#### Document 1

From: Foreman, Lisa

To: <u>Cairns, Louise; Bayles, Neil</u>

Cc: Spiers, Carolyn

Subject: RE: 2 page summary of DVA Digital Readiness Bill submission [SEC=UNCLASSIFIED]

Date: Tuesday, 7 February 2017 11:24:19 AM

Attachments: Summary of DVA submission to Senate Inquiry(2).docx

Louise and Neil – some comments. Neil could you pl confirm/discuss with Louise. Lisa

From: Cairns, Louise

Sent: Tuesday, 7 February 2017 10:41 AM

**To:** Foreman, Lisa **Cc:** Spiers, Carolyn

Subject: 2 page summary of DVA Digital Readiness Bill submission [SEC=UNCLASSIFIED]

Hi Lisa,

At the ESORT working group meeting last week on the Digital Readiness Bill, members suggested that a two page summary of the Department's submission to the Senate inquiry would be useful. I've drafted the summary (**attached**), which Carolyn has cleared. Could you please review and let me know if you'd like any changes made? Once you have cleared, I will provide to Craig Orme for his clearance.

Thanks very much,

Louise.

#### Summary of DVA's submission to the Senate Inquiry into the Digital Readiness Bill



#### **Public Interest Disclosures**

DVA has a duty of care in providing its services to veterans and clients. However, often there are privacy and legislative restraints on providing information that might be necessary in fulfilling that duty of care. In instances of preventing harm to others or self-harm, addressing concerns for health provision, maintaining the integrity of programmes, and preventing abuse of programmes by providers, the Department is not able in some instances to provide timely information to prevent detrimental outcomes to veterans.

Public Interest Disclosures are currently used in other areas of government in a careful and judicious manner that allows these issues to be addressed. It is important that measures that are in place and working in other areas of government are afforded to DVA in order to fulfil its duty of care to veterans and clients and provide the best outcome for them.

In recognition that DVA has not previously had this public interest disclosure power, and that disclosure of a person's information is not to be undertaken lightly, five specific safeguards are built into the proposed provisions, in addition to general safeguards already available.

The specific safeguards include:

- the Secretary of DVA must act in accordance with rules that the Minister makes about how the power is to be exercised and the rules will be a disallowable instrument
- the Minister cannot delegate his or her power to make rules about how the power is to be exercised by the Secretary of DVA
- the Secretary of DVA cannot delegate the public interest disclosure power
- before disclosing personal information about a person, the Secretary of DVA 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 (natural
  justice requirements), and
- unless the Secretary of DVA complies with the above natural justice requirements before disclosing personal information, he or she will commit an offence, punishable by a fine of 60 penalty units (approximately \$10,800.)

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. If a person is dissatisfied with the Secretary's decision to disclose information about them, they can apply for judicial review under the *Administrative Decisions (Judicial Review) Act 1977*.



From: Noel Mc Laughlin Bayles, Neil To:

Cosson, Liz; Spiers, Carolyn; Cairns, Louise Cc:

BRIEF ON EWG MEETING 24 NOV 16. [TO BE CLASSIFIED] Subject:

Date: Wednesday, 30 November 2016 7:14:42 PM

Attachments:

image001.jpg image003.jpg BRIFEING EWG MEETING 24NOV16.doc

#### Good evening Neil,

Pls find attached as a courtesy, a copy of my brief to the ADSO leadership.

I thank you for the opportunity to attend to attend and extend special thanks to Carolyn and Louise for the comprehensive briefing which enabled me to put this report together.

Regards,

Noel

**Noel Mc Laughlin** 

Chairman

**RAAC Corporation** 



## THE RAAC CORPORATION (ACN 156 250 958)

Mr David Jamison AM National President DFWA/ADSO

Mr Alf Jaugietis Executive Director DFWA/ADSO

SUBJECT: BRIEFING NOTE ON DVA MEETING 24 NOVEMBER, 2016

#### **PURPOSE**

To brief you on the outcome of the meeting fop the ESORT Working Group (EWG) with senior Departmental Officers at DVA Canberra on 24 November, 2016.

#### BACKGROUND

The meeting was convened to discuss the introduction of the new digital measures legislation. This brief seeks to inform you of the outcomes of the meeting and matters related to the new legislation.

(s 22)

This brief is limited in a material particular related to the digital measures legislation in that talking points sought by the EWG from DVA are as of today's date, still in the process of being proofed and settled by the Minister's office. It is considered important that, given the forthcoming ESORT meeting scheduled for 2 December, 2016, a brief *sans* the digital measures talking points, now be tendered for your information and dissemination.

The talking points promised by DVA will be forwarded in due course.

(s 22)	
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#### **Information-sharing Power**

The power vested in the Secretary will be for the disclosure of certain information e.g. fraud, police investigations, misrepresentation in the community, and misuse in terms of fact.

The information-sharing powers proposed in the Bill are vested in the Secretary DHS and Secretary DSS who use this exercise of a power and function in fraud-related matters.

#### **Release of Information**

Natural justice mandates that in the event the Secretary is intending to release information, the Secretary owes a duty to contact the individual concerned and inform them of that fact and give the respondent a reasonable opportunity to reply to the notice.

The sharing of such information is subject to a very strict process to be followed. This will be through the issue by the Minister of very strict guidelines, with which the Secretary must comply. Failure to comply, will result in criminal action.





#### **Restriction of Secretary's Delegation**

The powers granted to the Secretary under the proposed legislation, prevent the Secretary from delegating the information-sharing powers. They are not delegable to any other person. An amendment to s.214(1) VEA 1986, will be required to adjust the section to reflect that fact.

#### **Disclosure of Information**

The EM states, "The right to privacy and reputation is contained in article 17 of the International Covenant on Civil and Political Rights (ICCPR.)" (at p.3).

All three Acts will be amended to reflect certain disclosure provisions related to the exchange of information between DVA and the ADF in respect of claims lodged by members. These disclosures are also authorised and protected by the provisions of the *Privacy Act 1988* (Cth), in particular the Australian Privacy Principles (formerly the IPPs) at s.14 of the Act.

#### **Unauthorised disclosure of Information**

The Secretary may, where an unauthorised disclosure takes place, be held criminally liable for such unauthorised disclosures. An offence of this nature carries a pecuniary penalty of 160 penalty points (\$10,800).

The inclusion of this provision in all three Acts (s.409(A)(6) MRCA, s.151B(6) DRCA and s.131A(6) VEA) act as a fetter to the abuse of a power a by the Secretary and is considered to be a significant protective and beneficial application of a fetter to guard against untrammelled power.

#### **Safeguarding Measures**

The EM sets out (at p.6) the safeguarding measures imposed on the Secretary in relation to the exercise of a power and function under the proposed legislative amendments. These safeguards which reinforce the duty of the Department to act as an honest broker at all times, are:

- 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.)

It is contended that the legislative amendments as proposed in the Bill are on any reading, significant and combined with the beneficial DRCA (Henry VIII) provisions, operate to ensure veterans and their families are protected and natural justice and equitable decision-making is in fact, enhanced.





#### **CONCLUSION**

The briefings given by DVA over the past two EWG meetings and the issues canvassed demonstrate a significant effort by DVA to remake itself to be able to better manage its affairs in the digital age.



#### RECOMMENDATION

That you note the above and disseminate along with the attachments, prior to ESORT's next scheduled meeting.

Noel Mc Laughlin Chairman RAAC Corporation

(For and on behalf of ADSO) 30 November, 2016

From: Whyte, Angela
To: Cairns, Louise

**Subject:** FW: Consultation on Public Interest Disclosure Rule [DLM=For-Official-Use-Only]

Date: Thursday, 23 February 2017 2:52:49 PM

Attachments: image001.png

As requested

#### **Angela Whyte**

#### **Practice Coordinator**

DALAS

Legal Services & Assurance Branch

Department of Veterans' Affairs | www.dva.gov.au

Telephone: (\$ 22)

Gnabra Building, 21 Genge Street, Civic

GPO Box 9998, Canberra ACT 2601

email logo

From: Brenton Attard (\$ 22)

Sent: Wednesday, 22 February 2017 3:14 PM

To: Spiers, Carolyn

**Cc:** Foreman, Lisa; Whyte, Angela; Angelene Falk; Melanie Drayton; Renee Alchin **Subject:** RE: Consultation on Public Interest Disclosure Rule [DLM=For-Official-Use-Only]

Hi Carolyn

Thanks for the update and for providing the draft PID ahead of the consultation.

We are happy for the consultation to be conducted via phone. If your Office could please call us on (\$ 22)

The OAIC attendees at the teleconference will be:

- Angelene Falk, Deputy Commissioner
- Melanie Drayton, Assistant Commissioner Regulation and Strategy
- Renee Alchin, Adviser.

I will send over the meeting invitation.

Regards,

Brenton

**Brenton Attard** | Executive Officer |

Office of the Australian Information Commissioner |

GPO Box 5218 SYDNEY NSW 2001 | www.oaic.gov.au |

Phone: (\$ 22) | 1300 363 992

Email: (\$ 22)

From: Spiers, Carolyn(\$ 22)

Sent: Wednesday, 22 February 2017 2:25 PM

**To:** Brenton Attard (§ 22)

Cc: Foreman, Lisa (\$ 22) ; Whyte, Angela (\$ 22)

**Subject:** Consultation on Public Interest Disclosure Rule [DLM=For-Official-Use-Only]

Hi Brenton

I understand you have been discussing with Kristy Egan from DVA the proposed meeting this Thursday 23 February @ 12.00pm – 1.00pm for OAIC members to meet with Ms Lisa Foreman (First Assistant Secretary Rehabilitation and Support Division) and myself to discuss the draft

Public Interest Disclosure Rules that will be part of the Digital Readiness Bill. While Kristy arranged for Lisa and I to meet with OIAC in Sydney, we will need to change plans now and instead have the meeting via telephone. I understand that this arrangement is suitable for OAIC. Can you confirm which telephone number will be the most appropriate for us to call. Also to assist in the preparation of this meeting is a draft copy of the proposed rules. Please understand this is a confidential draft prepared for the Minister and should be used for the purpose of the consultation only.

If you have any questions, please call Angela Whyte on (\$ 22)
Regards

Carolyn Spiers

Principal Legal Advisor

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#### http://www.dva.gov.au/contact\_us/Pages/feedback.aspx

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From: Cairns, Louise
To: ESO.Round.Table

Cc: DALAS

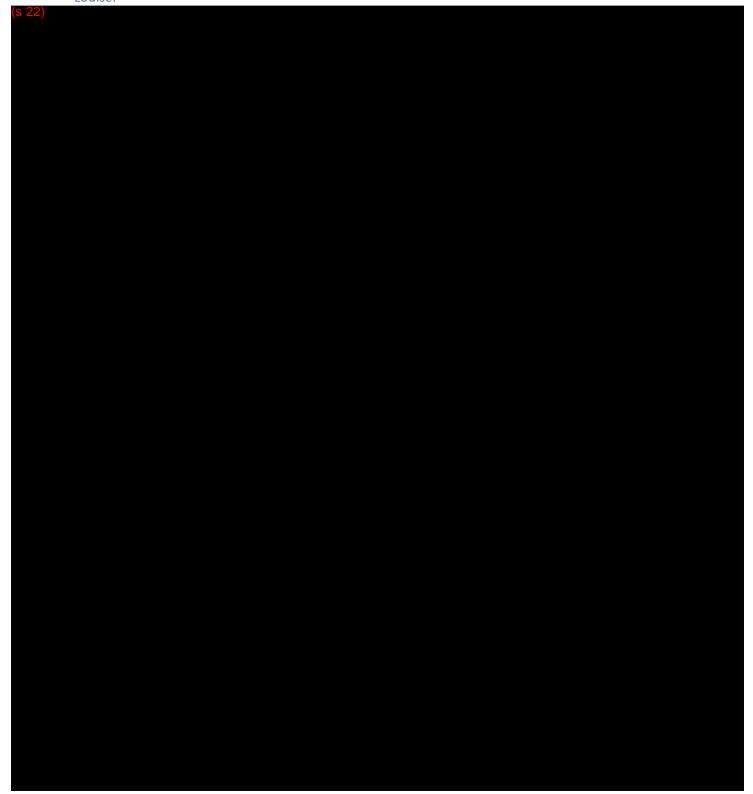
Subject: RE: Digital Readiness at 3 March ESORT [DLM=For-Official-Use-Only]

Attachments: <u>ESORT Agenda Item Coversheet Template.docx</u>

Hi Grant,

We've confirmed that Carolyn is happy to lead this discussion and I've filled in the cover sheet. Please let me know if you need anything else.

Regards, Louise.



From: Wrigley, Luke On Behalf Of Rehab.and.Support.Coord

Sent: Wednesday, 18 January 2017 9:19 AM

To: DALAS (\$ 47E)

**Cc:** ESO.Round.Table (\$ 47E) ; Rehab.and.Support.Coord

(s 47E)

**Subject:** FW: ESORT coversheet - DRB [DLM=For-Official-Use-Only]

Good morning DALAS,

RE my below request for a coversheet to be prepared for the March ESORT meeting, (\$ 470)

Are you able to confirm this with the PLA, and if she agrees, prepare an ESORT cover sheet and return it to the secretariat (Cc'd into this email).

Kind regards

#### Luke Wrigley

A/g Assistant Director Rehabilitation and Support Division Department of Veterans' Affairs Gnabra Building Canberra ACT 2606

Phone: (\$ 22) Email: (\$ 22)

From: Wrigley, Luke

**Sent:** Tuesday, 17 January 2017 12:06 PM **To:** Case.Escalation.and.MRCA.Review.Coord

(s 47E)

Cc: Bayles, Neil (\$ 22

**Subject:** ESORT coversheet - DRB [DLM=For-Official-Use-Only]

Good afternoon Lynda

Neil and Lisa have an ESORT working group meeting RE the Digital Readiness Bill (DRB) on 1 February. Lisa would also like an item to be added to the March ESORT meeting to provide the full ESORT with a 15 minute verbal update on the DRB. Can you please arrange for an ESORT coversheet on this item to be prepared and provided to me by COB Wednesday 25 January.

Thanks! ©

#### **Luke Wrigley**

A/g Assistant Director Rehabilitation and Support Division Department of Veterans' Affairs Gnabra Building

Canberra ACT 2606

Phone: (s 22) Email: (s 22)



**DVA Coversheet** 

### Meeting Date - 3/03/2017

Title: Digital Readiness Bill		Item:	
Committee (please select from drop down):	Discussion		
ESORT			
	Paper Provided  ⊠ Verbal Only (TPs s	still required)	
Discussion led by: Ms Carolyn Spiers, Principal Legal Advisor			
Sensitivity (please select from drop down): No Sensitivity - normal distribution to members			
Issues/Status Update:			
Separate meetings about the Digital Readiness Bill have been held with ESORT members on 2 and 16 December 2016, as well as a workshop on 1 February 2017.			
This update will provide information to ESORT members about the Senate Foreign Affairs, Defence and Trade Committee's inquiry into the Digital Readiness Bill and next steps.			
Recommendation:			
That members:			
1.note the briefing on the Digital Read	iness Bill.		

#### Document 5

Spiers, Carolyn From:

Vittoria, Nadia; White, Frank To:

Cc: Cairns, Louise

Digital Readiness Bill Privacy Impact Assessment - consolidated DVA and ... cs comments [DLM=For-Official-Use-Only] Subject:

Date:

Friday, 24 February 2017 1:49:58 PM

<u>Digital Readiness Bill Privacy Impact Assessment - consolidated DVA and ... cs comments.docx</u> Attachments:

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7

**Privacy Impact Assessment Report** 

Veterans' Affairs Legislation
Amendment

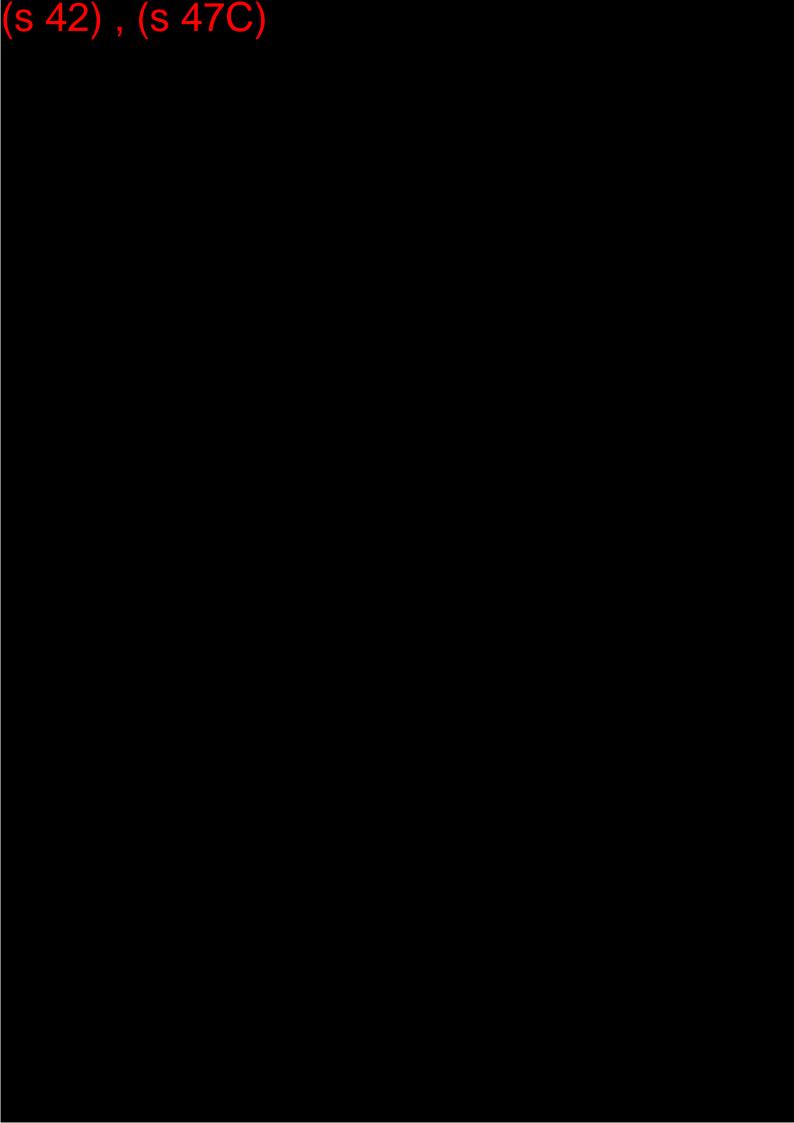
# (Digital Readiness and Other Measures) Bill 2016

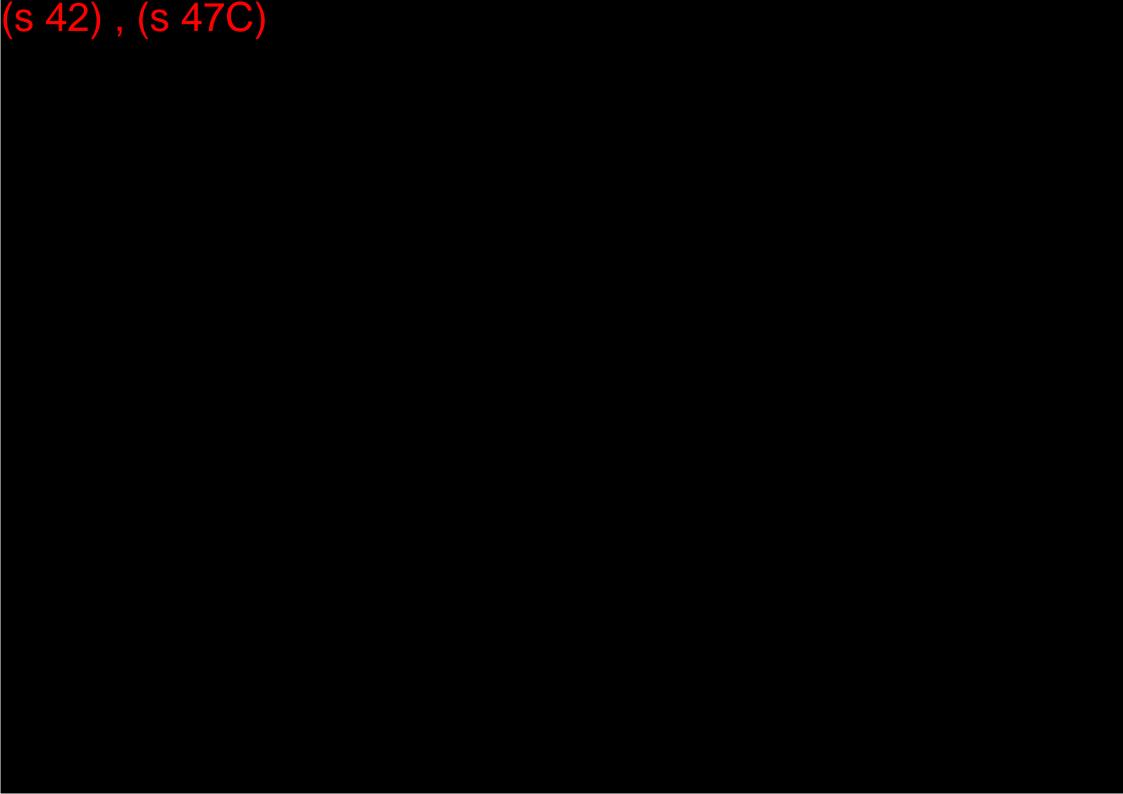
**Public Interest Disclosure Provisions** 

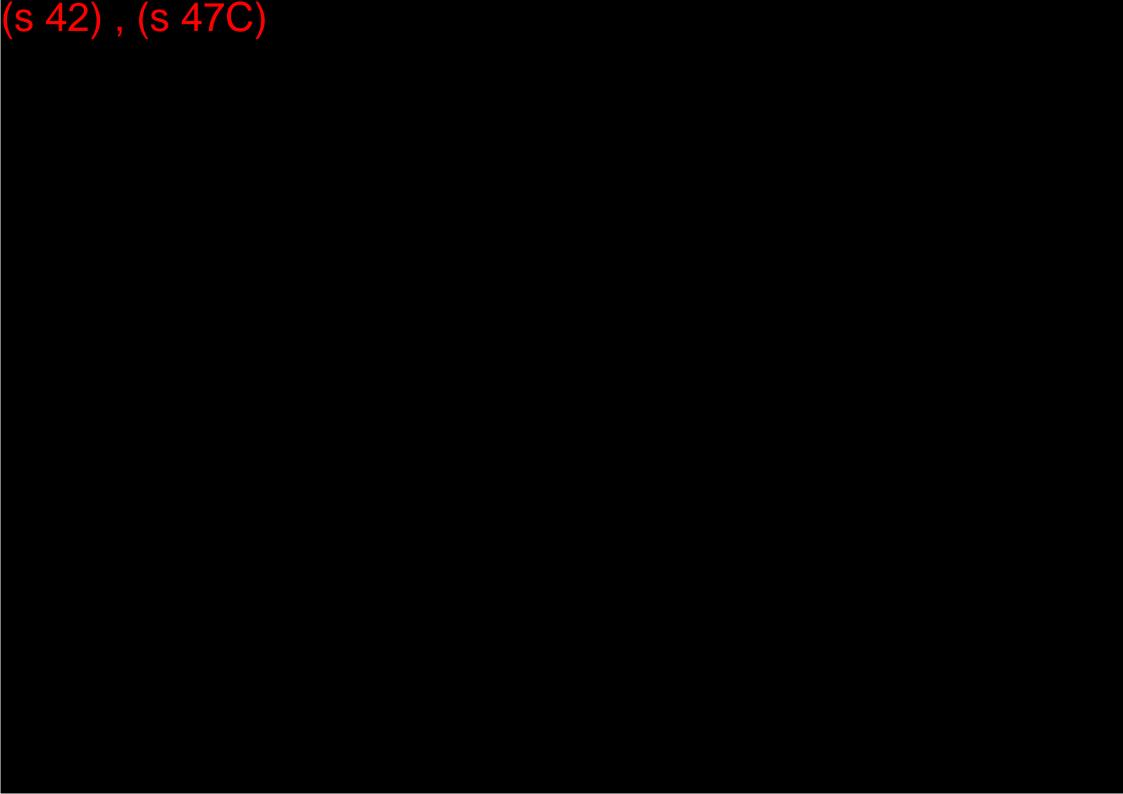
#### Contents

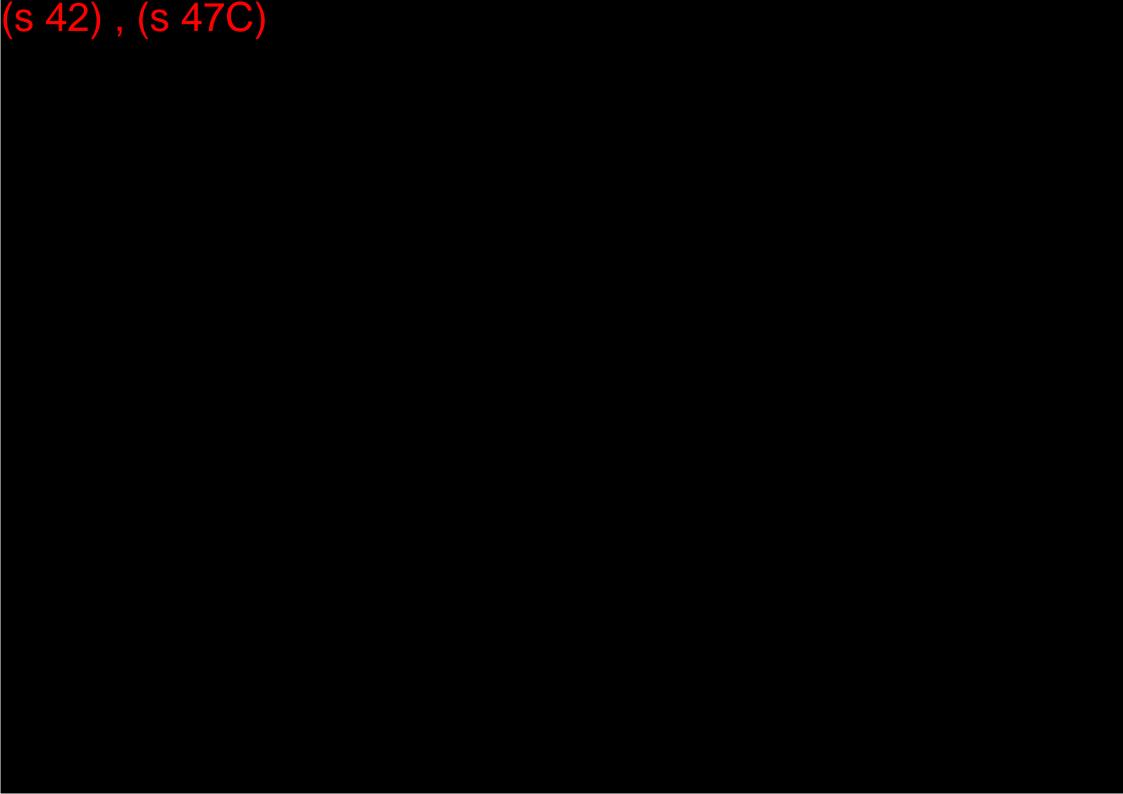
#### 1) Executive Summary

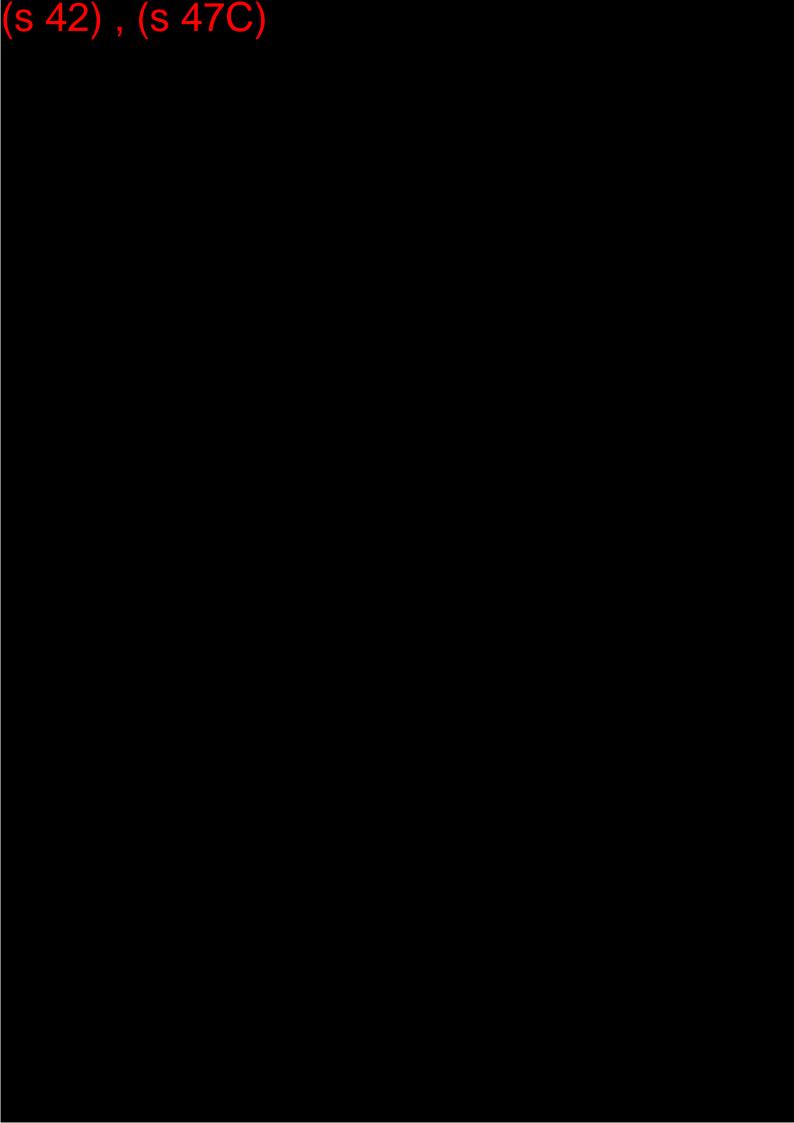
- The PID provisions relate only to the disclosure of information (including 'personal information' and 'sensitive information' as defined in the *Privacy Act 1988* (Privacy Act)) in listed circumstances in this way, they provide further bases for authorised disclosure, which operate in addition to the current bases for authorised disclosure set out in Australian Privacy Principle (APP) 6.
- In all other respects, any personal information that may potentially be disclosed by the Department through the operation of the PID provisions is required to be handled by the Department in accordance with the current APPs relating to collection, use, quality, security and access.
- (s 47C)
- The requirement that an individual be notified of a proposed disclosure of their
  personal information prior to any disclosure being made is an important privacy
  safeguard it will operate to ensure that the power is exercised in appropriate and
  necessary cases and will also provide individuals with the opportunity to inform the
  Department if information is inaccurate, out of date or incomplete.
- In some instances, the PID provisions could operate to permit public disclosure of personal information, rather than disclosure to particular recipients subject to specific privacy obligations in their own handling of this information (\$ 470) that this public disclosure power would be utilised only in circumstances where a significant public benefit would be served by such action, supplementary procedures should be developed to assist in assessing the potential consequences, risks and benefits of any public disclosure.
- It will be necessary for the Department's current privacy materials and published documents to be reviewed and updated to reflect the operation and effect of the PID provisions. In addition, specific staff training materials and guidelines need to be prepared to ensure that Departmental employees understand the meaning and operation of key definitions and tests in the PID provisions and are able to explain the effect of these changes to Departmental (s 47C) and other stakeholders.
- The recommendations arising from this Assessment are set out at page 27 below.

