

Chapter 4

Conclusion and recommendations

Introduction

4.1 The committee considers that the bill is a positive change to ensure that all three of the main legislative compensation and rehabilitation schemes for ADF members, veterans and their dependents can be responsive to the unique nature of military service. In particular, there are clear advantages if benefits intended for this group are kept separate from reforms to the SRCA which is mainly intended to support Commonwealth public servants.

4.2 Providing the Minister for Veterans' Affairs with full responsibility will facilitate future reform to address issues of legislative complexity and claims processing by DVA. The committee notes that veterans' entitlements and eligibility will not be changed under the DRCA and provision has been made to allow the Minister to make beneficial changes through regulation if any veterans are disadvantaged. However, the evidence received during the inquiry has indicated that there is room for improvement in the way in which DVA consults on changes to legislation and engages with the veteran community.

A move in the right direction

4.3 The creation of the DRCA will ensure that entitlements for ADF members, veterans and their dependents are excluded from reforms to compensation arrangements for other Commonwealth employees covered by the SRCA. This will recognise the unique nature of military service and the distinctive needs of those who have undertaken military service.

4.4 Many submitters and witnesses mentioned the evidence received by the Senate Foreign Affairs, Defence and Trade References Committee's inquiry into suicide by veterans and ex-service personnel. The evidence to that inquiry highlighted the complexity of veterans' entitlements and problems with processes for veterans making claims through DVA, including the operation of the Statements of Principle.

4.5 In the view of the committee, the bill is a positive step to commence addressing several of these long-standing issues in the veterans' affairs portfolio. This is a step to facilitate reform to simplify and harmonise the legislative schemes, departmental practices and the claims processes for ADF members and veterans. In particular, the bill will enable the Minister for Veterans' Affairs to make beneficial changes for veterans which may not be appropriate for Commonwealth employees.

4.6 Centralising policy authority for veterans' compensation and rehabilitation is also likely to assist the implementation of existing measures to address continuing matters of concern such as the out-of-date and disparate information systems used by DVA and the consequent problems with the processing of claims. For example, some key 2016-17 budget initiatives included \$24.8 million to develop a business case for transforming DVA's business operations and technology systems to be client focused, responsive and connected. There was also \$23.9 million provided over two years to

undertake urgent technical work to ensure critical compensation and rehabilitation processing systems operate effectively while the broader, detailed business case for the transformation program is developed.

Protections for veterans

4.7 It is important to emphasise that the bill includes protections to ensure that the eligibility and benefits under DRCA will be the same as those currently available to serving and former ADF members under the existing SRCA. There is an inherent tension in compensation claims processes between establishing clear rules for clients while at the same time allowing decision-makers the discretion to exercise judgement. In this context, it is appropriate that the bill includes a broad capacity for the Minister to modify the operation of the DRCA through making regulations for the benefit of veterans. The power is limited in that it can only be utilised when the Minister is 'satisfied that is necessary or desirable to make regulations to ensure that no person (except the Commonwealth) is disadvantaged by the enactment' of the DRCA. This safeguard ensures that any changes will be beneficial for veterans.

4.8 Some submitters and witnesses raised concerns regarding the level of parliamentary scrutiny for amendments to legislation enabled by this Henry VIII clause. Some of these concerns may result from a misunderstanding of parliamentary scrutiny processes. As the EM to the bill notes 'any regulation made under this provision may be subject to disallowance'.

4.9 The *Legislation Act 2003* provides the framework for the standard disallowance regime. In particular, it requires that legislative instruments must be registered and tabled in each House within 6 sitting days of being registered. Within 15 sitting days after tabling a senator or member of the House of Representatives may give notice of a motion to disallow the instrument (in whole or in part). If the motion is agreed to the instrument is disallowed and it then ceases to have effect. If a notice of motion to disallow the instrument has not been resolved or withdrawn within 15 sitting days after having been given, the instrument is deemed to have been disallowed and it ceases to have effect.

4.10 Further scrutiny of regulations and legislative instruments is also regularly undertaken through the Senate Standing Committee on Regulations and Ordinances (R&O Committee). All legislative instruments stand referred to the R&O Committee for scrutiny and recommendation as to any further parliamentary action, including disallowance. Established under the Senate's Standing Orders, this long-standing parliamentary committee, assisted by independent legal advice, scrutinises each legislative instrument to ensure:

- (a) that it is in accordance with the statute;
- (b) that it does not trespass unduly on personal rights and liberties;
- (c) that it does not unduly make the rights and liberties of citizens
- (d) dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and

(e) that it does not contain matter more appropriate for parliamentary enactment.¹

4.11 The committee agrees that, in most cases, proposed amendments to law should be introduced to the Parliament as primary legislation in order to maximise appropriate parliamentary scrutiny. However, in limited circumstances the uses of Henry VIII clauses are justified.² In this case, the committee considers that proposed new section 121B falls within these limited circumstances and is justified in facilitating the Minister to swiftly rectify compensation and rehabilitation issues for veterans arising from the transitional arrangements for the DRCA.

Improving consultation practices

4.12 The committee welcomes the commitment of DVA to undertake appropriate consultation with the veteran and Defence communities on any areas of potential alignment between the DRCA and the MCRA.³ However, the committee is concerned with DVA's current consultation and engagement practices in relation to proposed legislative changes. Partly, this appears to be an issue with the limited resources available to ex-service organisations to assess legislative proposals and provide informed feedback. While representatives from ADSO noted this was a shared responsibility between all stakeholders in the area of veterans' affairs, in practical terms, it is DVA who is best positioned to effect improvements to this relationship.

4.13 There is a perception that DVA has an adversarial relationship with some veterans' advocates, veterans' advocacy groups and lawyers acting on behalf of veterans. In the view of the committee, DVA should be seeking out and actively engaging with those persons who are best informed and capable of providing analysis of proposed legislation. Critical feedback on proposed legislative reforms should be encouraged at an early stage and utilised to identify areas where communications strategies may be required to answer questions raised in the veteran community. If DVA does not adequately consult and respond to issues raised, it can create environments where misinformation or unwarranted fears regarding legislative reform can flourish.

Recommendation 1

4.14 The committee recommends that the Department of Veterans' Affairs conduct a review of its consultation and engagement practices in order to:

- **receive informed critical feedback on proposed legislative amendments;**
- **rapidly respond to concerns raised in the veteran community; and**

1 Senate Standing Order 23(3).

2 For example, see Scrutiny of Legislation Committee (Queensland), *The use of "Henry VIII Clauses" in Queensland Legislation*, January 1997, pp 38-56, available at <http://www.parliament.qld.gov.au/documents/committees/SLC/1997/Report003.pdf> (accessed 16 March 2017)

3 *Submission 5*, p. 2.

- **increase the understanding of proposed legislation changes in the veteran community.**

Recommendation 2

4.15 The committee recommends the Senate pass the Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016.

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Chair**