



SUBMISSION IN RESPECT OF -

National Commissioner for Defence and Veteran Suicide Prevention Bill 2020

Returned and Services League of Australia



RSL

NATIONAL COMMISSIONER FOR DEFENCE AND VETERAN SUICIDE PREVENTION BILL 2020

Table of Contents

RSL supports an independent statutory position	2
RSL raises the following issues for consideration:	2
Independent review of past Defence and veteran suicides	2
Interaction with Coroners	3
Recognition of RSL's role as an advocacy body	4
Veteran Family Advocate	4
Arrangements relating to Staff of the Commission (Clause 14)	5
Commissioner's functions - to inquire into the circumstances of Defence and veteran deaths by suicide (Clause 11(a))	5
General principles for the performance of the Commissioner's functions (Clause 12)	5
Appointment of the Commissioner (Clause 16)	6
Inquiries (Clause 26) – Suggested amendments	6
Release of evidence given at a private hearing (Clause 29)	7
Requirement to give prior notice of likely disclosure of operationally sensitive information (Clause 33) or intelligence information (Clause 34)	7
Dismissal, etc of witness (Clause 51)	8
Response to report by the Commonwealth (Clause 62)	8
Reports if appropriate action not taken on Commissioner's report (Clause 62)	8
Rules (Clause 65)	8

NATIONAL COMMISSIONER FOR DEFENCE AND VETERAN SUICIDE PREVENTION BILL 2020

This submission in respect of the **National Commissioner for Defence and Veteran Suicide Prevention Bill 2020 (Bill)** has been prepared to represent RSL National's views with input from all RSL State Branches. This submission represents the formal view of Australia's foremost ex-service organisation (ESO) involved in the provision of advocacy services.

Throughout this report, all references to the views of the 'RSL' refer to RSL Australia, which is led by RSL National and includes the RSL State Branches.

RSL acknowledges the work already undertaken by the Government to support all current and former members of the Australian Defence Force (ADF) who have been identified as being at risk of suicide. Many of the initiatives have been detailed in the Australian Government response to **The Constant Battle: Suicide by Veterans**. We are pleased to note that many of the 24 recommendations put forward by the Senate Inquiry have been implemented or are in the process of being implemented.

RSL supports an independent statutory position

Although strong voices have called for a Royal Commission into Defence and veteran suicides, RSL supports the establishment of the National Commissioner for Defence and Veteran Suicide Prevention (**National Commissioner**), whose key role is to identify and understand the factors and systemic issues that may contribute to suicide among serving and former ADF members. We also support the position's statutory independence in conducting investigations and making recommendations to Government about actions and strategies to prevent future deaths by suicide. RSL acknowledges the Government's stated intention for the Commissioner to have the powers of a Royal Commission to investigate the cases of veterans who have taken their own lives, including prior to commencement of the legislation. RSL also notes that the Commissioner will report to Parliament each year and monitor the effectiveness of any initiatives undertaken by the Department of Defence (**Defence**) and Department of Veterans' Affairs (**DVA**) in response to the findings.

RSL raises the following issues for consideration:

Independent review of past Defence and veteran suicides

The Overview Information issued by the Attorney-General's Department states that an interim National Commissioner will also conduct an independent, comprehensive review of the more than 400 ADF member and veteran suicides since 2001. At individual families' request, the Commissioner can consider deaths prior to 2001. RSL notes that the Terms of Reference for the review will be publicly announced, with an interim National Commissioner appointed. The draft Bill does not currently contain any provisions in this regard. RSL would like to see Terms of Reference and a timeline for this activity included in the Bill.

Specific reference should be made in the Bill, as well as the Terms of Reference relating to the review of suicides since 2001, to the methodology for identifying relevant cases. If the Government does not intend for the Bill to cover the review, we ask that clarification be provided as to when the Terms of Reference will be published, and the timeframe that will be allowed for comment.

NATIONAL COMMISSIONER FOR DEFENCE AND VETERAN SUICIDE PREVENTION BILL 2020

Clarification needs to be provided as to how the ‘comprehensive review’ may differ from the National Commissioner’s proposed powers of ‘inquiry’ under the Bill. What process will the comprehensive review involve and how would it differ to an Inquiry under the Bill or, indeed, a Royal Commission? In addition, will the requirements for Government to respond to the Interim National Commissioner’s report align with those in the Bill?

