



DEFENCE FORCE WELFARE ASSOCIATION

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The Committee Secretary
Senate Foreign Affairs, Defence and Trade Committee
PO Box 6100
Parliament House
CANBERRA ACT 2601

SUBMISSION TO THE SENATE FADT LEGISLATION COMMITTEE'S INQUIRY INTO THE TWO BILLS RELATING TO THE NATIONAL COMMISSIONER FOR DEFENCE AND VETERANS SUICIDE PREVENTION

Introduction

The Defence Force Welfare Association (DFWA) welcomes the opportunity to make a submission to the **Senate FADT Legislation Committee's** Inquiry into the National Commissioner for Defence and Veteran Suicide Prevention Bill 2020 and the National Commissioner for Defence and Veteran Suicide Prevention (Consequential Amendments) Bill 2020. The two Bills having been introduced to Parliament on 27 August 2020.

The Bills are of specific interest to the not only DFWA but to the whole ex-service community because they represent culmination of long-held concerns that those Government Departments charged with administering veterans' legislation had long lost sight of their original beneficial intent. And seemingly lost sight also of the deleterious affect all this was having on the mental state of veterans, some of whom are known to have contemplated the extreme involving their own life.

There have been a series of varying inquiries into veterans' suicides over the last few years, not the least of which included a comprehensive Senate FADT Committee Inquiry "*The Constant Battle: Suicide by Veterans*" that concluded with a report in 2017. Evolving out of that Inquiry have been initiatives such as a new Veteran Mental Health and Wellbeing Strategy, and a National Action Plan on veterans' mental health and wellbeing, including suicide prevention.

Acceptance of the Concept of a Commissioner

There was hope that the aforesaid initiatives would individually and in concert stem the rate of suicides among veterans once they had transitioned out of the ADF. In reality, they seemed to have had only a minor impact. Increasing calls for a judicial inquiry was an inevitable consequence.

When the Prime Minister finally answered those calls on Wednesday 5 February 2020 by announcing that he would appoint an independent National Commissioner for Defence and Suicide Prevention who would be tasked to investigate cases of suicide, his initiative in doing so was widely applauded within both the veteran community and among serving ADF members. DFWA and its Alliance of Defence Service Organisation (ADSO) partners welcomed it.

There was a view that, notwithstanding some staunch continued support for a Royal Commission into veterans suicides, a National Commissioner would serve veterans far better than another inquiry that many felt would do little more than lead yet again to a lengthy process of inquiry and result in a series of tedious conclusions.

In welcoming the notion of a suicide Commissioner, DFWA initially proffered the following:

- There were many issues adversely impacting on the mental health and well-being of veterans and their families, many of which contribute to relationship and family breakdowns, financial distress, homelessness, incarceration and sometimes leading to veteran suicide;
- It was important that the appointed National Commissioner looks at the entire spectrum of inter-related and complex issues all of which adversely affect the well-being of veterans and their families and which, for some, tragically leads to suicide;
- There are issues that have not been identified and addressed in previous studies such as the true impact of the transition process from military service to civilian life. There is a need for urgency in establishing the position and commencing the task toward a more considered transition process;
- It was essential that the veteran community be continually briefed on the establishment of the positions, the appointment of suitably qualified individuals and that the government be accountable every step of the way; and
- The veteran community would respond positively if it is treated as partners in a new chapter in the treatment and care of veterans and their families who served at the Nation's bidding.

Comments on the Legislation

Without hesitation, DFWA broadly supports the aims and functions of the legislation as set out in S3, s11 and s12 respectively of the National Commissioner for Defence and Veteran Suicide Prevention Bill. The choice of a person as Commissioner who has specific 'lived experiences' is noteworthy.

More specifically but not meant as criticisms of the legislation, the following comments are offered:

Appointment of the Commissioner and Staffing

- The National Commissioner is appointed by the Governor-General and may only be terminated under specific circumstances. This affords the Commissioner a high level of protection from both political interference and influence. DFWA considers this arrangement necessary in the circumstances.
- All staff supporting the National Commissioner are Australian Public Service employed by the Attorney-General's Department. The presumption is that the Department effectively seconds them to the Commission. That being the case, DFWA expresses the need for care that there should be no influencing factors applied by the Department on the performance of the Commissioner and his/her staff. Employment powers should not be used to influence the workings of the Commissioner and staff.

