

Submission regarding the Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024

27 April 2024

To whom it may concern,

By way of introduction, I am a medically discharged veteran, with firsthand experience of the challenges and issues that modern-day veterans face within our current systems. My ongoing engagement with these issues has driven me to pursue a PhD in law focusing on the review and appeal pathways for modern-day veterans; aiming to enhance fairness and effectiveness in these processes.

Having just had the opportunity to review the exposure draft of the proposed bill, and recognizing that the submission deadline is 28 April, I am providing a concise yet focused response. It is imperative that the experiences and voices of veterans with lived experiences are considered in legislative reforms, to ensure that we address and rectify systemic shortcomings effectively. My aim from this submission is to ensure that the following issue(s) are not further missed, and that these would be looked into further and considered in a fulsome way.

After reading the exposure draft, it is of concern that arguably one of the largest issues found within the administration of the Commission at present has not been addressed through this proposed legislative reform. Specifically, I refer to the way in which the Commission attempts to 'deem' veterans, and its application of section 181 of the MRC Act specifically. In addition, the way it defines and views suitable work.

Respectfully, more could be done to make these issues clearer and to honour the commitment clearly articulated by this Government in the *Australian Veterans' Recognition (Putting Veterans and their Families First) Act 2019*. For example, clause 360BB(d) of the exposure draft bill states that the functions of the Commission are... "to promote the return to suitable work (defence or civilian) by persons who suffered a service injury or service disease". This is the only real mention of suitable work throughout. However, issues remain regarding how suitable work is presently defined, and how section 132(1) and section 181 of the MRC Act are applied.

Arguably this is a meaningful addition, as the use of "promote" would appear to create a higher level obligation than currently exists; whereby section 60 of the MRC Act states "all members and

former members who are incapacitated for service or work from a service injury or disease are assisted in finding suitable work under this Part".

However, if section 181 of the MRC Act is being applied by the Commission to adversely affect veterans who are already engaged in suitable work (which appears to be counterproductive and circular) then this should be an opportunity to provide further clarity at a legislative level; as to the scope of this provision and intention of the legislator generally. It is argued that the real scope of this provision is that it is designed to *only* focus on veterans who are either not working, or not in work that is considered to be suitable; which then allows for an enquiry as to whether the person is able to earn in suitable work. If that is reasonably open, and is of a greater quantum than what the person is actually earning from work not considered to be suitable at the time, then the Commission can remove the difference notionally from a veterans entitlements. This allows for the focus to remain on moving injured veterans into "suitable" work and not just any work.

It is argued here that what this provision is not, is a tool to adversely reduce veterans entitlements without good cause. However, at present, it allows decision makers to skirt around the need to involve experts in the decision making process for example; in a way that a decision like whether work remains suitable can't, as that requires a vocational assessment by a trained expert. Here, all that is needed is the subjective thoughts of an individual delegate which is rife for misuse and inconsistency. Further, it is not a tool with a focus on the greatest level of earnings from a variety of possible suitable work options (as it is not a comparative exercise, nor should there be over investigating). What suitable work is for a specific veteran is required to be determined before considering section 181. Lastly, it is not a tool which is designed to capture a person who is already engaged in suitable work as that would be nonsensical.

A plain reading of the Explanatory Memorandum for this provision is all that is needed to confirm as much. Given this, it is not as broad as one might think on first blush and it must be made clearer so that delegates at the initial decision making stage can avoid falling into error. In addition, so that delays and substantial legal costs can be reduced (which are a consequence of challenging adverse decisions from legislation which could be clearer).

It would also be suggested that this draft legislation include additional factors than those presently found in the section 5 definition of suitable work in the MRC Act; to include a focus towards "sustainable" suitable work, as well as a level of clarity that this work must also be suitable so far as it is "meaningful" and "career orientated". That this designated suitable work, and what the Commission is charged to "promote", must be trying to replicate what a veteran has lost; a vocation with a purpose, and some kind of meaning behind it. Too often suitable, in the eyes of the

Commission, has included that an infantry soldier for example could be a security guard, or that they could be employed in often causal type roles such as supermarkets. It is submitted that the Commission should be looking beyond; that it should also be focused towards returning a veteran to their level of pre-injury earnings and status as a minimum, and that this should be articulated clearly in legislation.

The Commission's obligation is a holistic one. Therefore, if the definition of suitable work were to include additional specific factors (as above) over that of continuing to only rely on the broad factor of "any other relevant matter", that the above would make the decision more objective, rather than the subjective inquiry it is at present. Afterall, the Commission's own policies refer to suitable work as logically needing to be "commensurate" (i.e of a similar salary) and of the same "status" (i.e. of a relative social and professional position) to their pre-injury vocation. At present the definition does not even include mention as to a medical capacity to undertake the work (which demonstrates just how broad the catch all provision is intended to be). However, legislating to this effect would have obvious benefits towards objectivity and consistency.

Lastly, it should also be articulated within legislation that it is the responsibility of the Rehabilitation Coordinator to put the veteran in a position where they can at all times make "informed" choices and decisions. This is so that a veteran is protected in case the Commission was to later change their mind over a topic, but had not properly informed the veteran initially.

Parts of ad hoc departmental policy presently infer all of the above, however, if there are legislative amendments being considered, then now would be an ideal time to consider the inclusion and solidification of the above points through statute. Making future decision making at the level of the Commission or the Tribunal and Courts more objective and consistent.

I trust that these points will be given serious consideration in your ongoing legislative reform efforts. I am available for further discussion or to provide additional evidence supporting these recommendations. I believe that with thoughtful amendments, we can significantly enhance the support offered for veterans.

Thank you for considering this submission.

Kind regards,

