Veterans’ Affairs Legislation Amendment (Mental Health and Other Measures) Bill 2014

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Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation
When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.
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Purpose of the Bill

The purpose of the Veterans’ Affairs Legislation Amendment (Mental Health and Other Measures) Bill 2014 (the Bill) is to amend the Veterans’ Entitlements Act 1986 (VE Act)\(^1\) to:

- enable the expansion of the mental health conditions that may be covered under non-liability health care to include alcohol use disorder and substance use disorder
- enable a determination to be made expanding the eligibility for non-liability health care for members of the Australian Defence Force (ADF) with peacetime service only
- expand the eligibility for the Veterans’ and Veterans’ Families Counselling Service (VVCS) to include a range of new client groups
- change the portability status of seniors supplement and Commonwealth Seniors Health Card (CSHC) to reduce the administrative burden on clients and
- make a technical amendment to an end date for a period of service in an operational area (the territories of Malaysia, Brunei and Singapore and the waters adjacent to those countries).

The Bill amends the VE Act and Military Rehabilitation and Compensation Act 2004 (MRC Act)\(^2\) to enhance the operation of the Veterans’ Review Board (VRB).

The Bill also amends the MRC Act to:

- expand the circumstances under which an eligible young person is taken to be wholly dependent on a member to include those for whom the member is liable to pay child support and
- enable the Chief Executive Officer of Comcare to be nominated for appointment to the Military Rehabilitation and Compensation Commission.

Structure of the Bill

The Bill is an omnibus Bill divided into seven Schedules providing for distinct measures and amendments. This Digest will address each of the Schedules separately including background information and explanation of the proposed changes.

Financial implications

The Government states that the financial impact of the measures dealing with non-liability health care (Schedule 1) will be $14.6 million over four years. The financial impact of the VVCS measure (Schedule 2) is expected to be $6.4 million over four years.\(^3\)

None of the other measures in the Bill are expected to have a financial impact.

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights can be found at page 31 of the Explanatory Memorandum to the Bill. As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

The Government says that amendments to the operation of the VRB in Schedule 4 may limit the right to equality and non-discrimination and the right to freedom of opinion and expression.

The right to equality and non-discrimination may be limited by new subsection 140(5) of the VE Act, at item 8 of Schedule 4, which refers to the provision of the reasons for a decision and provides the VRB with the discretion to exclude information it considers to be confidential or prejudicial to the physical or mental health and

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wellbeing of the applicant. The Government states that this is potentially discriminatory but can be justified as legitimate because it is intended to ‘prevent the applicant from self harm or harming other persons’.  

**New section 170** of the VE Act, at **item 35 of Schedule 4**, extends the conduct from that which was previously regarded as being in contempt of the VRB to include conduct such as creating a disturbance in or near a place where the Board is sitting. According to the Government, this ‘clearly limits the right to freedom of expression as set out in Article 19 of the [International Covenant on Civil and Political Rights]’. The Government states that this is ‘justified on the grounds that such a limitation is for the purposes of public order which is consistent with the right of the applicant to a fair hearing’.

**Committee Consideration**

**Parliamentary Joint Committee on Human Rights**

The Parliamentary Joint Committee on Human Rights has commented on the Bill and sought advice from the Minister as to:

- the compatibility of **new section 170** of the VE Act with the right to freedom of opinion and expression, and particularly:
  - whether the measure is rationally connected to its stated objective and
  - whether the measure is proportionate to achieving that objective
- the compatibility of **new subsections 170(3) and 170(4)** with the right to freedom of assembly, and particularly:
  - whether the measures are rationally connected to their apparent objective and
  - whether the measures are proportionate to achieving that objective.

**Schedule 1—Non-liability health care**

**Background**

There are three main Acts that provide for compensation and coverage of a war or defence service injury, disease or death. They are the:

- **VE Act**, which provides for those who undertook operational service, peacekeeping service and hazardous military service, and/or peacetime military service from 7 December 1972 up to 6 April 1986
- **Safety, Rehabilitation and Compensation Act 1988 (SRC Act)**, which provides coverage for illness, injury or death arising from military service undertaken from 3 January 1949 to 30 June 2004 and
- **MRC Act**, which provides coverage for illness, injury or death arising from military service undertaken from 1 July 2004.