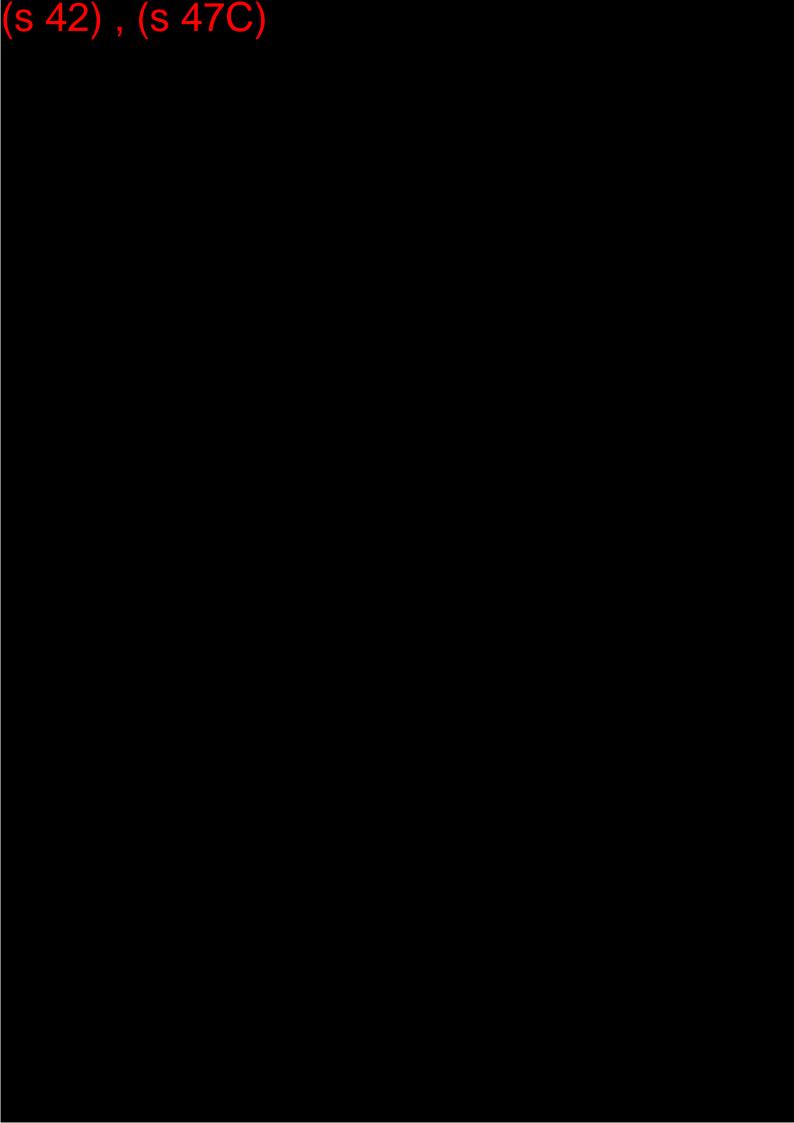


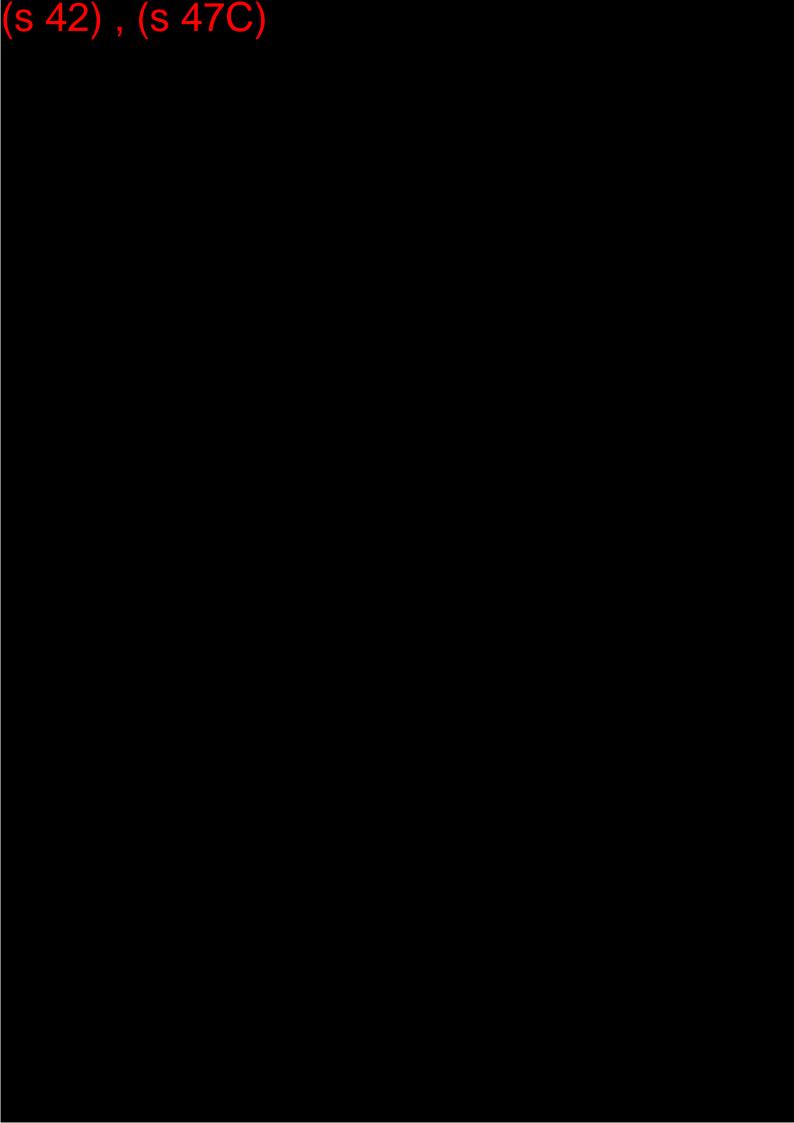


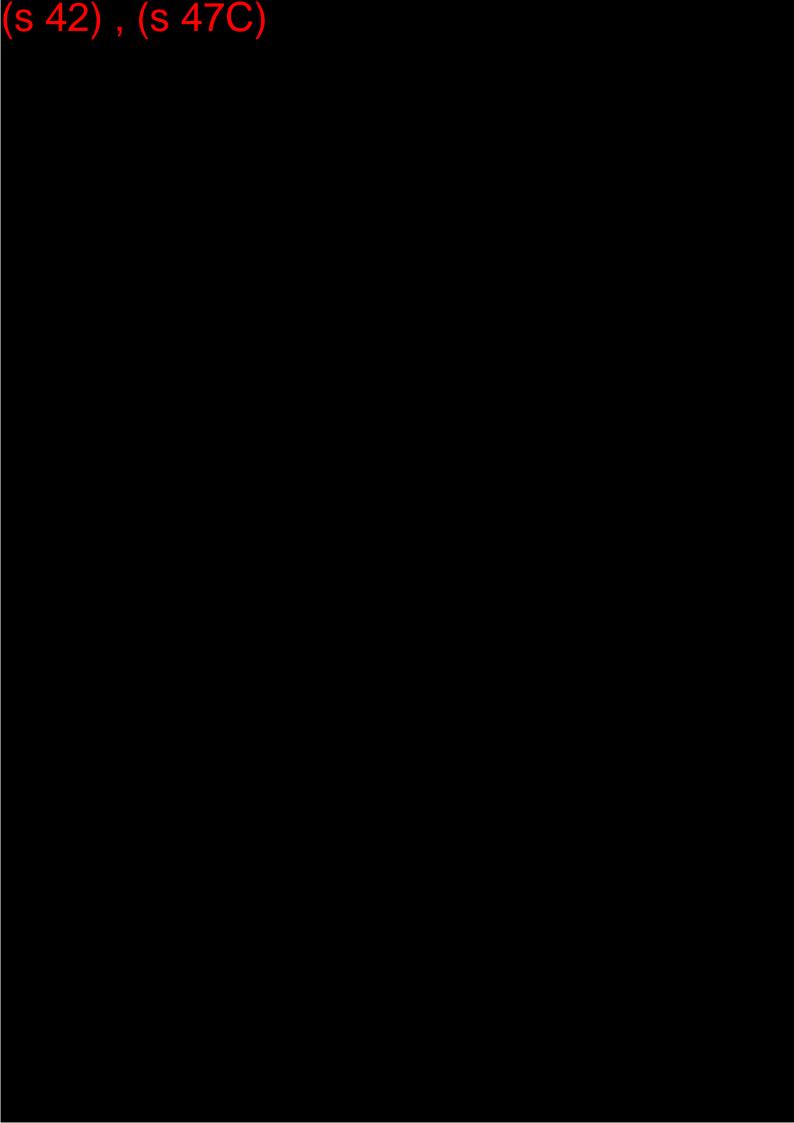


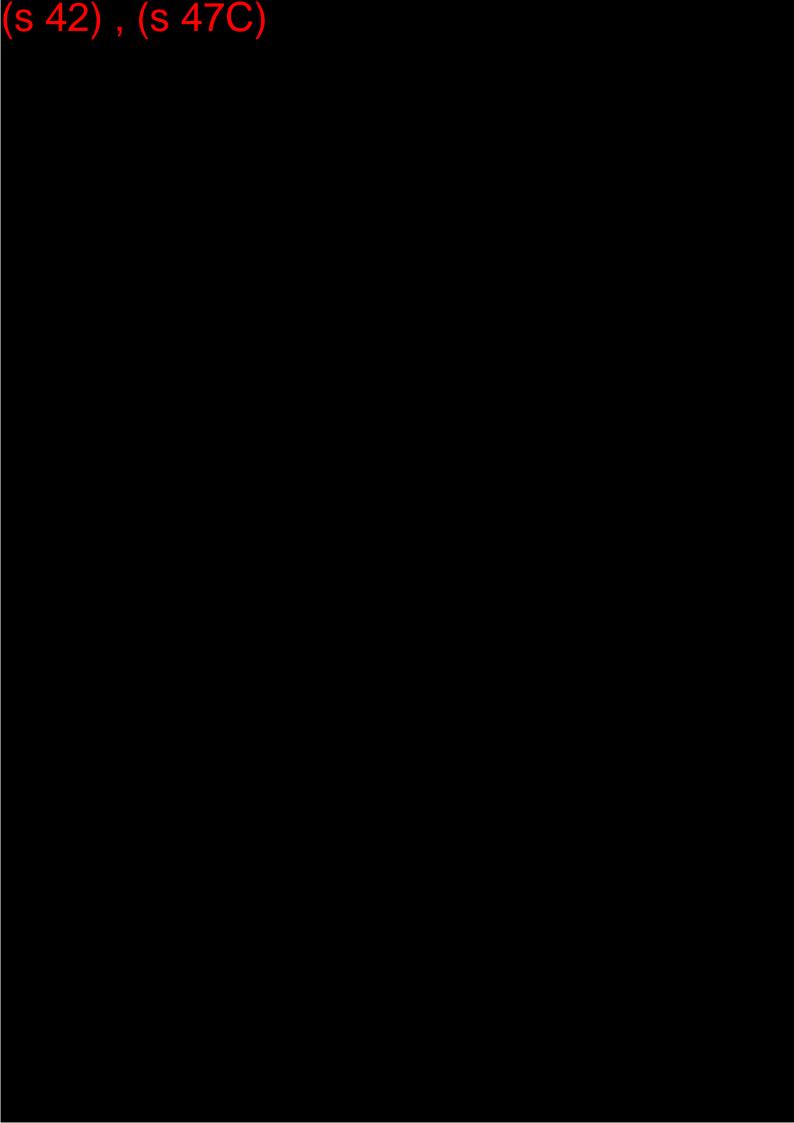


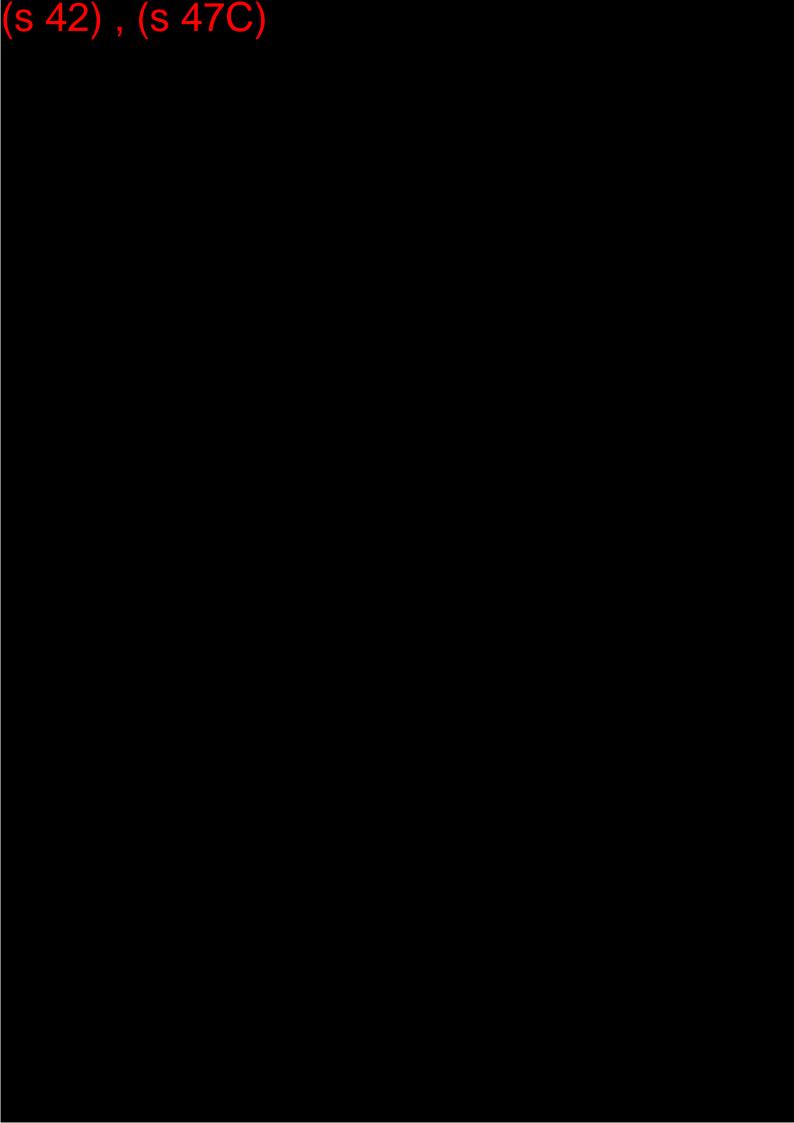








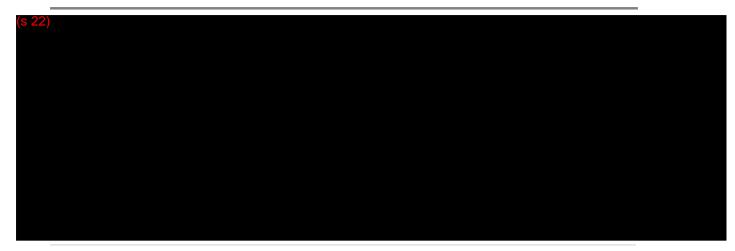




From: <u>Bayles, Neil</u>
To: <u>Cairns, Louise</u>

Subject: RE: Digital Readiness Bill Q&As [DLM=Sensitive:Legal]

Date: Thursday, 1 December 2016 8:54:37 AM



From: Bayles, Neil

Sent: Thursday, 1 December 2016 7:47 AM

**To:** Roberts, David (\$ 22) ; Summers, Wendy

s 22) ; Harris, John (s 22

Cc: Spiers, Carolyn(\$ 22) ; Cairns, Louise (\$ 22)

**Subject:** FW: Digital Readiness Bill Q&As [DLM=Sensitive:Legal]

Importance: High

Hi David, Wendy and John

Just wondering if you could provide ok to release these talking points on the Digital Readiness Bill to the ESO Working Group members.

We have an ESORT videolink tomorrow at 2 pm to go through the Bill. It would be useful if we could provide the talking points to the ESOWG before that event.

Neil

**Neil Bayles** 

A/g First Assistant Secretary Rehabilitation and Support

Department of Veterans' Affairs

(02) (s 22)

From: Bayles, Neil

Sent: Friday, 25 November 2016 4:21 PM

To: Roberts, David (\$ 22) ; Vale, Byron (\$ 22) ; Harris, John (\$ 22)

Cc: Foreman, Lisa (\$ 22) ; Spiers, Carolyn (\$ 22) ; Cairns, Louise (\$ 22) ; Skivington, Fiona (\$ 22)

Abeyaratne, Rukshan (\$ 22) ; Kemp, Robyn

(\$ 22) ; Summers, Wendy (\$ 22) **Subject:** Digital Readiness Bill Q&As [DLM=Sensitive:Legal]

Importance: High

Hi David, Bryon and John

Carolyn Spiers, Louise Cairns and I briefed small select sub-group of five representatives of the ESORT organisations yesterday afternoon on the Digital Readiness Bill that was introduced into the House that morning.

(s 47C)

#### Document 6

We are holding a videoconference with the full ESORT membership on the Friday 2 December afternoon to fully brief the whole roundtable membership. We have sent out to the ESORT members his afternoon the APH link to the Bill and Explanatory Memorandum in the email invite to the videoconference and asked ESORT members to call me if they have any concerns. We have prepared some key messages and Q&As on the Bill. See attached document. These cover the content of the discussion with the small sub-group.

Contingent on your agreement, we'd like to provide these to the ESORT members by hard copy on the 2<sup>nd</sup>.

The small sub-group also asked for talking points and we would like, subject to your agreement, to provide them with the attached document electronically next week – say Tuesday or Wednesday. We gave an undertaking to give them some talking points to assist them answer any concerns raised in the veteran community.

The small sub-group was: (\$ 47F) from RAAFA, (\$ 47F) from Legacy, Michael von Berg from Royal Australian Regiment Association, Ken Foster from VVAA, and (\$ 47F) of Defence Force Welfare Association.

Your clearance if possible early next week would be great as there would be benefit in disseminating this information to respond to any concerns raised in the veteran community. Neil

Neil Bayles

A/g First Assistant Secretary Rehabilitation and Support

(02) (s 22)

# **DIGITAL READINESS BILL**

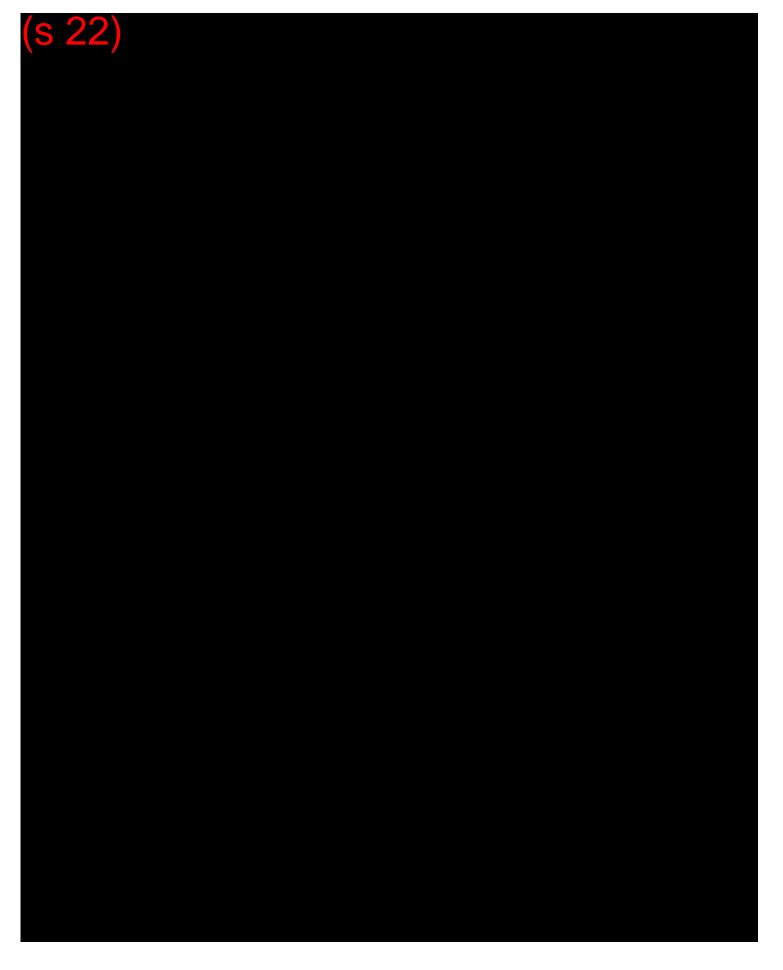
### **Key Messages**



The public interest disclosure provision will put beyond doubt that the Secretary may disclose information for certain limited purposes and also correct miss-truths of fact and misinformation in the community which leads to deterioration in the public's confidence in DVA and may discourage those veterans who need DVA's assistance from accessing DVA services.

# **Index to Talking Points:**

Page No	Topic
2	(s 22)
3	Public Interest Disclosure
6	(s 22)
9	(s 22)
10	(s 22)



#### **Public Interest Disclosure**

- **5.** Why does the Secretary need this power?
  - 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.
  - In certain limited circumstances it may be appropriate for the Secretary of the Department of Veterans' Affairs to disclose information about a person.
  - Such circumstances might 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 purpose of the public interest disclosure provisions is to put beyond doubt that the Secretary may, in certain circumstances, release information about a particular case or class of cases.
- **6.** Why is it important to correct misinformation in the community?
  - Misinformation in the public arena about DVA policies, processes and procedures can have a detrimental effect on <u>veterans' wellbeing</u>.
    - When there are misconceptions and untruths about DVA's performance, it can taint veterans' interactions with the Department.
    - This in turn can lead to veterans lacking confidence in DVA and becoming unnecessarily concerned about their case.
    - o It may even dissuade veterans from accessing their lawful entitlements.

(s 47C) , (s 47E)	
_	

(s 47C), (s 47E)	
	1

- **7.** What information can the Secretary disclose about me?
  - The Secretary may disclose information that was obtained under the relevant Act (VEA, MRCA or DRCA.) [This could include personal information.]
- **8.** Who can the Secretary disclose the information to and for what purposes?
  - Before the Secretary exercises this power, the Minister for Veterans' Affairs will
    make rules setting 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.
  - The nature and content of those rules is likely to be similar to the *Social Security* (Public Interest Certificate Guidelines) (DSS) Determination 2015.
- **9.** What safeguards are in place to protect my information?
  - There are five specific safeguards built into these new provisions, in addition to general safeguards already available.

#### Specific safeguards

- 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
- the Secretary cannot delegate the public interest disclosure power
- 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.)

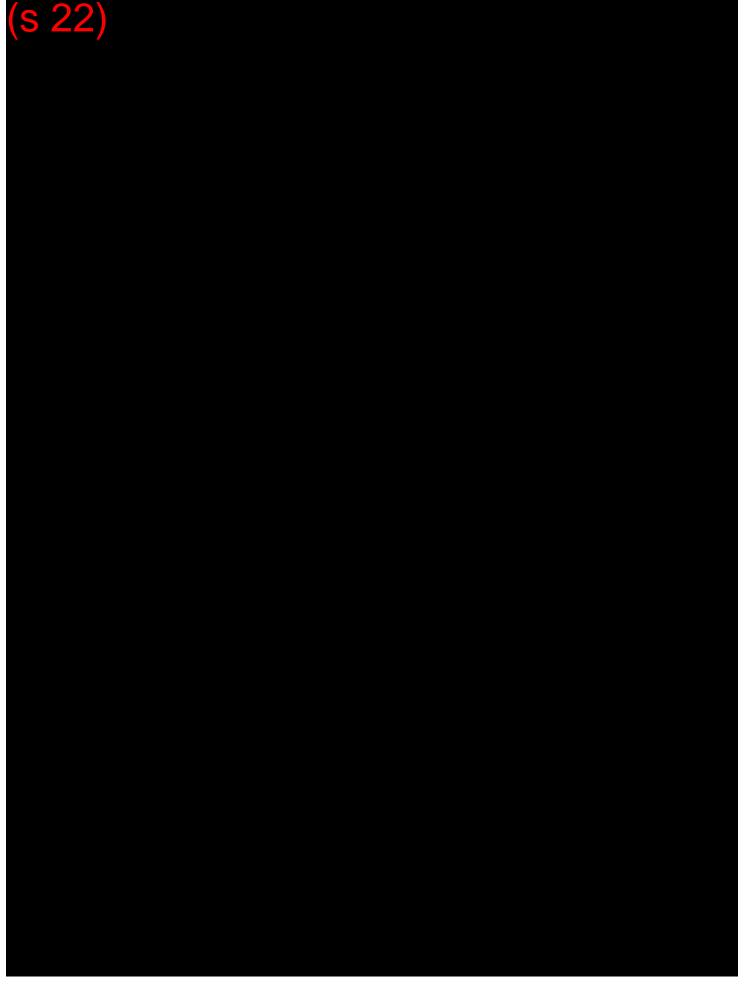
#### General safeguards

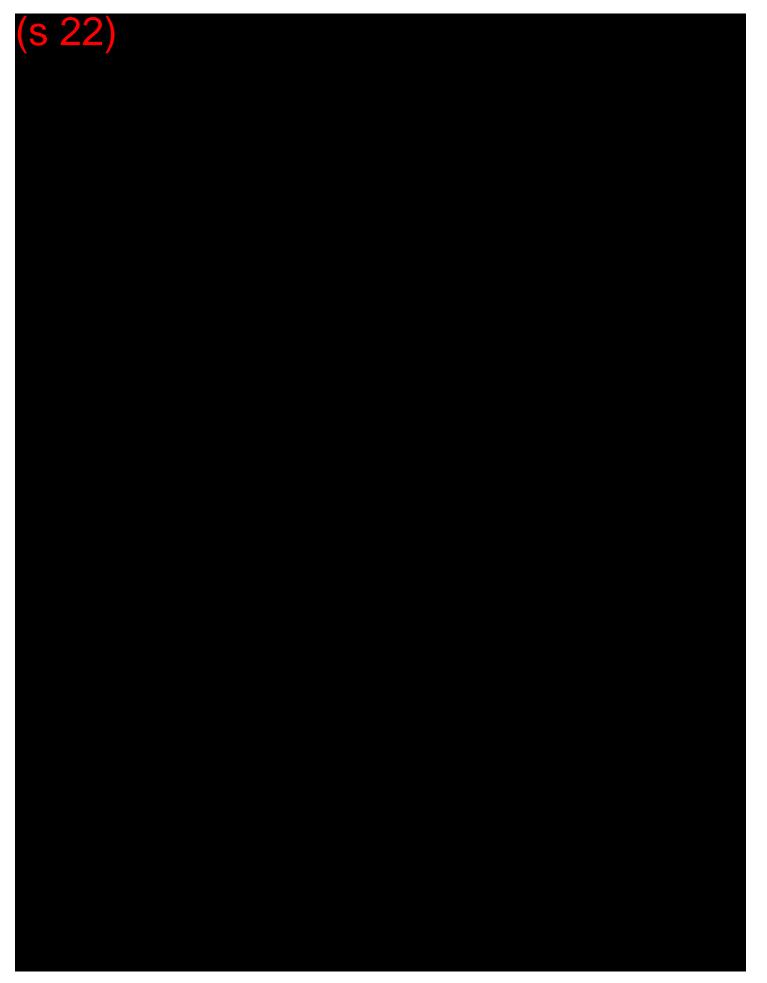
• In addition to the above safeguards, the Department (on behalf of the MRCC and the Repatriation Commission) manages clients' personal information in

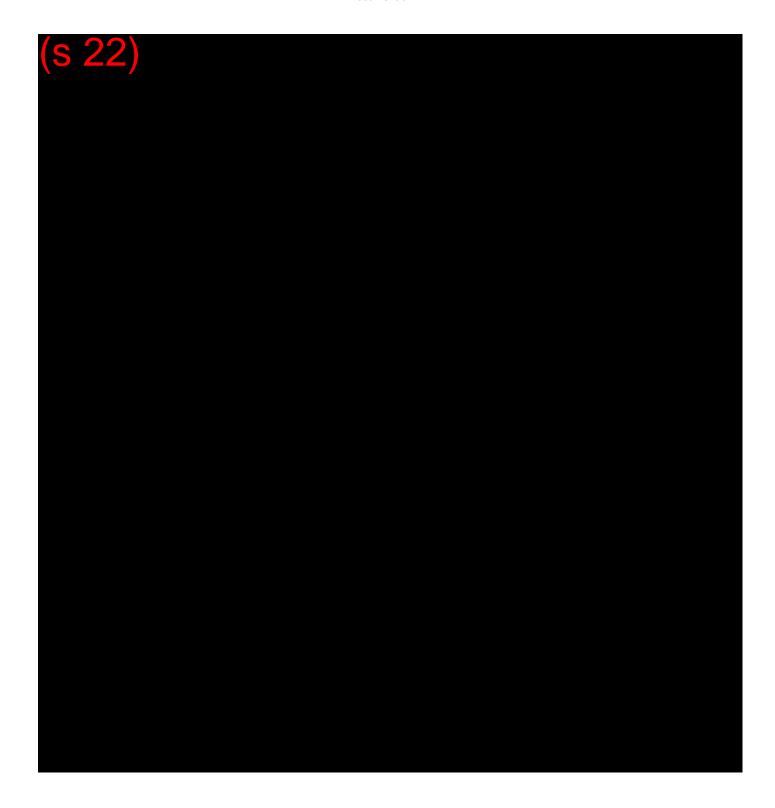
- compliance with the *Privacy Act 1988*, and the Department can be required to pay compensation for breaches of the *Privacy Act 1988*.
- In addition, departmental staff may face sanctions under the Australian Public Service Code of Conduct if they handle a client's personal information in an unauthorised manner.

#### 10. What can I do if the Secretary discloses information about me and I'm not happy?

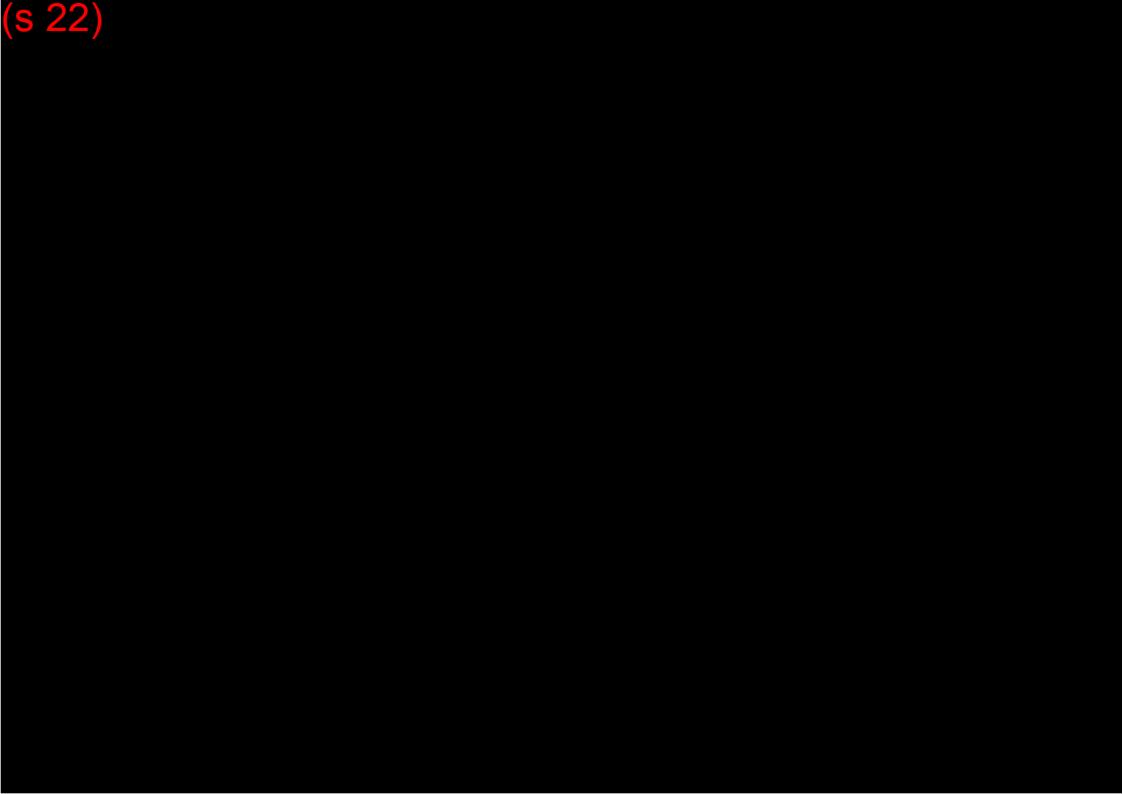
- Where the Secretary decides to issue a public interest disclosure certificate, he or she is required to notify the person in writing about his or her intention to disclose the information, give the person a reasonable opportunity to make written comments on the proposed disclosure of the information and consider any written comments made by the person.
- If a person is dissatisfied with the Secretary's decision to disclose information about them, they can apply for judicial review under the *Administrative Decisions* (Judicial Review) Act 1977.
- Merits review will not be available because those kinds of remedies are unlikely to be of benefit and also because of the time frames involved.
  - Remedies: Where the Secretary has publically released information about a person, merits review, which examines the correctness of the decision, is unlikely to be of benefit to the person because their information is already out in the public.
  - Timeframes: The timeframe within which information will be released will depend on the individual circumstances of each case. However, it is very unlikely that, between becoming aware that the Secretary intends to disclose information and the release of that information, a person would be able to obtain merits review. AAT processes while quick and efficient are unlikely to be available within the space of a few days or a week.

