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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

VETERANS' AFFAIRS LEGISLATION AMENDMENT (DIGITAL READINESS AND OTHER MEASURES) BILL 2016

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Veterans' Affairs,
The Honourable Dan Tehan MP)

VETERANS' AFFAIRS LEGISLATION AMENDMENT (DIGITAL READINESS AND OTHER MEASURES) BILL 2016

OUTLINE

The Department of Veterans' Affairs (DVA) is undertaking veteran centric reform to significantly improve services for veterans and their families by re-engineering DVA business processes.

In anticipation of planned business and ICT reforms that will reduce claims processing times and automate and streamline existing processes, legislative amendment is required to make the Department of Veterans' Affairs digitally ready in a legal sense, in line with the Government's broad digital transformation agenda.

The Bill inserts a provision in each of the VEA, MRCA and DRCA that would enable the Secretary to authorise the use of computer programmes to make decisions and determinations, exercise powers or comply with obligations and do anything else related to making decisions and determinations or exercising powers or complying with obligations under those Acts, and legislative instruments made under those Acts.

The Bill also inserts a provision in each of the VEA, MRCA and DRCA that would enable the Secretary to disclose information about a particular case or class of cases to such persons and for such purposes as the Secretary determines, if he or she certifies that it is necessary in the public interest to do so.

This power is accompanied by appropriate safeguards including that the power cannot be delegated by the Secretary to anyone, the Secretary must act in accordance with rules that the Minister makes, the Minister cannot delegate his or her rule making power, there are limits on disclosing personal information and, unless the Secretary complies with certain requirements before disclosing personal information, he or she commits an offence, punishable by 60 penalty units.

The Bill also inserts three information sharing provisions in the DRCA between the Military Rehabilitation and Compensation Commission and the Secretary of the Department of Defence or the Chief of the Defence Force (CDF). The obligation to provide claims information in relation to serving members under the SRCA is more limited than under the MRCA. These amendments will create consistency between the two Acts.

Finally, the Bill makes very two minor technical amendments to the VEA that were intended to be made as part of the *Statute Update Act 2016*, but which were overlooked, as well as a minor and technical amendment to the short title of the DRCA.

FINANCIAL IMPACT STATEMENT

None.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

VETERANS' AFFAIRS LEGISLATION AMENDMENT (DIGITAL READINESS AND OTHER MEASURES) BILL 2016

Schedule 1 – Computerised decision-making

Schedule 1 of the Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The amendments in Schedule 1 insert a provision into each of the VEA, MRCA and DRCA, which would enable the Secretary of the Department of Veterans' Affairs to authorise the use of computer programmes to make decisions and determinations, exercise powers or comply with obligations and do anything else related to making decisions and determinations or exercising powers or complying with obligations under those Acts, and legislative instruments made under those Acts.

Human rights implications

Schedule 1 does not engage any human rights issues as it simply enables a computer programme to be authorised by the Secretary to make decisions that would otherwise be able to be made by either the Repatriation Commission or Military Rehabilitation and Compensation Commission (MRCC.) It makes no change to the substance of the law.

Conclusion

Schedule 1 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, as it does not engage any of the applicable rights or freedoms or alter any human rights safeguards currently in place.

Schedule 2 – Disclosure of information

Schedule 2 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The amendments in Schedule 2 insert a provision in each of the VEA, MRCA and DRCA that would enable the Secretary of the Department of Veterans' Affairs to disclose information about a particular case or class of cases to such persons and for such purposes as the Secretary determines, if he or she certifies that it is necessary in the public interest to do so. Several safeguards have been incorporated into the Bill to ensure that the power will be exercised appropriately.

Schedule 2 also inserts two information sharing provisions into the DRCA. The information sharing provisions are based on equivalent provisions under the MRCA and are designed to align information sharing between the MRCC and the Secretary of the Department of Defence and the Chief of the Defence Force across both Acts.

Human rights implications

Schedule 2 engages the following human right:

Privacy

The right to privacy and reputation is contained in article 17 of the International Covenant on Civil and Political Rights (ICCPR.)

Public interest disclosure

The *Privacy Act 1988* legitimately limits the circumstances surrounding the handling and disclosure of a person's personal information, as set out in the Australian Privacy Principles. The amendments are designed to put beyond doubt that the Secretary may, in certain limited circumstances, release information about a case or class of cases.