Interaction with Coroners

RSL notes that the Commissioner is expected to work together with State and Territory Coroners to understand the issues contributing to ADF member and veteran deaths by suicide, and the Commissioner’s role does not change the role of Coroners. The Government has advised that it is working with State and Territory governments and Coroners to establish the National Coronial Centre for Defence and Veteran Suicides, which will help Coroners develop a common understanding of the issues to be considered in individual Defence and veteran deaths by suicide, and to support the Commissioner in identifying broader systemic issues for further inquiry.

RSL considers that the methodology for deciding which suicides to review needs to be established and made public as it is insufficiently defined. RSL holds the view that a full understanding of the factors and systemic issues leading to suicide will only be established if suicides across a wide range of circumstances and age groups are considered. It should not be restricted only to those cases which are raised with the Commission by family or the media.

It is understood that the Commissioner will be advised by the National Coronial Centre for Defence and Veteran Suicides of all identified suicides. If there is a delay in establishing the National Coronial Centre, **a process for identifying veteran suicides prior to its implementation needs to be established.**

In circumstances where the deceased veteran’s DVA entitlements confer automatic death benefits to the dependants, DVA has no mechanism to be able to identify those veterans who have died by suicide unless they are informed by family members. If the Commissioner replicates that approach and fails to identify these suicides for consideration, it will perpetuate an existing weakness in the system. It is hoped that the establishment of an effective National Coronial Centre for Defence and Veteran Suicides would resolve this existing issue.

It is considered essential that suicides in the older veteran cohort are also identified and considered, to establish the contributing factors in these deaths. Although the death of young veterans has had a great deal of media scrutiny, very little research has occurred to identify or investigate suicides of older veterans.

Whilst the National Coronial Centre for Defence and Veteran Suicides will assist the Commissioner to develop a common understanding of the issues for consideration in individual Defence and veteran death by suicide, there is a need for accurate, reliable, and complete data in relation to the incidence of suicide amongst veterans of all ages.

There appears to be no provision for the Centre to provide statistical data regarding suicides and this should be included as an essential requirement.

NATIONAL COMMISSIONER FOR DEFENCE AND VETERAN SUICIDE PREVENTION BILL 2020

Recognition of RSL's role as an advocacy body

The Bill currently includes few mechanisms to directly link the Commissioner to those in the veteran community who may have a broad understanding of issues related to veteran mental health and wellbeing.

Submissions by veterans' families are fundamentally important in understanding the difficulties faced by individual veterans (noting our comments below in relation to the importance of families being able to choose whether they provide information to the Commissioner).

However, an investigation into preventive measures should also consider the factors which are common across a broad range of veteran suicides, as well as difficulties that veterans are currently facing that may put them at risk.

RSL has direct contact with a broad range of veterans and has a broad network of peers and community members across the country who are also in close contact with veterans – both those who are thriving and those who are vulnerable.

RSL Queensland also makes significant investments into medical research. The Veteran Mental Health Initiative, currently being conducted by the Gallipoli Medical Research Foundation, aims to build a strong foundation of research into factors affecting the mental health of contemporary veterans. It comprises two major studies: the PTSD Initiative, and the Veteran Reintegration Study.

RSL requests a mechanism for it to brief the Commissioner on an annual basis regarding its knowledge of veteran vulnerabilities, both from its own extensive interaction with veterans and its research findings.

RSL notes that Clause 11(f) requires the Commissioner to promote understanding of suicide risks for Defence members and veterans and factors that can improve the wellbeing of Defence members and veterans. An established mechanism to inform key ESOs would meet the requirements of this clause. **RSL also seeks the opportunity to work closely with the Veteran Family Advocate regarding the delivery of remedial services.**

Veteran Family Advocate

The Government has advised that: "A new role of Veteran Family Advocate within the Veterans Affairs portfolio will provide strategic advice on policy and operational issues affecting veterans' families and will work closely with the National Commissioner so that findings can be rapidly translated into action to mitigate suicide risk factors association with DVA's service delivery."

It is noted that the new Veteran Family Advocate will be an additional member of two Commissions that deliver services to veterans and their families — the Repatriation Commission and the Military Rehabilitation and Compensation Commission.

