



Australian Government
Repatriation Medical Authority

Ref: 1302723

The Hon Matt Keogh MP
Minister for Veterans' Affairs
Minister for Defence Personnel
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

By Email: Matt.Keogh.MP@aph.gov.au

9 January 2024

Dear Minister,

OFFICIAL: SENSITIVE

Draft Veterans' Compensation, Rehabilitation and Other Entitlements (Simplification and Harmonisation) Bill 2023: Repatriation Medical Authority (Chapter 9A) and Specialist Medical Review Council (Chapter 9B)

The Repatriation Medical Authority (the Authority) was provided with a copy of the above portion of the draft new bill on 21 December 2023.

Unfortunately, as only Chapters 9A and 9B of the draft bill have been received, the Authority is not in a position to comment on what, if any, other provisions in the draft bill may impact its operation. Further, despite the Authority's requests, the Department of Veterans Affairs has indicated that it will not permit the Authority to have direct access to the parliamentary draftsman for the purpose of providing feedback in relation to the bill.

As that is the case the only course open to the Authority is to provide its chief concerns regarding the draft directly to yourself as the relevant Minister.

Establishment of the RMA – debts of the RMA

The current legislation contains the following provision:

Level 8
259 Queen Street
Brisbane QLD 4000

GPO Box 1014
Brisbane QLD 4001

ABN 23 964 290 824

Telephone: (07) 3815 9404
Facsimile (07) 3815 9412
Email: info@rma.gov.au
Website <http://www.rma.gov.au>

“Debts incurred by the Authority in the performance of its functions are, for all purposes, taken to be debts incurred by the Commonwealth.”

At present the parliamentary drafter is seeking instructions about whether this provision is still required.

The Authority has been advised that this provision was originally inserted by the Office of Parliamentary Council as the Authority was constituted as a body corporate with members, legally separate from the Commonwealth but treated as if it were part of the Department of Veterans’ Affairs for the purposes of the *Public Governance, Performance and Accountability Act 2013*. The provision sought to ensure that if anyone were to be sued, it should be the Commonwealth rather than the Authority itself, thus enabling the Department of Veterans’ Affairs to handle any such claims on behalf of the Commonwealth.

As you are aware the Authority is a very small corporate Commonwealth entity of only twelve staff and five members. Whilst both the draft and the current legislation states that the Authority may be sued in its corporate name, given it is constituted of members, whether those members are intended to be officials of the Authority and therefore also open to suit in respect their performance of the Authority’s functions is open to question. The retention of this provision would therefore clarify that the Commonwealth is the appropriate respondent in litigation. The provision was in place at the time that the current Authority members assumed their roles.

Accordingly the Authority seeks the retention of this provision.

Henry VIII clauses

The current draft contains two new Henry VIII clauses which concern the essential functions and administration of the Authority as follows:

@370BB Functions and powers of the Authority [VEA 196B(1)]

(1) The functions of the Authority are:

- (a) to determine Statements of Principles for the purposes of this Act; and*
- (b) any other function conferred on the Authority by this Act, the regulations or any other law of the Commonwealth.*

@370DE Other terms and conditions

An Authority member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

In the interests of certainty, scrutiny, accountability and the ongoing independence of the Authority, the functions of the Authority and the terms of an Authority member’s appointment should be stated in the principal Act. These provisions will inevitably attract adverse comment from the Scrutiny of Bills Committee.

Accordingly, the Authority is of the view that sections 370BB (1) (b) and, 370DE should be removed from the draft.

Statements of Principles made at the direction of the Specialist Medical Review Council (“the Review Council”)

The parliamentary drafter requests instructions as to whether it is the correct policy outcome that where the Review Council directs the Authority to make Statements of Principles about a new disease, injury or kind of death, the Authority will not later be able to amend or repeal those Statements of Principles unless directed by the Review Council.

The parliamentary drafter is of the view that this is the current effect of sections 196B (11) and (12) when combined with section 33 of the *Acts Interpretation Act (C'th) 1901* and has therefore retained it in the current draft sections 370CN (1) – (7). If this is the correct interpretation of the way the current provisions operate (and the Authority has some doubt about this), then it will create practical difficulty in that Statements of Principles for new conditions made at the direction of the Review Council, will not be able to be revoked and remade prior to sunseting nor will the Authority be in a position to review and amend them after receiving a request for amendment from a veteran and undertaking an investigation of the sound medical and scientific evidence. Essentially such Statements of Principle would be “set in stone” at a particular moment in time.

As the Authority retains some doubts about whether the drafter’s interpretation of the effect of section 33(3) of the *Acts Interpretation act (C'th) 1901* is correct, it is suggested that the current provisions be retained in the draft. If further consideration by the Authority indicates that there is a need for amendment at a later date, then it can be addressed at that time.

The imperative at present is surely is to progress the harmonisation of the legislation rather than undertake changes to the existing provisions of the Acts.

Veterans’ access to Information and Copyright in submissions to the Authority

Currently these draft provisions, which cover both the Authority and the Review Council are placed at the end of the chapter relating to the Review Council, draft Chapter 9B.

The placing of these provisions at the back of this chapter will make them difficult to find. Further, the majority of submissions and information requests will come to the Authority rather than the Review Council.

It may therefore be more practical to include the provisions at the back of Chapter 9A or in a separate part dealing with provisions common to both bodies.

Urgency

The Authority is mindful of the urgency of this matter given that the drafting of this legislation was to be completed by 22 December 2023, in accordance with the interim recommendations of the Royal Commission into Defence and Veteran Suicide. The Authority is of the view that significant changes to the existing provisions do not need to occur in order to harmonise the acts. Accordingly please accept the above by way of feedback in relation to those portions of the draft supplied.

Yours sincerely



Professor Terence Campbell
Chairperson
Repatriation Medical Authority