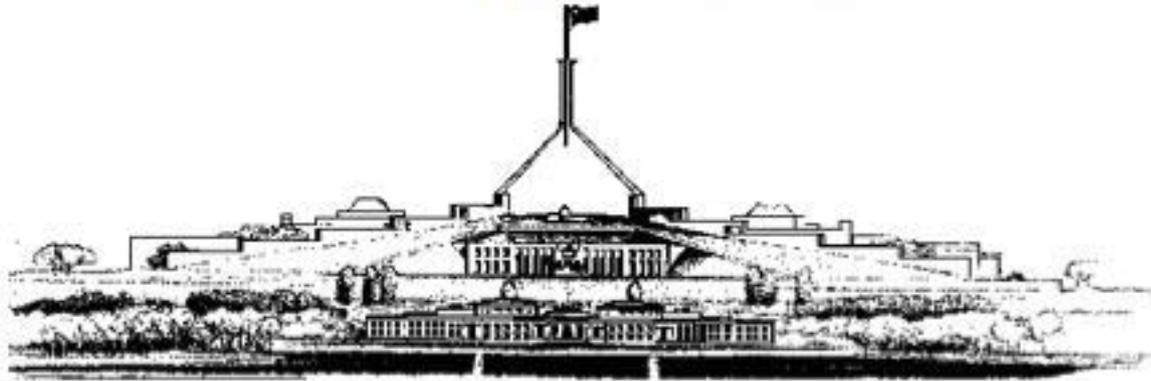




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

BILLS

**Safety, Rehabilitation and Compensation
Legislation Amendment (Defence Force) Bill 2017**

Second Reading

SPEECH

Wednesday, 6 September 2017

BY AUTHORITY OF THE SENATE

SPEECH

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Speaker Kitching, Sen Kimberley	Question No.

Senator KITCHING (Victoria) (12:25): I'm pleased to have this opportunity to speak on the Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill. I should begin by saying that the opposition will not be opposing this bill. When the bill was debated in the House of Representatives last month, the shadow minister for defence, Mr Richard Marles, said:

Given their assurances—

By the Minister for Veterans' Affairs, Mr Dan Tehan—

that no veterans will be worse off for these changes, Labor offer our support to this legislation.

This reflects Labor's view, which I certainly share, that, wherever possible, legislation affecting our national defence, the members of our Defence Forces or our Defence veterans should be considered on a bipartisan basis. It was in that spirit that the bill was referred to the Senate Committee on Foreign Affairs, Defence and Trade. Labor supported that reference and took part in the committee's review of the bill, which addressed some of the concerns raised by some members of the veterans community about the first iteration of the bill. We are pleased that the current version has remedied some of those concerns.

Pensions, compensation, rehabilitation, treatment and other benefits for members of the Defence Force, their families and ADF veterans are currently provided under three separate acts—the Veterans' Entitlements Act, the Military Rehabilitation and Compensation Act and the Safety, Rehabilitation and Compensation Act. The bill before the Senate will create the Safety, Rehabilitation and Compensation (Defence-related Claims) Act, to be known as the DRC Act, which will be a re-enacted version of the Safety, Rehabilitation and Compensation Act of 1988—the SRC Act. This new act will apply only to members of the Defence Force and their dependants. As a consequence of that change, the bill will also amend the SRC Act to remove cover for members of the Defence Force and their dependants from that act. The bill also amends a number of other acts to bring them into alignment with the changes made by the bill.

The purpose of the bill is to create a Defence-specific act which applies only to members of the Defence Force and their dependants. It will place all current veterans legislation under the control of the Minister for Veterans' Affairs. We think it is entirely reasonable that the Minister for Veterans' Affairs should be responsible for all matters regarding veterans. This bill will apply in relation to injury, disease, death and loss or damage sustained through employment in the Defence Force when that occurred before the commencement of the Military Rehabilitation and Compensation Act on 1 July 2004. Defence Force members and veterans with conditions linked to service from 1 July 2004 onwards will continue to be covered by the Military Rehabilitation and Compensation Act.

In his second reading speech in November last year, Mr Tehan assured the Defence and veteran communities that eligibility and benefits under the standalone act would be the same as those currently available to serving and former ADF members under the existing SRCA and that there were no other changes to benefits or entitlements. Mr Tehan described the bill as:

... a foundational step towards broader reform being undertaken by the Department of Veterans' Affairs to significantly improve services for veterans and their families ...

I certainly hope that is true.

It's been evident for some time that there is widespread dissatisfaction amongst Defence veterans about the operation of the Department of Veterans' Affairs and, particularly, its adversarial attitude to claims made by veterans and their families. This was really brought home to me through my participation in the Senate Foreign Affairs, Defence and Trade References Committee's inquiry into suicide by veterans and former Defence

personnel, which I spoke about in the chamber last month. Like other committee members, I was shocked to hear Defence veterans say that they would rather fight the Taliban than the Department of Veterans' Affairs. It's very difficult to get specific figures about the number of claims for post-traumatic stress disorder and others, for example, alcohol dependency, but DVA has accepted 1,590 claims for PTSD and 543 claims for alcohol dependence abuse from veterans of the Afghan war. There's no figure on the accepted number of claims which include permanent impairment.

