



Australian Government

Defence and Veterans' Service Commission



Submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee Inquiry into the Defence and Veterans' Service Commissioner Bill 2025 and a related Bill

Ms Penny McKay
Acting Commissioner
Defence and Veterans' Service Commission

February 2026

Introduction

I welcome the opportunity to provide a submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee (the Committee) inquiry into the Defence and Veterans' Service Commissioner Bill 2025 (the Bill) and the related Defence and Veterans' Service Commissioner (Consequential and Transitional Provisions) Bill 2025.

The Defence and Veterans' Service Commission (DVSC) was established under Part VIII E of the *Defence Act 1903* in response to the key recommendation of the Royal Commission into Defence and Veteran Suicide (the Royal Commission) to provide independent oversight and evidence-based advice to the Australian Government on reforms to improve suicide prevention and wellbeing outcomes for serving and ex-serving Australian Defence Force (ADF) members.

The DVSC commenced on 29 September 2025. I commenced as the Acting Commissioner on 22 September 2025 to stand up the new entity while a publicly advertised, merit-based recruitment process is underway to appoint the inaugural Commissioner of the DVSC. The Bill implements the [Government response](#) to the three recommendations of the Senate Standing Committee on Foreign Affairs, Defence and Trade report into the *Review of Schedule 9 of the Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Act 2025* (VETS Act).

Recommendation 1

The Committee recommends that the Australian Government transitions Part VIII E of the *Defence Act 1903* into standalone legislation.

Recommendation 2

The Committee recommends that the Australian Government considers amending Schedule 9 of the *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Act 2025* to include a reference to veterans' families for the purpose of the Defence and Veterans' Services Commissioner's functions.

Recommendation 3

The Committee recommends that the Australian Government reviews the functions and powers of the Defence and Veterans' Services Commission, specifically to consider the amendments proposed by the Interim Head of the Defence and Veterans' Services Commission.

The Bill itself gives effect to recommendation one (1) and the reference to families proposed in recommendation two (2) has been given effect in subparagraph 10(1)(f) of the Bill.

I have included a table at **Attachment A** which outlines the amendments proposed by the Interim Head of the Defence and Veterans' Service Commission, Mr Michael Manthorpe PSM, and where they have been given effect in the Bill to assist the Committee with identifying the changes made in

response to recommendation three (3). In general terms, these changes have the effect of strengthening:

- the independence of the Commissioner
- the Commissioner's powers
- witness protections, and
- the transparency of the Commission's work.

Additional Recommendations

The Jacqui Lambie Network made a further eight recommendations that were also included in the Government's response to the Committee's report. Consistent with the Government response, the Bill gives effect, either in full or in part, to recommendations one (1) (except (1c)), two (2), five (5), six (6), and seven (7) of the Jacqui Lambie Network to strengthen the Bill in the areas listed above.

I consider the standalone Bill better aligns the DVSC with the model proposed by the Royal Commission into Defence and Veteran Suicide, the key features of which were outlined in the Royal Commission's Final Report in Chapter 30: Beyond the Royal Commission. I am satisfied it provides the independence, functions and powers necessary for the Commissioner to hold agencies to account and to influence systemic reform to improve suicide prevention and the wellbeing of our veterans and serving ADF members.

I further note that clause 95 of the Bill retains the requirement for an independent statutory review of the operation of the Act, to be conducted as soon as practicable after the end of the period of 3 years beginning on the day the Act commences. The review must consider the effectiveness of the functions and powers of the Commissioner and the Commission to achieve the object of the Act.

Parliamentary Joint Committee on Human Rights – Scrutiny Report 1 of 2026

On 4 February 2026, the Parliamentary Joint Committee on Human Rights released its scrutiny report on the Bill. The Committee drew the following human rights concerns in relation to provisions within the Bill to the attention of the Minister and the Parliament:

Information sharing and disclosure – Right to Privacy

The Committee noted that several measures in the Bill provide for the collection, use and disclosure of personal information and this engages and limits the right to privacy. While noting these measures are accompanied by some important safeguards, the Committee suggested the following action:

The Committee considers the proportionality of these measures may be assisted were the Bill amended to:

- (a) provide that a person that may be affected by the disclosure or publication of certain information is notified, gives consent where possible and is afforded the opportunity to correct information prior to its disclosure or publication; and
- (b) require that the extent of personal information disclosed is limited to that which is strictly necessary to achieve the purpose for which the information is disclosed, and where possible, information is disclosed in a de-identified or anonymous form.