The VE Act provides four main types of benefits:

- compensation, through disability pensions to veterans, certain members of the Defence Force and members of peacekeeping forces, and war and defence widow/er’s pensions and orphan pensions for their dependants
- income support, through service pensions for veterans with qualifying service and their partners, and income support supplements for war or defence widow/ers
- health care for veterans and their dependants and

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4. Ibid., p. 38.
5. Ibid.
6. Ibid., p. 39.
9. There is some overlap of coverage between the VE Act, the SRC Act and the MRC Act respectively. For example, a person may have an entitlement to coverage under the VE Act and the MRC Act at the same time. In such cases a person may choose which coverage they want to receive. Where a person makes such a choice, this may also lead to offsets against entitlements under the other Act. For further background, see L Buckmaster, *Veterans’ Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2010*, Bills digest, 22, 2010–11, Parliamentary Library, Canberra, 2010, accessed 8 May 2014.
• allowances and other benefits for veterans and dependants.\textsuperscript{10}

In order to be eligible for compensatory pensions through the \textit{VE Act}, a person’s disability or illness must be determined to be related to their service (that is, war-caused or defence-caused).

Health care under the \textit{VE Act} is generally only provided to those eligible for compensatory pensions and eligible service pensioners. There are two main groups eligible for health care under the \textit{VE Act}: Gold Card holders and White Card holders.\textsuperscript{11} Holders of the Gold Card (the Repatriation Health Card—For All Conditions) are entitled to the full range of health care services at Department of Veterans’ Affairs’ (DVA) expense including medical, dental and optical care, within Australia. Holders of the White Card (the Repatriation Health Card—For Specific Conditions) are entitled to the full range of health care services at DVA’s expense but only for those disabilities or illnesses accepted as service-related.

In addition, under subsection 85(2) of the \textit{VE Act}, a White Card may be issued for treatment for non-service related cancer, pulmonary tuberculosis and post-traumatic stress disorder (PTSD), without the need to submit a claim for disability compensation. A White Card may also be issued for treatment for clinical depression and severe anxiety disorders through an instrument made under section 88A of the \textit{VE Act}. Section 88A provides that the Repatriation Commission may determine that specified veterans and others are eligible to be provided with specified treatment.\textsuperscript{12}

Treatment under the \textit{VE Act} for disability or illness where no service causation has been established is known as ‘non-liability health care’. In 2000, when section 88A was introduced to the \textit{VE Act}, the Government said that it would ‘provide the [Repatriation] Commission with flexibility to respond to the treatment needs of certain classes of veterans in a timely and detailed manner’.\textsuperscript{13} Further, as the 2011 Review of Military Compensation Arrangements (Military Compensation Review) noted:

Non-liability health cover has obvious advantages for early intervention through treatment to lessen the impact of the condition without the need to await acceptance of liability.\textsuperscript{14}

For those under the jurisdiction of the \textit{MRC Act} with operational service since 1 July 2004, \textit{VE Act} non-liability health care provisions apply. Those who entered the ADF after 1994 and have had peacetime service only, are not currently eligible for \textit{VE Act} non-liability health care (nor, subsequently, coverage under the \textit{MRC Act}).\textsuperscript{15}

\textbf{Proposed changes}

This Schedule proposes to amend the \textit{VE Act} to enable non-liability health care to include more conditions and more members of the ADF.

\textbf{Adding alcohol and substance abuse disorders to non-liability health care}

\textbf{Item 1} amends subsection 85(2) of the \textit{VE Act} to include ‘alcohol use disorder’ and ‘substance use disorder’ as conditions for which veterans, members of the Forces and members of a Peacekeeping Force may be provided with treatment.

The Explanatory Memorandum notes that each of these conditions are defined in the \textit{Diagnostic and Statistical Manual of Mental Disorders (DSM-5)}.\textsuperscript{16} The measure adds to the range of conditions for which eligible members can receive treatment and can be considered beneficial.