I want to go to some of the statements that came up post the Senate committee's report. The chair of that committee, Senator Gallacher, said:

Modern veterans were more likely to die from suicide and self-harm than overseas operations service.

He also was quoted as saying:

Unfortunately, the effort to address suicide in the veteran community is likely to be a struggle that has no end point.

Speaking on ABC Radio, the defence minister, Senator Payne, said that the government was making significant progress. I think everyone in this chamber would agree with her statement about veterans—we know that they are overwhelmingly well-skilled, highly talented, extraordinarily strong, contributing Australians. And we want to make sure we can support them in their engagement for whatever future they choose.

I want to talk to you about an organisation called VOTSA. VOTSA stands for Veterans off the Streets Association. It provides crisis accommodation. On their website, they have a quote from Argentinian writer Jose Narovsky, who said:

In war, there are no unwounded soldiers.

Currently, the director of that organisation, Ms Hudson, who came to see me a couple of weeks ago, is trying to be granted a lease over an unoccupied former aged-care facility in Euroa in north-east Victoria. She's having a lot of difficulty. They have very few funds. What they do have is from donations. The fact that we have organisations that are trying to provide crisis accommodation because there are veterans living on the streets is ridiculous. I have sent a letter to the Minister for Veterans' Affairs, both Commonwealth and Victoria, and I would hope that they will support Ms Hudson in her endeavours. But we shouldn't be reliant on the goodwill of organisations. It should actually be something that the Commonwealth itself looks after and that the department itself has regard to.

Going back to the committee report, much of the evidence that we heard related to veterans' experiences with the department. The committee made recommendations concerning the streamlining of the administration of the department, reducing the backlog of clients and increasing the capability and training of staff at the department to deal with mental-health conditions and complex health concerns. The committee members will be very interested to hear from the minister about how he plans to go about implementing the recommendations of the committee's report. I hope that the reforms in this bill will serve to make that process easier by streamlining the administration of Defence benefits and bringing all matters relating to Defence veterans under the control of the minister.

We should understand that these problems are going to get worse over the coming decades. There are 30,000 veterans of World War II who are still alive, and they are all in advanced years. Our Vietnam veterans, numbering more than 60,000, are now entering their 70s and the demands they make on the Department of Veterans' Affairs will increase. We also have to remember that, as a result of our deployments in the Gulf, Iraq, East Timor, the Solomon Islands and Afghanistan, over 50,000 Australians have seen active service overseas since 2000. Since some of these commitments are ongoing and since there are likely to be more Defence deployments over the coming years, the number of Defence veterans will continue to increase for the foreseeable future. We should not assume that because these veterans are still relatively young that they will not be making demands on our system of veterans' benefits, nor should we be limiting the benefits simply because of the number of deployments and the number of Australian service men and women who have served our country. As Senator Whish-Wilson said, if we're going to send people overseas, if we're going to have them serve to defend, then we must be responsible and return that favour and defend them.

Our committee was made very aware of the serious mental health issues faced by many younger veterans, and Senator Whish-Wilson raised the case of Jesse Bird—I do understand the Minister for Defence Personnel and

Veterans' Affairs has recently met with his family. Unresolved mental health issues are among the main causes of suicide for younger veterans. The committee's inquiry concluded that there needed to be some major reforms to the department and the way it operates if it is to be made fit for purpose, as it faces these new challenges.

Last month, I described the committee's recommendations in my speech on the inquiry into veteran and ex-service personnel suicide rates, but I will mention some of them again now. They are relevant to this debate because the main purpose of this bill, as I understand it, is to bring all veterans affairs issues under the control of the minister, and to rationalise and streamline the administration of veterans benefits. It should make it easier for the minister to implement the committee's recommendations.

Firstly, we recommended that the government continue to support and to fund the veteran-centric reform program in the department. We recommended targeted programs addressing issues in the transition of defence members to civilian life, and more appropriate interactions with mental health service providers for veterans with mental health conditions. We recommended that the government commission an independent study into the mental health impacts of Veterans' Affairs claims processes and that all transitioning defence members should be provided with a DVA white card—this was a major point of contention in the evidence the committee heard—to facilitate access to health care, to provide identification as a veteran and to aid in data collection. The committee was concerned to learn that we don't even know how many defence veterans there are in Australia, because of inadequate data collection. We did hear at estimates recently that the department is undergoing some changes to its IT system, so we'll ask again at upcoming estimates how that's proceeding.