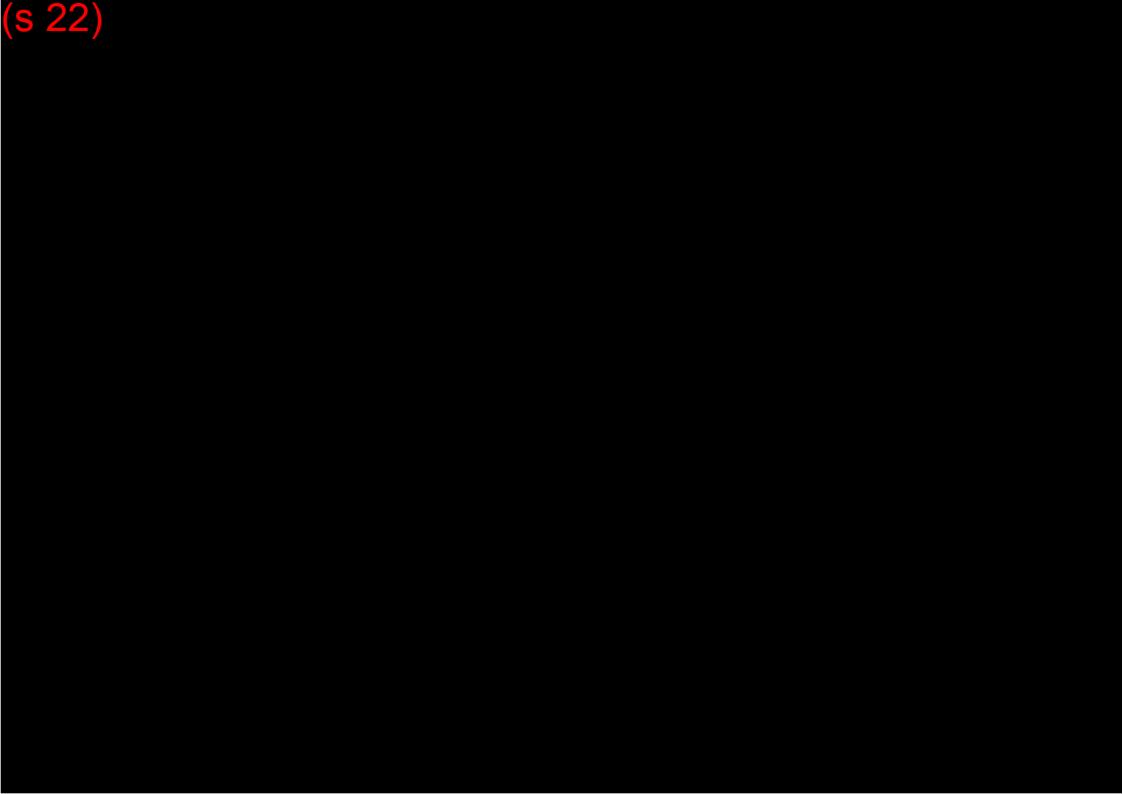


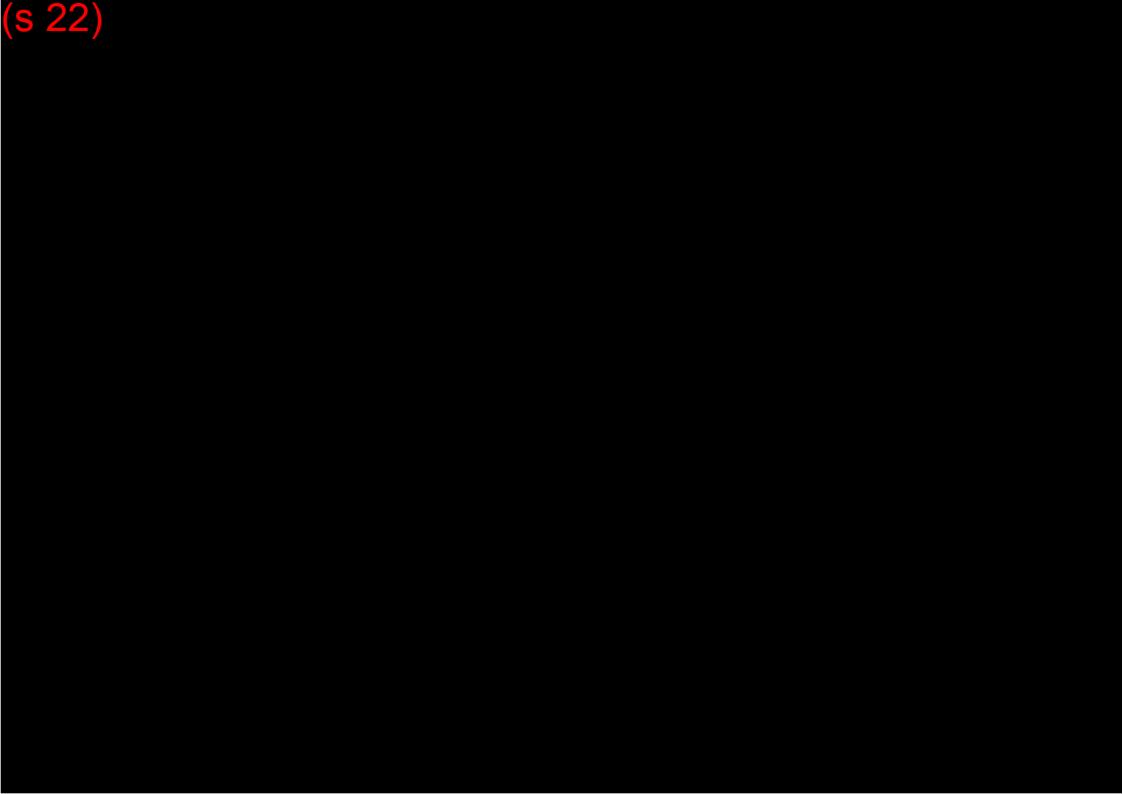


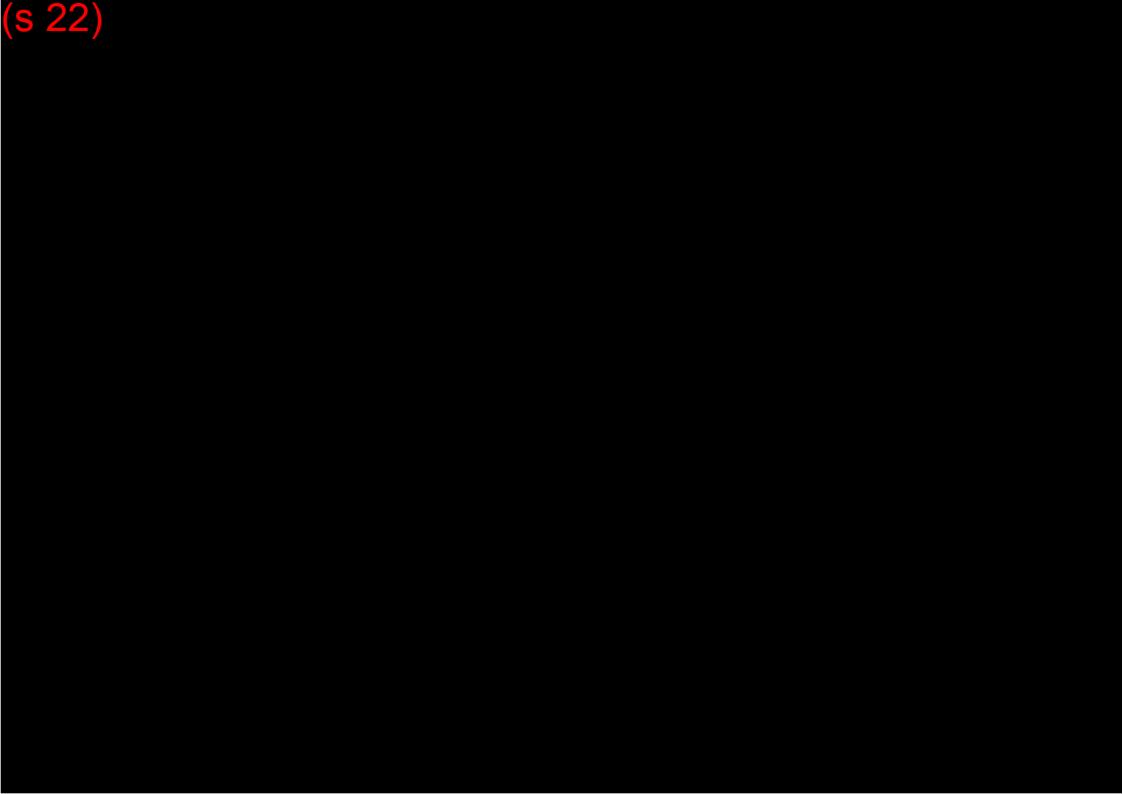












From: Spiers, Carolyn

To: Cosson, Liz; Foreman, Lisa; Bayles, Neil; Cairns, Louise

Subject: Digital Readiness Briefing (\$ 22) [DLM=Sensitive:Legal]

Date: Thursday, 24 November 2016 5:44:46 PM

Αll

Neil, Louise and I briefed the ESORT Working group on DR Bill today. It went well, there was agreement by those present that (\$ 47C), (\$ 47E)

(s 47C) , (s 47E)

We have

offered to provide the ESORT WG with some talking points about the measures in the Bill to enable them to communicate with their constituency.

FYI

Carolyn

#### Document 8

From: Spiers, Carolyn

To: "Harris, John (D. Tehan, MP)"; Foreman, Lisa

Cc: <u>Cairns, Louise</u>

**Subject:** FW: Digital Readiness PIA - Final [DLM=Sensitive:Legal]

**Date:** Friday, 24 February 2017 4:47:46 PM

Attachments: Digital Readiness Bill Privacy Impact Assessment - Final.docx

#### John / Lisa

Here is the Department's DR Bill Privacy Impact Assessment. It was prepared by DVA privacy experts and reviewed /cleared by Australian Government Solicitor privacy lawyers.

FYI

Regards Carolyn

From: White, Frank

Sent: Friday, 24 February 2017 4:32 PM

 $\textbf{\textbf{To:}} \ \ \textbf{Spiers, Carolyn:} \ \ \textbf{Cairns, Louise:} \ \ \textbf{Babington, Trent}$ 

**Subject:** Digital Readiness PIA - Final [DLM=Sensitive:Legal]

Dear colleagues,

Please find attached the final version of the Digital Readiness Privacy Impact Assessment.

Regards Frank White Ext. 616294

# 123456

7

**Privacy Impact Assessment Report** 

Veterans' Affairs Legislation
Amendment

# (Digital Readiness and Other Measures) Bill 2016

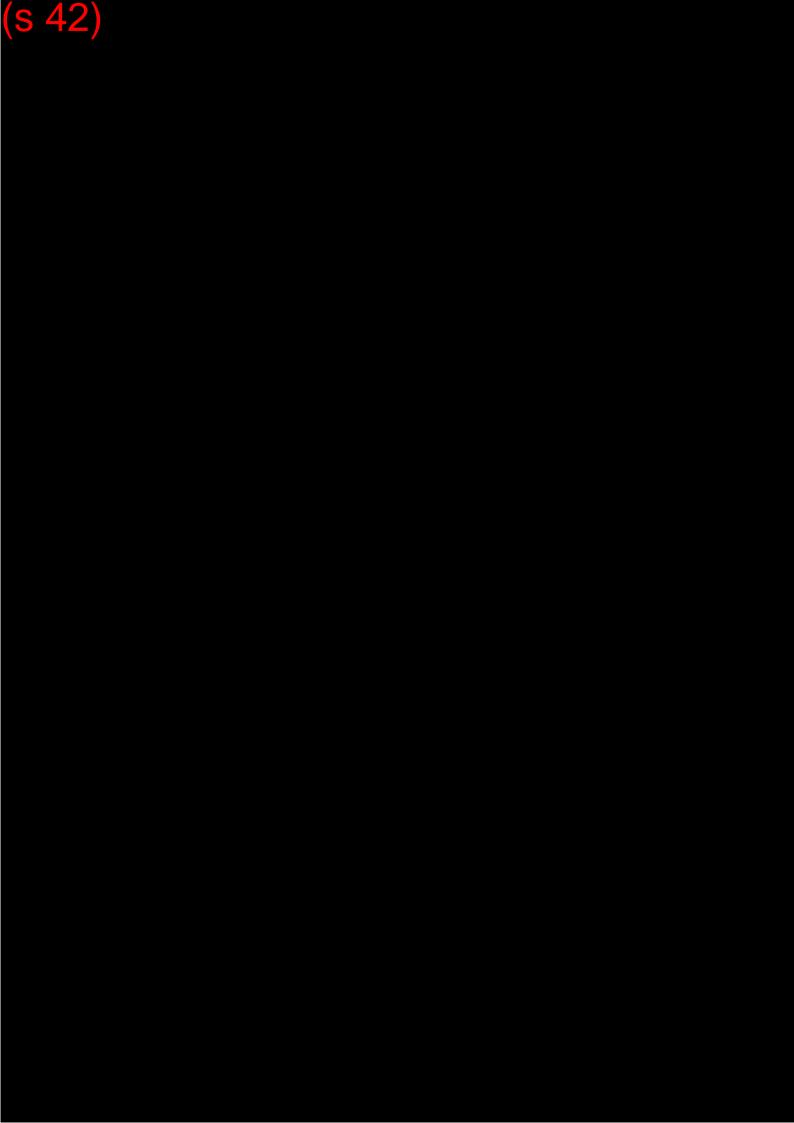
**Public Interest Disclosure Provisions** 

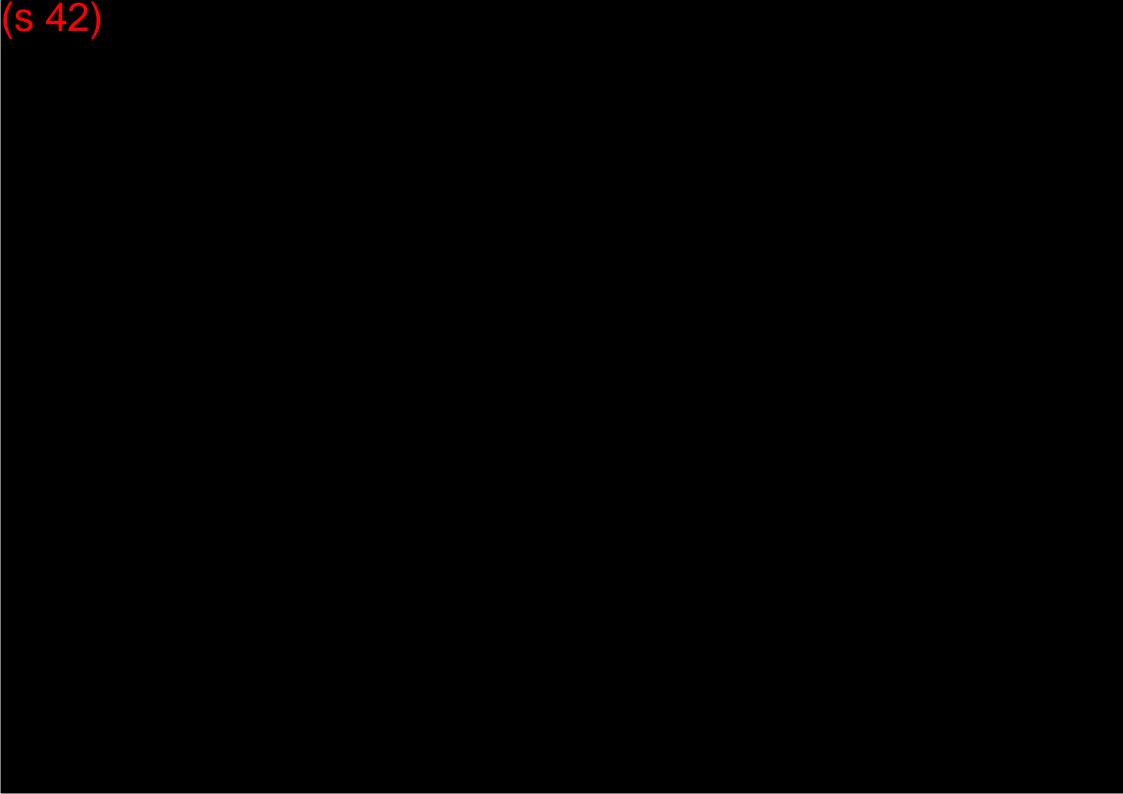
# Contents

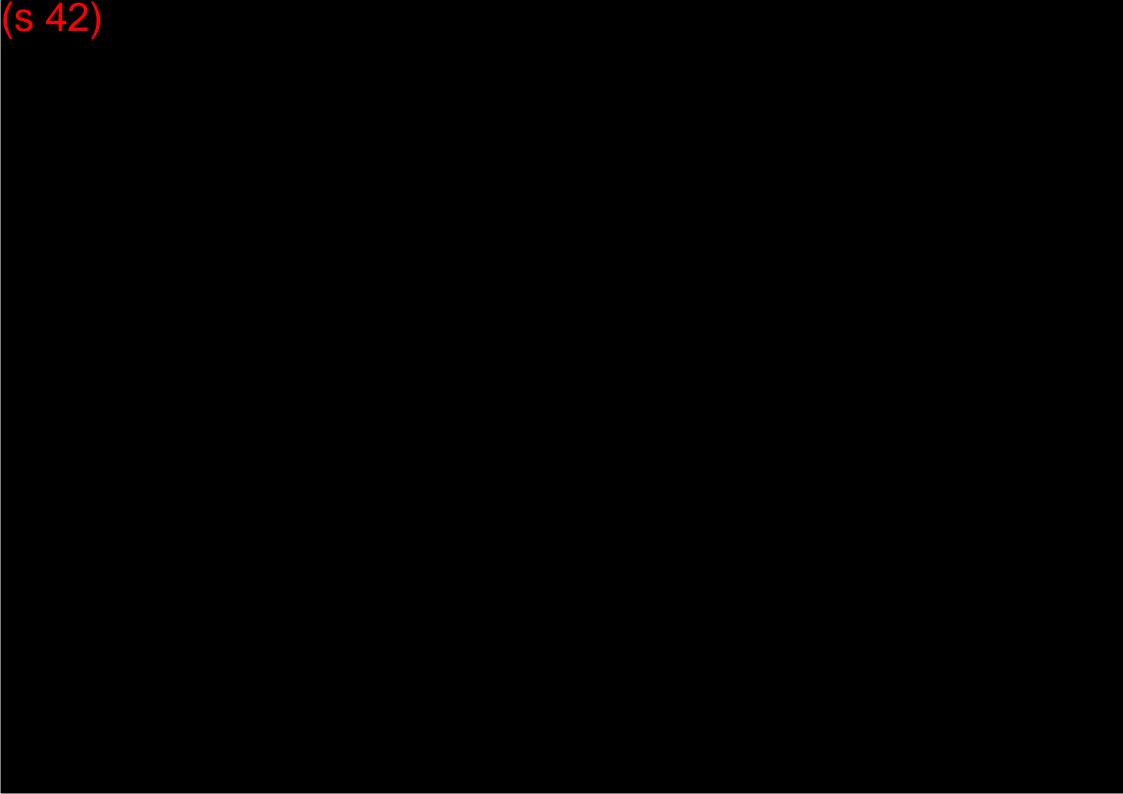
Executive Summary ......1

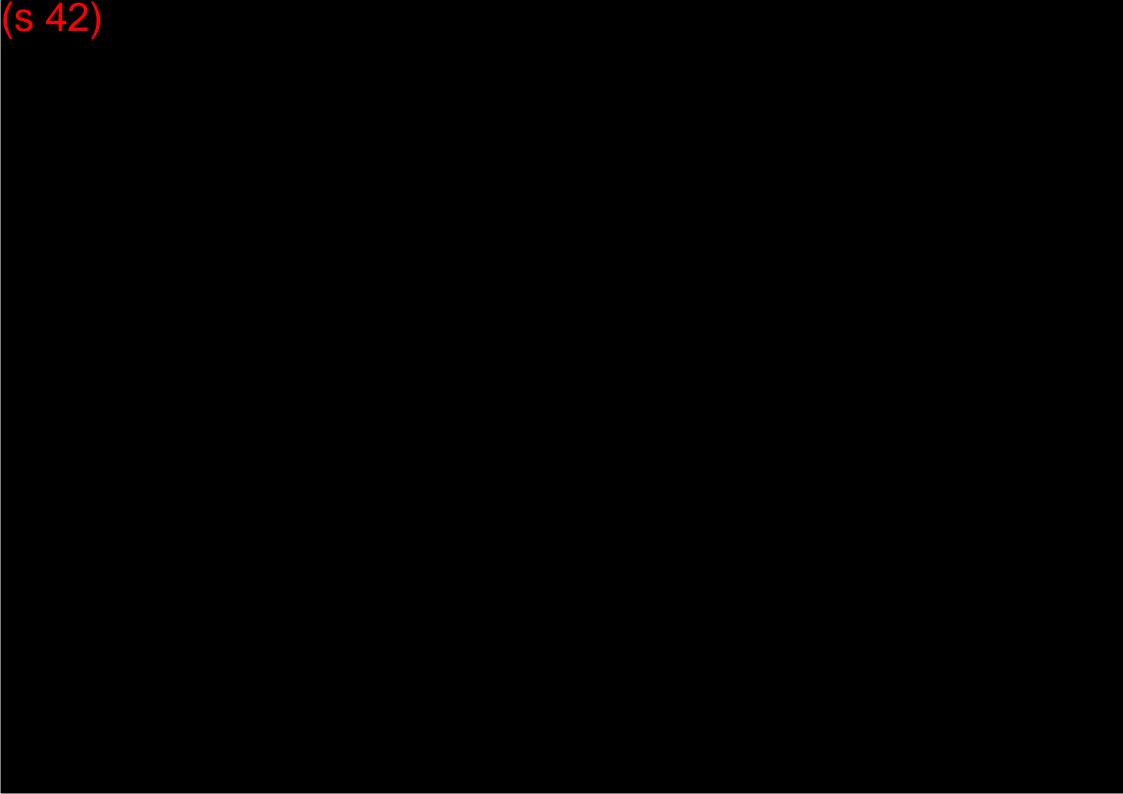
## 1) Executive Summary

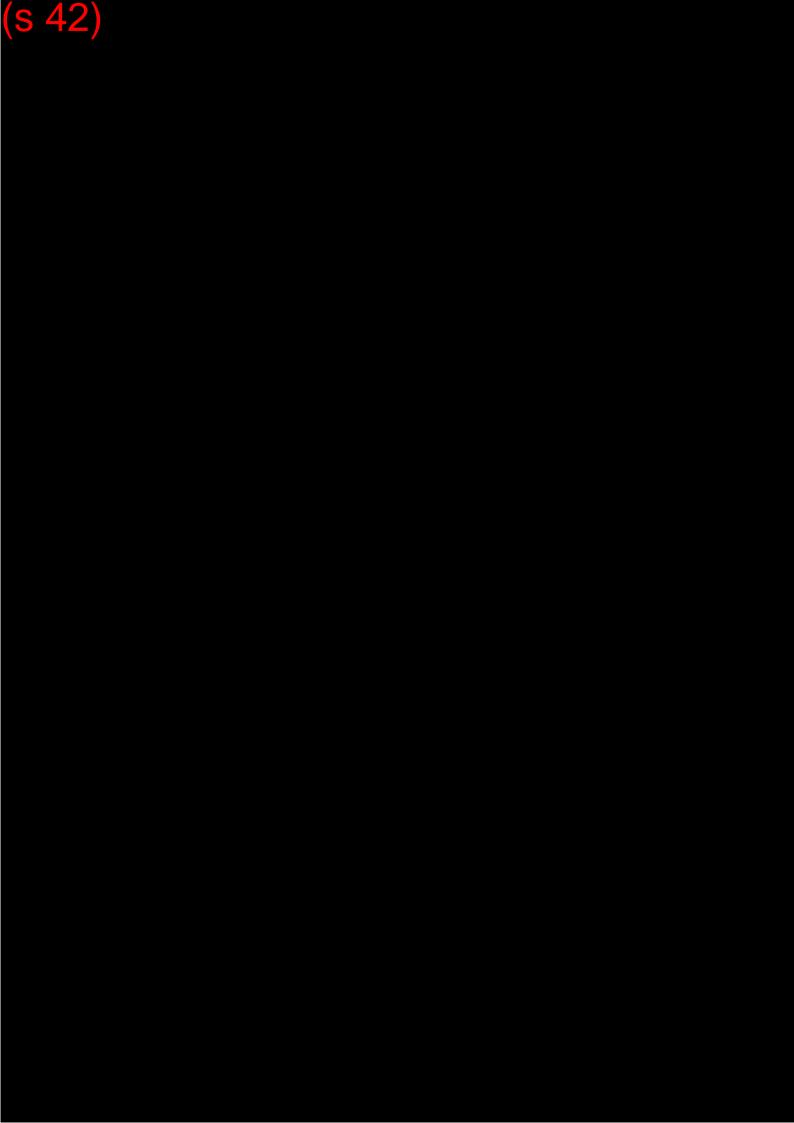
- The PID provisions relate only to the disclosure of information (including 'personal information' and 'sensitive information' as defined in the *Privacy Act 1988* (Privacy Act)) in listed circumstances in this way, they provide further bases for authorised disclosure, which operate in addition to the current bases for authorised disclosure set out in Australian Privacy Principle (APP) 6.
- In all other respects, any personal information that may potentially be disclosed by the Department through the operation of the PID provisions is required to be handled by the Department in accordance with the current APPs relating to collection, use, quality, security and access.
- The PID provisions contain detailed and stringent controls over the exercise of the disclosure power that reflect the importance of taking necessity and proportionality considerations into account before relying on the provisions to make a disclosure.
- The requirement that an individual be notified of a proposed disclosure of their personal information prior to any disclosure being made is an important privacy safeguard – it will operate to ensure that the power is exercised in appropriate and necessary cases and will also provide individuals with the opportunity to inform the Department if information is inaccurate, out of date or incomplete. The requirement also
- In some instances, the PID provisions could operate to permit public disclosure of
  personal information, rather than disclosure to particular recipients subject to
  specific privacy obligations in their own handling of this information and that this
  public disclosure power would be utilised only in circumstances where a significant
  public benefit would be served by such action, supplementary procedures should be
  developed to assist in assessing the potential consequences, risks and benefits of any
  public disclosure.
- It will be necessary for the Department's current privacy materials and published documents to be reviewed and updated to reflect the operation and effect of the PID provisions. In addition, specific staff training materials and guidelines need to be prepared to ensure that Departmental employees understand the meaning and operation of key definitions and tests in the PID provisions and are able to explain the effect of these changes to Departmental clients and other stakeholders.
- The recommendations arising from this Assessment are set out at page 27 below.