\textbf{Extending non-liability health care to those with peacetime service only}

\textbf{Item 2} adds new paragraph 88A(1)(d) to subsection 88A(1) providing the Repatriation Commission with the power to make a determination in writing that a person who is not already covered by paragraph 88A(1)(a), (b)

\begin{itemize}
\item \textsuperscript{11} Department of Veteran’s Affairs (DVA), \textit{Veterans’ health cards}, DVA website, 9 April 2013, accessed 12 May 2014.
\item \textsuperscript{12} The Repatriation Commission is responsible under the \textit{VE Act} for granting pensions, allowances and other benefits, providing treatment and other services and generally administering the \textit{VE Act}.
\item \textsuperscript{13} Explanatory Memorandum, \textit{Veterans’ Affairs Legislation Amendment Bill (No. 1) 1999}, p. 9, accessed 12 May 2014.
\item \textsuperscript{14} DVA, \textit{Review of military compensation arrangements: report to the Minister for Veteran’s Affairs}, February 2011, p. 342, accessed 12 May 2014.
\item \textsuperscript{15} Ibid., p. 343.
\end{itemize}
or (c), and who is in a specified class is eligible to be provided with non-liability health care under Part V of the VE Act. The ADF members targeted by this measure are not currently included in the instrument making power under section 88A.

The Explanatory Memorandum says that, under the expanded instrument making power, it is intended that the Repatriation Commission will extend coverage for PTSD, anxiety disorder, depressive disorder, and alcohol and substance use disorder to:

- members of ADF with at least three years continuous full-time peacetime service on or after 7 April 1994 (or before and on or after 7 April 1994) and
- members of ADF with less than three years continuous full-time service on or after 7 April 1994 (or before and on or after 7 April 1994), who were discharged on the ground of invalidity or mental or physical incapacity.¹⁷

The Military Compensation Review examined the question of whether non-liability treatment provided under the VE Act for psychiatric conditions should be extended to members of the ADF with peacetime service only. According to the Military Compensation Review report:

…the current restriction of non-liability mental health cover to certain veterans has been criticised in ex-service organisation submissions and public consultations and this approach needs to be re-examined.

The fact that a person has been unwilling or unable to establish a compensable entitlement for a mental health condition while an ADF member or shortly thereafter … should not inhibit access to treatment. This is particularly relevant when they are going through the stress of transition to discharge or later disruptions in their lives which may well have arisen from or have been exacerbated by their period of service. While public programs may be available through Medicare, former ADF members having issues with transition may be reluctant to use these or may have to wait for places to become available.

While ADF members are in full-time service they are covered by ADF health arrangements for all treatment. There is the possibility that former members of the ADF with peacetime service only will not be able to access necessary treatment if they do not have the same access as their former colleagues who have warlike/non-warlike service. This may be important in addressing emerging problems at an early stage without the stress of waiting for compensation coverage to be confirmed.¹⁸

The Committee undertaking the Military Compensation Review was divided on the question of extending non-liability treatment for psychiatric conditions to former members of the ADF with peacetime service only:

Committee members representing the DVA and the Australian Defence Organisation, and Mr Peter Sutherland [visiting fellow, Australian National University College of Law; an expert in workers’ and military compensation] believe that non-liability health cover for all psychiatric disorders should be provided under the MRCA for former ADF members and part-time Reservists who have served after 1 July 2004. These Committee members also believe that this is consistent with the thrust of recommendations of recent reviews including the suicide study by Professor David Dunt, which drew particular attention to members’ needs around the period of transition to discharge and did not limit consideration to those who had operational service.

The Committee members representing the Department of Finance and Deregulation, the Treasury and the Department of Education, Employment and Workplace Relations believe the MRCA (or Safety, Rehabilitation and Compensation Act 1988) is not an appropriate vehicle to extend non-liability health cover for all psychiatric disorders to former ADF members and part-time Reservists with peacetime service only. In principle, compensation schemes should only deal with cases where liability is established.¹⁹

Ultimately, the Committee recommended (Recommendation 25.1) that the Government consider:

１７. Ibid., p. 3.
１９. Ibid., pp. 341–2.
(a) providing non-liability health cover under the Military Rehabilitation and Compensation Act 2004 for certain psychiatric conditions to all former members of the Australian Defence Force (ADF) and part-time Reservists who have served after 1 July 2004 – favoured by the Department of Veterans’ Affairs (DVA) and the Australian Defence Organisation (Defence) representatives and Mr Peter Sutherland; or