Examples of the circumstances in which it might be appropriate for the Secretary to disclose information about a case or class of cases include where there is a threat to life, health or welfare, for the enforcement of laws, in relation to proceeds of crime orders, mistakes of fact, research and statistical analysis, APS code of conduct investigations, misinformation in the community and provider inappropriate practices.

The amendments would achieve this because they would enable the Secretary to disclose information about a particular case or class of cases to such persons and for such purposes as the Secretary determines, if he or she certifies that it is necessary in the public interest to do so.

Importantly, several safeguards have been incorporated into the Bill to ensure that the power will be exercised appropriately:

- the Secretary must act in accordance with rules that the Minister makes about how the power is to be exercised
- the Minister cannot delegate his or her power to make rules about how the power is to be exercised to anyone
- the Secretary cannot delegate the public interest disclosure power to anyone
- before disclosing personal information about a person, the Secretary must notify the person in writing about his or her intention to disclose the information, give the person a reasonable opportunity to make written comments on the proposed disclosure of the information and consider any written comments made by the person, and
- unless the Secretary complies with the above requirements before disclosing personal information, he or she will commit an offence, punishable by a fine of 60 penalty units (approximately $10,800.)

Significantly, any interference with a person's privacy will not be arbitrary under the proposed provisions because, if the Secretary proposes to disclose personal information about a person, he or she must first notify the person in writing about his or her intention to disclose the information, give the person a reasonable opportunity to make written comments on the proposed disclosure of the information and consider any written comments made by the person before disclosing the personal information. Further, the rules to be made by the Minister (which the Secretary must follow) would set out the matters to which the Secretary must have regard in giving a public interest certificate and the circumstances in which a public interest certificate may be given.

Information sharing provisions

The amendments are designed to overcome an anomaly that currently exists between the MRCA and the SRCA. The anomaly is that the MRCC is unable to provide the same sort of information to the Secretary of the Department of Defence or the Chief of the Defence Force under the SRCA about current serving members as it is able to under the MRCA.

This reflects the historical development and context of the two Acts. However, with the re-enactment of the SRCA as the DRC, it is important that the Secretary of the Department of Defence and the Chief of the Defence Force are able to receive the same sort of information about all serving members, particularly in the context of monitoring occupational health and safety or for monitoring the cost to the Commonwealth of a service injury or a service disease.

The amendments would achieve this by aligning information sharing provisions under the DRCA with those in the MRCA.

Importantly, in each of the proposed information sharing provisions, the sort of information, the purposes for which and the persons to whom it could be disclosed are

appropriately prescribed and limited, consistent with the equivalent provisions in the MRCA.

Conclusion

Schedule 2 is compatible with human rights as, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Schedule 3 – Technical amendments

Schedule 3 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The amendments in Schedule 3 update provisions to take account of changes to drafting precedents and practices. In particular, references to penalties expressed as a number of dollars will be updated with penalties expressed as a number of penalty units.

These amendments will ensure that older provisions on the Commonwealth statute book continue to be expressed in ways that are consistent with the overall legal context in which they operate and reflect changes to the law. The amendments also enhance readability, facilitate interpretation and administration, and promote consistency across the Commonwealth statute book.

There is also one minor and technical change to amend the short title of the DRCA.

Human rights implications

Schedule 3 does not engage any human rights issues as it makes minor technical corrections and technical improvements. It makes either no change, or only minor changes, to the substance of the law.

Conclusion

Schedule 3 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, as it does not engage any of the applicable rights or freedoms or alter any human rights safeguards currently in place.

VETERANS' AFFAIRS LEGISLATION AMENDMENT (DIGITAL READINESS AND OTHER MEASURES) BILL 2016

Short Title	Clause 1 provides for the short title of the Act to be the *Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Act 2016*.
Commencement	Clause 2 sets out the commencement date of the provisions of the Act**.**
Schedules	Clause 3 provides that legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

This explanatory memorandum uses the following abbreviations:

"DRCA" means the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*;

"MRCA" means the *Military Rehabilitation and Compensation Act 2004*;

"MRCC" means the Military Rehabilitation and Compensation Commission;

"SRCA" means the *Safety, Rehabilitation and Compensation Act 1988*;

"the Department" means the Department of Veterans' Affairs;

"the Secretary" means the Secretary of the Department of Veterans' Affairs; and

"VEA" means the *Veterans' Entitlements Act 1986*.