The provision of information from the Veteran Family Advocate to the Commissioner is supported by the RSL. However, the details of the interaction between the Veteran Family Advocate and the National Commissioner do

NATIONAL COMMISSIONER FOR DEFENCE AND VETERAN SUICIDE PREVENTION BILL 2020

not appear to be covered in the Bill. **There needs to be a legislative framework which will enable the Attorney General's Department, the Department of Defence, and DVA to work closely together.** No specific mention has been made regarding issues that may have arisen from actions involving Military Superannuation payments and hence, the potential involvement of the Commonwealth Superannuation Commission (CSC). RSL notes that the involvement of the Veteran Family Advocate will be *'to work closely with the National Commissioner so that findings can be rapidly translated into action to mitigate suicide risk factors association with DVA's service delivery'*. **Clarification is requested on how findings involving the CSC will be translated into action to remedy any concerns regarding the delivery of their services.**

It is noted from page 7 of the Overview Information that the *'IGADF will independently investigate the death of ADF members, where the death appears to have arisen out of, or in the course of, the member's service. The IGADF can also conduct inquiries into matters concerning the military justice system and provides for an independent review of complaints made under Defence's Redress of Grievance process.'*

Clarification is required as to whether the Commissioner can conduct an independent investigation into possible Defence involvement in a serving member's death, or if it will rely on the report prepared by the IGADF.

Arrangements relating to Staff of the Commission (Clause 14)

Clause 14 identifies the staff assisting the Commission.

RSL recommends that a mental health professional be attached to the Commissioner. To be effective, the Commission needs to appoint an appropriately qualified mental health professional with relevant research and clinical experience, alongside the recommended Legal Counsel and staff.

Commissioner's functions - to inquire into the circumstances of Defence and veteran deaths by suicide (Clause 11(a))

Consideration should be given to including an express right of inquiry in the Bill where a person has survived a suicide attempt and the person, or their family, expressly requests an inquiry by the Commissioner. Inquiry in those circumstances would help to inform the Commissioner's assessment of broader systemic issues.

General principles for the performance of the Commissioner's functions (Clause 12)

RSL notes that it is a general principle of the legislation (clause 12) that the Commissioner should take a trauma-informed and restorative approach. In that regard, the Government indicates that "the principles of choice, safety, confidentiality, consultation, and informed participation will underpin both the way the Commissioner and their Office operates, and how families, veterans and other community members will be supported to contribute. These principles are intended to recognise both the special role and potential contribution of families and those affected by deaths by suicide, while also recognising that some may not wish to share their experience and should have the choice about whether or not to participate."

NATIONAL COMMISSIONER FOR DEFENCE AND VETERAN SUICIDE PREVENTION BILL 2020

Although we commend this approach, RSL would also like to see express recognition in the Bill that families and other affected persons **may not** wish to be consulted and may elect not to be involved.

Clause 12(3) of the Bill should expressly recognise the possibility that families and other affected persons may not wish to be consulted.

Appointment of the Commissioner (Clause 16)

RSL suggests that the Commonwealth Department of Health should have input into who is an appropriate person, given that suicide is a mental health issue. This will remove the possible perception that there is a conflict of interest if former or current Defence staff are being considered for the role.

Inquiries (Clause 26) – Suggested amendments

Clause 26(1)(a) states: *“the person’s service in the ADF (including training and, for a person who has ceased serving in the ADF, the person’s transition from the ADF)”*.

Clause 26(1)(a) should be amended to read: “the person’s service in the ADF (including training and exposure to stressors during service and, for a person who has ceased serving in the ADF, the person’s transition from the ADF)”.

This addition will ensure the legislative capability to examine **all** aspects of a veteran’s service. It could also enable the Commission to make findings or comparisons in relation to operational and peacetime service.

Clause 26(1)(b) - Issues (including relevant personal circumstances) connected to:

- (i) the manner or time in which the person was recruited to the ADF; and*
- (ii) for a person who has ceased serving in the ADF – the manner or time in which the person transitions from the ADF.*

The use of the word ‘manner’ in this sub clause is questioned and it is suggested that the word ‘process’ could be considered as an alternative.

Clause 26(1)(c) - the availability of health, wellbeing, and counselling support services to the person in the person’s capacity as a defence member or veteran and the effectiveness of any such services.