Powers of the Commissioner

- It is noted that the Commissioner is to unambiguously avoid prejudicing current or future criminal or civil proceedings or other contemporaneous inquiries. DFWA again considers this to be entirely appropriate, given the nature of the National Commissioner's functions.

- The powers to be granted to the National Commissioner are stated to be exactly those that would be granted to a Commissioner of a Royal Commission, with the exception that the Commissioner is permanently granted these powers, whereas a Royal Commission's powers are invariably time limited. DFWA considers these permanent powers to be appropriate, given the ongoing scope of the Commissioner's task and the unfortunate likelihood that veteran suicides, while hopefully will be reduced in number, could not possibly be eradicated altogether.
- As the Commissioner's inquiry function will not lead to the Commissioner making findings of civil or criminal wrongdoing, or to making findings on the cause of death in relation to a defence or veteran death by suicide, DFWA considers that these functions should remain within the jurisdiction of coroners and civil or military courts.
- In exercising his/her powers, the National Commissioner should take a trauma-informed and restorative approach and should take into consideration that families and others affected by defence and veteran death by suicide have a unique contribution to make to the Commissioner's functions. DFWA considers that the Commissioner must recognise that those families and other affected persons wish to be consulted.

Reporting Provisions

- While (s60 and s61) of the Bill provides for the National Commissioner to report annually via the Prime Minister and relevant Minister to Parliament, and submit additional reports as may be deemed necessary, DFWA holds some reservations about whether such reports and actions taken under s62 goes far enough in accountability and transparency terms. DFWA considers that there should be some mechanism whereby, say ESORT Roundtable members, are consulted prior to the tabling of the annual report and any other report. They should be given the opportunity to comment/contribute/recommend to Parliament on the Commissioner's performance and/or recommendations before the Report is tabled or during consideration by the Parliament.
- DFWA proffers that consideration could be given to possibly having a separate review together with stakeholder involvement and consultation after 12 months to assess the way in which the Commissioner has progressed in the task, he/she has been given.

Privacy Matters

- DFWA notes with satisfaction that the draft Bill includes adequate provisions for protecting privacy, operational and intelligence sensitive information.
- DFWA also notes that the Offences/Witness Protection/Contempt provisions within the draft legislation are strong and commends the foresight of those involved in crafting it.
- DFWA notes that the majority of the National Commissioner's hearings are intended to be public ones. The Commissioner nonetheless has the option to hold private hearing where there is cause to believe that the information relating to the deceased person, family or associates of that deceased person may be disclosed at the hearing and the information is personal and private. DFWA agrees that hearings should also be private in whole or part where evidence that discloses operational sensitive information may be given. Similar consideration should apply to information that may prejudice national security. In the latter event, the Commissioner must consult any law enforcement or security agency to which the evidence/information pertains or concerns.

Suicide Data Collection Difficulties of the Past

- There is little doubt that the absence of accurate data on veterans' suicides has plagued efforts to scope the real problem at hand. DFWA thus contends that there is an urgent need for accurate, reliable and complete data on veteran suicides that appears not to be addressed by the legislation. Services and programs cannot be tailored to the needs of veterans at risk unless there is proper scoping as to when, how many, and why (if known) ex-service personnel are taking their own lives. Some States appear not to have developed a 'suicide deaths register' along the lines in Queensland, Tasmania and Victoria.
- DFWA contends that reliable data at national level about veteran suicide is essential, and believes that the National Commissioner must work with the Australian Institute of Health and Welfare to improve the timeliness, accuracy and frequency of reporting of veteran suicide. This will require consistent data collection and transfer from the States who have responsibility for coronial matters.
- DFWA contends that the National Commissioner should also gather data on the risk factors associated with veterans suicide, such as the nature of the transition process, post-ADF employment, housing, adjusting to civilian life, linking veterans with supportive networks and making new non-military social connections, and cultural issues relating to veterans with Indigenous backgrounds. A holistic approach that focuses on prevention and early intervention is required, one that examines wellbeing throughout the whole of a veteran's life.