Schedule 1 – Computerised decision-making

Overview

Items 1, 3 and **5** of Schedule 1 insert a provision into each of the MRCA, DRCA and the VEA, respectively, that would enable the Secretary to authorise the use of computer programmes to make decisions and determinations, exercise powers or comply with obligations and do anything else related to making decisions and determinations or exercising powers or complying with obligations under those Acts, and legislative instruments made under those Acts.

Background

The Department is undertaking veteran centric reform to significantly improve services for veterans and their families by re-engineering the Department's business processes.

In anticipation of planned business and ICT reforms that will reduce claims processing times and automate and streamline existing processes, legislative amendment is required to make the Department digitally ready in a legal sense, in line with the Government's broad digital transformation agenda.

Explanation of the Items

In relation to **items 1** and **3**, which will amend the MRCA and the DRCA, the Secretary will be enabled to arrange for computer programmes to be used to:

- make decisions or determinations
- exercise powers or comply with obligations, or
- do anything else related to the above two dot points

which the MRCC can do under those Acts or legislative instruments made under those Acts.

In the context of this reform, these provisions would enable the Secretary to arrange for a computer programme to do anything else related to making a decision or determination or exercising a power or complying with an obligation. For example, where a particular provision requires notice of a decision to be given, the computer programme may both make the decision and send the notice, thus automating parts of the Department's business and improving outcomes for clients.

Subitem (2) of **items 1** and **3** provides that actions undertaken by the operation of a computer programme under subitem (1) are taken to be actions of the MRCC.

Subitem (3) of **items 1** and **3** would enable the MRCC to substitute a decision or determination made by a computer programme (which by virtue of subitem (2) it is taken to have made) if the MRCC is satisfied that the decision or determination is incorrect.

This provision would enable a delegate of the MRCC to intervene and substitute a decision or determination where a computer programme has produced an incorrect outcome. The MRCC will be able to exercise this power on "own motion," without the need for a person to request review of an incorrect decision or determination made by a computer programme.

Subitem (4) of **items 1** and **3** makes it clear that this substituted decision/determination power does not affect or limit Chapter 8 with respect to item 1 (reconsideration and review of determinations under the MRCA) or Part VI with respect to item 3 (reconsideration and review of determinations under the DRCA.)

The substituted decision/determination power is intended to give the MRCC the ability to undertake own motion review for any incorrect decisions or determinations made by the operation of a computer programme, particularly in relation to decisions and determinations made under legislative instruments under the MRCA and the DRCA.

Item 5 is the same as items 1 and 3, except that it amends the VEA and will enable the Secretary to arrange for computer programmes to be used to:

- make decisions or determinations
- exercise powers or comply with obligations, or
- do anything else related to the above two dot points

which the Repatriation Commission can do under the VEA or legislative instruments made under the VEA.

As with subitem (2) of items 1 and 3, **subitem (2)** of **item 5** provides that actions undertaken by the operation of a computer programme under subitem (1) are taken to be actions of the Repatriation Commission.

As with subitem (3) of items 1 and 3, **subitem (3)** of **item 5** would enable the Repatriation Commission to substitute a decision made by a computer programme (which by virtue of subitem (2) it is taken to have made) if the Repatriation Commission is satisfied that the decision is incorrect.

Subitem (4) of **item 5** makes it clear that this substituted decision power does not limit any other provision in the VEA that provides for review or reconsideration of a decision. The substituted decision power is intended to give the Repatriation Commission an ability to undertake own motion review for any incorrect decisions made by the operation of a computer programme, particularly in relation to decisions and determinations made under legislative instruments under the VEA.

Items 2 and **4** insert a definition of "Secretary" into the MRCA and the DRCA respectively. "Secretary" will mean the Secretary of the Department of Veterans' Affairs. This is necessary because the new computer programme provisions refer to "the Secretary" arranging for the use of computer programmes and there is currently no definition of "Secretary" in either the MRCA or the DRCA.