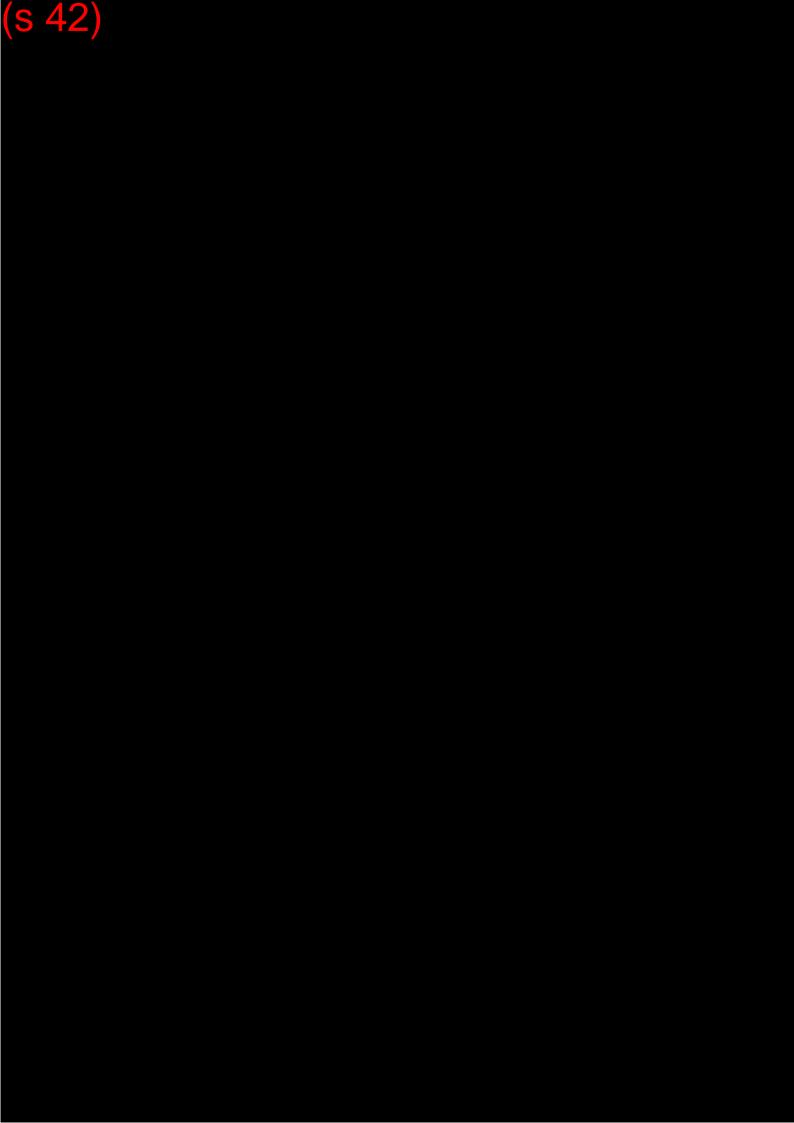


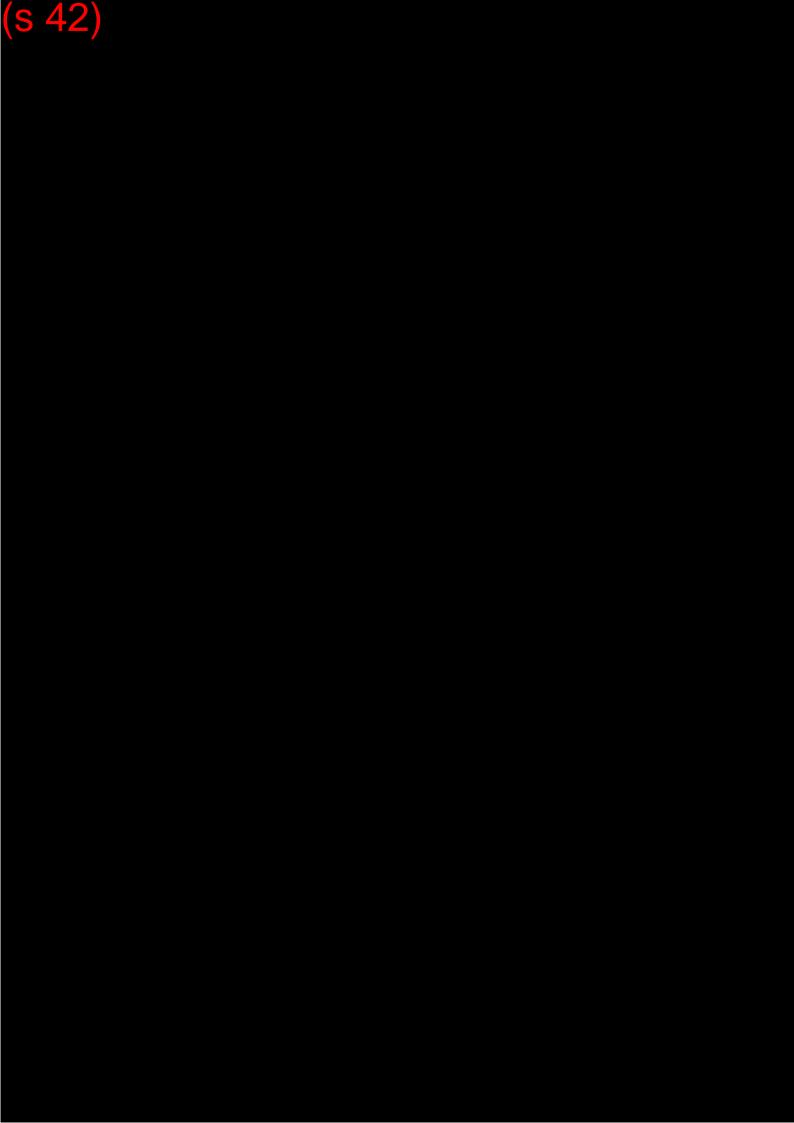


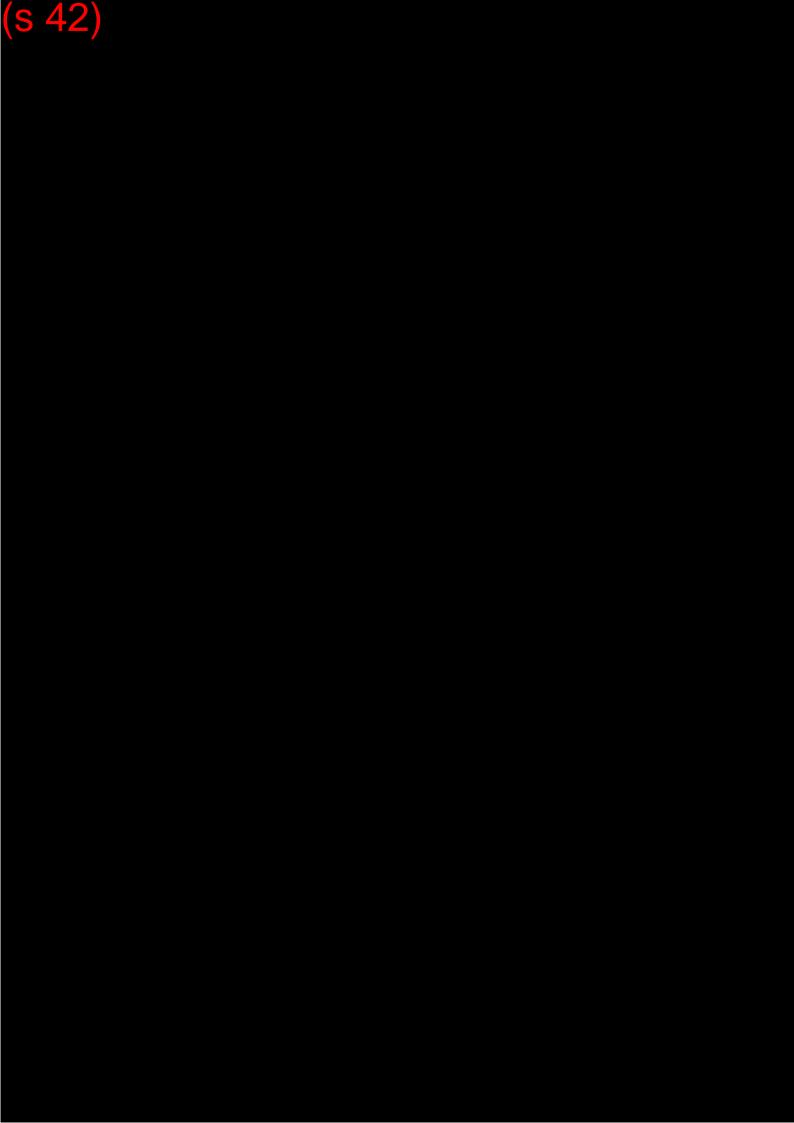


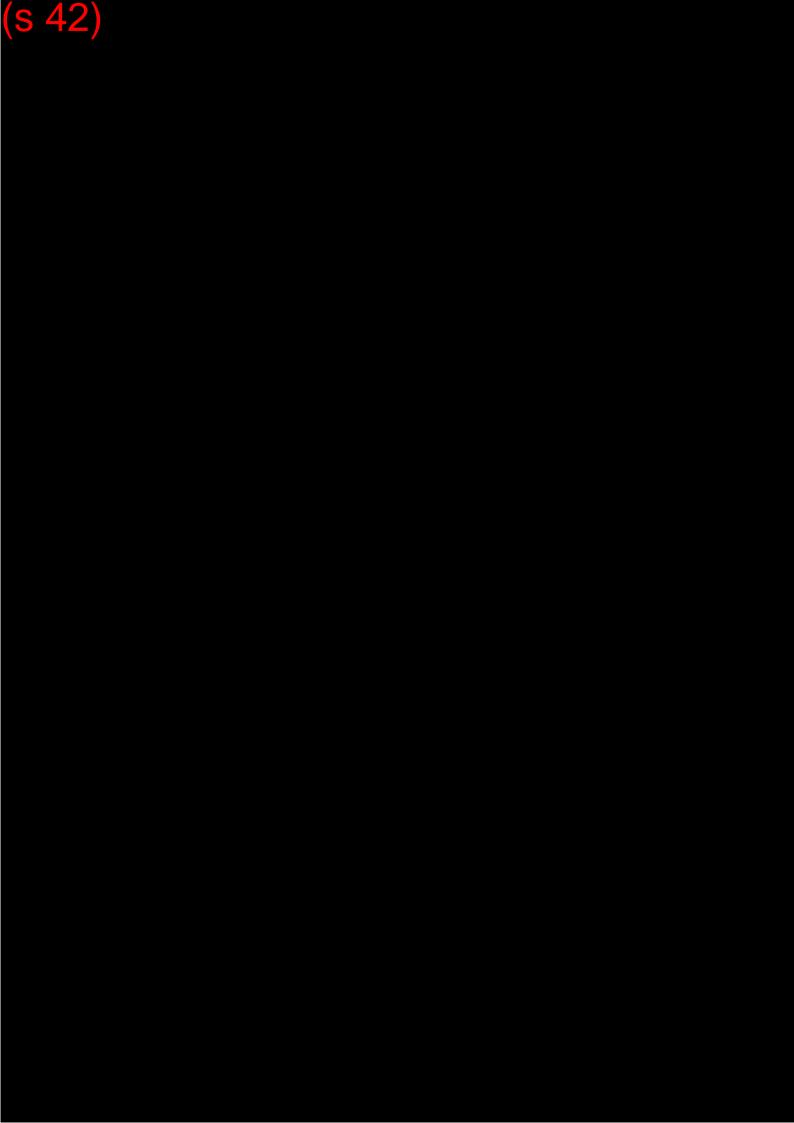


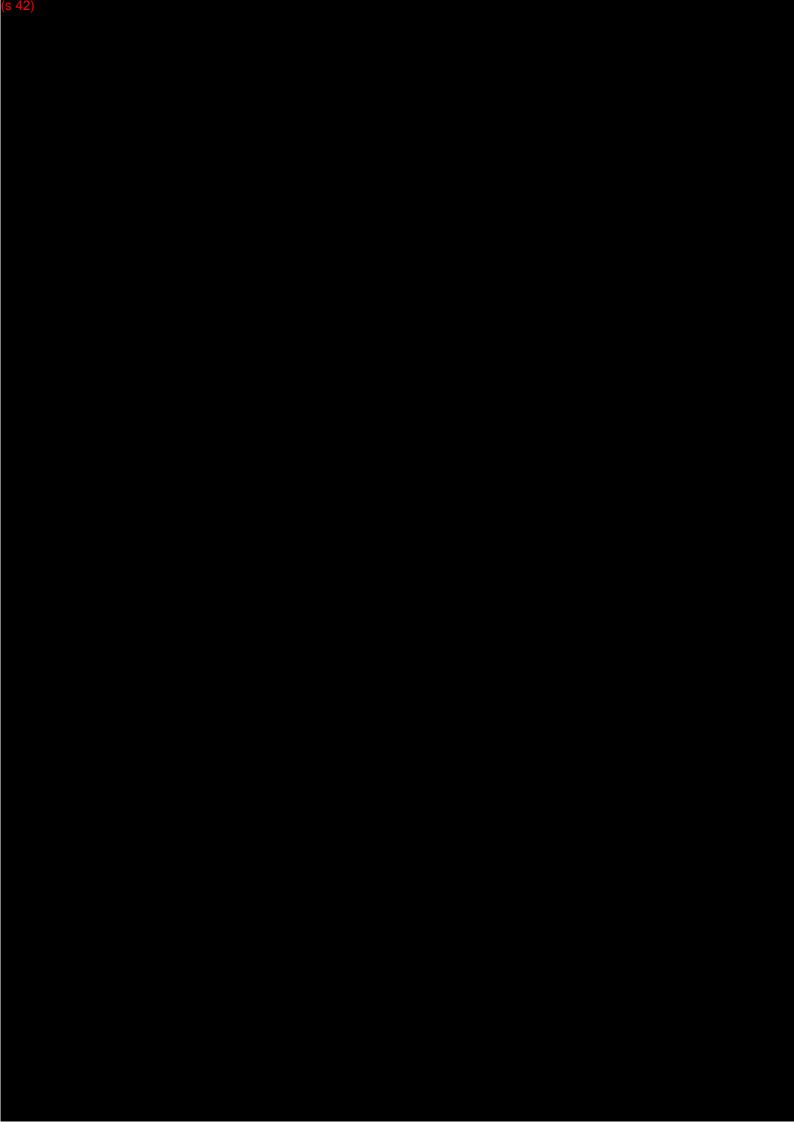


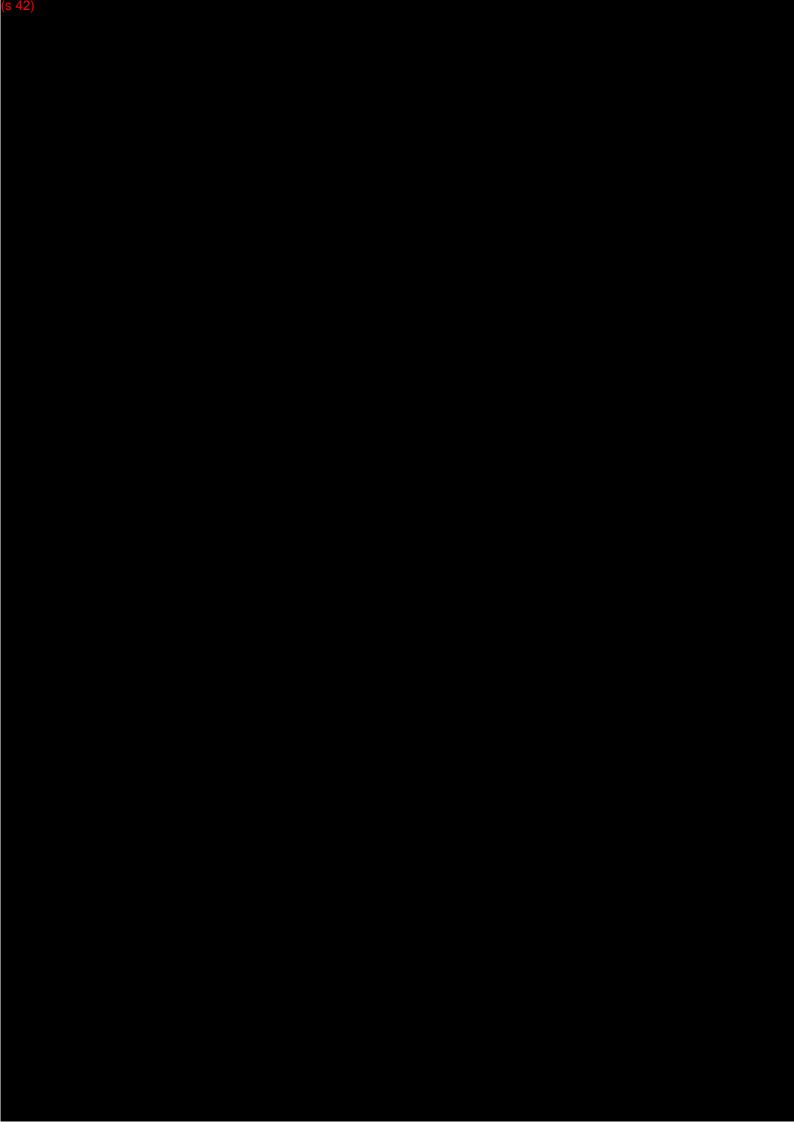


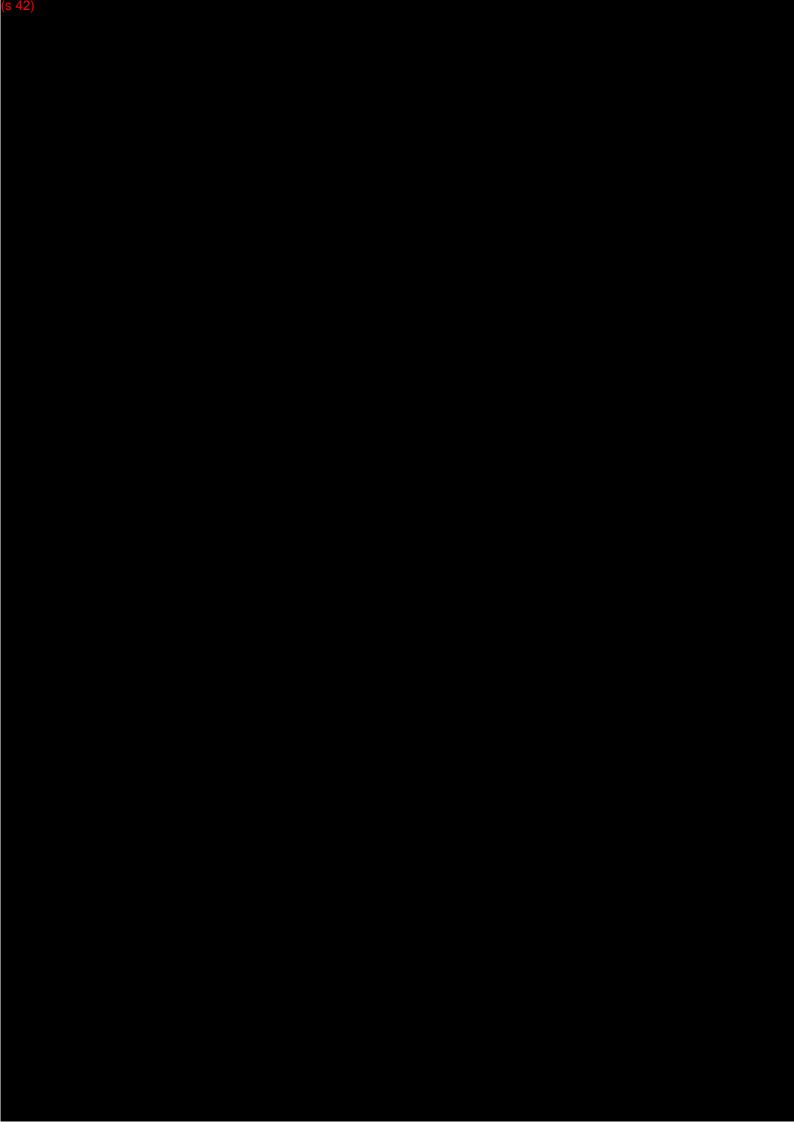


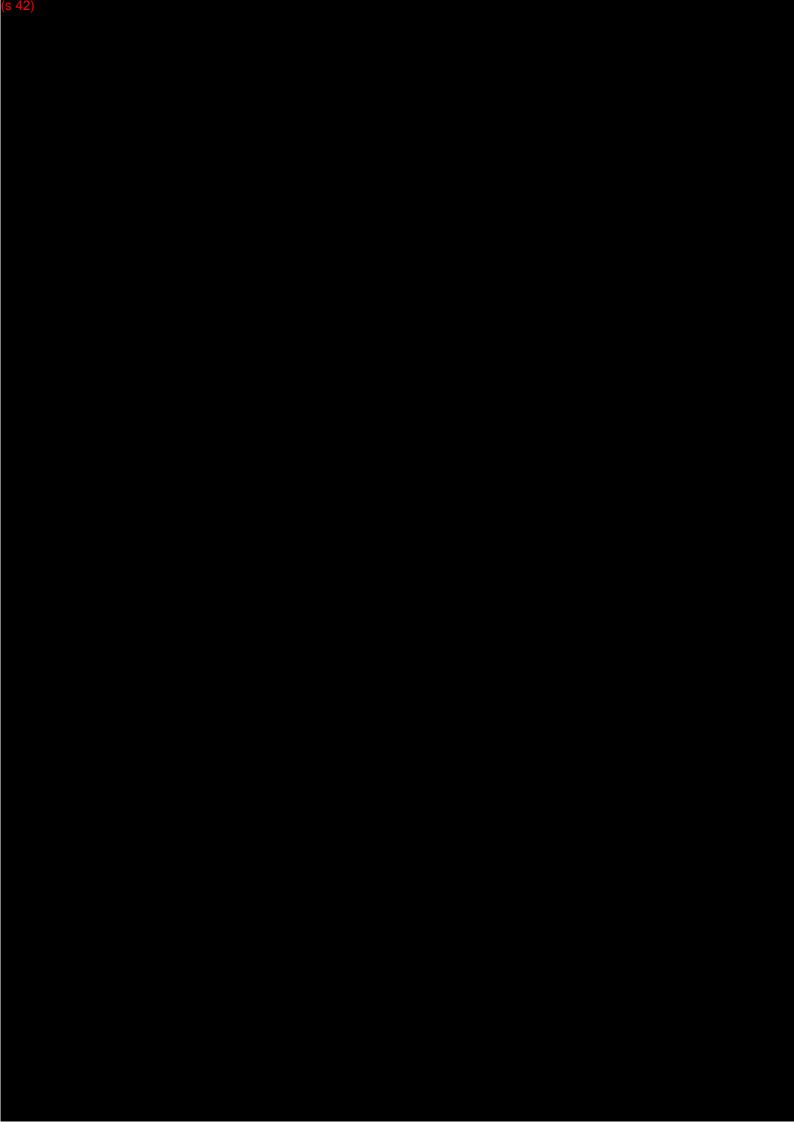


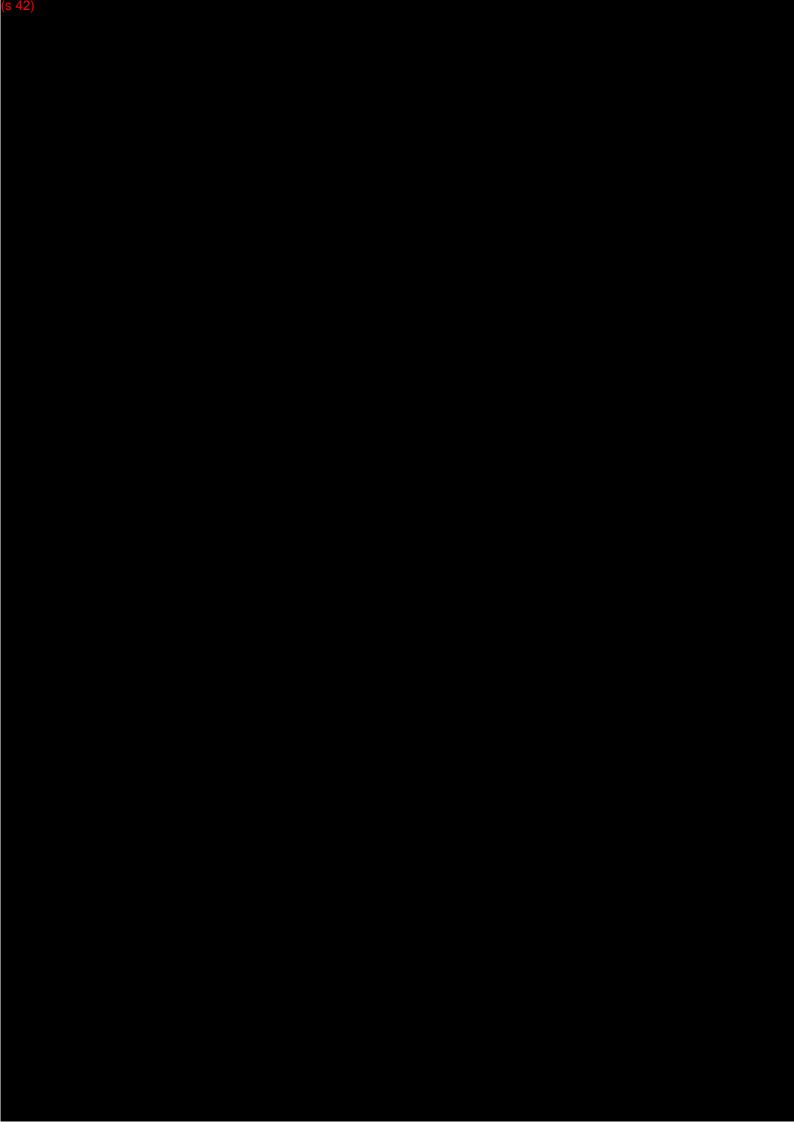


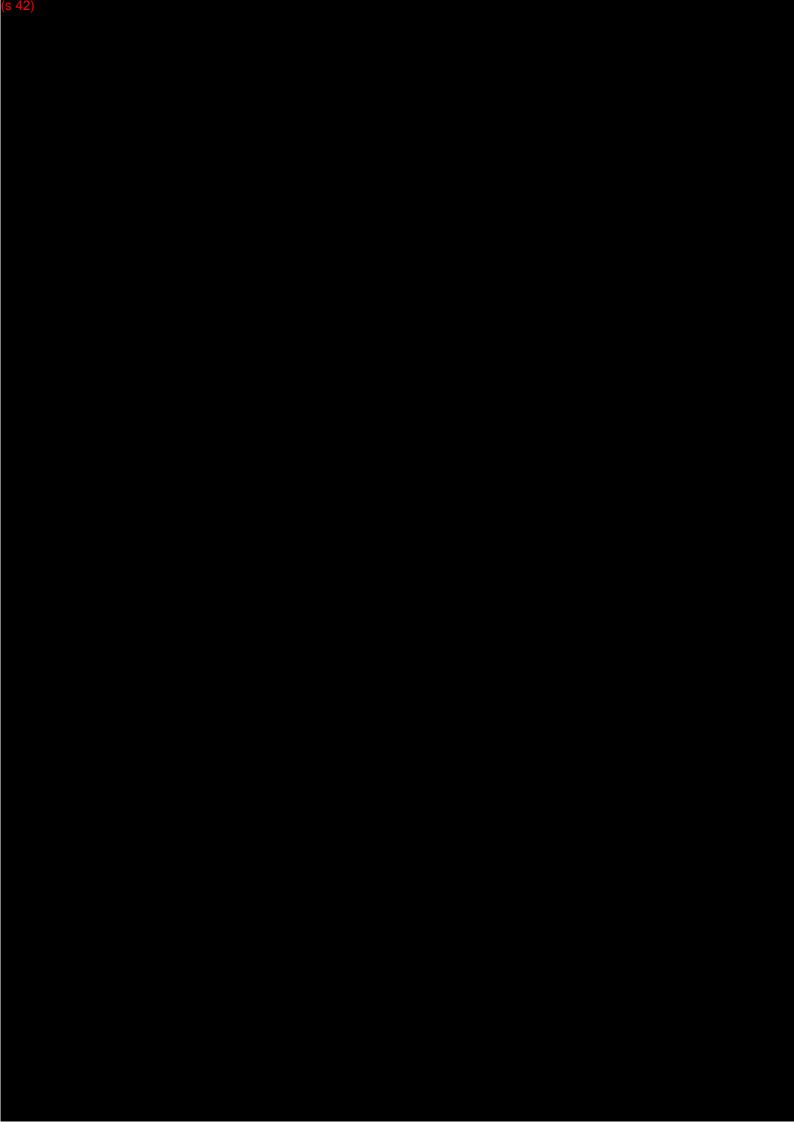


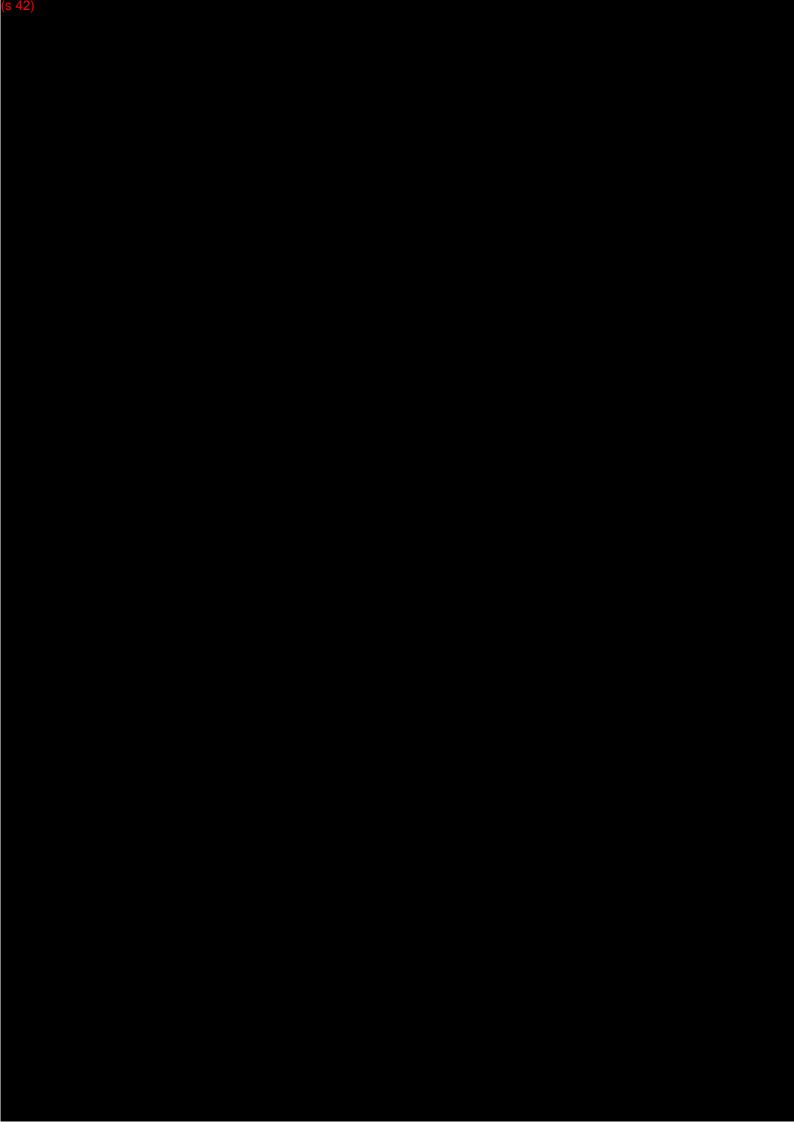












From: Spiers, Carolyn
To: Cairns, Louise

Subject: FW: DVA Clarification on Ombudsman submission - DVA Digital Readiness Bill [DLM=For-Official-Use-Only]

**Date:** Tuesday, 21 February 2017 4:29:49 PM

Attachments: <u>image001.png</u>
Importance: High

From: Doris Gibb (\$ 22)

Sent: Tuesday, 21 February 2017 1:57 PM

To: Spiers, Carolyn

Cc: Kate Wandmaker; Diane Mutch; Rodney Walsh; Richard Glenn

Subject: DVA Clarification on Ombudsman submission - DVA Digital Readiness Bill [DLM=For-

Official-Use-Only]
Importance: High
Dear Carolyn

Thank you for forwarding the clarification for our information.

Regards Doris Gibb

Acting Deputy Ombudsman

COMMONWEALTH OMBUDSMAN

Phone: (**s 22**)

Email: (s 22)

Website: ombudsman.gov.au



#### Influencing systemic improvement in public administration

From: Spiers, Carolyn (\$ 22)

Sent: Monday, 20 February 2017 8:45 AM

To: Ombudsman (\$ 22)

Subject: DVA Digital Readiness Bill [DLM=For-Official-Use-Only]

**Importance:** High Ms Doris Gibbs

Senior Assistant Ombudsman

Dear Ms Gibbs

DVA has provided the Senate Committee with a short supplementary submission after Thursday's hearing to clarify a couple of issues raised during the hearing concerning the operation of the Schedule 2 of the Bill. As the timing of the hearing was quite short and the committee asked many questions, it was not possible to handle the clarification during the hearing. As it relates to one of the submissions made the Ombudsman's Office, I thought it would be appropriate to forward a copy.

If you wish to discuss further, I can be contacted on (\$ 22)

Regards

Carolyn Spiers

Principal Legal Advisor

Department of Veterans' Affairs

From: Spiers, Carolyn

Sent: Friday, 17 February 2017 12:36 PM

To: (\$ 22)

Cc: Cairns, Louise (\$ 22) >; Foreman, Lisa <(\$ 22) Srown, Luke <(\$ 22) >

Subject: Further info for Committee re DR Bill - Cth O supp submission [DLM=For-Official-Use-

Only]

**Importance:** High Dear Mr Sullivan,

As I mentioned to you at the conclusion of the Senate Foreign Affairs, Defence and Trade Committee's inquiry into the *Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016* (Digital Readiness Bill), there is one aspect of the Commonwealth Ombudsman's supplementary submission that the Department of Veterans' Affairs would like to clarify.

Schedule 2 of the Digital Readiness Bill contains two types of information sharing provisions. Items 1, 7 and 10 of Schedule 2 are the proposed public information disclosure provisions. Items 3 – 6 are the proposed information sharing provisions between the Department of Veterans' Affairs and the Department of Defence/Chief of the Defence Force.

The excerpt of the Explanatory Memorandum quoted in the Commonwealth Ombudsman's supplementary submission relates to items 3-6 (information sharing between DVA and Defence), not the entire schedule 2. Thus the Commonwealth Ombudsman's comment that the amendments in Schedule 2 appear to exceed the quoted excerpt from the Explanatory Memorandum is correct, but this is because the excerpt relates to items 3-6 (information sharing between DVA and Defence), not items 1, 7 and 10 (public information disclosure provisions.)

The Commonwealth Ombudsman suggested that the anomaly (that the Military Rehabilitation and Compensation Commission can share information with the Department of Defence under the *Military Rehabilitation and Compensation Act 2004* (MRCA), but not the *Safety, Rehabilitation and Compensation Act 1988* (SRCA)) could be overcome by mirroring the existing MRCA provision (section 409) in the SRCA and *Veterans' Entitlements Act 1986* (VEA), rather than introducing new expanded provisions to all three pieces of legislation.

Item 5 of Schedule 2 inserts an equivalent of section 409 of the MRCA into the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA), subject to it being enacted. It is not necessary to make the equivalent amendment to the VEA because it already has an information sharing provision at section 130.

Items 1, 7 and 10 are not designed to overcome the anomaly mentioned above. They are designed to achieve a separate policy outcome of putting beyond doubt that, in certain limited circumstances and subject to rules made by the Minister, the Secretary of the Department of Veterans' Affairs may make a public interest disclosure where it is in the public interest to do so. As discussed yesterday, misinformation in the public arena about DVA's policies, processes and procedures can have a detrimental effect on the wellbeing of veterans.

Thank you for allowing the Department of Veterans' Affairs to provide this further information to the Committee and I would be happy to provide any further information if that would assist members of the Committee.

Regards,

Carolyn Spiers.

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- 3. Any views expressed in this e-mail are those of the sender and are not a statement of Australian Government Policy unless otherwise stated.
- 4. Electronic addresses published in this email are not conspicuous publications and DVA does not consent to the receipt of commercial electronic messages.
- 5. To unsubscribe from emails from the Department of Veterans' Affairs (DVA) please go to

## http://www.dva.gov.au/contact\_us/Pages/feedback.aspx

, and advise which mailing list you would like to unsubscribe from.

6. Finally, please do not remove this notice.

The Office of the Commonwealth Ombudsman acknowledges the traditional owners of country throughout Australia and their continuing connection to land, culture and community. We pay our respects to elders past and present.

\_\_\_\_\_

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From: <u>Cairns, Louise</u>
To: <u>ESO.Round.Table</u>

Subject: RE: ESORT - 2 page summary of DVA submission to Senate inquiry [DLM=For-Official-Use-Only]

Attachments: Summary of DVA submission to Senate Inquiry.docx

#### Hi ESORT Secretariat,

I'm not sure whether the minutes and documents from the 1 February ESORT workshop went out? I happened to look at the document I sent you on 8 February and realised it's the wrong version. Please find attached the correct version to be sent out.

Thanks very much,

Louise.

From: Cairns, Louise

Sent: Wednesday, 8 February 2017 10:52 AM

To: ESO.Round.Table

Subject: FW: ESORT - 2 page summary of DVA submission to Senate inquiry [DLM=For-Official-

Use-Only]

Hi ESORT Secretariat,

At last week's ESORT workshop on the Digital Readiness Bill (01/02/17), we agreed to provide ESORT members with a two page summary of DVA's submission to the Senate inquiry. Please find attached the summary to be distributed (perhaps with the minutes?) Craig, Lisa and Carolyn have cleared the document.

Regards, Louise.

From: Orme, Craig

Sent: Wednesday, 8 February 2017 10:26 AM

**To:** Cairns, Louise (\$ 22)

Cc: Spiers, Carolyn (\$ 22)

Subject: Re: ESORT - 2 page summary of DVA submission to Senate inquiry [DLM=For-Official-

Use-Only]

All good. It can go out.