(b) requesting Defence and DVA to gather further evidence to establish both the benefit and need of additional psychiatric care, separate to the existing general health services, for former members of the ADF and part-time Reservists who have served after 1 July 2004. If benefit and need are established, then options could be presented to the Government to deliver such health coverage outside of compensation legislation – favoured by the Department of Finance and Deregulation, the Treasury and the Department of Education, Employment and Workplace Relations representatives. 20

The then Government rejected Recommendation 25.1(a) noting that ‘those former members with warlike or non-warlike service after 1 July 2004 already have access to non-liability health care for certain psychiatric conditions via provision in the VE Act’. 21 Instead, the Government accepted Recommendation 25.1(b) and asked ‘Defence and DVA to gather further evidence to establish both the benefit and need for additional psychiatric care for those former members of the ADF and part-time Reservists with peacetime service after 1 July 2004’. 22

In contrast with the previous Government’s position, the intention of this Schedule is to give the Repatriation Commission an expanded instrument making power in order to implement Recommendation 25.1(a). Further, the intention is that the Repatriation Commission will expand the intent of Recommendation 25.1(a) to include those whose peacetime service included service on or after 7 April 1994.

**Schedule 2—Veterans and Veterans Families Counselling Service**

**Background**

The VVCS is a free, Australia-wide service that provides counselling and group programs to Australian veterans, peacekeepers and their families. 23 Services are provided by qualified psychologists or social workers who have experience working with veterans, peacekeepers and their families. Services include a wide range of treatments and programs for war and service-related mental health conditions such as PTSD.

VVCS was established in 1982 to provide counselling services to Vietnam Veterans and was known as the Vietnam Veterans Counselling Service. 24 Since then, eligibility has expanded to include:

- all Australian veterans of all conflicts and peacekeeping operations
- partners, ex-partners and dependent children of veterans/peacekeepers with issues arising from the veteran’s service and
- sons and daughters (regardless of age) of Vietnam veterans with issues relating to their parent’s service. 25

In 2007, the service was renamed Veterans and Veterans Families Counselling service to reflect the fact that it is available to the wider veteran community. 26

**Proposed change**

This Schedule proposes to amend the VE Act to enable eligibility for VVCS services to be expanded to additional client groups from 1 July 2014.

Currently, eligibility for the VVCS is provided for under sections 88A (see above) and 92 of the VE Act (dealing with counselling services and psychiatric assessment for veterans, their dependants and classes of persons who

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20. Ibid., p. 348.
22. Ibid.
25. Ibid.
26. Ibid.
have been the subject of a determination under section 88A). These provisions restrict eligibility for VVCS services to veterans, members of the Forces and members of a Peacekeeping Force.

According to the Explanatory Memorandum, the intention of Schedule 2 is to make it possible to extend VVCS eligibility to otherwise ineligible current and former members with the following peacetime service:

- border protection service
- service in an Australian or overseas disaster zone
- members involved in training accidents
- members who were medically discharged and
- submariners.\(^{27}\)

It is also intended that VVCS eligibility will also be expanded to partners and their eligible children up to the age of 26 of the newly eligible groups; and the partners, dependent children aged up to 26, and parents of members killed in service related incidents.\(^{28}\)

The Schedule creates a new instrument making power enabling the Repatriation Commission to extend eligibility for counselling services to a class of persons (item 2) and to arrange for counselling services for a person included in a class of persons specified in such an instrument (item 1).

**Schedule 3—Seniors supplement and seniors health card**

**Background**

The CSHC assists certain seniors with the cost of prescription medicines and other health services. The card is targeted at self-funded retirees of Age Pension age who do not qualify for the Age Pension (including that paid by DVA) because of their level of income or assets. To be eligible for the card, seniors must have an adjusted taxable income of less than: $50,000 for singles; $80,000 for couples (combined income); and $100,000 combined for couples separated by illness, respite care or prison. An amount of $639.60 per year is added to the allowable income amount for each dependent child. There is no assets test for the CSHC.\(^{29}\)

Seniors supplement is paid to CSHC holders to assist with the cost of bills such as energy, rates, phone and motor vehicle registration.

