16 November 2020

Committee Secretary
Senate Foreign Affairs, Defence and Trade Legislation Committee
Parliament House Canberra ACT 2600

Re: Inquiry into the National Commission for Defence and Veteran Suicide Prevention Bill 2020 and the National Commissioner for Defence and Veteran Suicide Prevention (Consequential Amendments) Bill 2020.

I thank the Committee for the opportunity to add to my initial submission for the Inquiry into the National Commission for Defence and Veteran Suicide Prevention Bill 2020 and the National Commissioner for Defence and Veteran Suicide Prevention (Consequential Amendments) Bill 2020 as detailed below.

The premise of calling for a Royal Commission within the military/veteran community was to ensure a rigorous, independent and accountable investigation into systemic practices of both the Australian Defence Force (ADF) and the Department of Veterans Affairs (DVA), that contribute to organisational harm which, every 6.5 days, results in a suicide. Calls for a Royal Commission were made as an inquiry of last resort following at least sixty released reports into both the ADF and DVA which have not amounted to any substantial enduring change.

In the past week there has been another five suicides.

Both the ADF and DVA are in crisis; a crisis which, for some, ends with them choosing to take their own life. But suicide is only one of many tell-tale signs of two public institutions that are in crisis. The case that is unfolding with information pertaining to alleged war crimes in Afghanistan shares many commonalities with institutional arrangements that lead to suicide. This is also the case for ADF members who suffer bastardisation, bullying, and sexual assault. The billions of dollars wasted on Defence budget blow outs also shares commonalties with institutional arrangements that lead to suicide.

Military suicidality is not simply a mental health issue but a whole of systems and whole of life issue. Military suicidality is predicated on how the ADF and DVA socialise and/or interact with the individual.; military socialisation practices run deep and impacts every facet of an individual's life even decades after Service. Importantly, military suicidality is a serious human rights issue which, at its base, is created by the abuse of power from within the institution. For the benefit of those who have never Served: Serving in the ADF is akin to being in a controlling, coercive, and abusive relationship which limits individual agency. Harms that occur from systemic malpractice within the ADF are then usually inherited by DVA who compound trauma and harm by facilitating similar practices that undermine the human rights of already traumatise and vulnerable veterans – namely procedural fairness, justice, and privacy.

The proposed legislation for a National Commission, as it now stands, will see the community set to receive a watered-down Commission whose inquiry will arguably reinforce institutional bias, compound trauma of both past and present military personnel and their families, and support the continuation of the cycle of suicidality (see attachment one). As a result, all the National Commision may achieve is ensuring that two public institutions investigate themselves behind closed doors – something which is, arguably, non-constitutional and flies in the face of democratic processes. Below are set out seven key areas of concern.

1. **The removal of the Privacy Act**. There is absolutely no rationale for this. In fact, it imposes the same limitations that ADF personnel are subjected to whilst serving in the ADF which limits their individual agency and human rights. In fact, the exclusion of the Act is counter intuitive to trauma informed care - especially within a population of people who are already protective of their privacy

given that both DVA and the ADF routinely trespass on their privacy with no consequence. As a result, excluding the Privacy Act will serve to increase distress and potentially create further trauma. Whilst I am a lay observer in terms of the legalities of this, I concur with Associate Professor Bruce Arnold's analysis. Therefore, I defer to his opinion whilst including the following:

- The removal of the Privacy Act removes the protections for the individuals at the expense of the institutions. The individuals will have no avenue to ensure that their private and confidential information is protected.
- Sharing of information with wider agencies without consent is inadequate and an oversight which could lead to significant harm and retribution from institutions who may have access to documents whilst the individual does not (consider the changes in legislation for the Royal Commission into people living with a disability).
- The removal of the Act seems to have more to do with protecting the reputation of public institutions under scrutiny than upholding the human rights and privacy of already traumatised and grieving individuals.

2. **The superficial wording within the legislation leaves much to the discretion of the Commissioner**. As specified by, Associate Professor Bruce Arnold and the Law Council of Australia, it is not enough to rely on the discretion of a Commissioner. Conversely, it is important that the wording of the Bill clearly articulates what is required to ensure accountability, transparency, and scrutiny of practice. The current safeguards are not enough particularly as the Commissioner, with the Bill in its current form, will not be subject to a merit review of performance. This is very disquieting when considered in tandem with the removal of the Privacy Act and proposed legislation which does not ensure the Commissioner, or any acting Commissioner, must be impartial and independent.