Craig

On 8 Feb 2017, at 09:16, Cairns, Louise (\$ 22) wrote:

Hi Craig,

I understand you're working from Sydney today and tomorrow –Louise suggested that I email you.

At last week's ESORT workshop on the Digital Readiness Bill, we agreed to provide a two page summary of DVA's submission to the Senate inquiry to ESORT members. I've drafted the two pager (attached), which Carolyn and Lisa have both cleared.

When you have a chance, could you also please consider and let me know whether you'd like any changes made?

Also, would you like Liz and the Secretary to clear this paper?

Thanks very much,

Louise.

#### Summary of DVA's submission to the Senate Inquiry into the Digital Readiness Bill



#### **Public Interest Disclosures**

DVA has a duty of care in providing its services to veterans and clients. However, often there are privacy and legislative restraints on providing information that might be necessary in fulfilling that duty of care. In instances of preventing harm to others or self-harm, addressing concerns about a veteran's health, maintaining the integrity of programmes, and ensuring appropriate service provision by providers, the Department is not able in some instances to provide timely information to prevent detrimental outcomes to veterans.

Public Interest Disclosures are currently used in other areas of government in a careful and judicious manner that allows these issues to be addressed. It is important that measures that are in place and working in other areas of government are afforded to DVA in order to fulfil its duty of care to veterans and clients and provide the best outcome for them.

In recognition that DVA has not previously had this public interest disclosure power, and that disclosure of a person's information is not to be undertaken lightly, five specific safeguards are built into the proposed provisions, in addition to general safeguards already available.

The specific safeguards include:

- the Secretary of DVA must act in accordance with rules that the Minister makes about how the power is to be exercised and the rules will be a disallowable instrument
- the Minister cannot delegate his or her power to make rules about how the power is to be exercised by the Secretary of DVA
- the Secretary of DVA cannot delegate the public interest disclosure power
- before disclosing personal information about a person, the Secretary of DVA 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 (natural justice
  requirements), and
- unless the Secretary of DVA complies with the above natural justice requirements before
  disclosing personal information, he or she will commit an offence, punishable by a fine of 60
  penalty units (approximately \$10,800.)

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. If a person is dissatisfied with the Secretary's decision to disclose information about them, they can apply for judicial review under the *Administrative Decisions (Judicial Review) Act 1977*.



#### Document 12

From: McNaught Karri on behalf of ESO.Round.Table

Subject: ESORT - Digital Readiness Bill Meeting 1 - Draft Minutes - 2 December 2016 [DLM=For-Official-Use-Only]

Date: Wednesday, 14 December 2016 3:53:52 PM

Attachments: F2015L01267.pdf DR EM.PDF

DR EM.PDF DR 2RS.PDF DR Bill.pdf

ESORT Draft Minutes - Digital Readiness - 2 December 2016 docx

#### Good afternoon,

Please find attached the draft minutes of the Digital Readiness meeting held on 2 December 2016 for your consideration.

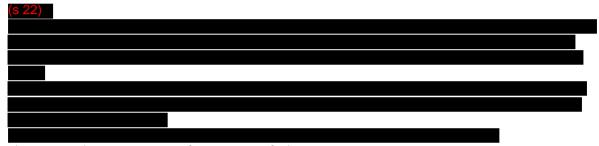
#### **Digital Readiness Bill**

Further information about the Digital Readiness Bill can be found at the following link, where you can track the progress of the Bill including the text of the Bill, Explanatory Memorandum, the Minister's Second Reading Speech, and second reading debate (when it occurs): <a href="http://www.aph.gov.au/Parliamentary\_Business/Bills\_Legislation/Bills\_Search\_Results/Result?">http://www.aph.gov.au/Parliamentary\_Business/Bills\_Legislation/Bills\_Search\_Results/Result?</a>

Please find attached copies of the Bill, Explanatory Memorandum and Second Reading Speech.

As mentioned at the meeting, the Digital Readiness Bill has been referred to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 14 February 2017, with submissions due by 25 January 2017. Here is a link to the inquiry homepage:

http://www.aph.gov.au/Parliamentary\_Business/Committees/Senate/Foreign\_Affairs\_Defence\_and\_Trade/VetAffairsDigitalBill Finally in relation to the Digital Readiness Bill, please find attached a copy of DSS' rules about when the Secretaries of DSS and DHS may exercise their public interest disclosure provisions. DVA's rules are under development, but will be broadly modelled on DSS'.



Please contact the ESORT Secretariat if you require any further assistance.

Thank you

Karri



# DEPARTMENT OF VETERANS' AFFAIRS **Ex-Service Organisation Round Table**

Level 6 Executive Board Room, Gnabra Building, Venue:

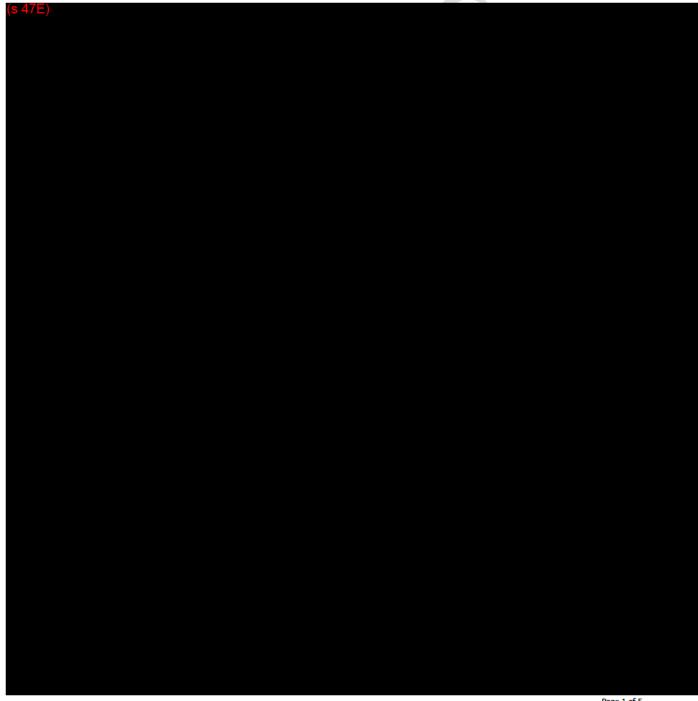
Canberra

Friday 2 December 2016 Date:

2.00am - 3.00pm Time:

Meeting No: 36

#### **Attendees**







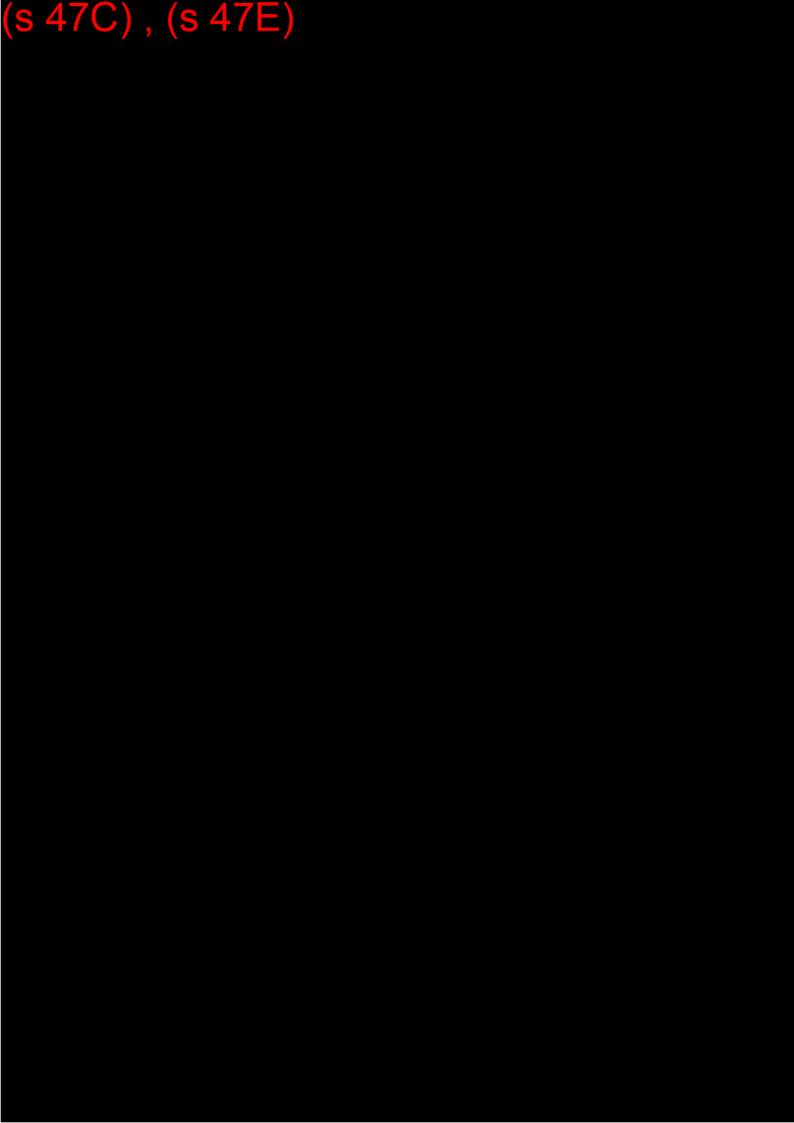
DVA Participants			
Ms Lisa Foreman	First Assistant Secretary, Rehabilitation and Support		
Mr Neil Bayles	Assistant Secretary, Rehabilitation, Case Escalation and MRCA Review		
Ms Carolyn Spiers	Principal Legal Adviser		
Ms Louise Cairns	Legislation Liaison Officer		

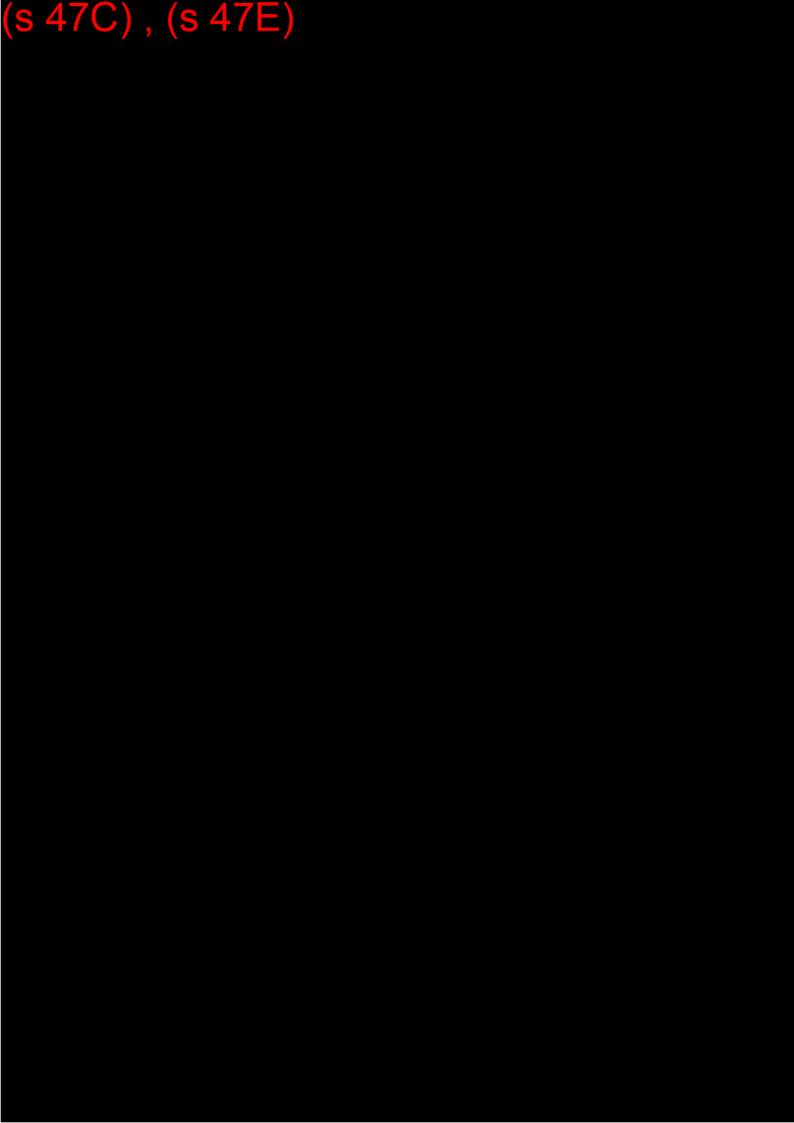
Secretariat		
Ms Paula Green	Assistant Director, Rehabilitation Communication and Evaluation	



Digital Readiness Bill

(s.47C) (s.47F)	
(s 47C) , (s 47E)	







# Social Security (Public Interest Certificate Guidelines) (DSS) Determination 2015

# Social Security (Administration) Act 1999

I, Scott Morrison, Minister for Social Services, make this Determination under paragraph 209(a) of the *Social Security (Administration) Act 1999*.

Dated: 6 August 2015

**Scott Morrison** 

Minister for Social Services

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# Part 1 Preliminary

#### 1 Name of Determination

This Determination is the Social Security (Public Interest Certificate Guidelines) (DSS) Determination 2015.

#### 2 Commencement

This Determination commences on the day after it is registered.

#### 3 Revocation

The Social Security (Public Interest Certificate Guidelines) (DSS) Determination 2014 is revoked.

# 3A Savings provision

Despite the revocation in section 3, the *Social Security (Public Interest Certificate Guidelines) (DSS) Determination 2014* continues in force in relation to public interest certificates made under and in accordance with that instrument.

# 4 Purpose

The purpose of this Determination is to set out guidelines for the exercise of the Secretary's power to give certificates under paragraph 208(1)(a) of the Act.

#### 5 Definitions

In this Determination:

Act means the Social Security (Administration) Act 1999.

APS Code of Conduct has the same meaning as in the Public Service Act 1999.

**Department** means the Department of Social Services.

Human Services Department means the Department of Human Services.

*Minister* means, as the context permits:

- (a) a Minister of State administering any part of:
  - (i) the social security law; or
  - (ii) the family assistance law; or
  - (iii) the Human Services (Centrelink) Act 1997; or
  - (iv) the Human Services (Medicare) Act 1973; and
- (b) the Prime Minister.

*public interest certificate* means a certificate, under paragraph 208(1)(a) of the Act, for the disclosure of relevant information.

relevant information means information about a person (including protected information) acquired by an officer in the performance of his or

her functions or duties, or in the exercise of his or her powers, under the social security law or the *Farm Household Support Act 2014*.

Note 1 The following expressions are defined in the Act:

- 1991 Act
- social security law.

*Note 2* The following expressions are defined in the 1991 Act and have the same meaning in the Act (see subsection 3(2) of the Act):

- family member
- officer
- protected information
- Secretary
- social security payment.

# 6 Matters to which Secretary must have regard

In giving a public interest certificate, the Secretary must have regard to:

- (a) any situation in which the person to whom the information relates is, or may be, subject to physical, psychological or emotional abuse; and
- (b) whether the person in such a situation may be unable to give notice of his or her circumstances because of:
  - (i) age; or
  - (ii) disability; or
  - (iii) social, cultural, family or other reasons.

# Part 2 Guidelines — public interest certificate (general)

# 7 When public interest certificate may be given

- (1) The Secretary may give a public interest certificate for the disclosure of relevant information under this Part if
  - (a) the information cannot reasonably be obtained from a source other than the Department or the Human Services Department; and
  - (b) the person to whom the information will be disclosed has sufficient interest in the information; and
  - (c) the Secretary is satisfied that the disclosure is for the purpose of sections 8, 9, 9A, 10, 11, 12, 13, 14, 15, 16, 16A, 17, 17A, 17B, 17C, 18, 18A, or 18B of this Determination.
- (2) A person has *sufficient interest* in the relevant information if:
  - (a) the Secretary is satisfied that, in relation to the purpose of the disclosure, the person has a genuine and legitimate interest in the information; or
  - (b) the person is a Minister.

# 8 Threat to life, health or welfare

Relevant information may be disclosed for the purpose of this section if the disclosure is necessary to prevent, or lessen, a threat to the life, health or welfare of a person.

#### 9 Enforcement of laws

- (1) Relevant information may be disclosed for the purpose of this section if:
  - (a) the disclosure is necessary:
    - (i) for the enforcement of a criminal law that relates to an indictable offence punishable by imprisonment of 2 years or more; or
    - (ii) for the enforcement of a law imposing a pecuniary penalty equivalent to 40 penalty units or more; or
    - (iii) to prevent an act that may have a significant adverse effect on the public revenue; or
  - (b) the disclosure relates to an offence or threatened offence:
    - (i) against a Commonwealth employee; or
    - (ii) against Commonwealth property; or
    - (iii) in Department premises; or
    - (iv) in the premises of the Human Services Department.

# (2) In this section:

#### criminal law means:

- (a) for Australia a criminal law of the Commonwealth or of a State or Territory; and
- (b) for a place outside Australia a criminal law that may be recognised under an extradition arrangement to which Australia is a party.

**penalty unit** has the same meaning as in section 4AA of the Crimes Act 1914.

Note Subsection 4AA(1) of the Crimes Act 1914 provides:

'In a law of the Commonwealth or a Territory Ordinance, unless the contrary intention appears:

penalty unit means \$170.'.

#### 9A Proceeds of crime order

- (1) Relevant information may be disclosed to a Commonwealth, State or Territory law enforcement agency for the purpose of this section if the disclosure is necessary for:
  - (a) the making, or proposed or possible making, of a proceeds of crime order; or
  - (b) supporting or enforcing a proceeds of crime order.
- (2) In this section *proceeds of crime* order means:
  - (a) an order under:
    - (i) Chapter 2 (the confiscation scheme) or Division 1, Part 3-1 of Chapter 3 (examination orders) of the *Proceeds of Crime Act 2002*; or
    - (ii) Part II (confiscation) or III (control of property liable to confiscation) of the *Proceeds of Crime Act 1987*; or
    - (iii) a State law or Territory law corresponding to a law referred to in subparagraph (i) or (ii); or
    - (iv) Division 3 of Part XIII (recovery of pecuniary penalties for dealings in narcotic goods) of the *Customs Act 1901*; or
  - (b) an unexplained wealth order (within the meaning of the *Proceeds of Crime Act 2002*); or
  - (c) a court order (including a declaration or direction):
    - (i) under a State law or Territory law; and
    - (ii) relating to unexplained wealth.

#### 10 Mistake of fact

Relevant information may be disclosed for the purpose of this section if:

- (a) the disclosure is necessary to correct a mistake of fact in relation to the administration of a program of the Department; and
- (b) either:
  - (i) the integrity of the program will be at risk if the mistake of fact is not corrected; or

(ii) the mistake of fact relates to a matter that was, or will be, published (whether by, or with or without the consent of, the person to whom the information relates).

# 11 Ministerial briefing

Relevant information may be disclosed for the purpose of this section if the disclosure is necessary:

- (a) to brief a Minister so that the Minister can consider complaints or issues raised by or on behalf of a person with the Minister (in writing or orally), and respond to that person in relation to the complaints or issues; or
- (b) to brief a Minister for a meeting or forum that the Minister is to attend; or
- (c) to brief a Minister in relation to issues raised or proposed to be raised publicly by or on behalf of the person to whom the relevant information relates so that the Minister can respond by correcting a mistake of fact, a misleading perception or impression, or a misleading statement; or
- (d) to brief a Minister about an error or delay on the part of the Human Services Department; or
- (e) to brief a Minister about an instance of an anomalous or unusual operation of the social security law.

# 12 Missing person

Relevant information may be disclosed to a court, coronial inquiry, Royal Commission, department or any other authority of a State or Territory for the purpose of this section if:

- (a) the information is about a reported missing person; and
- (b) the disclosure is necessary:
  - (i) to assist a court, coronial inquiry, Royal Commission, department or any other authority of a State or Territory in relation to the whereabouts of the missing person; or
  - (ii) to locate a person (including the missing person); and
- (c) there is no reasonable ground to believe that the missing person would not want the information disclosed.

# 13 Deceased person

- (1) Relevant information may be disclosed for the purpose of this subsection if:
  - (a) the information is about a deceased person; and
  - (b) the disclosure:
    - (i) is necessary to assist a court, coronial inquiry, Royal Commission, department, or any other authority of a State or Territory in relation to the death of the person; or
    - (ii) is necessary to help a person locate a relative or beneficiary of the deceased person; or

- (iii) is necessary to help an individual or authority responsible for the administration of the estate of the deceased person in relation to the administration of the estate of the deceased person; or
- (iv) is in relation to the Human Services Department transferring information to the relevant authority responsible for administering the social security system in another country regarding the deceased person who, prior to their death, was qualified for or in receipt of an Australian social security payment or held a Commonwealth Seniors Health Card; and
- (c) there is no reasonable ground to believe that the deceased person would not have wanted the relevant information disclosed.
- (2) Relevant information may be disclosed for the purpose of this subsection if the information is to establish:
  - (a) the death of a person; or
  - (b) the place where the death of a person is registered.

#### 14 School enrolment and attendance

Relevant information may be disclosed for the purpose of this section if the disclosure is necessary to ensure a child who:

- (a) is required to be enrolled in a school under a law of a State or Territory is enrolled: or
- (b) is required to be attending a school under a law of a State or Territory is attending.

#### 15 School infrastructure

Relevant information may be disclosed for the purpose of this section if the disclosure is necessary to plan for, meet or monitor infrastructure and resource needs in one or more schools.

# 16 Public housing administration

Relevant information may be disclosed to a department or any other authority of a State or Territory or an agent or contracted service provider of a department or authority for the purpose of this section if:

- (a) the information is about a resident, an applicant to become a tenant, or a tenant of public housing or other State or Territory managed housing; and
- (b) the disclosure is necessary to facilitate rent calculation or rent deduction in relation to public housing, or State or Territory managed housing; or
- (c) the disclosure is necessary to facilitate the administration of an income confirmation service in relation to public housing or State or Territory managed housing to avoid mistakes, underpayments and overpayments of rent, pensions, benefits and allowances; or

- (d) the disclosure is necessary to investigate or take enforcement action in relation to public housing or State or Territory managed housing including to assist with an investigation into either:
  - (i) the misreporting of income by tenants of public housing or State or Territory managed housing; or
  - (ii) the unauthorised occupation of public housing or State or Territory managed housing by any person.

# 16A Vulnerable Welfare Payment Income Management measure

Relevant information may be disclosed to:

- (a) a department or any other authority of a State or Territory; or
- (b) an agent or contracted service provider of such a department or any other authority of a State or Territory;

for the purpose of this section if:

- (c) the information is about a resident, an applicant to become a tenant, or a tenant of public housing or other State or Territory managed housing; and
- (d) the disclosure is necessary to facilitate the administration of the vulnerable welfare payment recipient income management measure, including through the provision of information:
  - (i) about a person's social security payment arrangements (including any nominee arrangement and usual place of residence) to assist one of the bodies referred to in paragraphs (a) or (b) in deciding about whether to refer a person to the Secretary for possible subjection to income management; or
  - (ii) about whether the person is subject to the vulnerable welfare payment recipient income management measure and details of this arrangement (including details about a person's payment rate, qualification, any nominee arrangement, usual place of residence and any subsequent cessation of income management); or
  - (iii) about whether a referral referred to in subparagraph (i) has not led to a person being made subject to income management and the reasons for this: or
  - (iv) to assist in minimising the risk or effect of eviction or homelessness in relation to a person.

# 17 Establishment and operation of the Family Responsibilities Commission

- (1) Relevant information may be disclosed for the purpose of this section if the disclosure is necessary:
  - (a) for the establishment of the Family Responsibilities Commission; or
  - (b) to assist in the performance of the functions, or the exercise of the powers, of the Family Responsibilities Commission.
- (2) In this section, Family Responsibilities Commission means the Commission established by section 9 of the *Family Responsibilities Commission Act 2008* (Qld).

# 17A Reparations

Relevant information may be disclosed to a department or any other authority of a State or Territory for the purpose of this section if the disclosure is necessary for the purpose of contacting the person in respect of their possible entitlement to compensation or other form of recompense in a reparation process.

# 17B Child protection agencies

- (1) Relevant information may be disclosed to a Child Protection agency of a State or Territory for the purpose of this section if the disclosure is necessary for the purpose of contacting the parent or relative in relation to the child.
- (2) In this section, *Child Protection agency* means a government agency that carries out child protection functions.

#### 17C Public utilities

- (1) Where:
  - (a) a customer of a public utility (the first public utility) has provided consent to that public utility to enable it to confirm the entitlement of the customer to a social security related concession; and
  - (b) responsibility for the provision of services to the customer by the first public utility has been transferred, in whole or in part, to another public utility (the second public utility); and
  - (c) as a result of the transfer of responsibility for the provision of services, the customer of the first public utility became a customer of the second public utility; and
  - (d) where necessary, the second public utility advises the Commonwealth of the contact details of the customer;
  - relevant information may be disclosed to the second public utility for the purpose of this section if the disclosure is necessary to enable the second public utility to confirm the entitlement of the customer to a social security related concession.
- (2) In this section, public utility means a legal entity that provides, or is related to a legal entity that provides, any of the following services to the public:
  - (a) water;
  - (b) sewerage;
  - (c) gas;
  - (d) electricity; or
  - (e) telecommunications.

#### 18 Matters of relevance

- (1) Subject to subsection (2), relevant information may be disclosed for the purpose of this section if the disclosure is necessary for the purpose of facilitating the progress or resolution of matters of relevance within the portfolio responsibilities of a department that is administering any part of the family assistance law or the social security law.
- (2) In this section, a matter of relevance to a department includes a programme or activity that provides assistance or services to a class of people that includes at least some persons receiving payments or entitlements under the social security law or the family assistance law.

# 18A Research and statistical analysis

Relevant information may be disclosed for the purpose of this section if the disclosure is necessary for the purpose of:

- (a) research into (including evaluation or monitoring of, or reporting on) matters of relevance to a department that is administering any part of the family assistance law or the social security law; or
- (b) statistical analysis of those matters.

# 18B APS Code of Conduct investigations

Relevant information may be disclosed for the purpose of this section if the disclosure is necessary for the purpose of:

- (a) investigating suspected breaches of the APS Code of Conduct; and
- (b) making a decision on whether the APS Code of Conduct has been breached

# Part 3 Guidelines — public interest certificate (homeless young person)

# 19 Application

- (1) This Part applies if the relevant information for disclosure relates to a homeless young person.
- (2) In this Part:

#### homeless young person means a person:

- (a) who is under 18 years; and
- (b) who has sought a social security payment on the ground of being a homeless person.

# *parent*, in relation to a homeless young person, means:

- (a) a natural parent, adoptive parent or relationship parent of the homeless young person with whom the homeless young person normally lived before becoming a homeless young person; or
- (b) if a parent referred to in paragraph (a) is a member of a couple and normally lives with the other member of the couple the other member of the couple; or
- (c) any other person (other than the homeless young person's partner) on whom the homeless young person was wholly or substantially dependent before becoming a homeless young person.

# 20 When public interest certificate may be given

- (1) The Secretary may give a public interest certificate for the disclosure of relevant information under this Part if:
  - (a) the information cannot reasonably be obtained from a source other than the Department; and
  - (b) the Secretary is satisfied that the disclosure will not result in harm to the homeless young person; and
  - (c) the Secretary is satisfied that the disclosure is for the purpose of section 21, 22, 23 or 24.

- (2) The Secretary may also give a public interest certificate for the disclosure of relevant information under this Part if:
  - (a) the information cannot reasonably be obtained from a source other than the Department; and
  - (b) the disclosure will be made to a welfare authority of a State or Territory; and
  - (c) the homeless young person to whom the relevant information relates is:
    - (i) in the care of a welfare authority of a State or Territory in accordance with the law of the State or Territory; or
    - (ii) under 15 years; and
  - (d) the Secretary is satisfied that the disclosure will not result in harm to the homeless young person.

#### 21 Abuse or violence

Relevant information may be disclosed to an appropriate authority for the purpose of this section if:

- (a) the information is about a family member of a homeless young person; and
- (b) the Secretary is satisfied that the homeless young person or a family member of the homeless young person has been subjected to abuse or violence.

# 22 Verification for payment

Relevant information may be disclosed for the purpose of this section if:

- (a) the disclosure is necessary to verify a circumstance by which a homeless young person who is under 15 years may qualify for a social security payment on the ground of being a homeless person; and
- (b) in order to verify the circumstance, a parent, or the parents, of the homeless young person must be asked whether the homeless young person is able to live at the home of his or her parent or parents.

# 23 Reconciliation

Relevant information may be disclosed for the purpose of this section if the disclosure will facilitate reconciliation, or possible reconciliation, between a homeless young person and his or her parent or parents.

#### 24 Assurance

Relevant information may be disclosed for the purpose of this section if:

- (a) a parent, or the parents, of a homeless young person has sought assurance that the homeless young person has been in contact with the Department or with the Human Services Department; and
- (b) the disclosure is necessary to inform the parent or parents whether the homeless young person has been in contact with the Department or with the Human Services Department.

## 2016

# 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 (subitem (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) (subitem (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.

Subitem (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, <u>before</u> 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.

2016

The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016

No. , 2016

(Veterans' Affairs)

A Bill for an Act to amend the law relating to veterans' entitlements and military rehabilitation and compensation, and for related purposes

# Contents Short title \_\_\_\_\_1 2 Commencement 1 3 Schedules......3 Schedule 1—Computerised decision-making Military Rehabilitation and Compensation Act 2004 4 Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 Veterans' Entitlements Act 1986 Schedule 2—Disclosure of information Military Rehabilitation and Compensation Act 2004 8 Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 9 Veterans' Entitlements Act 1986 12 Schedule 3—Technical amendments 14 Safety, Rehabilitation and Compensation (Defence-related Claims) 14 Veterans' Entitlements Act 1986 14

•	A Bill for an Act to amend the law relating to veterans' entitlements and military rehabilitation and compensation, and for related purposes
r	Γhe Parliament of Australia enacts:
-	Short title
	This Act is the Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Act 2016.
2	2 Commencement
	(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information			
Column 1	Column 2	Column 3	
Provisions	Commencement	Date/Details	
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.		
2. Schedule 1, items 1 and 2	The day after this Act receives the Royal Assent.		
3. Schedule 1,	The later of:		
items 3 and 4	(a) immediately after the commencement of the provisions covered by table item 2; and		
	(b) immediately after the commencement of Part 2 of Schedule 1 to the Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2016.		
	However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.		
4. Schedule 1, items 5 and 6	The day after this Act receives the Royal Assent.		
5. Schedule 2,	A single day to be fixed by Proclamation.		
items 1 and 2	However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.		
6. Schedule 2,	The later of:		
items 3 to 8	(a) the day the provisions covered by table item 5 commence; and		
	(b) the 28th day after the commencement of Part 2 of Schedule 1 to the Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2016.		

