



**THE RAAC CORPORATION LIMITED**  
**ACN 156 250 958**  
**ABN 29 156 250 958**

**Ms Nina Mac Kenzie**  
**Head of Government Relations**  
**RSL QLD**

**SUBJECT: EXAMINATION OF DRAFT HEALTH CARE BILL 2023**

## **1 PURPOSE**

To brief you on my examination of the Draft Aged Care Bill 2023 (the Draft) conducted within the parameters discussed in our telephone conversations of 16 and 17 February, 2024. This brief attempts to address the issues discussed and to also inform you of other disturbing matters arising from that examination.

## **2 BACKGROUND**

The Government's move to introduce new aged care legislation, possibly this year, will require a very careful and close look at what is proposed in the new legislation before the matter passes through Parliament for a vote. The Act is designed to replace:

- *Aged Care Act 1997*
- *Aged Care (Transitional Provisions) Act 1997*
- *Aged Care Quality and Safety Commission Act 2018.*

The sponsor agency is the Commonwealth Department of Health and Aged Care (DOHAC) vide the responsible Minister, the Honourable Mark Butler MP.

Your comments in your email of 16/2/23<sup>1</sup> regarding what I describe and as having a foot more firmly in the health care door for veterans and widows, are very relevant; viz

---

<sup>1</sup> Mac Kenzie - Mc Laughlin of 161804 February 2024.

*“While the proposed new Act isn’t veteran specific, we think the consultation is another opportunity to advocate for the aged care needs of our defence family. We are developing our response with a focus on the importance of eligible veterans and widows being able to seamlessly access the high quality medical and allied health services, aids and appliances provided by DVA as they move into the aged care system.”*

*There is only limited reference to these DVA provisions for veterans and widows in the draft legislation. We are also aware that unless legislation leads to increased veteran literacy and veteran aware practice for all aged care providers then some veterans and widows will likely continue to lack the support they need from those providers to access DVA provisions.”*

Your comments that the Draft’s actual contents are not an issue finds support from Messrs Ted Chitham MC OAM Interim Secretary ADSO and Carl Schiller OAM CSM. National President RAAF Association.

Your concerns in respect of the need for the veteran community being joined to the proposed Act are well thought out and have considerable merit.

### **3 CAVEAT**

As discussed, this brief will discuss only those matters the Corporation considers it is competent to comment on. The Corporation acknowledges the wealth of expertise among ESOs such as ASO and kindred organisations. As discussed, this writer is not a subject matter expert on what is politically, industrially, financially and emotionally for many Australians, a hugely sensitive issue.

### **4 THE DRAFT**

The draft is an Exposure Draft, namely a document enabling stakeholders and other interested parties to peruse and comment on an issue before it is made law. In this instance, every single Australian is an interested party for very good reasons.

More specifically it is contended that, veterans and veterans’ widows are on every level a very specific and significant interested party. This contention arises due to the fact this particular demographic has served the nation and the unique nature of military service that attaches thereto.

This gives rise by veterans to being exposed to the contraction, acceleration or aggravation of an illness, injury or disease affecting veterans physically and mentally earlier than non-veteran members of the community with a consequential entry into aged care earlier than anticipated, due to the effects of their service-related medical conditions/disabilities.

Similarly the sacrifices of War and Defence widows/ers is another very relevant consideration in ensuring the veteran community’s voice is heard in respect of aged care.

It is not an exaggeration to note this is an end-of-life issue in veteran aged care and is considered to be the primary fact in issue here.

#### **4.1 The Draft in General**

The Draft is a 347-page document containing 413 Sections.

It contains eight references to the term “**veterans.**”

Other than referring to the term in the VEA 1986, the references to veteran can be found in specific Sections.

Section 22-Statement of Principles, includes a reference the Notes to “**veterans or war widows**” and does not refer to Defence widows or widowers. S.22 (5)(b) enshrines access to integrated services including stronger linkages vide S.11(5); viz

*access to integrated services, including strong linkages with the health, mental health, veterans, disability and community services sectors.*

This particular Section is one that ESOs should take up in order to ensure every health care provider and not just some, to just pay lip service to their duties under the law, but ensure they all comply with that particular provision.

The lack of an aged care - specific Ombudsman is concerning given that the only reference to an Ombudsman is to the Commonwealth Ombudsman (three references in the Draft).

It is difficult to conceive of this office having any meaningful input into monitoring the proper discharge by aged care providers and DVA of their duties under this statute.