3. **There are significant oversights with clause 16 and clause 24 which articulate the appointment of the Commissioner including impartiality and appointment of acting Commissioners.**

   - **Clause 16** – states that a person must not be appointed as the Commissioner unless the person is suitable for appointment because of a *person's qualifications, training or experience.* It is extremely disquieting to note that the word ***independent*** *or* ***impartial*** is not included in the attributes required for the Commissioner. That is, the ability for the Commissioner (or acting Commissioner) to pass the 'the fair minded observer test'; a test to ensure that the Commissioner does not have any actual or apprehended bias. Impartiality, whilst not the only desirable quality for a potential Commissioner is certainly a necessary one. In other words, an appointee must have no personal interest in the subject matter of the inquiry. Consequentially, it could result in the Commissioner being challenged under the spectre of allegations of bias.

     Without the requirement of impartiality, the National Commission cannot claim to be better or even equal to a Royal Commission because, under a Royal Commission, Commissioners are required to be independent and impartial. Independence and impartiality of the Commissioner is particularly important for not only current and past serving military personnel and their families who already retain a trust deficit with both the ADF and DVA but also because the institutions under scrutiny are public departments. To not include the word independence or impartiality will create a significantly flawed legislative instrument. To not ensure impartiality and strengthen the eligibility criteria of the Commissioner creates potential for further distress for both family members and the wider military/veteran community.

- **Clause 24** - states that the minister may, by written instrument, appoint a person to act as an acting Commissioner. It is disquieting to note that, under the current Bill, the appointment of an acting Commissioner does not have to meet the same rigour as an appointed Commissioner. Arguably, the earmarked acting appointment of Dr Boss has already demonstrated the flaws in the current Bill as well as the flaws in not including the wording of independent or impartial. Dr Boss was, until recently, a member of the Australian Defence Force which demonstrates a significant bias. It is asking an ex-employee to investigate profoundly serious and sensitive matters and deaths that occurred whilst she was a Serving member. This leads to the challenge of allegations of bias. Of note, past Royal Commissioners have been stepped down when it has been found that they were employed by an organisation during the time period under scrutiny. Dr Boss was employed by the ADF during the time that many of the suicides that will be under review took place. This means that she may investigate situations where she personally knows the people involved. In sum, if the premise of the National Commission is to be better than a Royal Commission, it is necessary for Commissioners (both appointed and acting) to meet the same rigours including that of impartiality and independence.

4. **Under the current Bill, it is difficult to qualify how the National Commission intends to meet its own objectives because the terms of reference are too narrow, it does not include the lived experience of suicidality within the community and has a limited research reach and agenda.** As a result, it is also difficult to qualify how it can be claimed that the National Commission will be as 'good as' or 'better than' a Royal commission.
    - The terms of reference of the Bill are too narrow to attain the desired outcome. The current Bill only investigates past suicides and is, therefore, limited in its inquiry. Stating that the Commissioner has the power to inquiry into other areas is not a satisfactory response. Suicide is a complicated issue which impacts multifaceted areas of a person's life.
        - Military suicidality is not simply about 'mental health', it is about changing relations between how an individual perceives their situation, perceives themselves in that situation, and perceives what courses of action are available to them at any point of time. In this way, those that have argued that military suicidality is a societal issue are correct as every individual has a different life course. However, much of how serving or past serving personnel perceive themselves are premised on how the ADF and DVA administer and construct the veteran/military member. Therefore, **broad terms of reference as well as a multi-disciplinary research agenda will be required if the Commission has any chance of meeting its objectives.**
    - Following the above, if the government is committed to an inquiry that can report on systemic issues, and themes that contribute to suicidality**,** the terms of reference must include investigation into the underlying social, cultural, legal, and institutional issues behind military suicidality.
        - There has been no investigation that has had the scope to bring all the pieces that contribute to military suicidality together – this includes the current arrangements for the National Commission. Currently, there is deficit of research within both military and veteran contexts (most of which is health based) – to the extent that a question is being put on the next census in order to have a better understanding of the veteran population in Australia. A broad ranging inquiry, with the necessary

resources, should be seen as best practice because an investigation that looks at the underlying social, cultural, legal, and institutional issues behind military suicidality will fast track understandings of a broad range of issues that affect the military and veteran community in order to adequately support those that have served our nation and their families.