Column 1		Column 2	Column 3
Provisions		Commencement	Date/Detail
		However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
7. Schedule items 9 to 13		At the same time as the provisions covered by table item 5.	
8. Schedule	3,	The later of:	
item 1		(a) the start of the day after this Act receives the Royal Assent; and	
		(b) immediately after the commencement of Part 2 of Schedule 1 to the Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2016.	
		However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
9. Schedule items 2 and		The day after this Act receives the Royal Assent.	
	Note:	This table relates only to the provisions of this enacted. It will not be amended to deal with any this Act.	
(2)	Inform	nformation in column 3 of the table is not praction may be inserted in this column, or in the edited, in any published version of this A	nformation in
3 Schedule	es		
	repeal	lation that is specified in a Schedule to this led as set out in the applicable items in the rned, and any other item in a Schedule to the ding to its terms.	Schedule

1 2	Schedule 1—Computerised decision-making
3	Military Rehabilitation and Compensation Act 2004
4	1 After section 4
5	Insert:
6 7	4A Secretary may arrange for use of computer programs to make decisions or determinations
8 9 0 1 2 2 3 4 4 5 6	<ul> <li>(1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for any purposes for which the Commission may, or must, under this Act or a legislative instrument made for the purposes of this Act: <ul> <li>(a) make a decision or determination; or</li> <li>(b) exercise any power or comply with any obligation; or</li> <li>(c) do anything else related to making a decision or determination or exercising a power or complying with an obligation.</li> </ul> </li> </ul>
17 18 19 20 21 22 23 24 25 26	<ul> <li>(2) For the purposes of this Act or the legislative instrument, the Commission is taken to have: <ul> <li>(a) made a decision or determination; or</li> <li>(b) exercised a power or complied with an obligation; or</li> <li>(c) done something else related to the making of a decision or determination or the exercise of a power or the compliance with an obligation;</li> <li>that was made, exercised, complied with or done by the operation of a computer program under an arrangement made under subsection (1).</li> </ul> </li> </ul>
27 28 29 30 31	Substituted decisions or determinations  (3) The Commission may, under a provision of this Act or of the legislative instrument, make a decision or determination in substitution for a decision or determination the Commission is taken to have made under paragraph (2)(a) if the Commission is

satisfied that the decision or determination made by the operation of the computer program is incorrect.
Note: For review of a determination made in substitution, see Chapter 8.
(4) Subsection (3) does not limit Chapter 8 (about reconsideration and review of determinations).
2 Subsection 5(1)
Insert:
Secretary means Secretary of the Department.
Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988
3 After section 3
Insert:
3A Secretary may arrange for use of computer programs to make decisions or determinations
<ul> <li>(1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for any purposes for which the MRCC may, or must, under this Act or a legislative instrument made for the purposes of this Act: <ul> <li>(a) make a decision or determination; or</li> <li>(b) exercise any power or comply with any obligation; or</li> <li>(c) do anything else related to making a decision or determination or exercising a power or complying with an obligation.</li> </ul> </li> </ul>
<ul> <li>(2) For the purposes of this Act or the legislative instrument, the MRCC is taken to have: <ul> <li>(a) made a decision or determination; or</li> <li>(b) exercised a power or complied with an obligation; or</li> <li>(c) done something else related to the making of a decision or determination or the exercise of a power or the compliance with an obligation;</li> </ul> </li> </ul>

# Schedule 1 Computerised decision-making

1 2 3	that was made, exercised, complied with or done by the operation of a computer program under an arrangement made under subsection (1).
4	Substituted decisions or determinations
5 6 7 8 9	(3) The MRCC may, under a provision of this Act or of the legislative instrument, make a decision or determination in substitution for a decision or determination the MRCC is taken to have made under paragraph (2)(a) if the MRCC is satisfied that the decision or determination made by the operation of the computer program is incorrect.
11 12	Note: For review of a decision or determination made in substitution, see Part VI.
13 14	(4) Subsection (3) does not limit Part VI (about reconsideration and review of determinations).
15	4 Subsection 4(1)
16	Insert:
17	Secretary means Secretary of the Department.
18	Veterans' Entitlements Act 1986
19	5 After section 4A
20	Insert:
21 22	4B Secretary may arrange for use of computer programs to make decisions
23 24 25 26 27 28 29 30	<ul> <li>(1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for any purposes for which the Commission may, or must, under this Act or a legislative instrument made for the purposes of this Act: <ul> <li>(a) make a decision; or</li> <li>(b) exercise any power or comply with any obligation; or</li> <li>(c) do anything else related to making a decision or exercising a power or complying with an obligation.</li> </ul> </li> </ul>

1	(2)	For the purposes of this Act or the legislative instrument, the
2		Commission is taken to have:
3		(a) made a decision; or
4		(b) exercised a power or complied with an obligation; or
5		(c) done something else related to the making of a decision or
6		the exercise of a power or the compliance with an obligation
7		that was made, exercised, complied with or done by the operation
8		of a computer program under an arrangement made under
9		subsection (1).
10		Substituted decisions
11	(3)	The Commission may, under a provision of this Act or of the
12		legislative instrument, make a decision in substitution for a
13		decision the Commission is taken to have made under
14		paragraph (2)(a) if the Commission is satisfied that the decision
15		made by the operation of the computer program is incorrect.
16		Note: For review of a decision made in substitution, see Parts IX and X.
17	(4)	Subsection (3) does not limit any other provision of this Act that
18	(.)	provide for the review or reconsideration of a decision.
19	6 At the e	end of subsection 214(1)
20		"and the power under subsection 4B(1)".
20	Auu	and the power under subsection 4D(1).

1 2	Schedule 2—Disclosure of Information			
3	Military .	Rehabilitation and Compensation Act 2004		
4	1 After s	ection 409		
5	Inse	ert:		
6	409A Pub	olic interest disclosures		
7 8 9 10	(1)	The Secretary may, if the Secretary certifies that it is necessary in the public interest to do so in a particular case or class of cases, disclose any information obtained by any person in the performance of that person's duties under this Act to such persons and for such purposes as the Secretary determines.		
12 13	(2)	The Secretary must, in giving certificates under subsection (1), act in accordance with any rules made under subsection (3).		
14 15 16	(3)	The Minister may, by legislative instrument, make rules for and in relation to the exercise of the Secretary's power to give certificates under subsection (1).		
17 18	(4)	A certificate under subsection (1) that applies in relation to a particular case is not a legislative instrument.		
19 20	(5)	A certificate under subsection (1) that applies in relation to a class of cases is a legislative instrument.		
21		Limit on disclosure of personal information		
22 23	(6)	Before disclosing personal information about a person under subsection (1), the Secretary must:		
24 25		(a) notify the person in writing of the Secretary's intention to disclose the information; and		
26 27 28		<ul><li>(b) give the person a reasonable opportunity to make written comments on the proposed disclosure of the information; and</li><li>(c) consider any written comments made by the person.</li></ul>		
20	(7)	The Secretary commits an offence if:		

1 2			etary discloses personal information about a person absection (1); and
3		(b) the Secr	retary failed to comply with subsection (6) in relation isclosure.
5		Penalty: 60 p	enalty units.
6		Authorisation	for Australian Privacy Principles
7 8 9	(8)	section, the di	ot, if information is disclosed in accordance with this sclosure is taken, for the purposes of the Australian iples, to be authorised by this Act.
10		Definitions	
11	(9)	In this section	:
12 13		personal info. 1988.	rmation has the same meaning as in the Privacy Act
14	2 Applica	ation provis	ion
15 16 17	info	ormation on or a	ade by item 1 applies in relation to disclosures of after the commencement of that item (whether the brained before, on or after that commencement).
18 19	Safety, R	ehabilitatio Claims) Ac	n and Compensation (Defence-related ct 1988
20	3 Subsec	ction 147(2)	(after table item 2)
21	Inse	ert:	
	2A Sec	ction 61	The section applies as if it requires the determining authority to give a copy of the notice to the Chief of the Defence Force if the determination relates to liability for an injury, disease or death, or the permanent impairment, of a person who was a member of the Defence Force:  (a) for an injury or disease or permanent impairment—at the time when the determination was made; or
			(b) for a death—at the time of death.

1	4	Subsection 151(1)
2 3		Omit "relevant to a defence-related claim", substitute "required for the purposes of this Act".
4	5	After subsection 151A(1)
5		Insert:
6 7 8 9 10 11 12 13 14 15		<ul> <li>(1A) The MRCC (or a staff member assisting the MRCC) may provide any information obtained in the performance of duties under this Act to the Secretary of the Defence Department for any purposes relating to: <ul> <li>(a) litigation involving an injury, disease or death of an employee in relation to which a claim has been made under this Act; or</li> <li>(b) monitoring, or reporting on, the performance of the Defence Force in relation to occupational health and safety; or</li> <li>(c) monitoring the cost to the Commonwealth of injuries, diseases or deaths of employees, in relation to which claims</li> </ul> </li> </ul>
17 18 19	6	have been made under this Act.  Paragraphs 151A(2)(a) and (b)  After "the information", insert "obtained under subsection (1) or (1A)".
20	7	After section 151A
21	,	Insert:
22	1:	51B Public interest disclosures
23 24 25 26 27		(1) The Secretary may, if the Secretary certifies that it is necessary in the public interest to do so in a particular case or class of cases, disclose any information obtained by any person in the performance of that person's duties under this Act to such persons and for such purposes as the Secretary determines.
28 29		(2) The Secretary must, in giving certificates under subsection (1), act in accordance with any rules made under subsection (3).
30 31 32		(3) The Minister may, by legislative instrument, make rules for and in relation to the exercise of the Secretary's power to give certificates under subsection (1).

1 2		(4) A certificate under subsection (1) that applies in relation to a particular case is not a legislative instrument.
3		(5) A certificate under subsection (1) that applies in relation to a class of cases is a legislative instrument.
5		Limit on disclosure of personal information
6 7 8		<ul><li>(6) Before disclosing personal information about a person under subsection (1), the Secretary must:</li><li>(a) notify the person in writing of the Secretary's intention to</li></ul>
9 10 11		disclose the information; and  (b) give the person a reasonable opportunity to make written comments on the proposed disclosure of the information; and
12		<ul><li>(c) consider any written comments made by the person.</li><li>(7) The Secretary commits an offence if:</li></ul>
13 14 15		(a) the Secretary discloses personal information about a person under subsection (1); and
16 17		(b) the Secretary failed to comply with subsection (6) in relation to that disclosure.
18	1	Penalty: 60 penalty units.
19		Authorisation for Privacy Act 1988
20 21 22		(8) To avoid doubt, information that is disclosed in accordance with this section is taken, for the purposes of the <i>Privacy Act 1988</i> , to be authorised by law.
23		Definitions
24		(9) In this section:
25 26		<i>personal information</i> has the same meaning as in the <i>Privacy Act</i> 1988.
27	8 Ap	olication provisions
28 29	(1)	The amendment made by item 3 applies in relation to notices given on or after the commencement of that item.

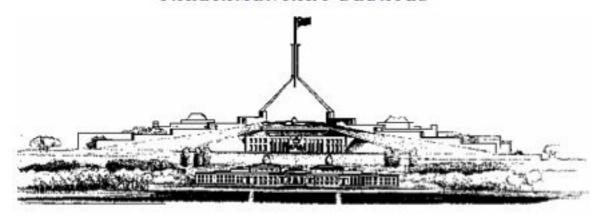
1 2 3	(2) The amendments made by items 5 and 7 apply in relation to disclosures of information on or after the commencement of those items (whether the information was obtained before, on or after that commencement).
4	Veterans' Entitlements Act 1986
5	9 At the end of section 130
6	Add:
7 8 9	(3) To avoid doubt, if information is disclosed in accordance with subsection (2), the disclosure is taken, for the purposes of the Australian Privacy Principles, to be authorised by this Act.
10	10 After section 131
11	Insert:
12	131A Public interest disclosures
13 14 15 16 17	(1) The Secretary may, if the Secretary certifies that it is necessary in the public interest to do so in a particular case or class of cases, disclose any information obtained by any person in the performance of that person's duties under this Act to such persons and for such purposes as the Secretary determines.
18 19	(2) The Secretary must, in giving certificates under subsection (1), act in accordance with any rules made under subsection (3).
20 21 22	(3) The Minister may, by legislative instrument, make rules for and in relation to the exercise of the Secretary's power to give certificates under subsection (1).
23 24	(4) A certificate under subsection (1) that applies in relation to a particular case is not a legislative instrument.
25 26	(5) A certificate under subsection (1) that applies in relation to a class of cases is a legislative instrument.
27	Limit on disclosure of personal information
28	(6) Before disclosing personal information about a person under subsection (1), the Secretary must:

1 2		(a) notify the person in writing of the Secretary's intention to disclose the information; and
3		(b) give the person a reasonable opportunity to make written
4		comments on the proposed disclosure of the information; and
5		(c) consider any written comments made by the person.
6		(7) The Secretary commits an offence if:
7 8.		(a) the Secretary discloses personal information about a person under subsection (1); and
9 10		(b) the Secretary failed to comply with subsection (6) in relation to that disclosure.
11		Penalty: 60 penalty units.
12		Authorisation for Australian Privacy Principles
13		(8) To avoid doubt, if information is disclosed in accordance with this
14 15		section, the disclosure is taken, for the purposes of the Australian Privacy Principles, to be authorised by this Act.
16		Definitions
17		(9) In this section:
18 19		<i>personal information</i> has the same meaning as in the <i>Privacy Act</i> 1988.
20	11	Paragraph 212(1)(a)
21		After "delegation", insert "and the power under subsection 131A(3)".
22	12	Subsection 214(1)
23		Omit "and the power under subsection 4B(1)", substitute "and the
24		powers under subsections 4B(1) and 131A(1)".
25	13	Application provision
26		The amendment made by item 10 applies in relation to disclosures of
27 28		information on or after the commencement of that item (whether the information was obtained before, on or after that commencement).

1 2	3	chedule 5—Technical amendments
3	Si	afety, Rehabilitation and Compensation (Defence-related Claims) Act 1988
5	1	Section 1
6		After "and Compensation", insert "(Defence-related Claims)".
7	V	eterans' Entitlements Act 1986
8	2	Subsection 127(4) (penalty)
9		Omit "\$1,000 or imprisonment for 6 months", substitute "Imprisonment
0		for 6 months or 10 penalty units".
1	3	Section 216
2		Omit "\$500", substitute "5 penalty units".



# PARLIAMENTARY DEBATES



# HOUSE OF REPRESENTATIVES PROOF

# **BILLS**

# Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016

# **Second Reading**

# **SPEECH**

Thursday, 24 November 2016

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

# **SPEECH**

Date Thursday, 24 November 2016Page 9QuestionerSpeaker Tehan, Dan, MP

Source House Proof Yes Responder Question No.

**Mr TEHAN** (Wannon—Minister for Veterans' Affairs, Minister Assisting the Prime Minister for the Centenary of ANZAC, Minister Assisting the Prime Minister for Cyber Security and Minister for Defence Personnel) (10:09): I move:

That this bill be now read a second time.

## Introduction

I am pleased to present a bill which will make the Department of Veterans' Affairs (DVA) digitally ready in a legal sense, in line with the government's broad digital transformation agenda.

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, amendment is required to provide a sound legislative basis for computerised decision-making.

This bill also proposes some amendments to information-sharing provisions, as well as making two minor technical amendments to the Veterans' Entitlements Act that were intended to be made as part of the Statute Update Act 2016, but which were overlooked.

# Computerised decision-making (s chedule 1)

In the context of veteran-centric reform, these provisions would enable the secretary of DVA to arrange for computer programs to:

make decisions and determinations,

exercise powers or comply with obligations, or

do anything else related to making decisions and determinations, or exercising powers or complying with obligations.

The last point is very important with respect to automating parts of DVA's business and improving outcomes for clients. For example, where a particular provision requires notice of a decision to be given, this new computerised decision-making provision will enable the computer program to both make the decision and send the notice.

The proposed computerised decision-making provisions are modelled on section 87 of the Australian National Registry of Emissions Units Act 2011.

# **Information sharing (schedule 2)**

Schedule 2 contains two types of information-sharing provisions:

- 1. public interest disclosures, and
- 2. information sharing under the Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 1988, subject to it being enacted.

## Public interest disclosure

In relation to the proposed public interest disclosure provision, this would enable the secretary of DVA 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.

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 provision is to put beyond doubt that the secretary may, in certain limited circumstances, release information about a case or class of cases.

The public interest disclosure provisions are modelled on paragraph 208(1)(a) of the Social Security Administration Act 1999, which have been operating for the last 16 years. These are powers that have been available to the minister for human services since 1999 and have proven to work well.

In deciding whether to make a public interest disclosure, the secretary of DVA must follow rules set by the Minister for Veterans' Affairs and there are limits about disclosing personal information, which could result in the secretary committing an offence. These ministerial rules will be modelled on the rules currently in place for the Department of Human Services. I have begun consulting with the shadow minister on how they can best apply to the Department of Veterans' Affairs and I thank her for her cooperation in that regard.

Examples of the circumstances in which it might be appropriate for the secretary of DVA 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.

Because this is the first time this department has been given these powers, five safeguards have been incorporated to ensure that they are exercised appropriately. They are that:

the Minister for Veterans' Affairs sets the rules for how the secretary exercises the powers

only the Minister for Veterans' Affairs can set these rules

only the secretary can exercise the powers

before disclosing any information, the secretary must notify the person in writing, give the person a reasonable opportunity to make written comments on the proposed disclosure, and the secretary must consider these comments, and

if the secretary fails to comply with the requirements I before disclosing personal information, they will commit an offence that is punishable by a fine of 60 penalty units.

# Information sharing between the Department of Veterans' Affairs and the Department of Defence

The information-sharing provisions under the Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 1988, subject to it being enacted, are necessary to overcome an anomaly that currently exists between the Military Rehabilitation and Compensation Act 2004 and the Safety, Rehabilitation and Compensation Act 1988.

The anomaly is that the Military Rehabilitation and Compensation Commission 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 Safety, Rehabilitation and Compensation Act 1988 about current serving members as it is able to under the Military Rehabilitation and Compensation Act 2004.

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 Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 1988 with those in the Military Rehabilitation and Compensation Act 2004.

# **Technical amendments (s chedule 3)**

The purpose of the Statute Update Act 2016 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.

The two technical amendments replace references to specific dollar amounts in penalties under the Veterans' Entitlements Act with references to penalty units, which is the current Commonwealth drafting practice. There are no substantive changes to the law—this is a technical amendment only.

## Conclusion

In conclusion, I am very pleased to be introducing this bill, which provides an important plank for the foundation of veteran-centric reform in the Department of Veterans' Affairs. I commend this bill to the House.

Debate adjourned.

From: Foreman, Lisa
To: Orme, Craig

Cc: Spiers, Carolyn; Cairns, Louise

**Subject:** FW: ESORT comments on DR Bill [DLM=Sensitive]

Date: Thursday, 9 February 2017 4:11:58 PM

**Attachments:** <u>img-208145701-0001.pdf</u>

ESORT comments on DR Bill.docx ESORT comments on DR Bill (V2).docx

# Craig

Carolyn, Louise and I met today to compare notes on where we think the ESORT members landed. I have attached a marked up version of the document (see the ESORT Comments on DR Bill (V2) document. In particular, we struggled to recall (\$\frac{47F}{}) views - we didn't seem to capture any comments from her that indicated her view.

For your consideration and forwarding to Simon.

Regards

Lisa

Lisa Foreman

First Assistant Secretary | Rehabilitation & Support | Department of Veterans' Affairs

s 22)

Executive Assistant - Leanne Brozic (\$ 22)

----Original Message-----From: Whyte, Angela

Sent: Wednesday, 8 February 2017 3:36 PM

To: Orme, Craig (\$ 22); Foreman, Lisa (\$ 22)

Cc: Cairns, Louise (\$ 22)

Subject: FW: ESORT comments on DR Bill [DLM=Sensitive]

Good afternoon Craig / Lisa,

The Secretary has requested an update on the current status in regards to the DR Bill please (see attached PDF)

Angela Whyte

From: Spiers, Carolyn

Sent: Wednesday, 25 January 2017 9:18 AM

To: Foreman, Lisa (\$ 22); Bayles, Neil (\$ 22)

Subject: ESORT comments on DR Bill [DLM=Sensitive]

Lisa/Neil

I've tried to summarise comments by ESORT members on the DR Bill. - Lisa this is an update to yesterday's version. Can you consider any additions to this summary.

Regards

Carolyn

Carry Latest?

Mr Allan Thomas JP	Australian Peacekeepers & Peacemakers Veterans' Association
Mr Peter Fitzpatrick AM JP	National President Australian Special Air Service Association (ASASA) National Chairman
Ms Robyn Ritchie	Defence Families Australia
(Colonel David Jamison AM (Ret'd))  Substitute Kerry Mellor	National Convenor Defence Force Welfare Association (DFWA)
Mr Tony Ralph OAM	National President Legacy Australia Inc.
(s 47F)	National Chairman Naval Association of Australia
Mrs Narelle Bromhead OAM	National President Partners of Veterans Association (PVA)
Air Vice-Marshal Brent Espeland AM (Ret'd)	National President Royal Australian Air Force Association (RAAF)
Mr Michael von Berg MC OAM	National President Royal Australian Regiment Corporation (RAR)
Robert Dick AM RFD	Chairman Returned & Services League of Australia (RSL)
Ms Pat McCabe OAM	National President TPI Federation Australia
Mr Kenneth Foster OAM JP	National President Vietnam Veterans Association of Australia (VVAA) National President

Mr James Wain	Vietnam Veterans' Federation of Australia (VVFA) National President
Ms Meg Green	War Widows' Guild of Australia National President

		(c. 17E) (c. 17C)
Mr Allan Thomas JP	Australian Peacekeepers & Peacemakers Veterans' Association	(s 47E) , (s 47C)
Mr Peter Fitzpatrick AM JP	National President Australian Special Air Service Association (ASASA) National Chairman	
Ms Robyn Ritchie	Defence Families Australia	
(Colonel David Jamison AM (Ret'd))	National Convenor Defence Force Welfare Association (DFWA)	
Substitute Kerry Mellor		
Mr Tony Ralph OAM	National President Legacy Australia Inc.	
(s 47F)	National Chairman Naval Association of Australia	
Mrs Narelle Bromhead OAM	National President Partners of Veterans Association (PVA)	
Air Vice-Marshal Brent Espeland AM (Ret'd)	National President Royal Australian Air Force Association (RAAF)	
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Robert Dick AM RFD	Chairman Returned & Services League of Australia (RSL)	
Ms Pat McCabe OAM	National President TPI Federation Australia	
Mr Kenneth Foster OAM JP	National President Vietnam Veterans Association of Australia (VVAA) National President	

Mr James Wain	Vietnam Veterans' Federation of Australia (VVFA) National President	(s 47E) , (s 47C)
Ms Meg Green	War Widows' Guild of Australia National President	

Mr Allan Thomas JP	Australian Peacekeepers & Peacemakers Veteranes' Associatione	(s 47E) , (s 47C)
Mr Peter Fitzpatrick AM JP	National President Australian Special Air Service Association (ASASA) National Chairman	
Ms Robyn Ritchie	Defence Families Australia	
(Colonel David Jamison AM (Ret'd))  Substitute (\$ 47F)	National Convenor Defence Force Welfare Association (DFWA)	
Mr Tony Ralph OAM	National President Legacy Australia Inc.	
(s 47F)	National Chairman Naval Association of Australia	
Mrs Narelle Bromhead OAM	National President Partners of Veterans Association (PVA)	

		(a 47F) (a 47C)
Air Vice-Marshal Brent Espeland AM (Ret'd)	National President Royal Australian Air Force Association (RAAF)	(\$ 47E) , (\$ 47C)
Mr Michael von Berg MC OAM	National President Royal Australian Regiment Corporation (RAR)	
Robert Dick AM RFD	Chairman Returned & Services League of Australia (RSL)	
Ms Pat McCabe OAM	National President TPI Federation Australia	
Mr Kenneth Foster OAM JP	National President Vietnam Veterans Association of Australia (VVAA) National President	
Mr James Wain	Vietnam Veterans' Federation of Australia (VVFA) National President	
Ms Meg Green	War Widows' Guild of Australia National President	

From: <u>Cairns, Louise</u>

To: <u>Harris, John (D. Tehan, MP)</u>

Cc: Spiers, Carolyn

Subject: ESORT meetings on DR Bill [DLM=For-Official-Use-Only]

# Hi John,

Carolyn asked me to email you the dates that we consulted with ESORT on the Digital Readiness Bill. They are:

- 24 November 2016 Working Group of ESORT (sub-group of 5 6 ESORT members; this was in the afternoon after the DR Bill was introduced)
- 2 and 16 December 2016 All ESORT members invited
- 1 February 2017 ESORT workshop
- 3 March 2017 update on the Bill

Please let me know if you need anything else.

Regards,

Louise.

From: Howard Melanie ESO.Round.Table To:

Subject: RE: ESORT Minutes - Digital Readiness - 1 February 2017 [SEC=UNCLASSIFIED] Friday, 17 February 2017 11:13:52 AM

Date: IPS - ESORT February 2017 Final.pptx
Summary of DVA submission to Senate Inquiry.docx Attachments:

# Good morning ESORT Members,

Apologies, the attached documents should have been with the original email.

The following link can be used to access submissions received by the Senate enquiry.

 $\underline{http://www.aph.gov.au/Parliamentary\_Business/Committees/Senate/Foreign\_Affairs\_Defence\_and\_Trade/VetAffairsDigitalBill/Submissions}$ Kind regards,

#### Melanie Howard

Secretariat Support Officer

Commissions, Committees and Appointments

Department of Veterans' Affairs

≅:(s 22) | ⊠ (s 22)

From: Howard, Melanie On Behalf Of ESO.Round.Table

Sent: Friday, 17 February 2017 10:55 AM

To: ESO.Round.Table

**Subject:** ESORT Minutes - Digital Readiness - 1 February 2017 [SEC=UNCLASSIFIED]

Good morning ESORT Members,

Please see attached documentation relating to the 1<sup>st</sup> February Digital Readiness meeting.

Kind regards,

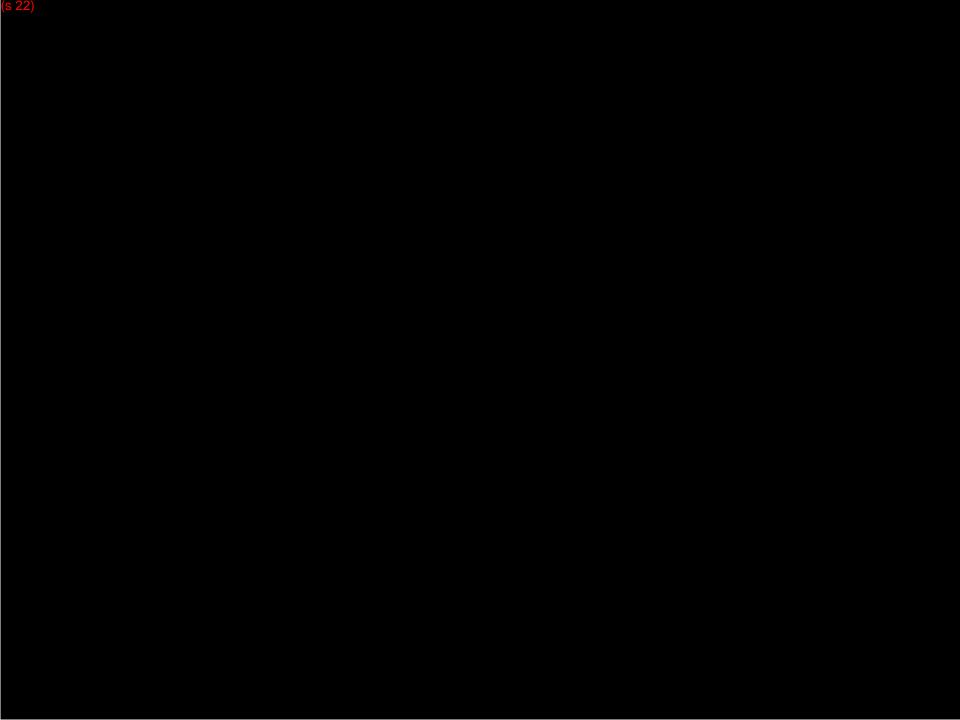
# Melanie Howard

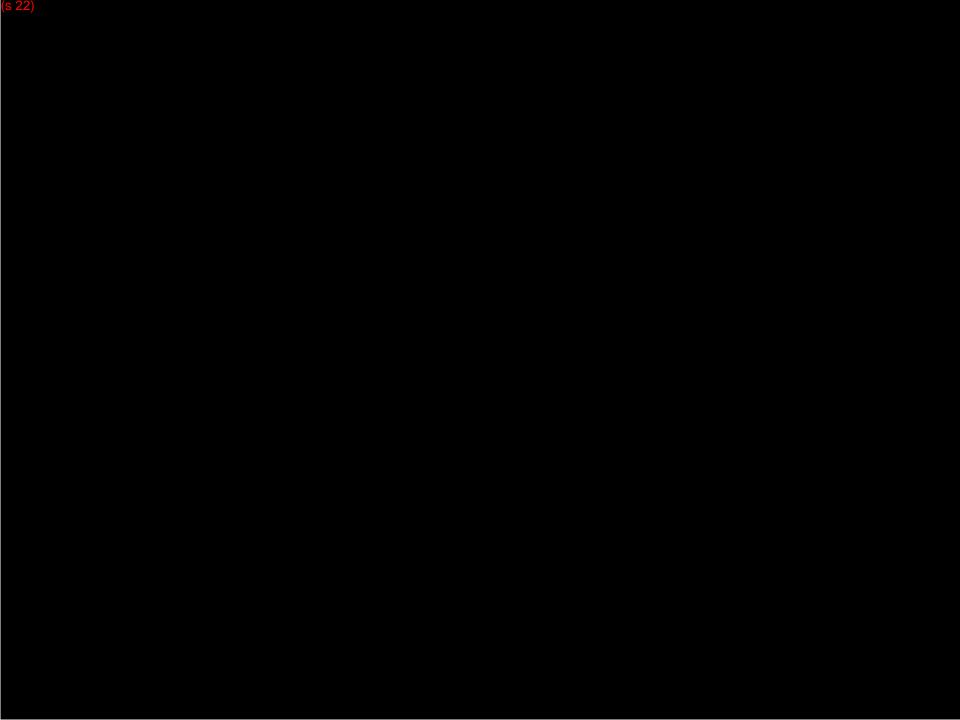
Secretariat Support Officer

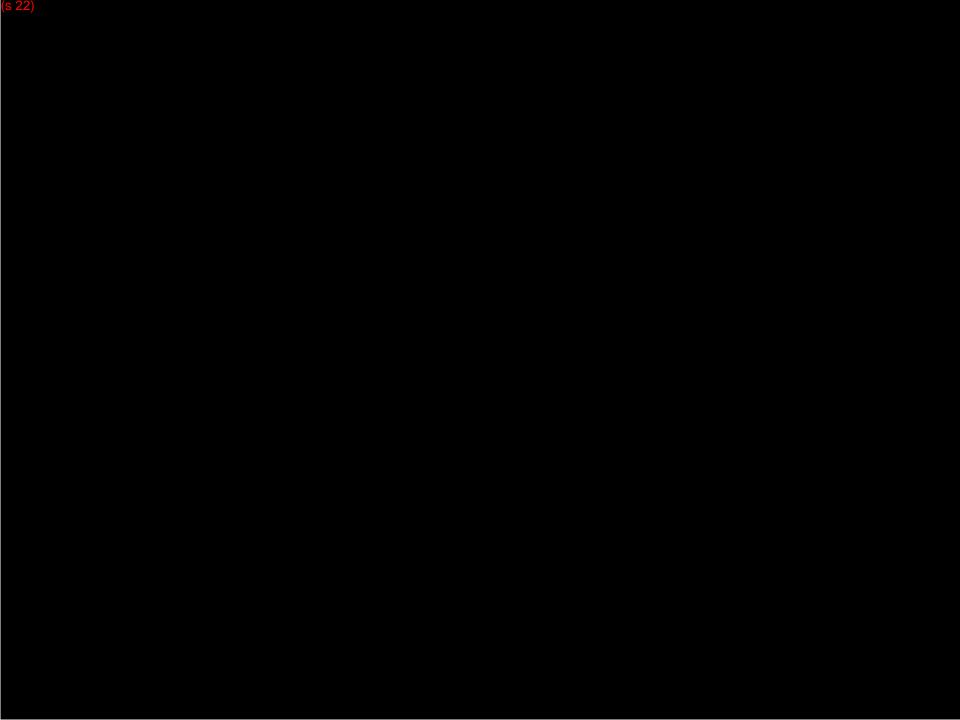
Commissions, Committees and Appointments