I appreciate the issue raised, but I do not consider additional amendments to the Bill are required to address this issue.

The DVSC will actively issue privacy notices to notify individuals of the matters contained in Australian Privacy Principle (APP) 5 as required, including the purposes for which the DVSC collects personal information as well as any entities, bodies or people the personal information is usually disclosed to, at the time of collecting personal information wherever possible. These privacy notices will also notify individuals of the ability to correct and access any personal information provided.

The DVSC will actively pursue obtaining consent for disclosure and publication of personal information provided to it, again at the point and time of collection of the personal information wherever possible. The DVSC will also limit disclosure and publication of personal information to that which it has consent to disclose and publish, otherwise wherever possible the DVSC will disclose and publish information in a way that is de-identified as a matter of good privacy practice. The DVSC will also provide individuals with the option of not identifying themselves or using a pseudonym when providing personal information wherever practicable (as required by APP 2).

These matters require a degree of flexibility in approach that depend on circumstances and can be managed adequately at an administrative level.

The Bill also includes a requirement in clause 23 to afford procedural fairness to an official of the Commonwealth or any other person where a draft inquiry report includes a preliminary finding or proposed recommendation that is critical (either expressly or impliedly) of them. In those circumstances the Commissioner must give the official or person concerned:

- (a) a statement setting out the finding or recommendation; and
- (b) a reasonable opportunity to respond to the finding or recommendation.

Subclauses 22(3) also requires that, where an inquiry relates to the exercise of powers, or the performance of functions, by a Commonwealth entity, the Commissioner must give the accountable authority of the Commonwealth entity:

- (a) the draft inquiry report, or the part of the draft inquiry report that relates to the entity; and
- (b) a reasonable opportunity to comment on the report or the part of the report.

The Commissioner also has discretion to provide the draft report or part thereof to any other person or body if the Commissioner considers it appropriate to give the person or body an opportunity to comment on the report (subclause 23(4)).

As part of this process, any person who is provided with an opportunity to comment would be afforded the opportunity to correct mistakes of fact and respond to or comment upon the content, including the removal of any personal information, for the consideration of the Commissioner prior to publication.

Self-incrimination – Criminal Process Rights

The Committee reviewed the provisions dealing with the privilege against self-incrimination which engage the right to a fair trial and noted that while the measure provides for a use immunity, there does not appear to be a derivative use immunity. The Committee noted that compelling individuals to provide information is likely to assist the Commissioner to gather relevant information and fulfil their functions and as such the measure is likely to be rationally connected to the stated objective. However, the absence of a derivative use immunity significantly increases the potential extent of the interference with the right not to incriminate oneself and as such, the measure may not be proportionate.

The Committee considers the proportionality of this measure may be assisted were the Bill amended to provide for a derivative use immunity.

I note the lack of derivative use immunity in the Bill is not unusual for oversight entities and is in keeping with the approach taken in both the *Royal Commissions Act 1902* (see section 6P) and the *National Anti-Corruption Commission Act 2022* (see section 113). The Explanatory Memorandum (EM) to the Bill explicitly acknowledges that a derivative use immunity was not included in the Bill and sets out additional protections in the Bill that are available to witnesses providing evidence (see paragraph 542).

The Commissioner is empowered to disclose certain information to specified persons and bodies including the police and the Director of Public Prosecutions (see clauses 48, 49 and 51). I consider that inclusion of a derivative use immunity would be inconsistent with, and significantly limit the operation of, these information sharing provisions.

I note the Bill expands the availability of a use immunity for self-incriminating material beyond information provided in response to a summons or notice to produce to include information provided voluntarily or at the request of the Commissioner.