It is not an exaggeration to contend that, a definite need exists for the appointment of an aged-care Ombudsman or like authority with all the relevant powers similar to the Commonwealth Ombudsman.

This is not an unnecessary duplication of roles. It is on any reading, an essential requirement given the unique nature of aged care service delivery through residential aged care (RAC) to DVA-specific aged care packages. It will act as a mechanism for aged care recipients where complaints of aged care clients have been made. It is seen to be protective as well as regulatory.

S.132, 339(2) (b)(c)(d) addresses disclosure of protected information (51 references Draft) to a receiving Commonwealth body; viz

(b) the Department administered by the Minister administering the *Veterans’ Entitlements Act 1986*;

(c) the Repatriation Commission;

(d) the Military Rehabilitation and Compensation Commission;

## **4.2 The Regulatory Framework**

The draft contains a total of 332 references to the term “*regulatory*” which this writer believes enhances the accountability requirements explicit in the Draft.

This is consistent with the contentions by RSL Queensland, Messrs Chitham and Schiller suggests that the legislative architecture of the provisions of the Draft *in toto*, is sound.

Chapter 6 of the Draft deals with Regulatory Mechanisms vide Sections 184 to 320 (136 Sections in total) and the application and effect *inter alia*, of the *Regulatory Powers Act 2014* (Cth).

## **4.3 Delegation and Subdelegation**

The provisions of S.367 provides for the delegation of the powers and functions of the Systems Governor to the Secretary DVA (367(1)) and subdelegation by the Secretary of powers and functions to an SES officer or acting SES officer

S.132 refers to functions of the Systems Governor. The Draft contains 457 references to this office-holder.

S.367(1) is incomplete and this provision has to be completed by the legislative drafters. The fact this Section is incomplete speaks to the shabbiness of the execution of this consultation process. The inclusion of an incomplete Section is completely unacceptable and should not have occurred.

S.368 (1) and (2) provide for similar powers and functions in respect of delegation and subdelegation of powers and functions to the Repatriation Commissioner. The powers and functions for both office-holders have not yet been drafted.

This is frustrating as it detracts from a smoother consultation process and is a matter that needs to be pursued vigorously either at ESORT or DVA’s National Aged and Community Care Forum<sup>2</sup> at which ADSO is among others represented.

## **5 IMPEDIMENTS TO THE CONSULTATION PROCESS**

In examining the need for additional DVA involvement, a number of issues arose that question the efficacy of the consultation process.

---

<sup>2</sup> <https://www.dva.gov.au/about/overview/consultations-and-grants/how-we-consult-ex-service-community/national-aged-and-community-care-forum>

## 5.1 Shabby Planning and Execution

The consultation period for the Draft was extended due to concerns raised by stakeholders that the initial consultation period of 14/12/23 to 16/2/24 was insufficient resulting in the consultation deadline being further extended to 8/3/24. Such a concession may appear to be generous. I consider it to be anything but.

An examination of the 86-day consultation period *in toto* shows that it encompassed the entire school holiday and Charismas/New Year period.

I consider this to be a shabby and sneaky attempt by Government at minimising consultation and feedback due to older stakeholders undertaking grandparenting duties to relieve parents, and travelling themselves during the holiday period to visit families interstate and overseas. Similarly, this applies also to the younger veteran and non-veteran cohort who are busily enjoying holidays during the approximate 45-day holiday period. The effect of this tactic is considered to be an underhanded one designed to minimise the amount of feedback.

I consider that to be a typical Government ploy to introduce issues such as this in the dead part of the year when people are very much preoccupied with other important matters. The initial boast by DOAHC of permitting an initial consultation period of August-September 2023 is risible in the extreme.

The sheer size of the Draft, the depth and breadth of the Draft Sections clearly militates against what is on its face a completely unacceptable time frame of just one month for all stakeholders including DVA and the ex-service community. The second tranche of consultation is not much better for the reasons discussed.

This Draft is a critical part of the aged care continuum and it is of such a nature that it cannot and must not be rushed through Parliament. To do so will in my respectful submission, result in a structurally and procedurally flawed Act that will operate to cause all stakeholder and families of loved ones in aged care unnecessary stress and grief.

The consultation process can best be described and inchoate and at worst incompetent and chaotic. There is no easy or trouble-free access to the Draft. This required a degree of rummaging around in the relevant hyperlink<sup>3</sup> to obtain and download a copy.

This is shabby planning and execution of a major policy initiative involving and affecting millions of people and should not have occurred.