Under ‘portability’ provisions in the VE Act, CSHC holders lose eligibility for the CSHC and seniors supplement if they travel outside Australia for longer than six weeks. Those who lose their eligibility under these provisions must then reapply for the CSHC if they wish to resume receiving seniors supplement. To reapply for the CSHC a person must submit a written claim including proof of income.

It should be noted that the Government announced in the 2014–15 Budget that it intends to abolish seniors supplement from 20 September 2014.\(^{30}\)

**Proposed change**

Schedule 3 proposes amending the VE Act to ensure that CSHC holders do not become ineligible for the card as a result of the portability provisions and hence will no longer need to reapply for CSHC upon their return from overseas. Instead, the portability provisions are to be moved from the CSHC eligibility provisions (items 3 to 10) to the seniors supplement eligibility provisions (item 1). Eligibility for Seniors Supplement is automatically assessed when a person claims CSHC. It is not necessary to make a separate claim for the supplement.

Thus, according to the Explanatory Memorandum, this will mean that ‘seniors supplement can be paid automatically upon a person’s return to Australia after a short period abroad without the need for the person to re-claim the CSHC’ and hence ‘reduce the administrative demand on clients’.\(^{31}\)

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27. Explanatory Memorandum, op. cit., p. 4.
28. Ibid.
Schedule 4—Veterans’ Review Board

Background
The Veterans’ Review Board (VRB) is an independent statutory tribunal that exists to provide independent merits review of:

- decisions made by the Repatriation Commission under the VE Act on:
  - claims for acceptance of injury or disease as war-caused or defence-caused
  - claims for war widows’, war widowers’ and orphans’ pensions
  - assessment of pension rate for incapacity from war-caused or defence-caused injury or disease and
  - claims for the grant, or assessment of, attendant allowance and
- determinations under the MRC Act made by:
  - the Military Rehabilitation & Compensation Commission (MRCC) and
  - the Service Chiefs of the Australian Army, the Royal Australian Navy, and the Royal Australian Air Force.

Merits review means that the VRB ‘makes a fresh decision that it considers is the correct or preferable decision in all the circumstances’. It is ‘not bound by the rules of evidence or any of the findings within the decision it is reviewing’. It exercises the same statutory powers and is subject to the same limitations as those conferred on the Repatriation Commission, MRCC or a service chief.

The VRB operates under the VE Act (with some modifications) when deciding matters under the MRC Act and Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004.

Proposed changes
Schedule 4 proposes to amend the VE Act and MRC Act to enhance the operation of the VRB through:

- providing for alternative dispute resolution processes, including case conferencing, similar to other Commonwealth merits review tribunals (for example, the Administrative Appeals Tribunal (AAT))
- improving case management powers that will also enable alternative dispute resolution processes
- making the VRB legislative framework more consistent with the AAT legislative framework and
- allowing the VRB to implement more effective administration and business procedures.

Key provisions include:

- **item 2**, which inserts new definitions into subsection 133(1) of the VE Act, including a definition for ‘alternative dispute resolution processes’ as meaning ‘procedures and services for the resolution of disputes’.

- **item 4**, which inserts a new section 133A into the VE Act stating the VRB’s objective as ‘providing a mechanism of review that is fair, just, economical, informal and quick’ (similar to the objective of the AAT).

- **item 6** repeals paragraph 139(3)(c) and substitutes a new paragraph 139(3)(c) intended to provide the VRB with broader remittal powers as a means to determining certain reviews (without, as is currently the case, having to adjourn a review hearing to allow the Secretary of the Department of Veterans’ Affairs to investigate any associated matters and provide a report to the Board).