Contempt – Freedom of Assembly and Expression

The Committee noted the Bill would make it an offence to obstruct or hinder the Commissioner in the performance of the Commissioner's functions or exercise of their powers and considers this

engages and limits the rights to freedom of assembly and expression. The Committee considered there to be a risk that the offences are framed so broadly they may criminalise legitimate conduct that would otherwise be protected under international human rights law, such as peaceful protest (including protests not related to the Commission) and legitimate criticism of the Commission.

The Committee further considered that the measure is not drafted in the least rights restrictive way to achieve the stated objective, noting there appears to be overlap between the two contempt offences.

The Committee considers the proportionality of this measure may be assisted were the Bill amended to remove subclause 66(1) (which would retain only the contempt of the Commission offence) and provide that the conduct that the offence seeks to criminalise must reach such a level that the Commission is effectively unable to operate.

While I accept that where the contempt offences apply in relation to hearings conducted by the Commissioner there may be some overlap, subclause 66(1) applies to all the Commissioner's functions and powers, not just hearings. It is intended to protect the integrity of the Commissioner's processes and support the Commissioner to undertake their role. The issue of veteran suicide is pressing and substantial. It warrants possible limitations of the rights to freedom of assembly and freedom of expression, so the Commission can operate effectively. Further, without clear legislative clarification, it would be impractical and legally difficult to define the specific point at which the Commission is effectively unable to operate because of a person's conduct. This point is likely to vary depending on the circumstances existing at the time of the conduct.

Contempt offences are generally only pursued in the most serious of cases and would not be pursued in cases of legitimate conduct, such as peaceful protest, and legitimate criticism of the Commissioner. It is unlikely such matters would satisfy the Prosecution Policy test that a prosecution must be in the public interest. However, it is important the Bill retains appropriate offences to address serious conduct intended to show disregard for and undermine the integrity of the Commissioner, their functions and powers.

Senate Standing Committee for the Scrutiny of Bills – Scrutiny Digest 2 of 2026

The Scrutiny of Bills Committee (Bills Committee) also released its scrutiny digest on 4 February 2026 which included consideration of the Bill.

The Bills Committee noted that Division 5 of Part 3 of the Bill would establish various coercive information-gathering powers that may be exercised by the Commissioner for the purposes of a 'special inquiry'. Clause 57 would criminalise non-compliance with a notice requiring attendance at a hearing or the production of information, documents or things relevant to a special inquiry, without reasonable excuse.

Under clause 60, legal professional privilege would not constitute a reasonable excuse not to provide information unless a court or the Commissioner determines the privilege applies. The privilege against self-incrimination is also abrogated in clause 62 and would not provide a reasonable excuse, although information provided would be subject to a use immunity only.

The Committee draws its scrutiny concerns to the attention of senators and leaves to the Senate as a whole the appropriateness of Clause 60 modifying the application of legal professional privilege in the context of Commission proceedings.

The Committee also requests the minister's advice as to why it is necessary and appropriate to abrogate the privilege against self-incrimination pursuant to Clause 62. The Committee's consideration of the appropriateness of this response will be assisted if it explicitly addresses relevant principles as set out in the Guide to Framing Commonwealth Offences¹¹ to support the absence of a derivative use immunity.

In relation to the privilege against self-incrimination and derivative use immunity, I refer to my comments above.

As noted by the Bills Committee, the abrogation of legal professional privilege is qualified in the Bill, as it remains a reasonable excuse for failing to provide information where the privilege has been upheld by a court or accepted by the Commissioner. The Bill permits the Commissioner to require the person to produce information for inspection for the purpose of deciding whether a legal professional privilege claim should be accepted. This is a discretionary power and would generally only be used where that information is required to determine the claim. This approach is consistent with the power of courts to review documents where legal professional privilege is claimed.

Where the claim of legal professional privilege is accepted, the documents are returned, and the information disregarded for the purpose of the inquiry. If the claim is rejected, the Bill provides for review of the decision by the Administrative Review Tribunal.