Item 6 will prevent the Secretary from delegating his power under subitem (1) of item 5 (arranging for the use of computer programmes to make decisions under the

VEA or legislative instruments made under the VEA.) This is appropriate because it will ensure that the decision about whether to authorise the use of a computer programme to make decisions is taken at the highest organisational level within the Department.

This is not necessary with respect to items 1 and 3 because, under the MRCA and the DRCA, the Secretary is unable to delegate any of his or her powers. That is, there is no provision that allows the Secretary to delegate his or her powers under those Acts, as there is under the VEA. Any delegated powers under the MRCA and the DRCA, are powers of the MRCC.

Any amendments to the DRCA are contingent on the enactment of the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016*.

Schedule 2 – Disclosure of information

Overview

Items 1, 7 and **10** insert a provision into each of the MRCA, DRCA and the VEA, respectively, that would enable the Secretary of the Department to release certain information in certain circumstances where the Secretary certifies that it is necessary in the public interest to do so.

Items 3 – 6 insert two information sharing provisions, and two small consequential amendments, into the DRCA.

Background

In certain limited circumstances it may be appropriate for the Secretary of the Department of Veterans' Affairs to disclose information about a person that was obtained by a delegate performing their duties under the MRCA, DRCA and the VEA.

Examples of the circumstances in which it might be appropriate for the Secretary to disclose information about a case or class of cases include where there is a threat to life, health or welfare, for the enforcement of laws, in relation to proceeds of crime orders, mistakes of fact, research and statistical analysis, APS code of conduct investigations, misinformation in the community and provider inappropriate practices.

The *Privacy Act 1988* legitimately limits the circumstances surrounding the handling and disclosure of a person's personal information, as set out in the Australian Privacy Principles. The purpose of the public interest disclosure provisions is to put beyond doubt that the Secretary may, in accordance with items 1, 7 and 10, release information about a case or class of cases.

The information sharing provisions, and related consequential amendments, are necessary because, with the creation of a stand-alone version of the SRCA with application to Defence Force members, the ability of the MRCC to share claims information about current serving members with either the Secretary of the Department of Defence or the Chief of the Defence Force is more limited than it is under the MRCA. These amendments will align information sharing under the DRCA with arrangements under the MRCA.

Explanation of the items

Public interest disclosures
The public interest disclosure provisions are modelled on paragraph 208(1)(a) of the *Social Security Administration Act 1999* and would enable the Secretary to disclose information about a particular case or class of cases where the Secretary certifies that it is necessary in the public interest to do so. In deciding whether to make a public interest disclosure, the Secretary must follow rules set by the Minister and there are limits about disclosing personal information, which could result in the Secretary committing an offence.

Examples of the circumstances in which it might be appropriate for the Secretary to disclose information about a case or class of cases include where there is a threat to life, health or welfare, for the enforcement of laws, in relation to proceeds of crime orders, mistakes of fact, research and statistical analysis, APS code of conduct investigations, misinformation in the community and provider inappropriate practices.

It is expected that the "class of cases" disclosure would be particularly relevant for research and statistical analysis purposes.

Because this is a new power, five safeguards have been incorporated to ensure that it is exercised appropriately. They are described in further detail below but, briefly, they are:

- the Secretary must act in accordance with rules that the Minister makes about how the power is to be exercised (s**ubitem (2)** of **items 1, 7** and **10**)
- the Minister cannot delegate his or her power to make rules about how the power is to be exercised (**item 11**)
- the Secretary cannot delegate the public interest disclosure power (**item 12**)
- before disclosing personal information about a person, the Secretary must notify the person in writing about his or her intention to disclose the information, give the person a reasonable opportunity to make written comments on the proposed disclosure of the information and consider any written comments made by the person (**subitem (6)** of **items 1, 7** and **10**), and
- unless the Secretary complies with the above requirements before disclosing personal information, he or she will commit an offence, punishable by a fine of 60 penalty units (approximately $10,800) (s**ubitem (7)** of **items 1, 7** and **10.**)

In addition to the above safeguards, the Department (on behalf of the MRCC and the Repatriation Commission) manages clients' personal information in compliance with the *Privacy Act 1988*, and the Department can be required to pay compensation for breaches of the *Privacy Act 1988.* In addition, departmental staff may face sanctions under the Australian Public Service Code of Conduct if they handle a client's personal information in an unauthorised manner.