---

<sup>3</sup> <https://www.health.gov.au/our-work/aged-care-act/consultation>

It is slackness such as this which operates to drive interested parties away from the DOHAC site in frustration thereby denying them the opportunity to make a comment.

I consider it necessary that it is better exercise due care and diligence in a less than rushed and forced manner such as that currently employed by DOHAC.

It is the RAAC Corporation's contention that an additional 30-day period should be considered.

## **5.2 Explanatory memorandum**

The process of consultation is manifestly deficient in the complete lack of an Explanatory Memorandum (EM).

The EM is a document whose criticality to the consultation process cannot be overstated. It is a vehicle for enabling ordinary Australians, in this instance veterans and their families, to be able to better understand why a Bill is designed and the justification for its development.

The EM is a document that operates in tandem with the Draft Bill and contains specific explanations as to the specific nature of Sections and where relevant justifies the inclusion of new and very specific Sections and where necessary excising old sections from the current Act as part of the process of legislative design. The fact it was not part of the DOHAC drafting armoury is not only disturbing but completely unjustifiable.

The EM has an alternate purpose. It enables a Minister to introduce a Bill and address its introduction in clear English consistent with the plain English approach to the law. It prevents a Minister from having to struggle through legalese. It is in its own way, a political lifebuoy.

To introduce a comprehensive Bill such as the DOHAC Draft without an EM is beyond comprehension. I consider it to be gross negligence and an action that treats the ordinary reasonable reader and stakeholders with contempt.

Similarly, it is also noted that the lack of an EM also means the lack of a Statement of Compatibility With Human Rights, vide Part 3 of the *Human Rights (Parliamentary Scrutiny) Act* 2011 certifying that the proposed Act is human rights-compliant.<sup>4</sup> That should have been carried out given the aged care sector is extremely human-rights conscious.

---

<sup>4</sup> The author was a member of an ESO Legislative Working group in the Cosson Administration in 2017 during which time the author worked on the following Draft Bills, all of which contained an EM and Human Rights Compliance Declarations: Budget Measures Bill 2017, Digital Measures Bill 2017, DRCA Bill 2017, Single Path Treatment Bill 2017.

These measures combined with the Draft Regulatory Framework discussed, enable those in aged care to enjoy the statutory protections and guarantee of their human rights while in care from elder abuse and physical and mental mistreatment as has been the case in the past. The kerosene baths scandal is but one example.

### **5.3 Covenants**

There are five references to the term “*Covenant.*”

In examining lack of a Human Rights Compliance and EM, it is contended that the Covenants do not on their face, appear to be sufficient to certify human rights compliance as specified in Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Covenants appear in the Draft as:

Section 5 addresses:

***Objects of this Act***

*The objects of this Act are to:*

*(a) in conjunction with other laws, give effect to Australia’s obligations under the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities;*

Section 7 Definitions, includes:

***Covenant on Economic, Social and Cultural Rights*** means the *International Covenant on Economic, Social and Cultural Rights 2 done at New York on 16 December 1966*.

*Note: The Covenant is in Australian Treaty Series 1976 No. 5 ([1976] ATS 4 5) and could in 2023 be viewed in the Australian Treaties Library on 5 the AustLII website (<http://www.austlii.edu.au>).*

Section 395 (g)(i): *Articles 2, 6 and 12(2) of the Covenant on Economic, Social and Cultural Rights;*

Section 395 (g)(ii) addresses: *Articles 4, 9, 19, 20, 25, 26 and 27 of the Convention on the Rights of Persons with Disabilities;*

### **5.4 Transitional and Consequential Provisions (T&CP)**

The Draft is completely silent on the matter of T&CPs. Notwithstanding the other Aged care legislation slated for repeal and subsequent enactment of this legislation, no reference is made in this Draft of any T&CPs being made in relation to the VEA 1986, MRCA 2004 and DRCA 1988. That makes it impossible for the ordinary reasonable reader and stakeholders, to ascertain what changes if any to aged care legislation will affect the three veteran-specific Acts currently in force or for that matter any other Act in force.

There is no way of ascertaining whether a T&CP will in fact be promulgated which may have a detrimental effect on the rights and entitlement of veterans or widows/ers to DVA-specific aged care under VEA 1986. This is a significant concern, particularly in light of ongoing legislative reform of VEA and MRCA and the melding of these two Acts by 30/6/24.