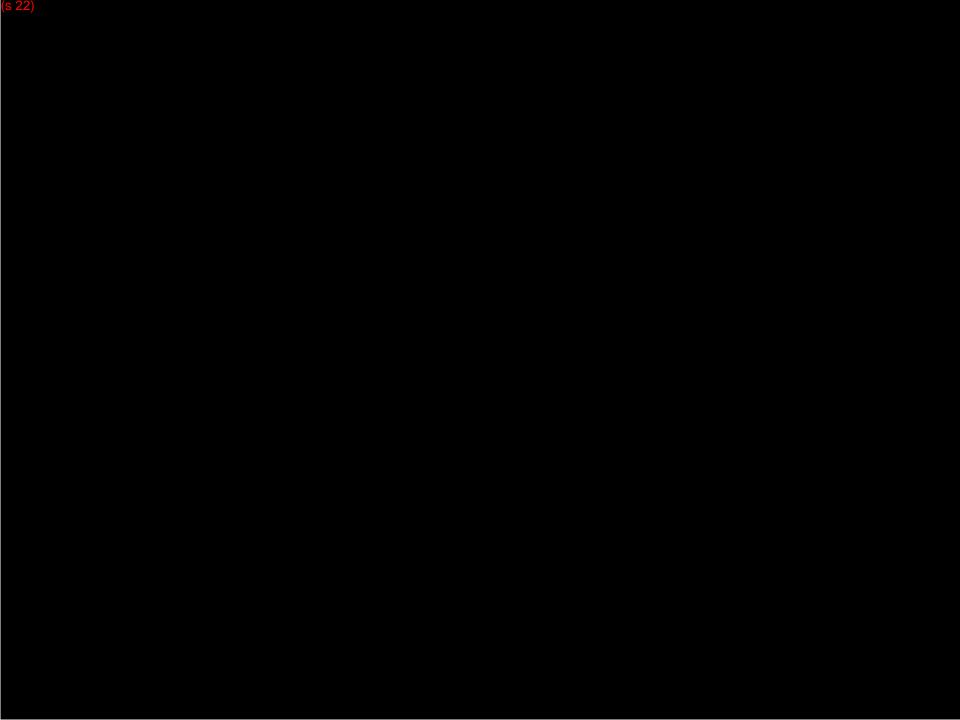
Department of Veterans' Affairs

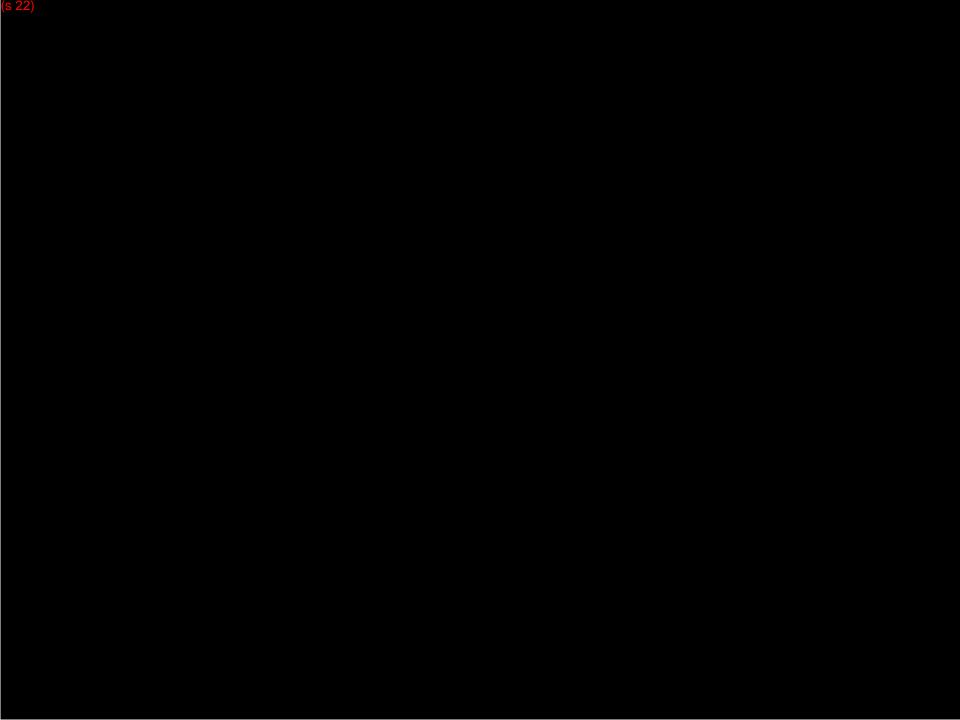


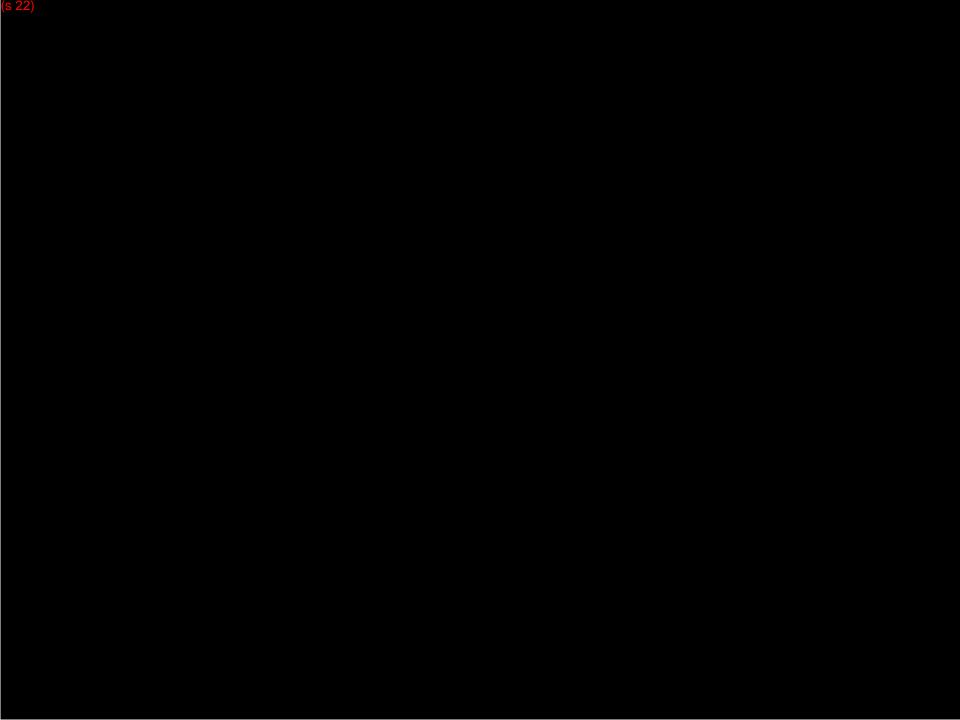


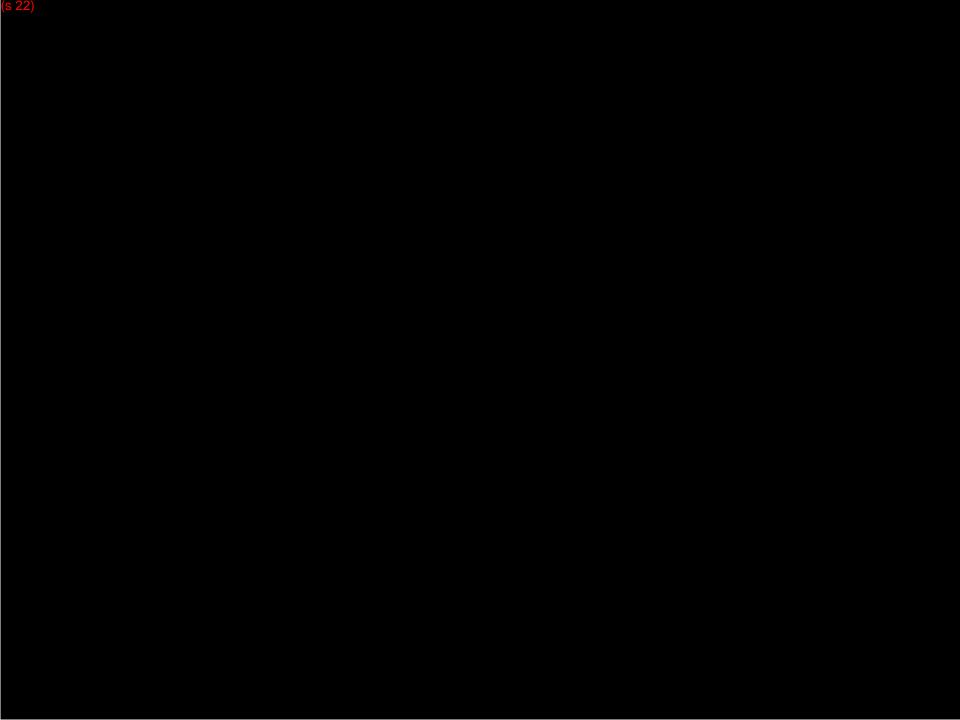


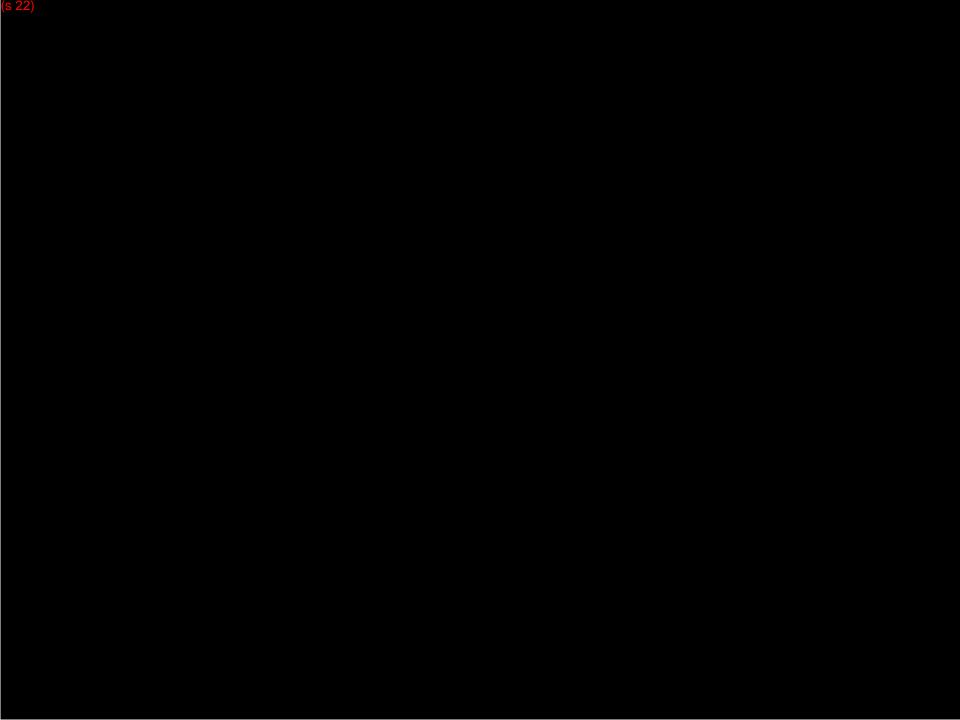












# Summary of DVA's submission to the Senate Inquiry into the Digital Readiness Bill



# **Public Interest Disclosures**

DVA has a duty of care in providing its services to veterans and clients. However, often there are privacy and legislative restraints on providing information that might be necessary in fulfilling that duty of care. In instances of preventing harm to others or self-harm, addressing concerns about a veteran's health, maintaining the integrity of programmes, and ensuring appropriate service provision by providers, the Department is not able in some instances to provide timely information to prevent detrimental outcomes to veterans.

Public Interest Disclosures are currently used in other areas of government in a careful and judicious manner that allows these issues to be addressed. It is important that measures that are in place and working in other areas of government are afforded to DVA in order to fulfil its duty of care to veterans and clients and provide the best outcome for them.

In recognition that DVA has not previously had this public interest disclosure power, and that disclosure of a person's information is not to be undertaken lightly, five specific safeguards are built into the proposed provisions, in addition to general safeguards already available.

The specific safeguards include:

- the Secretary of DVA must act in accordance with rules that the Minister makes about how the power is to be exercised and the rules will be a disallowable instrument
- the Minister cannot delegate his or her power to make rules about how the power is to be exercised by the Secretary of DVA
- the Secretary of DVA cannot delegate the public interest disclosure power
- before disclosing personal information about a person, the Secretary of DVA 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 (natural justice
  requirements), and
- unless the Secretary of DVA complies with the above natural justice requirements before disclosing personal information, he or she will commit an offence, punishable by a fine of 60 penalty units (approximately \$10,800.)

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. If a person is dissatisfied with the Secretary's decision to disclose information about them, they can apply for judicial review under the *Administrative Decisions (Judicial Review) Act 1977*.



From: McKay, Grant on behalf of ESO.Round.Table

To: <u>ESO.Round.Table</u>

Subject: RE: ESORT Working Group - 1 Feb 2017 [SEC=UNCLASSIFIED]

**Date:** Monday, 23 January 2017 4:11:33 PM

#### Dear ESORT members,

During our previous meeting in December, DVA mentioned that we expected to have completed our submission to the Senate Committee reviewing the Bill by today. We are currently still working on the submission and now plan to lodge it with the Committee on Wednesday, 25 January. We will provide you with a copy once we have lodged it with the Committee.

Regards

Lisa

# Lisa Foreman

#### First Assistant Secretary | Rehabilitation & Support | Department of Veterans' Affairs

(s 22)

Executive Assistant – Leanne Brozic (\$ 22)

From: McKay, Grant On Behalf Of ESO.Round.Table

Sent: Tuesday, 10 January 2017 3:18 PM

To: ESO.Round.Table

**Subject:** ESORT Working Group - 1 Feb 2017 [SEC=UNCLASSIFIED]

Good afternoon ESORT Members,

On 16 December 2016, the Round Table met to discuss the Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016 (Digital Readiness Bill).

At the meeting, Lisa Foreman suggested that a follow-up workshop be held in early 2017 to talk more about the Bill, especially the provisions regarding the use of computer programmes to make decisions and determinations.

You are invited to attend this workshop, which will held on 1 February 2017 in DVA's Australia-wide videoconferencing facilities. It is scheduled for 1:00pm to 3:00pm AEDT.

The Bill is currently the subject of an inquiry by the Senate Foreign Affairs, Defence and Trade Committee. Submissions to the inquiry are due by 25 January 2017. We intend to provide you with a copy of the Department's submission on or around 23 January 2017.

If you could please confirm your availability, or nominate a suitable proxy, for the meeting. In addition, if you could please respond to the ESORT Secretariat to confirm which DVA video conference you will be using. We have initially booked the closest DVA video conference to your place of residence.

Regards,

# **Grant McKay**

Assistant Director

Commissions, Committees and Appointments

Department of Veterans' Affairs

(s 22)



From: Cairns, Louise

**Sent:** Friday, 20 January 2017 11:34 AM

**To:** Spiers, Carolyn (\$ 22) ; Foreman, Lisa (\$ 22)

**Subject:** Issues to discuss at Mon 23/01 3pm meeting re DR Bill and ESORT workshop [DLM=For-

Official-Use-Only]
Dear Carolyn and Lisa,

Ahead of our meeting on Monday afternoon (3pm) to discuss the 1 February ESORT workshop, I thought it might be useful to compile a list of issues for discussion and action needed ahead of the meeting:

- 1. Format of meeting? Will we have any guest presenters, eg, from the Transformation Taskforce?
- 2. Are there any specific issues we want to address (could draw from submissions to the Senate inquiry. So far, only (\$ 47E) submission has been put on the website)
- 3. Provide an opportunity to discuss DVA's submission?
- 4. Q&A session?
- 5. I understand from the 16 December meeting that DVA undertook to consider suggestions put forward by ESORT. I've listed these below under the heading, "Issues for consideration."

# (s 22)

# Issues for consideration

Public Interest Disclosure

- Can we provide ESORT members with a copy of the rules (\$\frac{\section 47C}{\cdot}\), (\$\frac{\section 47E}{\cdot}\)
  provided a copy of the DSS/DHS rules following first meeting.)
- o(s 47C), (s 47E)

(\$ 47C) , (\$ 47E)	
•	
•	
(6.22)	
(s 22)	
Concerns raised by ESORT members (for MO)	
Concerns raised by ESORT members (for MO) <u>Public Interest Disclosure</u>	
(s 47C), (s 47E)	
(7- 00)	
(s 22)	

# Document 17



Louise.

From: Spiers, Carolyn
To: Cairns, Louise
Cc: Dixon, Julie

Subject: RE: Meeting with Commonwealth Ombudsman [DLM=Sensitive]

**Date:** Tuesday, 28 February 2017 10:30:38 AM

Attachments: image001.png

No I take this to mean that when we're writing a policy/procedure to underpin the PID we work with the O's office . — Lisa and I had already agreed to this approach.

Regards

CS

From: Cairns, Louise

Sent: Tuesday, 28 February 2017 10:13 AM

**To:** Spiers, Carolyn **Cc:** Dixon, Julie

**Subject:** RE: Meeting with Commonwealth Ombudsman [DLM=Sensitive]

Hi Carolyn,

Does this mean that we need to consult with the Cth Ombudsman further about rule 5?

Louise.

From: Spiers, Carolyn

Sent: Tuesday, 28 February 2017 10:10 AM

To: 'Harris, John (D. Tehan, MP)' (\$ 22)

Cc: Cairns, Louise (\$ 22); Foreman, Lisa (\$ 22)

Brown, Luke (\$ 22)

Subject: FW: Meeting with Commonwealth Ombudsman [DLM=Sensitive]

John

Attached for your information is the comment from the Office of the Commonwealth Ombudsman regarding our consultation with the office on DR Bill and PID rules

Regards Carolyn

From: Emily Wilson-Kwong (\$ 22) On Behalf Of

Doris Gibb

Sent: Tuesday, 28 February 2017 7:57 AM

**To:** Spiers, Carolyn (\$ 22) ; Foreman, Lisa (\$ 22)

Cc: Kate Wandmaker (\$ 22)

**Subject:** Meeting with Commonwealth Ombudsman [SEC=UNCLASSIFIED]

Dear Lisa and Carolyn

Thank you for meeting with us on Friday and going through the draft Rules to underpin the proposed amendments to the MRCA and related Acts.

As discussed, the concern for this Office in relation to the proposed amendments is that many members of the veteran community are extremely vulnerable and have provided very personal information to DVA. This office is concerned that, under the proposed amendments, personal information could be released to the public at large.

Now that we have seen the proposed rules, we are pleased to note that they contain a number of safeguards and we think the addition suggested by OAIC to Rule 6 is also an improvement (currently the  $2^{nd}$  (a) but I assume will be (c) in the final version).

The main area of interest for this office is in relation to the policy which underpins proposed Rule 5, the matters to which the Secretary must have regard. We would be happy to provide input as that policy is developed and we would then be in a position to appropriately respond to any

complaints which may be made to this office in the future.

Thank you again for consulting this office.

Regards

Doris Gibb

Acting Deputy Ombudsman

Sent by

**Emily Wilson-Kwong** 

Executive Assistant to

Doris Gibb, Acting Deputy Ombudsman

COMMONWEALTH OMBUDSMAN



Influencing systemic improvement in public administration

The Office of the Commonwealth Ombudsman acknowledges the traditional owners of country throughout Australia and their continuing connection to land, culture and community. We pay our respects to elders past and present.

\_\_\_\_\_\_

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From: Brenton Attard

To: Spiers, Carolyn

Cc: <u>Foreman, Lisa; Cairns, Louise</u>

**Subject:** RE: New section 6 - Draft PID rules [DLM=For-Official-Use-Only]

Date: Thursday, 23 February 2017 7:07:23 PM

# Hi Carolyn

Thank you for forwarding this information on. Confirming that it is with the meeting attendees.

Regards,

Brenton

From: Spiers, Carolyn (\$ 22)

Sent: Thursday, 23 February 2017 4:32 PM

To: Brenton Attard

Cc: Foreman, Lisa; Cairns, Louise

**Subject:** New section 6 - Draft PID rules [DLM=For-Official-Use-Only]

Dear Brenton

At today's telephone meeting with the Privacy Commissioner and others, DVA agreed to redraft a provision of the draft PID rules to be more specific on the use of de-identified data.

The following is a replacement section 6. Could you provide to Commissioner Pilgram and the others in attendance at the meeting.

Regards

Carolyn Spiers



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# DEPARTMENT OF VETERANS' AFFAIRS **Ex-Service Organisation Round Table**

Level 6 Executive Board Room, Gnabra Building, Venue:

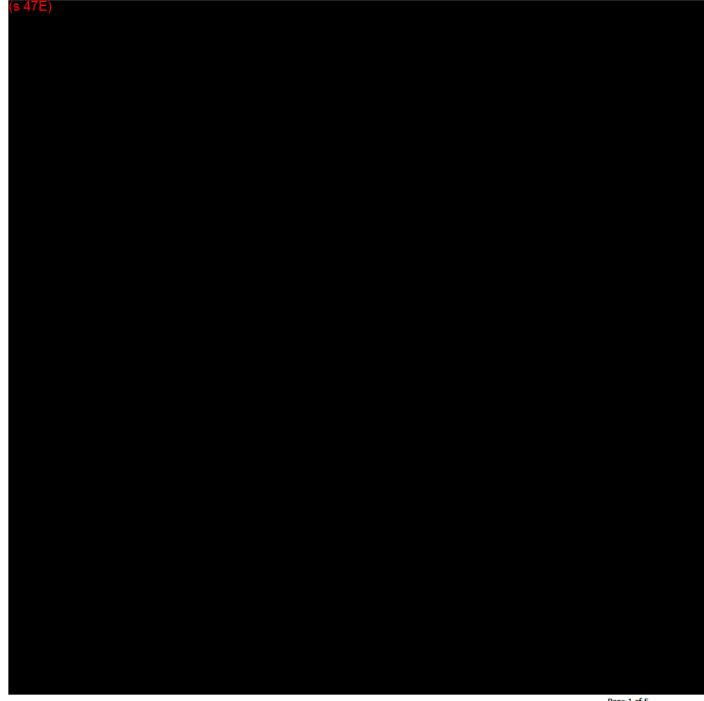
Canberra

Friday 2 December 2016 Date:

2.00am - 3.00pm Time:

Meeting No: 36

# **Attendees**







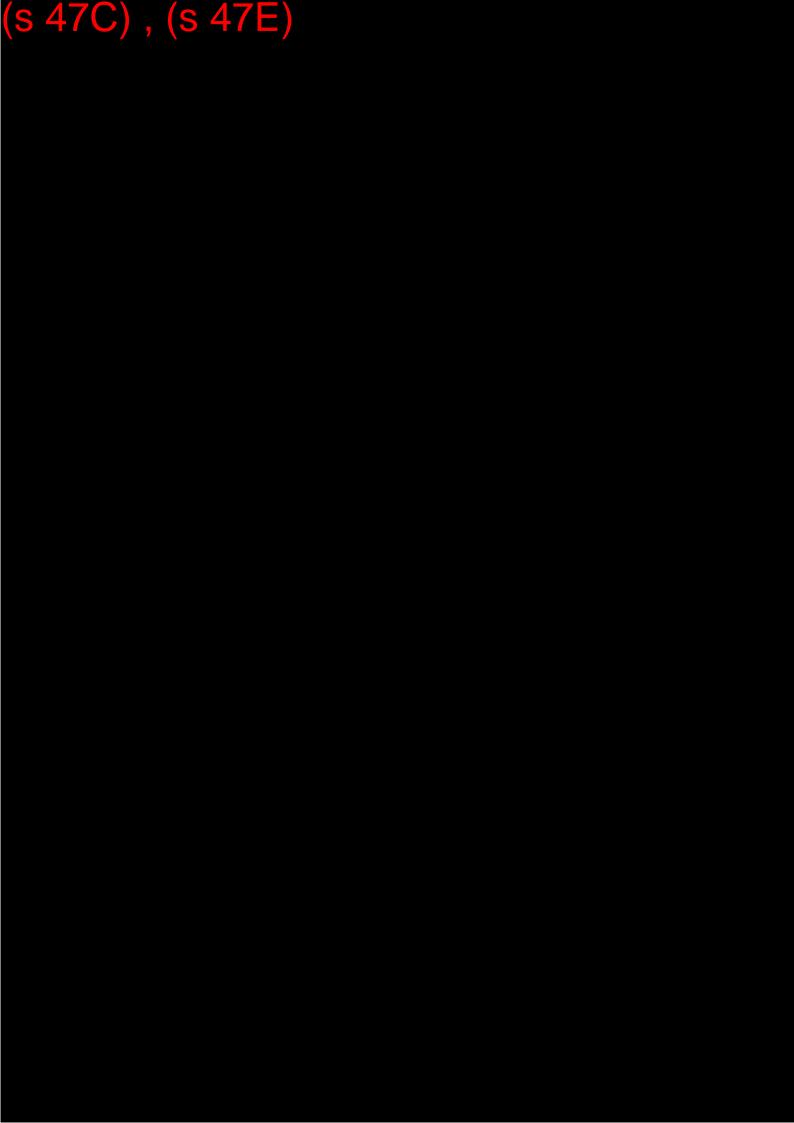
DVA Participants		
Ms Lisa Foreman First Assistant Secretary, Rehabilitation and Support		
Mr Neil Bayles	Assistant Secretary, Rehabilitation, Case Escalation and MRCA Review	
Ms Carolyn Spiers	Principal Legal Adviser	
Ms Louise Cairns	Legislation Liaison Officer	

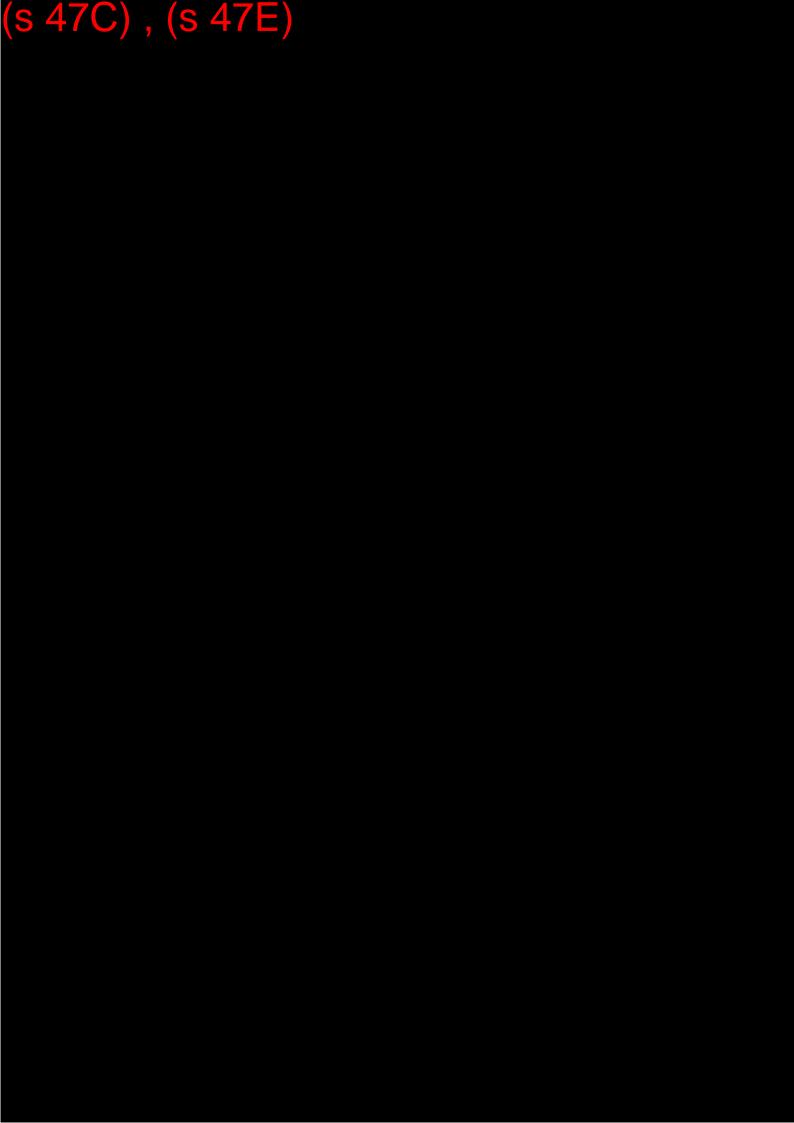
Secretariat	
Ms Paula Green	Assistant Director, Rehabilitation Communication and Evaluation



# Digital Readiness Bill

(s 47C) , (s 47E)		





From: Angelene Falk
To: Sophie Higgins

Subject: FW: Consultant with OAIC on Veterans" Affairs Legislation Amendment (Digital Readiness and Other

Measures) Bill 2016 [DLM=For-Official-Use-Only]

Date: Tuesday, 21 February 2017 1:15:43 PM

Importance: High

We will need to discuss later please.

From: Brenton Attard

Sent: Tuesday, 21 February 2017 11:49 AM

**To:** Timothy Pilgrim (\$ 22) ; Angelene Falk (\$ 22)

Cc: Emma Jelenic (\$ 22)

Subject: FW: Consultant with OAIC on Veterans' Affairs Legislation Amendment (Digital

Readiness and Other Measures) Bill 2016 [DLM=For-Official-Use-Only]

Importance: High

Hi Timothy and Angelene

Please see meeting request from DVA below.

Emma – FYI, we may need to adjust the diary to accommodate.

**Thanks** 

Brenton

From: Egan, Kristy (\$ 22)

Sent: Tuesday, 21 February 2017 11:15 AM

**To:** Brenton Attard (\$ 22)

Subject: Consultant with OAIC on Veterans' Affairs Legislation Amendment (Digital Readiness

and Other Measures) Bill 2016 [DLM=For-Official-Use-Only]

Importance: High

Hi Brenton

Thank you for your time on the phone earlier. As I noted on the phone, the Senate Foreign Affairs, Defence and Trade committee handed down its report on the <u>Veterans' Affairs</u> <u>Legislation Amendment (Digital Readiness and Other Measures) Bill 2016</u> ('Digital Readiness Bill') yesterday afternoon.

Recommendation 1 of that report at paragraph 2.74 provides:

'The committee recommends that the Department of Veterans' Affairs consult with the Commonwealth Ombudsman and the Office of the Australian Information Commission on the content of the Minister's regulations before they are finalised and introduced in the Parliament'.

DVA is keen to consult with the OAIC and the Ombudsman's Office as soon as possible, preferably this week. The senior executive from DVA that would attend the consultation are:

- Lisa Foreman, First Assistant Secretary, Rehabilitation and Support Division
- Carolyn Spiers, Principal Legal Advisor, Legal Services and Assurance Branch.

Ms Foreman and Ms Spiers would bring the draft Public Interest Disclosure rules referred to in the recommendation to the consultation and explain their operation.

Both Ms Foreman and Ms Spiers would be available all day this Thursday 23 February for the consultation, if this is suitable for the relevant OAIC staff. It would be anticipated that the consultation would need to go for approximately one hour.

While Ms Foreman and Ms Spiers are able to travel to Sydney, if required, the preference would be for the consultation to occur in Canberra. The benefit of a meeting in Canberra would be that we would try to arrange a joint consultation with the Ombudsman's Office, which would allow the relevant OAIC officers to have the benefit of hearing the comments from the relevant Ombudsman's Office staff on the Public Interest Disclosure rules.

Please do not hesitate to contact me if there are any further questions.

Thank you in advance for your assistance in arranging this consultation.

Kind regards

# Kristy Egan

Director

Deregulation, Assurance and Legal Administration Support (DALAS) Legal Services, Assurance & Deregulation Branch Department of Veterans' Affairs | www.dva.gov.au

(s 22)

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From: Brenton Attard

To: Angelene Falk

Subject: Fwd: Consultant with OAIC on Veterans" Affairs Legislation Amendment (Digital Readiness and Other

Measures) Bill 2016 [DLM=For-Official-Use-Only]

Date: Wednesday, 22 February 2017 10:39:13 AM

**FYI** 

Sent from my iPhone

Begin forwarded message:

From: "Egan, Kristy" (\$ 22

**Date:** 21 February 2017 at 4:51:19 pm AEDT

To: (\$ 22)

Subject: RE: Consultant with OAIC on Veterans' Affairs Legislation

Amendment (Digital Readiness and Other Measures) Bill 2016

[DLM=For-Official-Use-Only]

Hi Brenton

Thank you for your call earlier, noting that there is availability for consultation on Thursday 23 February between 12:00pm and 1:00pm. I would like to lock in that time for the consultation. Carolyn Spiers and Lisa Foreman from DVA will be travelling to Sydney to participate in the consultation.

I have made enquiries regarding being able to either provide a copy of the draft rules prior to the meeting or leaving a copy after the meeting, and will get back to you on that point.

If you could advise the address for your office and also a contact person and number for when Ms Spiers and Ms Foreman arrive at your office that would be greatly appreciated.

Thank you for your prompt assistance in arranging this meeting.

Kind regards

# Kristy Egan

Director

Deregulation, Assurance and Legal Administration Support (DALAS)

Legal Services, Assurance & Deregulation Branch

Department of Veterans' Affairs | www.dva.gov.au

(s 22)

From: Egan, Kristy

Sent: Tuesday, 21 February 2017 11:15 AM

То: <mark>(\$ 22</mark>

Subject: Consultant with OAIC on Veterans' Affairs Legislation Amendment (Digital

Readiness and Other Measures) Bill 2016 [DLM=For-Official-Use-Only]

Importance: High

Hi Brenton

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- <!--[if !supportLists]-->• <!--[endif]-->Lisa Foreman, First Assistant Secretary, Rehabilitation and Support Division
- <!--[if !supportLists]-->• <!--[endif]-->Carolyn Spiers, Principal Legal Advisor, Legal Services and Assurance Branch.

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Kind regards

# Kristy Egan

Director

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# **Attachments:**

Covering Letter to Senate Enquiry.pdf; DR Bill Senate inquiry submission - v1.docx; Minister-s letter to the Senate Scrutiny of Bills Committee- dated 12 December 2016.pdf; Table comparing proposed DRCA information sharing powers with existing M....docx

From: Howard, Melanie On Behalf Of ESO.Round.Table

Sent: Wednesday, 25 January 2017 5:35 PM Cc: Foreman, Lisa (\$ 22)

Subject: FW: Departmental Submission - Senate Inquiry Digital Readiness Bill [DLM=For-Official-Use-Only]

# **Dear ESORT members**

As previously advised, attached is a copy of the Department's submission to the Senate Inquiry regarding the Digital Readiness Bill. I trust that it will assist in explaining the importance of the measures included in the Bill and will assist with the workshop on this Bill scheduled for Wednesday 1 February.