Subitem (1) of **items 1, 7** and **10** would enable the Secretary of the Department of Veterans' Affairs to disclose information about a particular case or class of cases to such persons and for such purposes as the Secretary determines, if he or she certifies that it is necessary in the public interest to do so.

S**ubitem (2)** of **items 1, 7** and **10**, would oblige the Secretary, when giving a certificate under subitem (1) of items 1, 7 and 10, to act in accordance with any rules that the Minister makes under subitem (3) of items 1, 7 and 10.

It is intended that, should this Bill be enacted, the Minister for Veterans' Affairs would make rules setting out the circumstances in which the Secretary may make a public interest disclosure under subitem (1) of items 1, 7 and 10, before the Secretary exercises that power. The nature and content of those rules is likely to be similar to

the *Social Security (Public Interest Certificate Guidelines) (DSS) Determination 2015*, and will set out the matters to which the Secretary must have regard in giving a public interest certificate and the circumstances in which a public interest certificate may be given.

Examples of the sorts of circumstances in which it is envisaged that the Secretary might consider it necessary to make a public interest disclosure under **subitem (1) of items 1, 7** and **10**, include where there is a threat to life, health or welfare, for the enforcement of laws, in relation to proceeds of crime orders, mistakes of fact, research and statistical analysis, APS code of conduct investigations, misinformation in the community and provider inappropriate practices.

Subitem (3) of **items 1, 7** and **10**, would create an instrument-making power so that the Minister could prescribe the rules governing the exercise of the Secretary's power to give certificates under **subitem (1)** of **items 1, 7** and **10**. These rules would be subject to disallowance by the Parliament.

Subitem (4) of **items 1, 7** and **10**, is included to assist readers and provides that a certificate given under subitem (1) of items 1, 7 and 10 in relation to a particular case is not a legislative instrument within the meaning of section 8 of the *Legislation Act 2003*.

Subitem (5) of **items 1, 7** and **10**, is included to assist readers and provides that a certificate given under subitem (1) of items 1, 7 and 10 in relation to a class of cases is a legislative instrument within the meaning of section 8 of the *Legislation Act 2003*. In accordance with the principles of the rule of law that the law is applied equally and fairly and that it is capable of being known to everyone, it is more appropriate, with respect to a class of cases, for the certificate to be in the form of a legislative instrument.

Subitem (6) of **items 1, 7** and **10** limits disclosure of a person's personal information under **subitem (1) of items 1, 7** and **10** unless the Secretary has first notified the person in writing about his or her intention to disclose the information, given the person a reasonable opportunity to make written comments on the proposed disclosure of the information and considered any written comments made by the person.

This is an important safeguard and affords a person about whom a public interest disclosure may be made natural justice because they will have an opportunity to comment on any proposed disclosure, which the Secretary must consider before proceeding to make the disclosure.

Requiring the intended disclosure, and any comments by the affected person about the disclosure, to be in writing will ensure that the decision making process is clearly documented and evidenced. What constitutes a 'reasonable opportunity" for comment in relation to paragraph (b) of **subitem (6)** of **items 1, 7** and **10** will depend on the factual circumstances of each case.

Subitem (7) of **items 1, 7** and **10** would establish an offence, if the Secretary disclosed personal information about a person under **subitem (1) of items 1, 7** and **10**

without first having complied with **subitem (6)** of **items 1, 7** and **10** (the Secretary must notify a person in writing about his or her intention to disclose the information, give the person a reasonable opportunity to make written comments on the proposed disclosure of the information and consider any written comments made by the person.)

The proposed penalty level is 60 penalty units which is currently $10,800 (see section 4AA of the *Crimes Act 1914*.) This provision is another important safeguard in ensuring the proposed power under **subitem (1) of items 1, 7** and **10** is exercised appropriately.

Subitem (8) of **items 1, 7** and **10** provides that, to avoid doubt, information disclosed in accordance with **items 1, 7** and **10** is taken, for the purposes of the Australian Privacy Principles, to be authorised by the MRCA, DRCA and the VEA, respectively. This provision puts it beyond doubt that personal information can be disclosed when undertaken in accordance with **items 1, 7** and **10**.