The Committee reflected that the EM refers to the public benefit in equipping the Commissioner with appropriate powers of inquiry (refers para 522 of the EM) but does not further articulate why the systemic oversight of the defence and veteran ecosystem constitutes an exceptional circumstance that justifies the qualified abrogation of the right to legal professional privilege.

Providing the Commissioner with information for the purpose of inspection, under the compulsion of law, does not remove legal professional privilege or waive privilege over the information. However, it is important the Commissioner can conduct full and genuine inquiries as part of exercising relevant functions, with access to all relevant information.

Similar to my comments above with respect to contempt, I consider the issue of veteran suicide is pressing and substantial. It justifies the qualified abrogation of legal professional privilege such that all relevant information is available to the Commissioner in the performance of their functions, and the Commissioner is able to provide evidence-based advice to influence systemic reform to improve

suicide prevention and wellbeing outcomes for serving and ex-serving Australian Defence Force members. This is consistent with the view of the Royal Commission, that “[b]y monitoring, reviewing, investigations and reporting on actions taken to prevent suicide and suicidality, [the DVSC] can be a catalyst for change across Australian Government agencies.”¹

House of Representatives Debate – Opposition amendment

Clause 18 of the Bill requires the DVSC to complete two inquiries into the Government's implementation of the Royal Commission's recommendations – the first by 2 December 2027 and a second inquiry by 2 December 2030.

During the debate of the Bill in the House of Representatives on 11 February 2026, the Opposition moved an amendment to clause 18 of the Bill which would bring the reporting date for the first inquiry forward to 30 September 2026. The amendment was negated, with the Government noting this issue may best be considered as part of this Inquiry.

The dates proposed in the Bill for the finalisation of the two inquiries under clause 18 were initially put forward by the Interim Head of the DVSC, Mr Michael Manthorpe PSM, in his submission to this Committee's review into Schedule 9 of the VETS Act, which informed recommendation 3 of the Committee's report. He noted these timeframes would:

“provide transparency for relevant government stakeholders and those in the defence and veteran community that the two reports will be undertaken in a timely manner. The proposed timing is intended not only to take account of budget cycles and implementation timeframes such that agencies have sufficient time to make meaningful changes, but also that the Commissioner's reports are delivered within timeframes that ensure its findings have value and impact.” [May 2025, paragraph 53]

The Government accepted these timeframes as reasonable and included them in the Bill. The timeframes have further significance in that they are the third- and sixth-year anniversaries of the Government's response to the Royal Commission's recommendations in its final report.

It is important to note these are the timeframes for the completion of inquiries into the Commonwealth's implementation of the Government's response to all 122 final report recommendations and 13 interim report recommendations. The DVSC will be required to report on the implementation of all 135 recommendations by 2 December 2027 and then report on all the recommendations again by 2 December 2030.

I recognise the urgent need for reform in the Defence and veteran ecosystem and fully support the provision of timely and transparent reporting on the Government's implementation of recommendations. To afford additional flexibility for the DVSC to deliver these reports, the Bill

¹ Royal Commission, Final Report, volume 6, chapter 30, p 279, para 9.

includes a new provision which will permit the Commissioner to prepare one or more final reports for each of the two inquiries (see subclause 24(3)). This will allow for the Commissioner to tranche reports and deliver the reports throughout the 5 year period, rather than addressing all 135 recommendations collectively in one large report when they are due in December 2027 and December 2030.

I consider this new provision will provide the opportunity for greater and more timely transparency about implementation progress and the work of the Commission over the five-year period. As an example, I recently commenced an inquiry into the implementation of recommendations 9 – 13 of the Interim Report of the Royal Commission which deal with veterans and their families access to information from the Department of Defence and the Department of Veterans Affairs. The Commission is currently calling for public submissions, and the inquiry will result in a report to be published later this year.

In my view, moving the reporting date for the first inquiry forward by over a year to 30 September 2026, would not allow for meaningful review of the implementation of all 135 Royal Commission recommendations and would not necessarily provide greater transparency to the community.