The Commission should be able to make findings during an inquiry on whether a veteran having access to independent medical practitioners could have led to a different outcome. The RSL is of the view that this specific consideration is relevant given concerns publicly raised around standards of ADF medical care. The emphasis needs to be placed on the availability and **quality** of health care, wellbeing, etc.

NATIONAL COMMISSIONER FOR DEFENCE AND VETERAN SUICIDE PREVENTION BILL 2020

Clause 26(1)(d) The quality and effectiveness of responses to any complaints made by the person or the person's family, friends, or associates in relation to:

- (i) the health and wellbeing of the person; or*
- (ii) the person's access to support services mentioned in paragraph (c)*

The health and wellbeing of all persons who are required to give evidence at an Inquiry must also be considered.

How will the wellbeing of Defence and DVA staff and ESO staff be protected during the investigative process? The process of looking into the deceased person's access to support services may require an intensive investigation into the actions of specific individuals. Will the identity of these individuals be protected? Will they be provided with support services during any prolonged investigation?

It must be recognised that those who were engaged with supporting the veteran prior to death (including staff of Government Departments) might also be affected by the death, and that the trauma informed principles apply to them as well.

Release of evidence given at a private hearing (Clause 29)

Although hearings may be held 'in private' in relation to personal and private information (clause 28(1)), it appears the Commissioner is at liberty to disclose the information, as long as they '**consider** consulting' any witness or other affected person and consider any preference the witness communicates and any potential risk of prejudice to relevant persons; it is not mandatory to consult the witness or other affected person before publication. These provisions are materially different to provisions of the Royal Commissions Act 1902 (Cth) regarding private hearings and the publication of personal information that was provided at a private hearing could result in significant mental health and other consequences.

Clarification is required regarding why these provisions do not require personal information provided at a private hearing to remain confidential and/or be de-identified. RSL urges that clause 29(2) is amended to require that, in the case of a private hearing that involved disclosure of personal information, the Commissioner must at a minimum consult the witness and take into account the preferences that they communicated in relation to publication of information provided. In addition, the Bill should provide for de-identification of information provided in private by an individual prior to any publication and consideration should be given to inclusion of offence provisions in relation to unauthorised use or disclosure of information given at a hearing held in private under clause 28(1).

Requirement to give prior notice of likely disclosure of operationally sensitive information (Clause 33) or intelligence information (Clause 34)

It will be fundamentally important that any summons or information request from the Commissioner clearly flags this requirement by means of a warning on the relevant notice. This requirement would ideally be made clear in the legislation. The RSL acknowledges that it may be covered in the Regulation but notes that the Regulation has not yet been published for consultation.

NATIONAL COMMISSIONER FOR DEFENCE AND VETERAN SUICIDE PREVENTION BILL 2020

Dismissal, etc of witness (Clause 51)

It is noted that it is an offence if a person:

- (a) dismissed an employee from employment or a Defence member from the ADF
- (b) prejudices an employee in their employment by the person or disciplines a Defence member in their capacity as a Defence member

on account of the employee or Defence member being required to give evidence.

It is also noted that Sub-clause (1) does not apply if the employee or Defence member was dismissed, prejudiced, or disciplined for some reason other than the reasons mentioned in subsection (1).

Because the offence provision does not apply if the employee or Defence member was dismissed, prejudiced or disciplined for some other reason, and the onus is on the defendant to prove this, RSL is concerned that this could be used as a loophole for dismissal.

Response to report by the Commonwealth (Clause 62)

The timeframe for a response by the Government to the Commissioner's annual reports is '*as soon as reasonably practicable*'.

A fixed timeframe should be specified for publication of an interim response (which would itself confirm the timing of a final response) to give all relevant parties some certainty regarding response times.

Reports if appropriate action not taken on Commissioner's report (Clause 62)

There is no requirement for the Government to respond or take other action in relation to any further report from the Commissioner. Clarification is required as to why there is no obligation on the Government to formally respond. Is it intended that the Commissioner would be able to comment further on any action or inaction in that regard in their next annual report?

There should be an express requirement for the Commissioner's annual reports to track the status of actions taken in response to each recommendation made by the Commissioner until such time as the Commissioner is satisfied that relevant action has been finalised.

Rules (Clause 65)

The Government should provide information to all stakeholders regarding the proposed timing for publication of the draft Regulation and the proposed consultation period as soon as possible.