Subitem (9) of **items 1, 7** and **10** inserts a definition of "personal information" into the MRCA, DRCA and the VEA, respectively. "Personal information" will have the same meaning as in the *Privacy Act 1988*. This amendment is necessary because **items 1, 7** and **10** refer to "personal information" and there is currently no definition of "personal information" in the MRCA, DRCA or the VEA.

Items 2 and **13** and **subitem 8(2)** are application provisions for **items 1, 10** and **7** respectively. **Items 2** and **13** and **subitem 8(2)** provide that disclosure of information under **items 1, 10** and **7** may only occur after those provisions commence (which is a date to be fixed by proclamation), but that the information able to be disclosed under **items 1, 10** and **7** may have been obtained before, on or after commencement of those items.

Finally, in relation to the public interest disclosure provisions, while merits review will not be available for decisions made by the Secretary about whether to issue a public interest certificate or release information, judicial review will be available.

Merits review is not considered appropriate in relation to these decisions because, once information is released, remedies available under merits review are unlikely to be of benefit to the person concerned. Further, in situations where the Secretary provides information for law enforcement purposes or in relation to proceeds of crime, these sorts of decisions are not amenable to merits review, as noted by the Administrative Review Council in its publication, "What decisions should be subject to merits review?"

Item 9 inserts new subsection 130(3) into the VEA to make it clear that, information disclosed in accordance with subsection 130(2), is taken, for the purposes of the Australian Privacy Principles, to be authorised by the VEA.

Item 11 amends paragraph 212(1)(a) of the VEA to prevent the Minister from being able to delegate his or her power to make rules under new subsection 131A(3) of the VEA. This will ensure that the person making the rules and exercising the power cannot be the same person, which is an important safeguard.

It is not necessary to prohibit delegation with respect to **subitems 1(3) and 7(3)** because, under the MRCA and the DRCA, the Minister cannot delegate any of his or her powers.

Item 12 amends subsection 214(1) of the VEA to prevent the Secretary from delegating his power under **subitem (1) of item 10** (giving a certificate that it is in the public interest to disclose information.) This is another safeguard to ensure that this proposed new power will be exercised appropriately.

This is not necessary with respect to items 1 and 3 because, under the MRCA and the DRCA, the Secretary is unable to delegate any of his or her powers. That is, there is no provision that allows the Secretary to delegate his or her powers under those Acts, as there is under the VEA. Any delegated powers under the MRCA and the DRCA, are powers of the MRCC.

Information sharing

Item 3 inserts new table item 2A in the table in subsection 147(2) of the DRCA. The table lists the provisions of the DRCA which are to be modified for the purposes of a defence-related claim.

Table item 2A modifies section 61 of the DRCA so that, where a determination relates to liability for an injury, disease, death or the permanent impairment of a person who was a member of the Defence Force at the time of the determination, the MRCC must give a copy of the notice to the Chief of the Defence Force.

This amendment is necessary because the obligation to provide claims information about serving members to the Chief of the Defence Force under the DRCA (which is a re-enacted version of the SRCA, modified to apply only to members of the Defence Force and their dependants) is more limited than the equivalent provision under the MRCA: subsection 346(2).

This amendment would align the information sharing provisions of the DRCA, to those in the MRCA. Importantly, it would enable the MRCC to advise the Chief of the Defence Force of determinations relating to liability and Permanent Impairment determinations.

Subitem 8(1) is an application provision and provides that **item 3** above only applies in relation to notices given on or after commencement of that item. Item 3 will commence on the later of either a date fixed by proclamation or 28 days after Part 2 of Schedule 1 to the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2016* commences. As noted below, any amendments to the DRCA are contingent on the enactment of the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016*.

Item 4 amends subsection 151(1) of the DRCA by omitting the words "relevant to a defence-related claim" and substituting the words "required for the purposes of this Act." This amendment is designed to align information sharing under the DRCA with section 406 of the MRCA.

Under the SRCA, the words "relevant to a defence-related claim" were required to ensure that section 151 of that Act only applied to defence-related claims. As the DRCA will only apply to Defence Force Members and their dependants, these words can be removed and the words, "required for the purposes of this Act," substituted instead.