A great deal of mistrust in relation to that exercise still exists and it is vital that any changes which come into effect with the new Aged Care Act are not of themselves capable of derating or extinguishing the aged care provisions in the VEA.

It is also noted that the Draft is silent on any Savings provisions, also.

## **6 STAKEHOLDER INVOLVEMENT IN THE AGED CARE ACT**

The RAAC Corporation has a total of 22 contentions. These are set out hereunder in three tranches.

### **6.1 Contentions**

It is contended that:

1. The examination of the Draft makes it clear on the facts that the expected involvement by DVA will be minimal at best. That is not acceptable.
2. It also reveals that in terms of involvement as a significant stakeholder group, veterans through their organisations, are not even included for aged care under the new Act.
3. The Act is silent on that issue and appears to rely solely on the continuation of DVA-specific aged care vide the relevant provisions of the VEA 1986. It is as if veterans do not exist.
4. Consequently I consider that a strong case exists for lobbying through DVA or not through DVA, as the case may be, to be considered to enable ESOs to get their feet under the table as part of an ongoing consultation process on addressing aged care issues.
5. Veterans are the conscience of the nation. The unique nature of their service and their families' sacrifices mandate that the establishment of a consultative/ginger group comprising either DVA and ESO representatives jointly or separately from each other be given careful consideration and pursued vigorously.



6. The support for taking this course of action can be found in the *Australian Veterans' Recognition (Putting Veterans and their Families First) Act 2019*.
7. The Act states at s.3: **Object of this Act** *The object of this Act is to acknowledge the unique nature of military service and the sacrifice demanded of those who commit to defend our nation.*

## 6.2 Contentions

It is contended that:

1. The Object and its intent extends to aged care in ensuring veterans are joined to this Act in respect of the Regulatory and enforcement provisions being used to protect them from having their aged care rights and entitlements under the VEA 1986 preserved and protected.
2. A watching brief needs to be undertaken to ensure all rights and entitlements related to aged care are not adversely affected by the current DVA Legislative Reform project and harmonising process.
3. The appointment of a cohort-specific Aged Care Ombudsman given the Act's silence on this, is essential and should be vigorously pursued.
4. Allowing veterans and widows/ers access to services not provided by DVA and at no detriment to their veteran card status be it gold or white.
5. It is not unreasonable to contend that, provisions must be made for recognising the unique service and sacrifices by veterans in having them joined to the new Aged care Act 20123. Their service and sacrifice demands no less.

## 6.3 Contentions

It is further contended that:

1. A further extension of the consultation period should as a matter of priority, be considered.
2. The lack of involvement of DVA in the new legislation to be disappointing.
3. Aged care and its attendant challenges cannot be allowed to operate in a silo-like environment.

4. DVA is now 107 years old and is considered, warts and all, to be world's best practice in the care and provision of services and support to veterans and widows/ers.
5. To not have an entity such as that with some involvement in the operation the Aged Care Act 2023 is an insult to the Department.
6. The experience gained in 107 years by DVA in human care is incalculable.
7. Consideration needs to be given by DOHAC to further include DVA in the relevant veteran-specific care and support.
8. DOHAC is not a member of DVA's National Aged and Community Care Forum. Action should also be taken to admit DOHAC to membership of the Forum.
9. Action should also be taken to enable DOHAC to obtain membership of DVA's newly-formed Aged Care Taskforce.
10. I consider that the admission of DOHAC to membership of both will enable DVA to have a seat at the DOHAC table (after a fashion), whereby DVA will along with ADSO and kindred ESOs, be able to advocate on behalf of its veteran client base in terms of aged care provision under the Aged Care Act 2023.

## **7 SUMMARY**

1. In summary, the proposed new Act is considered to be well-constructed over all and its architecture appears on its face to be sound. The regulatory and accountability obligations appear to be sufficient to protect the human rights of all Australians in aged care.
2. Similarly, the whistleblower provisions will enable matters of abuse and withholding treatment adversely affecting the human rights of aged care recipients, to be reported and acted upon.
3. The ex-service community and DVA need to have more involvement at a strategic and advocacy/representational level with DOHAC than is planned in the Draft.
4. The minimal involvement of DVA and non-involvement of ex-service organisations in a consultational and advocacy role in respect of the new Act is not acceptable on any level and needs to be redressed as a matter of priority.

## **RECOMMENDATION**

That you note the above.

Submitted for your information and consideration.



**Noel Mc Laughlin OAM MBA**  
**Chairman**  
**RAAC Corporation**  
**20 February, 2024**