In relation to the transition to civilian life, we recommended that there be an option in the Career Transition Assistance Scheme that would allow veterans to undertake a period of work experience with an outside employer. We recommended that the Australian Public Service Commission conduct a review into mechanisms to support the public sector employment of veterans. Again, there are some organisations that are conducting this work, but this is only because people have chosen to get together and do it. Janine Kirk, who is the chair of the Prince's Trust, runs a program with RMIT in Melbourne, where veterans can go and do some study at RMIT and then they are placed with employers. But this shouldn't be an ad hoc approach—this should be a systemic approach to help veterans gain employment and transition properly and safely and healthily to civilian life. We also recommended that the government improve access to support services by supporting the Veterans and Veterans Families Counselling Service to create and maintain a public database of support services.

In the longer term, the committee recommended that the legal and administrative complexity of the legislative framework be addressed through a review by the Productivity Commission, with a view to simplifying the system. I acknowledge that this bill goes some way towards meeting the obvious need to rationalise the administration of veterans affairs, which is one reason why we on this side are supporting it, but a wider review of the way the system operates is still warranted. The committee also recommended that a bureau of veterans advocates be established, modelled on the Bureau of Pensions Advocates in Canada, to advocate on behalf of veterans in their interactions with the department. The minister should use the greater control given to him by this bill to carry out these recommendations in the Senate committee's report. I will be looking to him for a commitment to do that.

One of the things we learnt about in the course of our inquiry was the fragmented state of the veteran community. The days when the RSL could speak for all veterans and had a close relationship with the minister and with the department are long gone. There are now a variety of voices speaking on behalf of defence members, defence families, and defence veterans, and not always in a coordinated way. This has made the process of consultation with defence and veteran communities more difficult. Senator Farrell also spoke about the adversarial nature of some of the interactions, and I will go to that a little later, but a mechanism such as a bureau of veterans advocates would make it easier for the department to know what the various groups of veterans in the community want and need.

This problem was identified when this bill was referred to the Senate Standing Committee on Foreign Affairs, Defence and Trade. The committee identified a number of concerns in relation to the way in which consultation is undertaken by the department. The committee's report expressed concern about the department's:

... current consultation and engagement practices in relation to proposed legislative changes.

They suggested this might be due in part to:

... limited resources available to ex-service organisations to assess legislative proposals and provide informed feedback.

The committee did express concern about the department's:

... adversarial relationship with some veterans' advocates ... and lawyers acting on behalf of veterans.

The committee stated that in their view the department should be:

... seeking out and actively engaging with those persons who are best informed and capable of providing analysis of proposed legislation.

The committee acknowledged the difficulties involved in consultation with a variety of veteran advocacy groups, but also said that the department needed to take responsibility for improving its relationship with the veteran community.

This adversarial culture in the department was something that Labor sought to resolve by committing, prior to the election, to undertaking a first principles review of Veterans' Affairs. This review would be based on a set of agreed-upon first principles, would examine the department and would seek to rectify administrative, governance and process failings to ensure the department is able to meet existing and future challenges in a clear and efficient manner. Most importantly, this review would help to re-establish trust in DVA for the veterans and their representative organisations. It would ensure that we have a system in place which works for the people who need it the most and puts our veterans first. It also brings to mind that Commonwealth departments and agencies are subject to model litigant rules. I wonder whether that has been fully explored. The committee therefore recommended that the department conduct a review and receive feedback. I hope the minister takes on board these recommendations, which arose from a bipartisan committee process.

Finally, I want to say something about section 121B of the bill, the so-called 'Henry VIII' clause. Senator Whish-Wilson has outlined his party's position, but I understand and foreshadow that Senator Lambie will be moving some amendments. Both as a lawyer and as a parliamentarian, I have serious concerns about the use of this mechanism. A 'Henry VIII' clause allows a minister to make a regulation which would retroactively change the bill that parliament has passed. I won't go into the history of Henry VIII's changing of acts of parliament. The government has assured us that retrospective legislation under new section 121B is intended to operate:

... in a purely beneficial way to deal with any anomalies that may arise where there is a retrospective application of the DRC Act which will need to refer to the earlier version of the SRC Act that applied at the time for which eligibility is being determined.

The section seeks to limit the use of this power of retrospective regulation. It says:

The Minister must seek only to make the regulations to protect the entitlements of those covered by the DRC Act and to ensure that "no person is disadvantaged by the enactment of this Act".

We are further assured that:

This clause is expressly for the benefit of those persons covered by the DRC Act and is not to be read to provide any advantage to the Commonwealth.

Again, it does make me think of the model litigant rules. I am aware that the High Court in *ADCO Constructions Pty Ltd v Goudappel*[2014] unanimously upheld the validity of a similar clause inserted into the New South Wales Workers Compensation Act, so I don't dispute that the government has the power to legislate in this way.

I am also aware that the parliament has the power to disallow any regulation made under this section. The parliament has consistently rejected the idea of retrospective legislation, and I think that is a position that we should stick to. Our legal system is, after all, based on precedent. With that caveat, I repeat that the opposition supports this bill. I hope that it will go some way towards meeting the many concerns that veterans have raised about the functioning of our system.

Debate interrupted.