Item 5 inserts new subsection 151A(1A) into the DRCA. The new subsection will authorise the MRCC, or a staff member assisting the MRCC, to provide certain information obtained in performing their duties under the DRCA to the Secretary of the Department of Defence. This information sharing power is modelled on section 409 of the MRCA.

The information to be provided must relate to the following purposes:

- litigation involving an injury, disease or death of an employee, in relation to which a claim has been made under the DRCA; or
- monitoring, or reporting on, the performance of the Defence Force in relation to occupational health and safety; or
- monitoring the cost to the Commonwealth of injuries, diseases or deaths of employees, in relation to which claims have been made under the DRCA.

Under section 151A of the SRCA, the Department can provide any information obtained in performing duties under that Act to certain specified agencies as the case requires. Currently, this is limited to agencies that administer legislation relating to Health, Aged care, Centrelink or Medicare. This has prevented the Department from providing claims information to the Department of Defence, outside of what is currently prescribed by the SRCA.

This amendment would align information sharing under the DRCA with subsection 409(2) of the MRCA. Subsection 409(2) of the MRCA states that "the Commission (or a staff member assisting the Commission) may provide any information obtained in the performance of his or her duties under this Act to a person or agency" for certain specified purposes.

For Defence purposes, regulation 21 of the *Military Rehabilitation and Compensation Regulations 2004* states that information released under subsection 409(2) may be used (among other reasons) in monitoring or reporting on the Defence Force's occupational health and safety performance or for monitoring the cost to the Commonwealth of a service injury or a service disease. The SRCA currently does not have a similar provision to allow information to be disclosed that would enable the Department of Defence to monitor occupational health and safety risk (and cost) to the Commonwealth.

Item 6 makes a technical amendment to paragraphs 151A(2)(a) and (b) of the DRCA as a consequence inserting new subsection 151A(1A) (by **item 5**.)

Any amendments to the DRCA are contingent on the enactment of the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016*.

Schedule 3 – Technical amendments

Summary

Items 2 and **3** of Schedule 3 are technical amendments that were intended to be made as part of the *Statute Update Act 2016*, but which were overlooked. The purpose of that Act is to update provisions in Acts to take account of changes to drafting precedents and practices. In particular, that Act updates references to penalties expressed as a number of dollars with penalties expressed as a number of penalty units. Such changes enhance readability, facilitate interpretation and promote consistency across the Commonwealth statute book.

Item 1 is also a technical amendment to amend the short title of the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988, once it is enacted.

Background

Current Commonwealth drafting practice is to express penalties for criminal offences as a number of penalty units. The current value of a penalty unit is $180 (see section 4AA of the *Crimes Act 1914*). However, many older Commonwealth Acts contain references to penalties that are expressed as an amount in dollars. Section 4AB of the *Crimes Act 1914* has the effect that if a provision refers to a penalty in dollars, this is converted into a reference to a penalty of a certain number of penalty units (by dividing the number of dollars by 100, and rounding up to the next whole number if necessary), which leads to a higher penalty than is stated in the provision.

Converting references to dollar penalties under section 4AB of the *Crimes Act 1914* is time consuming for the community and the appearance of dollar amounts on the face of the statute book that are less than the actual legal penalty can be misleading.

Consistent with the intent of the *Statute Update Act* 2016, the items in this Schedule convert existing references in the VEA to penalties expressed as a number of dollars into references to penalties expressed as a number of penalty units to remove the need to convert the amounts and reduce the potential for confusion.

Explanation of the items

Item 2 amends the penalty for the offence under subsection 127(4) of the VEA (failure to comply with a notice served by the Secretary) from "$1,000 or imprisonment for 6 months" to "Imprisonment for 6 months or 10 penalty units." This means that, consistent with section 4AB of the *Crimes Act 1914*, the monetary fine for this offence is currently $1,800 instead of $1,000.

Item 3 amends section 216 of the VEA so that, instead of the maximum penalty level for contraventions of the regulations being $500, it will be 5 penalty units (ie, currently $900.)

Item 1 would amend the short title of the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (DRCA), once it is enacted. When the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016* was introduced into the Parliament, it amended the long title of the DRCA, but not the short title. This amendment rectifies that situation and ensures that the short title of the DRCA is consistent with the long title.