- The current Bill does not include an invitation for submissions from the broader military/veteran community and their lived experiences of military suicidality. This is a significant oversight. Whilst it is acknowledged that families have a very important role in understating suicide, individuals who have lived the experience of military suicidality also have an extremely important role to play in ensuring that government and policymakers understand the complex web of practices and perceptions that contribute to military personnel and veterans choosing to take their own lives. The current Bill chillingly silences all military personnel and veterans with lived experiences of suicidality from participation. Not only does this undermine the veracity of any findings made by the Commission, but also raises an ethical conundrum. To silence military personnel, both past and present, who have a lived experience of military suicidality will ensure that further trauma is elicited on an already traumatised and vulnerable population.

  I fail to understand how the lived experience of families of the deceased, whilst important, have been considered more important than the lived experience of the population who have, in fact, lived the experience of military suicidality. To value the voice of the family with lived experience over the veteran with lived experience is a very slippery slope which will only end in disaster for both findings and any subsequent policies. Both voices are equally important and equally required to understand the subtleties of arrangements that contribute to military suicidality.

5. **As a result of point four, the Bill will not be able to deliver the promises it has made to the veteran community**. If this occurs, it will be read in the community (those supporting a Royal Commission as well as those supporting a National Commission) as a betrayal – similar to the Veterans Recognition Bill. Not meeting the objectives of the Bill may lead to an exacerbation of distress and harm for families of the deceased and the wider veteran community.

6. **The trauma informed and restorative approach cited by the Bill sits at odds with the Commissions compulsory powers including the power to compel witnesses.** I agree with the analysis of the Law Council of Australia of clause 12 in that families of the deceased should not be forced to participate in any forum or inquiry – both formal or informal. This needs to be explicitly stated in the Bill. Further, the families of the deceased should have the right to decide if they want any form of inquiry to occur in connection to their loved one. Forced participation and mandatory investigation not only sits at odds with trauma informed care but also exerts significantly more compelling powers than a Royal Commission which invites free participation and has full respect for a person's privacy and confidentiality. Whilst a Royal Commission invites participation from the general populace, the National Commission excludes participation by enforcing and controlling who participates and when.

7. **As the Bill is currently written, Clause 53, as a non- publication direction could be utilised as a gag order for families of the deceased – effectively stopping them from speaking in a public forum.** In connection with clause 54, this could see family members imprisoned for up to three years. Recently this type of Bill has made headlines in both Tasmania and Victoria in relation to victims of

> sexual assault. It has seen sexual assault survivors and their families advocate for changes in legislation to ensure that they could speak openly and freely about their experiences in a public forum. The passing of a non- publication direction, as it currently stands, speaks to the potential of military suicide being swept under the carpet, yet again, and silenced. As such, the current wording of the non-disclosure clause seems more about protecting the reputation of public institutions at the expense of the rights of grieving families and traumatised individuals. This flies in the face of any type of trauma informed care and, once again, will potential compound an already traumatised and vulnerable population.

As the Bill now stands, the proposal for a National Commission re-enforces and supports the perpetuation of institutional blindness and deafness to ADF personnel, veterans, and families constant calls for accountability which became all too familiar in the exposes of the Royal Commission into Institutional Responses to Child Sex Abuse.

The proposed legislation points towards a predetermined outcome which smacks of a reasonable apprehension of bias and actual bias. Yet, just like the actualisation of the Royal Commission into Institutional Child Abuse, a Royal Commission into both the ADF and DVA is, at some point, inevitable. Therefore, I would urge the Senate and the current government to reconsider their stance to end the perpetuation of institutional abuse and protection of those in power at the expense of the ordinary sailor, soldier, and airperson.

Otherwise, one could be led to conclude that those who hold power are complicit to the normalisation of institutional harm that is inflicted on our ADF personnel and veterans daily.