- **item 8** substitutes a new, ‘simpler, more modern’ section 140 of the VE Act dealing with statements of decisions of the VRB. As part of this, new subsection 140(5) retains an existing provision giving the VRB the

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33. Ibid.
34. Explanatory Memorandum, op. cit., p. 8.
35. VRB, op. cit.
37. Ibid., p. 9.
38. This includes conferencing, mediation, neutral evaluation, case appraisal, conciliation, and procedures or services prescribed in an instrument under subsection 133(2). It does not include arbitration or court procedures or services.
discretion to exclude information it considers to be confidential or prejudicial to the physical or mental health and wellbeing of the applicant.\textsuperscript{41} As noted in the Statement of Compatibility with Human Rights section (above), the Government states that this is potentially discriminatory but can be justified as legitimate because it is intended to ‘prevent the applicant from self harm or harming other persons’ and such an intention can be considered reasonable and consistent ‘with the aim of achieving purposes which are legitimate under the various Conventions’\textsuperscript{42}

• item 10 amends subsection 141(2) to enable the VRB to be constituted by a single member for a particular review or class of reviews without (as is currently the case) requiring the approval of the Minister for Veterans’ Affairs

• item 14 establishes arrangements for conferences of the parties or alternative dispute resolution processes (other than conferencing) to be held in relation to an application to the VRB for a review of a decision

• item 24 establishes arrangements according to which the VRB may dismiss an application for review without proceeding to or completing the review, whichever is applicable

• item 28 provides for the Principal Member of the VRB to delegate all or any of their powers under various provisions of the \textit{VE Act} to specified VRB Registrars. The purpose of this is to ‘promote the more efficient running of the Board by enabling certain management functions to be undertaken by the various Registrars’\textsuperscript{43}

• item 35 substitutes a new section 170 to strengthen the Contempt of Board provisions. Currently, it is an offence to obstruct or hinder the Board or a member in the performance of the functions of the Board; or disrupt a hearing before the Board. Penalties associated with these offences are $2,000 or imprisonment for 12 months, or both. This item provides that the following would be offences:
  
  – conduct insulting a person in the exercising of that person’s powers under Part IX of the \textit{VE Act}
  
  – conduct interrupting the proceedings of the VRB
  
  – conduct creating a disturbance in or near a place where the VRB is sitting
  
  – taking part in creating or continuing a disturbance in or near a place where the VRB is sitting and
  
  – conduct that would constitute contempt of court if the VRB were a court of record.

The maximum penalty associated with each of these offences is to be six months imprisonment. The Government has not provided a rationale for these changes to the Contempt of Board provisions. As noted in the Statement of Compatibility with Human Rights section (above), the Government acknowledges that extending the types of conduct from that which was previously regarded as being in contempt of the VRB limits the right to freedom of expression but argues that such a limitation may be justified as being for the purposes of public order.

Although new section 170 does not explicitly provide that the imposition of a fine is a penalty option, it is available under subsection 48(2) of the \textit{Crimes Act 1914} (Cth), which allows a sentencing court to impose a pecuniary penalty on an individual convicted of a Commonwealth offence that is punishable by imprisonment only, if the relevant offence provision does not indicate a contrary intention and the court considers that a monetary penalty would be appropriate.\textsuperscript{44} The maximum penalty that may be imposed by the court is calculated by multiplying the maximum term of imprisonment (in months) by five. This gives the maximum number of penalty units that may be imposed (in this case 30). As a result, the maximum fine that could be imposed for an offence under new section 170 of the \textit{VE Act} is $5,100.\textsuperscript{45} This is the same as the maximum pecuniary penalty that may be imposed under the equivalent provision in the \textit{Administrative Appeals Tribunal Act 1975}.\textsuperscript{46}

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41. In addition to being included in the current version of section 140, exclusion of information on these grounds is also provided for under sections 34, 137 and 153 of the \textit{VE Act}.
42. Explanatory Memorandum, op. cit., p. 38.
43. Ibid., p. 21.
45. Under section 4AA of the \textit{Crimes Act}, a penalty unit is $170.
• items 42 to 49 make consequential amendments to the MRC Act.

Schedule 5—Operational service

Background
The VE Act provides for compensation and coverage of a war or defence service injury, disease or death for those who undertook operational service, peacekeeping service and hazardous military service, and/or peacetime military service from 7 December 1972 up to 6 April 1986. Operational areas for the purposes of operational service are described in a table in Schedule 2 of the VE Act.

Item 7 in the table at Schedule 2 of the VE Act refers to operational service in the territories of Malaysia, Brunei and Singapore and the waters adjacent to those countries in the period from and including 17 August 1964 to and including 30 September 1967.