Regards

Lisa Foreman
First Assistant Secretary
Rehabilitation and Support Division



Mr David Sullivan Committee Secretary Senate Foreign Affairs, Defence and Trade Committee PO Box 6100 Parliament House CANBERRA ACT 2600

Dear Mr Sullivan

I refer to your 6 December 2016 letter to me, enclosing a copy of a letter from Senator Back, Chair of the Senate Foreign Affairs, Defence and Trade Committee (the Committee), in which he invited the Minister, Department of Veterans' Affairs or relevant agencies to make a written submission in relation to the Committee's inquiry into the *Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016* (Digital Readiness Bill.)

I would like to thank the Committee for the opportunity to make a written submission and I am pleased to provide the Committee with general information about the Digital Readiness Bill, as well as specific information that addresses the reasons for referral/principal issues for consideration, contained in Senator Urquhart's referral request.

Should issues about other aspects of the Digital Readiness Bill be raised during the submission stage, and the Committee would like further information about those issues, I would be very happy to provide the Committee with that further information.

My submission follows as an attachment to this letter.

Yours sincerely

S. Lewis PSM Secretary

January 2017

Encl.

GNABRA BUILDING 21 GENGE STREET CANBERRA CITY ACT 2601

GPO BOX 9998 CANBERRA ACT 2601 AUSTRALIA

# Senate Foreign Affairs, Defence and Trade Committee inquiry into the Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016

# Submission provided by the Department of Veterans' Affairs

# Computerised decision making

The Department of Veterans' Affairs (DVA) is currently looking for several ways to leverage available technology to provide a better service to veterans and clients. Computerised decision-making would enable some elements of the Repatriation Commission's and Military Rehabilitation and Compensation Commission's decision-making processes to be conducted by computer processes rather than by delegates. Automating these processes will free up resources and result in benefits such as shorter wait times and faster payments and services for DVA clients.

For some time, members of the veteran community have listed slow processes and long wait times as high priorities for the Department's attention. These provisions would address these issues in two ways: in enabling further routine process automation in the short term and preparing the Department for an upgrade of its ICT systems in the medium term.

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 and ICT systems.

To realise the full potential of these reforms and provide veterans with the quickest and most accurate decisions possible, it is important that, in addition to existing processes being simplified and streamlined, some decision-making is also automated. In anticipation of planned business and ICT reforms to achieve this, legislative amendment is required to provide a sound legal basis for computerised decision-making.

Younger veterans consistently inform the Department of Veterans' Affairs that they would like to engage with DVA electronically. To enable such online services, the use of expert computer systems to make formal determinations must be legislatively sanctioned to ensure that it is compatible with the legal principles of authorised decision making.

Similarly, older veterans provide feedback to the Department on the length of time for some reimbursement processes and transactions. The computerised decision-making powers would enable many of these routine reimbursements to be processed faster.

The Department has seen the potential benefits that online and automated services can bring to veterans. As part of DVA's veteran centric reform, a model project ("Lighthouse Project") was developed in 2016 in conjunction with the Department of Human Services.

Lighthouse initially focused on how DVA could reduce the length of time it takes to process a claim.

The use of computer and computer-assisted decision making will not only improve the timeliness and accuracy of decision making but it will enable staff to deal <u>in person</u> with more complicated claims or clients with unique needs.

Claims under the *Military Rehabilitation and Compensation Act 2004* (MRCA) were examined. Changes to DVA's policies and processes, combined with an easy to access online service and an automated decision process, aim to ideally reduce the average time taken to process a MRCA claim from about 120 days, to some claims being processed in significantly less time, by expediting information gathering about the link between service and a condition. As mentioned, these provisions seek to extend the lessons learnt in this process and prepare for an upgrade to the Department's ICT systems.

Examples of the sorts of decisions that could be suitable for computerised decision-making include where the decision-making can be converted into an algorithm, automatic granting of benefits in certain circumstances and where the decision can be generated based on information that is not subject to interpretation or discretion.

For example, travel reimbursement decisions are currently calculated by a delegate on the basis of the mode of transport and the number of kilometres travelled at a particular rate of reimbursement. Under the proposed computerised decision-making provisions, a computer program could make the calculation and decision, and issue the reimbursement and advice about the decision. In addition, it could provide the capacity for the Department to allow clients to submit these claims online and have the reimbursement transferred outside of normal office hours, in a shorter time frame, and allow the client to have access to online tracking of reimbursement requests.

There are some benefits under veterans' legislation that automatically ensue, based on the existence of a certain set of circumstances. For example, where a veteran with 80 or more impairment points dies, DVA accepts the death as "service related" for both the dependent partner pension and payments to the children. In this instance, the Department's process for claims and payments could be automated to reduce the need for these partners and dependants to contact the Department and allow a streamlined provision of their entitlements and immediate access to funds.

Computerised decision-making could also be used to automatically extend incapacity payments where a person is on the correct payment amount, and it is just their medical certificate or the period of the payment that is being updated. Currently, to have incapacity payments extended in these circumstances, a veteran has to provide their medical certificate and a delegate scans it to the file and updates the new payment date in DVA's system. This process could be simplified and streamlined for the person if they were able to tick a few boxes online and a computer program automatically generated a decision to extend the veteran's incapacity payments.

#### Department of Veterans' Affairs

The Department may also be able to automate some decisions on the basis of information supplied by the Department of Defence. For example, currently a veteran has to provide information on their service that is corroborated by information provided by the Department of Defence. However, under an automated system information provided by the Department of Defence could provide an early determination about whether a person has qualifying service. This would provide the person with certainty that, should they need to make a claim in the future for income support payments, either because they have retired or are unable to work, they will be eligible. A veteran could always provide additional information to support their claim if they choose to, they need not rely only on information held by the Department of Defence.

Another example of this sort of information based automation is a determination about whether a particular Statement of Principles (SoP) factor has been met. Currently, this requires a delegate to make a determination. However, under the proposed computerised decision making powers and based on information supplied by the Department of Defence about particular types of service, a computer program could calculate automatically whether particular SoP factor has been met.

There is evidence at the moment that some SoP factors can be met simply because an ADF member has performed their regular duties in the ADF. For example, lower back strain caused by carrying a heavy pack during training. Currently, if a person submits a claim for lower back strain injury, SoP factors are fully examined. However, where a SoP factor can be satisfied on the basis of a person's ADF training, this process could be automated and streamlined for the person, as long as there is a medical diagnosis of the condition. As noted above, a veteran could always provide additional information to support their claim if they choose to, they need not rely only on information provided by the Department of Defence.

Computerised decision making may be used in a simple element of a larger and more complex decision that requires a human decision-maker in the final analysis, but will not be used where fact finding and weighing of evidence is required, such as interpretation/evaluation of medical evidence. As mentioned above, these are matters for a human decision maker to determine based on all of the evidence provided. An example of a simple element of a larger and more complex decision could be a determination about whether a particular SoP factor has been met, as described above, which then reduces the overall time for a delegate to determine a larger decision.

In terms of the implementation and safeguards around this power, computerised decision-making would only be implemented for a decision or determination with the direct approval of the Secretary of the Department of Veterans' Affairs. It is the intention of the Department that, in the short term, computerised decision-making would be gradually implemented only in relation to those decisions and determinations suitable for electronic decision making and where no subjectivity for a decision would play a role. In all cases, it would be the Secretary of DVA who would decide whether a computer program could be

used to make decisions and the Secretary would not be able to delegate that power to anyone else in DVA.

In regards to automated debt collection, the Department does not intend this provision for this purpose. While debt calculations are already made with the assistance of computers, debt management and collection will remain a matter where the specific circumstances of the individual and the value of the debt are considered in what action is taken and how it is communicated.

The language of the provisions in the Bill that would enable computerised decision-making under veterans' legislation is deliberately broad. This is for two reasons.

Firstly, it is important that the Secretary of DVA has flexibility to apply computerised decision-making in appropriate circumstances as part of the Government's commitment to improve services and reduce claims processing times for veterans.

As electronic capabilities and functions continue to exponentially improve, it is difficult to predict precisely which of the numerous decisions under veterans' legislation might be suitable for computerised decision-making. If the Government were to specifically list in the legislation those decisions to which computerised decision-making could be applied, it is likely that the legislation would need to be continuously amended as capabilities improve and either existing, or new types of, decisions need to be added to the list.

Importantly, where the Secretary authorises the use of a computer program to make decisions or determinations, that decision/determination made by a computer program must comply with all of the requirements of particular legislative provisions, in the same way that a delegate's decision would. For example, under subsection 284(1) of the MRCA, there are three matters about which a delegate must be satisfied before certain wholly dependent partners are eligible for treatment. Should the Digital Readiness Bill be enacted and the Secretary authorises the use of a computer program to make determinations under subsection 284(1) of the MRCA, the decision coming from the computer program would also have to be satisfy those same three matters.

Secondly, to gain maximum benefit from computerised decision-making the enabling powers need to permit a computer program to undertake actions related to making decisions or determinations, exercising powers, and complying with obligations under veterans' affairs legislation. A practical example of this is where notice of a decision is required to be given. Automating this process would enable the computer program to both make the decision and send the notice, enabling faster decisions to be made and communicated.

For example, a person could submit a travel reimbursement claim late at night for a medical appointment that occurred earlier in the day. Under computerised decision-making, the computer program could make the decision, send an automatically generated email advising the person of the outcome and deposit the reimbursement in the person's bank account – all outside of normal business hours and at the person's convenience.

#### Department of Veterans' Affairs

In addition to these requirements, should a computer program malfunction or make an incorrect decision, the Repatriation Commission or the Military Rehabilitation and Compensation Commission (MRCC) (depending on which Act the decision/determination is made under) can substitute that decision or determination.

In these circumstances, a veteran would not need to request a review of an incorrect decision or determination made by a computer program because the Commissions would be able to exercise this substitution power on "own motion." An "own motion" review power enables the Repatriation Commission and the Military Rehabilitation and Compensation Commission to look at a decision or determination and consider whether it should be varied or revoked, without a person having to formally ask either of the Commissions to review the decision. The "own motion" review power is designed to correct computerised decisions that are incorrect.

Importantly, the proposed "own motion" review power would be in addition to a person's existing statutory review rights and would not affect their right to request review of a decision with which they are dissatisfied.

In regards to appeals of decisions more generally, if a person were dissatisfied with a correctly made computer generated decision, they could exercise their existing statutory rights of review under veterans' legislation. If a veteran believes a computer has made an incorrect decision, they would be able to contact a DVA staff member to discuss the issue. All normal processes for appeal and recourse would be still available to the veteran.

The Department of Veterans' Affairs is one of the few client-focused departments that does not have the capacity for computerised decision-making. Other Commonwealth agencies already use computer programs to make decisions and seen benefits for their clients in terms of reduced wait times on decisions and faster processing for claims. For example, the:

- Department of Social Services and the Department of Human Services to make decisions about people's social security benefits and calculations (section 6A of the Social Security Administration Act 1999)
- Department of Immigration in relation to citizenship applications (section 48 of the *Australian Citizenship Act 2007*)
- Therapeutic Goods Administration about medicines and other therapeutic goods to be placed on the Register (section 7C of the *Therapeutic Goods Act 1989*)
- Clean Energy Regulator about carbon credit units and Kyoto units under the Registry of Emissions Units (section 87 of the Australian National Registry of Emissions Units Act 2011), and
- Australian Fisheries Management Authority in relation to fishing permits, fishing rights and management plans (section 163B of the Fisheries Management Act 1991)

In addition, the *National Health Amendment (Pharmaceutical Benefits) Bill 2016* (the Bill), which was introduced into the House of Representatives on 24 November 2016, seeks to insert

similar computerised decision-making powers into the *National Health Act 1953* (see Schedule 1 amendments.)

In the Explanatory Memorandum to the Bill it is noted that the amendments in Part 1 of Schedule 1 of the Bill provide that the Minister, the Secretary of the Department of Health and the Chief Executive Medicare can arrange for a computer program to be used to take administrative actions on their behalf including making decisions, exercising any powers or complying with any obligations under Part VII of the *National Health Act 1953* or any legislative instruments made under that Part, or doing anything else related to those actions.

An example of the sort of computerised decision-making envisaged under these amendments is to streamline processes such as fully automated online processing of PBS claims and prescribing approvals. Use of real-time prescription data for claims processing reduces payment times for approved pharmacists and removes the need for hardcopy prescriptions to be submitted to the Department of Human Services for reconciliation. Online prescribing approvals for certain prescriptions will reduce administrative workload for prescribers and save time for prescribers during consultations by removing the need to request approvals for individual patients by telephone or in writing.

The ability to automate some aspects of DVA's business does not mean that veterans would be left dealing with a machine rather than a person. Similarly, it will not mean that veterans would have to have a computer in order to be able to access DVA services. Where veterans would prefer, they will always be able to speak to a DVA staff member. The challenge for DVA is to remain responsive to the needs of all veterans while also repositioning its services and programmes to accommodate changes in client demographics.

DVA has a deep connection and commitment to our clients and this will continue. Computerised decision-making, which is an aspect of the Department's broader veteran centric reform, is about putting the client at the centre and re-engineering DVA's systems and processes to revolve around clients. The Department must continue to explore and use new technologies to deliver a higher standard of service, which will be achieved by enabling simple, non-subjective decisions to be made by computers. These powers are necessary to maintain the Department as a modern functioning service provider.

#### **Public Interest Disclosures**

The Department of Veterans' Affairs has a duty of care in providing its services to veterans and clients. However, often there are privacy and legislative restraints on providing information that might be necessary in fulfilling that duty of care. In instances of preventing harm to others or self-harm, addressing concerns for health provision, maintaining the integrity of programmes, and preventing abuse of programmes by providers, the Department is not able in some instances to provide timely information to prevent detrimental outcomes to veterans.

Public Interest Disclosures are currently used in other areas of government in a careful and judicious manner that allows these issues to be addressed. It is important that measures that are in place and working in other areas of government are afforded to the Department of Veterans' Affairs in order to fulfil its duty of care to veterans and clients and provide the best outcome for them.

In this context, the *Privacy Act 1988* legitimately limits the circumstances for the handling and disclosure of a person's personal information, as set out in the Australian Privacy Principles. However, as outlined above, there are certain limited circumstances where it would be appropriate for the Secretary of DVA to disclose information about a person outside of the Privacy Act.

Such circumstances include where there is a threat to life, health or welfare (either to self or to others), for enforcing laws, mistakes of fact or misinformation in the community and provider inappropriate practices.

The purpose of the public interest disclosure provisions is to ensure that the Secretary of the Department has an ability to release information about a particular case or class of cases where it is appropriate to do so.

To assist the Committee to understand the circumstances in which DVA might need to release information about a veteran, four such examples are outlined below.

# Threat to life

• Where DVA considers that a client may be planning to harm either themselves or another person, albeit at an unspecified time in the future, and where it is not unreasonable or impracticable to obtain the person's consent to disclose their personal information (ie, the threat may not materialise until some weeks into the future), DVA is unable to provide that information to the appropriate authorities because the person's consent could, in theory, be obtained given the time frames involved. Under the proposed public interest disclosure provisions, however, the Secretary would be able to share that information if he or she considered that it were in the public interest to do so, putting beyond doubt that such information can be shared to ensure public safety.

# Threat to health or welfare

Under the current system, the Department is not able to provide certain information
to a third party even where the health and welfare of a client is at risk. For example,
where a local council community advisor might become aware that a person has
significant health issues and is a DVA client, if the person chooses not to reveal the
nature of their health problems the local council advisor is unable to assist them,
ultimately to the detriment of their health. If appropriate under the proposed public
interest disclosure provision, the Department could share this form of information
with external agencies to ensure the person receives proper treatment for their
condition.

### Provider inappropriate practices

• Currently, the Department is unable to advise veterans of instances of provider abuse or inappropriate practices if it meant that the information used would reveal circumstances of a provider contract with the Department. For example, where DVA becomes aware that a contracted treatment provider, was inappropriately asking DVA clients to pay more than the negotiated price to receive treatment, it might be appropriate for DVA to advise these clients that under DVA health treatment card arrangements eligible clients do not make co-payments. If the Secretary of DVA considered it to be in the public interest, however, the public interest disclosure provisions would enable him or her to take out notices in local newspapers or similar action to notify clients more generally.

# Mistake/misinformation in the community

• The Department is aware of instances where misinformation or claims that are not factual have damaged the integrity of programmes or prevented veterans from taking up assistance from the Department, often leading to wider spread distress among veterans. In these instances, the Department has not got the ability to correct the misinformation or mistake of fact as it may include the disclosure of information about a veteran or class of veterans. Often in these circumstances, the misinformation or mistake of fact can often have consequences which are detrimental to some veterans' mental health conditions or lead to some veterans cancelling their contact with the Department. These outcomes may have been prevented were DVA able to provide limited information to the public regarding circumstances where mistake of fact or misinformation has caused distress in the veteran community.

### Australian Public Service (APS) Code of Conduct investigations

• In circumstances where the Department suspects that a staff member may have inappropriately accessed or released a client's personal information, and would like a third party investigation firm to undertake an investigation, there is doubt about whether a client's personal information (as opposed to the staff member being investigated) could be released to the third party investigation firm under the Australian Privacy Principles. An investigation firm may need a client's information to verify whether a staff member had access to certain information about a client,

particularly where there is an allegation that information was inappropriately released. If the Secretary considered it in the public interest to do so, he or she could provide this information to assist with APS Code of Conduct investigations.

The Department understands that there are concerns around the proposed power to release information regarding individual cases or classes of cases. In particular, concern has been raised over the provision of information to correct mistakes of fact or misinformation. However, misinformation in the public arena about DVA policies, processes and procedures can have a detrimental effect on veterans' wellbeing.

When there are misconceptions and misinformation about DVA's services or programmes, this can lead to veterans lacking confidence in DVA and becoming unnecessarily concerned about their cases. It may even dissuade veterans from accessing the essential services that they require. Misinformation in the community can also exacerbate underlying mental health conditions for some veterans, damaging rehabilitative progress that may have been made under DVA programmes.

Just as computerised decision-making is not new within Government, neither are public interest disclosure provisions. The proposed provisions are modelled on paragraph 208(1)(a) of the *Social Security Administration Act 1999*. That public interest disclosure provision has been in operation for 17 years and has operated successfully with the approval of Parliament. The Privacy Commissioner has not raised any concern about the Department of Social Services/Department of Human Services' provision. If a person is concerned that their information has been inappropriately shared, they may lodge a complaint with the Privacy Commissioner. There is no cost involved and a person does not need a lawyer to represent them.

When the Minister for Social Services revoked and remade the *Social Security (Public Interest Certificate Guidelines) (DSS) Determination 2015*, the Parliamentary Committee for Human Rights conducted an inquiry and report into the guidelines and concluded that the public interest certificate determinations are likely to be compatible with the right to privacy.

In recognition, however, that DVA has not previously had this public interest disclosure power, and that disclosure of a person's information is not to be undertaken lightly, five specific safeguards are built into these proposed provisions, in addition to general safeguards already available.

# Specific safeguards

 the Secretary of DVA must act in accordance with rules<sup>1</sup> that the Minister makes about how the power is to be exercised and the rules will be a disallowable instrument

Department of Veterans' Affairs

<sup>&</sup>lt;sup>1</sup> See below for further information about the rules.

- the Minister cannot delegate his or her power to make rules about how the power is to be exercised by the Secretary of DVA
- the Secretary of DVA cannot delegate the public interest disclosure power to anyone else
- before disclosing personal information about a person, the Secretary of DVA
  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 (natural justice requirements), and
- unless the Secretary of DVA complies with the above natural justice requirements before disclosing personal information, he or she will commit an offence, punishable by a fine of 60 penalty units (approximately \$10,800<sup>2</sup>.)

# General safeguards

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.

If a person is dissatisfied with the Secretary's decision to disclose information about them, they can apply for judicial review under the *Administrative Decisions (Judicial Review) Act* 1977. Merits review will not be available because the kinds of remedies available under merits review are unlikely to be of benefit and also because of the time frames involved.

Where the Secretary has publically released information about a person, merits review, which examines the correctness of the decision, is unlikely to be of benefit to the person because their information would already be in the public arena. The timeframe within which information will be released will depend on the individual circumstances of each case. However, it is very unlikely that, between becoming aware that the Secretary intends to disclose information and the release of that information, a person would be able to obtain merits review.

As stated in the Explanatory Memorandum to the Digital Readiness Bill, 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 of DVA may make a public interest disclosure, before he or she exercises that power.

<sup>&</sup>lt;sup>2</sup> When the Digital Readiness Bill was introduced, one penalty unit was \$180 under section 4AA of the *Crimes Act 1914*. However, the Government announced at the 2016-17 Mid-Year Economic and Fiscal Outlook that it intended to increase the penalty unit amount from \$180 to \$210, effective 1 July 2017. If that change is approved by the Parliament, the fine will be approximately \$12,600.

The Department notes that the Minister is currently in consultation with the shadow minister, the Hon Amanda Rishworth MP, to develop the precise rules that the Minister would need to determine for the use of the Public Interest Disclosure powers.

In responding to a request for information from the Senate Scrutiny of Bills Committee, the Minister advised that Committee that he intended to make rules that would appropriately limit the circumstances in which the Secretary would be able to exercise the proposed public interest disclosure power and that he or she would not exercise that power until the rules are in place. **Attached** is a copy of the Minister's letter, for the information of this Committee.

Unfortunately, the final rules/guidelines<sup>3</sup> are not able to be provided to the Committee at this time, primarily because they cannot be made until after the Digital Readiness Bill receives Royal Assent, should the Parliament pass the Digital Readiness Bill. In relation to the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA) rules/guidelines, the DRCA also needs to have been passed by the Parliament before they can be made.

In anticipation that the Digital Readiness Bill will be enacted, the Department is aware that the Minister has been consulting his Parliamentary colleagues, and in particular the shadow minister, about the content of the rules/guidelines and that he will instruct officers in DVA about how he wants the rules/guidelines drafted. The Parliament will have an appropriate opportunity to consider the rules/guidelines once they are drafted, as they will be a disallowable instrument, ensuring Parliamentary scrutiny and oversight.

### **Information Sharing**

Timely information sharing between DVA and the Department of Defence is crucial to the veteran experience. It is important that the Chief of the Defence Force is aware if a currently serving member submits an application for compensation for incapacity payments, permanent impairment or is in receipt of medical treatment, or has claimed liability for a condition. The Chief of the Defence Force owes a duty of care to members, especially those members deployed in an operational context.

Information sharing can also promote healthier work practices in the military. For example the MRCC may notice a common pattern of injuries arising out of certain duties. This information should be shared appropriately so that fewer people become injured, and fewer compensation claims are made.

Providing information at the macro level to Defence about claims can lead to improved outcomes for both the individual member concerned, and the ADF more broadly. For example:

<sup>&</sup>lt;sup>3</sup> Rules/guidelines will be made under each of the *Veterans' Entitlements Act 1986, Military Rehabilitation and Compensation Act 2004* and the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988.*Department of Veterans' Affairs

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- Mental health conditions it is important that the Chief of the Defence Force knows whether deployed members on overseas missions have any mental health conditions, such as PTSD. If these conditions are unknown, they could imperil the member and their unit. This could also provide information or a flag as to the mental health education, tools and support the individual and their family may require.
- Hearing loss trends in veterans the incidence of hearing loss in current and ex-ADF members is important occupational health and safety information as so many jobs in the ADF require top hearing ability for personal protection, intelligibility of signals and discerning speech against background noise.
- Treatment sought outside of Defence health arrangements this is particularly important for personnel on seagoing vessels, where access to certain treatment may be limited at sea.

Providing claims information to the ADF about injuries, diseases and deaths of members will enable the ADF to monitor the occupational health and safety of its workforce and determine whether adjustments are needed to training or equipment, for example, to reduce incidences of injuries. It could also provide an opportunity for more targeted promotion of health and wellbeing education, tools and support.

The MRCC and the Repatriation Commission are able to share the above sort of information with the Department of Defence or the Chief of the Defence Force under the MRCA and the *Veterans' Entitlements Act 1986* (VEA) respectively, but the MRCC is unable to share such information under the *Safety, Rehabilitation and Compensation Act 1988* (SRCA), and, should the DRCA be passed by the Parliament, also would not be able to under the DRCA. The proposed amendments would be made to the DRCA to align it with the MRCA, subject to the DRCA being enacted.

The SRCA predominantly applies to Commonwealth public servants, with Comcare able to share information with agencies such as the Departments of Health and Human Services, as well as Centrelink and Medicare. However, there is not a power under the SRCA/DRCA to share information with the Department of Defence, in the way that there is under the MRCA, which is a military-specific compensation Act.

It is anomalous that crucial work health and safety information can only be provided on the basis of legislative coverage. It is appropriate that the Repatriation Commission and the MRCC would be able to provide consistent information about members, irrespective of whether their claim falls under the DRCA or MRCA. For this reason, these information sharing amendments would align the information sharing provisions in the DRCA (subject to it being passed by the Parliament), with the existing information sharing provisions in the MRCA.

The information would only be able to be provided to specified persons and for specified purposes. In relation to the Chief of the Defence Force, the amendments would enable the MRCC to provide a copy of a determination if it related to liability for an injury, disease or death, or the permanent impairment of a member.

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Under section 143 of the SRCA, the MRCC must give a copy of a defence-related claim to the relevant service chief of the person making a claim, if the person was a member of the Defence Force at the relevant time of the injury or accident or when the disease was contracted. However, there is currently no provision in the SRCA, as there is in the MRCA, that specifically enables the MRCC to provide a copy of a *determination* made in relation to a claim. The amendment to the DRCA would create greater certainty about the MRCC's ability to do so.

In relation to the Secretary of the Department of Defence, the information that could be provided must relate to one of 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.

To assist in comparing the proposed DRCA information sharing provisions with the existing MRCA ones, a table is **attached** to this submission for ease of reference. While the provisions in the table may look a little different, they achieve the same objective and were drafted to conform to existing provisions in the SRCA/DRCA.

If a person is concerned that their information has been inappropriately shared, they may lodge a complaint with the Office of the Australian Information Commissioner (OAIC.) There is no cost involved and the person does not need a lawyer to represent them. If the person is dissatisfied with a decision of the OAIC, in certain circumstances they may be able to apply to the Federal Court of Australia or the Federal Circuit Court for review of a decision. Further, the Privacy Act states that information gathered for a particular purpose may generally only be used for that purpose. Agencies that use information inappropriately face sanction under the Privacy Act.

#### **Technical Amendments**

The Digital Readiness Bill contains three minor and technical amendments. Two of the technical amendments were intended to be made as part of the *Statute Update Act 2016*, but 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.

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<sup>4</sup> (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, these two amendments 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.

The other technical amendment would amend the short title of the *Safety, Rehabilitation* and *Compensation (Defence-related Claims) Act 1988* (DRCA), subject to it being 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 would rectify that situation and ensure that the short title of the DRCA is consistent with the long title.

### Stakeholder engagement/consultation on the Digital Readiness Bill

The Department has undertaken consultation with the Ex-Service Organisation Roundtable (ESORT) on the Digital Readiness Bill. The ESORT is the primary forum for consulting with the ex-service and defence communities and comprises the National Presidents of 14 Ex-Service Organisations, and members of the Repatriation Commission and the Military Rehabilitation and Compensation Commission.

There have been several productive meetings between DVA representatives and ESORT members to discuss the content of the Digital Readiness Bill. Consultation with a smaller working group of ESORT members occurred on 24 November 2016 and then full ESORT meetings occurred on 2 and 16 December 2016. A further workshop with ESORT members is planned for early February 2017. Some ESORT members have indicated that they found those information sessions very valuable, and they thanked DVA for the briefing provided on the Digital Readiness Bill.

<sup>&</sup>lt;sup>4</sup> When the Digital Readiness Bill was introduced, one penalty unit was \$180 under section 4AA of the *Crimes Act 1914*. However, the Government announced at the 2016-17 Mid-Year Economic and Fiscal Outlook that it intended to increase the penalty unit amount from \$180 to \$210, effective 1 July 2017 Department of Veterans' Affairs

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The Government is actively listening to the views of stakeholders and working to allay any concerns they may have. The Department is considering suggestions made by ESORT members about the amendments proposed in the Digital Readiness Bill and these matters are under active deliberation.

### **List of Attachments**

Minister's letter to the Senate Scrutiny of Bills Committee, dated
12 December 2016.
(s 22)



# The Hon Dan Tehan MP

Minister for Veterans' Affairs Minister for Defence Personnel Minister Assisting the Prime Minister for Cyber Security Minister Assisting the Prime Minister for the Centenary of ANZAC

Parliament House CANBERRA ACT 2600 Telephone: 02 6277 7820

MS16-001006

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Senator Helen Polley Chair Senate Scrutiny of Bills Committee Suite 1.111 Parliament House Canberra ACT 2600

Dear Senator Polley Helen,

Thank you for the letter from your Committee Secretary, dated 1 December 2016, requesting information about issues identified with the *Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016* (Digital Readiness Bill.)

I am pleased to provide my advice in relation to the two issues identified by the Standing Committee for the Scrutiny of Bills and thank the Committee for the opportunity to provide this further information.

I would like to advise the Committee that I intend to make rules that will appropriately limit the circumstances in which the Secretary of the Department of Veterans' Affairs (the Secretary) will be able to exercise the proposed public interest disclosure power and that the Secretary will not be able to exercise the proposed public interest disclosure power until those rules are in place.

I would also like to advise the Committee that my Office has been working very closely with the Office of the Hon Amanda Rishworth MP, the Shadow Minister for Veterans' Affairs, to develop the content of these rules.

As noted in the Explanatory Memorandum, items 1, 7 and 10 of Schedule 2 of the Digital Readiness Bill are modelled on paragraph 208(1)(a) of the *Social Security Administration Act* 1999. That public interest disclosure provision has been in operation for 17 years and has

not, as far as I am aware, been the cause of any concern or Parliamentary inquiry, nor has the Privacy Commissioner raised any concern about the operation of the provision.

The Department of Human Services and the Department of Social Service make public interest disclosures without having rules or guidance in the primary legislation.

When the Committee examined the Social Security (Administration) Bill 1999 (as it then was) in its fourteenth report of 1999 and in the Scrutiny of Bills Alert Digest No 9 of 1999, it did not raise similar concerns about why rules or guidance about the exercise of the Secretary's disclosure power cannot be included in the primary legislation and why there is no duty on the Minister to make rules regulating the exercise of the Secretary's power.

At least thirteen versions of the Social Security Public Interest Certificate Guidelines have been made. I understand that more versions have been made but that, earlier (revoked) versions are not available on the Federal Register of Legislation. Most recently, the Guidelines were amended in 2015 (from a 2014 version) to ensure that information can be disclosed to assist Commonwealth, State and Territory law enforcement agencies with the making, or proposed or possible making, of a proceeds of crime order or supporting or enforcing a proceeds of crime order.

It is important that, where new circumstances arise necessitating the disclosure of information (such as in relation to proceeds of crime orders), the Minister for Veterans' Affairs is able to respond quickly and flexibly to deal with changing circumstances.

Were the rules or guidance located in the primary legislation, the Minister for Veterans' Affairs would be less able to quickly respond to evolving circumstances, owing to the length of time required for the Parliament to pass legislation and also due to the competing relative priorities of the Parliament.

Equivalent rules made under legislative instrument have been effectively operating in relation to public interest disclosures for the Department of Social Services and the Department of Human Services. The rules would take the form of a disallowable instrument, thus ensuring appropriate Parliamentary scrutiny of the rules.

As I noted above, I intend to make rules that will limit the circumstances in which the Secretary will be able to exercise the proposed public interest disclosure power and the Secretary will not be able to exercise the proposed public interest disclosure power until those rules are in place. Work on developing the content of the rules is well underway in consultation with the Shadow Minister and I thank Ms Rishworth for her continued constructive engagement on veterans' affairs issues.

The Social Security rules are also discretionary, but, as can be seen from the frequent amendment history, Ministers have ensured that appropriate rules are in place to limit the circumstances in which a proposed public interest disclosure may be made.

Thank you again for raising these issues in relation to the Digital Readiness Bill with me. I trust that my advice addresses the Committee's concerns and would be happy to provide any further information the Committee considers useful.

Yours sincerely

DAN TEHAN