Recognition of the Unique Nature of Military Service

Somewhat unsaid within the wording of the legislation but DFWA believes that, by way of the mere fact that a National Commissioner for Defence and Veteran Suicide Prevention is to be created, there is recognition that military service has its special demands and is unique. Such recognition should not be just implied but be overt within any veterans-related legislation. DFWA believes that the concept of the **'Unique Nature of Military Service'** should universally underpin not only all legislation affecting veterans but underpin the ADF's ethos as well.

As brief background, the unique nature of military service concept is one that long ago displaced the notion of military service being merely a 'Profession of Arms'. Today, literally all legislation affecting ADF members and/or veterans debated in Parliament by all sides of politics now reference military service as being 'unique'. That uniqueness is now also regularly referenced at all Defence Force Remuneration Tribunal hearings, and Workplace Remuneration determinations.

No wonder the strong emphasis on giving recognition to military service by not only the Government but by policy makers on all side of politics. Recent years have born witness to a pronounced shift in assumptions and attitudes underpinning the way military service is viewed. Policy makers are increasingly attracted to the idea that soldiers, sailors and airmen should be adequately compensated by salary and allowances for their service both during service and after it has ceased.

Military service by some sections of the community may have once been mistakenly seen as comparable to other forms of service, such as Emergency Services, involving risk and danger.

Critically, none are required to forego their inalienable human rights, recognized in the Universal Declaration of Human Rights namely, life, liberty and the security of the person (Article 3). Australia is a signatory of the Declaration, adopted by the General Assembly of the UN in 1948

In volunteering for military service and joining an ADF arm of it, a member must surrender his/her basic rights under Article 3. Without recourse, this places their liberty and security of person in the hands of the Nation State. While this surrender is not unconditional, though *in extremis*, it is absolute.

The Nation State, for its part, accepts the obligation to preserve, as far as is consistent with the achievement of any military mission, the physical and spiritual wellbeing of such individuals who place themselves at its disposal. This obligation must invariably extend beyond the period of service itself, to the physical and psychological consequences of that service.

In no other calling, occupation or profession has the Nation State the power to accept or demand the surrender of these rights. Military service in this fundamental respect is unique, and the obligations placed on the Nation State are inescapable, as it is enduring.

These issues are at the centre of DFWA's purpose. It believes that the very essence of the proposed legislation to create a National Commissioner for Defence and Veteran Suicide Prevention is rooted in the '**Unique Nature of Military Service**' concept. This should be given recognition accordingly.

Summary

The Defence Force Welfare Association is an Australia-wide organisation established in 1959 to specifically foster the best interests and welfare of all members of the ADF and their families in any matter likely to not only affect them during their period of service but afterwards as well.

Thus, personnel issues, particularly as they relate to still serving members, are very much at the forefront of the Association's activities. That includes the following:

- Advocating improved conditions of service for ADF members;
- Providing advocacy services on behalf of serving personnel (and retirees) who may have a claim on the Government under Commonwealth legislation covering superannuation, compensation and veterans' entitlements; and
- Representing the interests of ADF serving members as a recognized intervener at the DFRT. DFWA is also the Defence Employees Representative on the Public Safety Industry Advisory Committee of Government Skills Australia.

DFWA is strictly politically neutral and has a deliberate policy of remaining outside the Defence policy debate, except where it may affect the wellbeing of serving ADF personnel.

Against this background and mindful of its principal roles, DFWA welcomes the opportunity to make a submission to the **Senate FADT Legislation Committee's** Inquiry on the legislation relating to the two Bills introduced to Parliament on 27 August 2020 to create a National Commissioner for Defence and Veteran Suicide Prevention.

At the discretion of the of the members of the Senate Committee, I offer myself to appear personally before any hearing at any time to answer questions about the issues contained in this Submission.

Yours Sincerely

Kel Ryan
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Defence Force Welfare Association

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