This period is inconsistent with the Instrument of Allotment provided by the Defence Force for this operational area, which refers only to service from the period from 17 August 1964 to 14 September 1966. Instruments of allotment list which persons or units of the Defence Force are allotted for duty in an operational area.

Proposed change
Schedule 5 amends the end date in the table in Schedule 2 of the VE Act for a period of service in the territories of Malaysia, Brunei and Singapore and the waters adjacent to those countries to make it consistent with the Instrument of Allotment.

Column 2 of item 7 of the table is to be amended by omitting the end date of ‘30 September 1967’ and substituting the end date of ‘14 September 1966’.

According to the Explanatory Memorandum, ‘no veteran will be disadvantaged by the change of end date as no member or unit of the Defence Force was allotted for duty, with the meaning of the [VE] Act, in the area after 14 September 1966’.

Schedule 6—Eligible young persons wholly dependent on a member

Background
Currently, an eligible young person may be entitled to the following supports under the MRC Act:

• lump sum and weekly compensation
• education assistance
• a Gold Card and
• MRC Act supplement.

Eligibility is determined on the basis of the young person’s economic dependence on a member. Those young people taken to be ‘wholly’ or ‘mainly’ dependent may be entitled to the full range of supports, while those taken to be ‘partly’ dependent may only receive lump sum compensation and education assistance.

Proposed change
Schedule 6 expands the circumstances under which an eligible young person may be taken to be wholly dependent on a member to include an eligible young person for whom the member is liable to provide child support under the Child Support (Assessment) Act 1989 (CSA Act).

Item 1 repeals section 17 of the MRC Act which sets out certain circumstances under which a partner or young person is taken to be wholly dependent on a member. It substitutes a new section 17 in which partners and young persons are dealt with in new subsections 17(1) and 17(2) respectively.

Under new subsection 17(2), the member’s liability to provide child support under the CSA Act in respect of the young person is added to the circumstances under which a young person is taken to be wholly dependent on a member.

47. Explanatory Memorandum, op. cit., p. 25.
Schedule 7—Membership of the Military Rehabilitation and Compensation Commission

The MRCC provides rehabilitation, compensation and other benefits for eligible members under the jurisdiction of the MRC Act. Its functions include:

• making determinations relating to the acceptance of liability for service-related conditions, the payment of compensation and the provision of treatment and rehabilitation
• minimising the duration and severity of service-related conditions and promoting the return to suitable work
• promoting research into the health of members and former members, the prevention of injury and disease and rehabilitation
• providing advice to the ministers and departmental secretaries of Veterans’ Affairs and Defence, the Chief of the Defence Force and the Service Chiefs, either on request or on its own initiative and
• other functions that may be conferred on it.\(^{48}\)

As the Explanatory Memorandum explains:

Amendments made to the [SRC Act] with effect from 1 January 2012, unintentionally prevented the nomination of the Chief Executive Officer [(CEO)] of Comcare for appointment to the MRCC. It was the intention of the [MRC Act] that the membership of the MRC include the [CEO] of Comcare, to enable the benefit of expertise from a member with whole-of-government knowledge on workers’ compensation issues.\(^{49}\)

**Proposed change**

Schedule 7 amends the MRC Act to enable the CEO of Comcare to be nominated for appointment to the MRCC. Item 2 inserts a reference to the ‘Chief Executive of Comcare’ to the subparagraph of the MRC Act which lists persons who may be nominated by the SRC Minister to the MRC (364(1)(b)(ii)).

**Concluding comments**

Most of the provisions in this Bill are beneficial and uncontentious.

The Government acknowledges that some changes to provisions relating to the VRB may be discriminatory and limit certain rights but may be justified on the grounds that they are beneficial to the individuals concerned and public order.

The Parliamentary Joint Committee on Human Rights has commented on the Bill and sought advice from the Minister as to the compatibility of new section 170 with the right to freedom of opinion and expression; and new subsections 170(3) and 170(4) with the right to freedom of assembly.

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49. Explanatory Memorandum, op. cit., p. 29.
Veterans' Affairs Legislation Amendment (Mental Health and Other Measures) Bill 2014

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