

DEFENCE FORCE WELFARE ASSOCIATION (QUEENSLAND) SUBMISSION
FOREIGN AFFAIRS, DEFENCE and TRADE COMMITTEE
ON

National Commissioner for Defence and Veteran Suicide Prevention Bill 2020 and the National Commissioner for Defence and Veteran Suicide Prevention (Consequential Amendments) Bill 2020

1. **Defence Force Welfare Association (DFWA).** At the urging of some parliamentarians, the DFWA was formed in 1959 to provide a voice for regular serving members of the then Permanent Defence Force into the changing provisions for superannuation. DFWA purpose is to foster the interests and wellbeing of current and former members of the ADF and their families. We make representations such as this, are an Authorized Intervener at the Defence Force Remuneration Tribunal and are the official ADF employee representative on the Public Safety Industry Advisory Committee of the Australian Skills Committee.
2. This submission by DFWA Qld Branch (DFWAQ) supports and supplements the submission by DFWA National.

SUMMARY

3. On review of the legislation, DFWAQ has made several conclusions and recommendations.

THE NATIONAL COMMISSIONER POWERS

4. It was concluded that:
 - a. The National Commissioner does not have the same powers as other Royal Commissioners where co-operation of States was required.
 - b. The “requirement” powers are not as clearly defined as it in Royal Commissions involving States where the Federal letters patent were reflected in those Commissions/enquiries terms of reference established by the States.
 - c. There is a need to require evidence from State bodies involved in provision of services to Veterans.
 - d. The National Commissioner’s powers to require evidence from or work in collaboration with Coronial courts or funding arrangements is unclear and should be transparent.
 - e. It appears that the National Commissioner’s powers to require evidence from officials of State bodies may be, at best unclear and at worst, non-existent, and should be as explicit as for officials of Commonwealth bodies.
5. Recommendations are made concerning:
 - a. Suggested changes to some clauses in the legislation to address these issues. (Para 18).
 - b. Need for greater clarity of arrangements between State coronial courts and the National Commissioner.

LIMITING TERMS OF REFERENCE

6. It was concluded that:

- a. Limiting the Commissioners inquiry function to only instances of Veteran suicide or suspected suicide:
 - i. severely limits the Commissioner’s ability to identify suicide risks for defence members and Veterans and factors that can improve the wellbeing of defence members and Veterans.
 - ii. Severely limits the Commissioner’s ability to consider evidence from surviving Veterans, their families and support organisation of circumstances around attempted suicides, and where suicide has been avoided through deliberate action or happenstance.
 - iii. Ignores the Victoria Coroner’s finding that, the National Commissioner as an independent oversight body with a preventative role, should not be confined to investigating suicides only, but examine other areas where Veterans are at risk of suicide.
- b. Claims of flexibility of the Commissioner to “own initiative inquiries” appear severely limited.
- c. The Object of the Commission should be amended to address these limitations.

7. Recommendations are made concerning:

- a. Suggested changes to some clauses in the legislation to address these issues. (Para 27).
- b. Direct the Commissioner to also make recommendations regarding factors that can improve the wellbeing of defence members and Veterans, *and where appropriate, the wellbeing of defence and Veteran families.*

DFWAQ MAIN SUBMISSION

8. **Key Concerns.** When reading into the detail, main concerns are that:

- a. The National Commissioner (NC) does not have the same powers as other Royal Commissions requiring State co-operation.
- b. The terms of reference are more limited than claimed.

NATIONAL COMMISSIONER POWERS

9. In regard to establishing the National Commissioner (NC), the following has been claimed:

- a. Co-operation with the States¹ was required due to complexities regarding State responsibilities for coronial services.
- b. The NC has the same powers etc as a Royal Commission.

10. **Co-Operation with the States.** It is noted that Veterans², after transition, along with all other Australians, are dependent on States for many services. This legislation is focussed on the coronial services provided by States. However, many State delivered services are actually and potentially related to suicidality vectors, including

¹ In this paper, “States” refers to States and Territories.

² In this paper, “Veteran” includes serving members of the ADF as well as former members as defined in the Australian Veterans’ Recognition (Putting Veterans and their Families First) Bill 2019

attempted suicide, and should not be ignored by the NC and their experiences with Veterans requires exposure. At present, virtually no statistics are collected or available. For example:

- a. Medical services, including mental health services, substance abuse services etc. Not all these services are provided by DVA nor sought from DVA by Veterans, whether entitled or not. Many Veterans are users of public hospitals and other medical services. Virtually all Veterans would use State provided Emergency Departments. While private hospitals contracted to DVA are required to have Veteran Liaison Officers, there is no such requirement on State public hospitals. No statistics related to Veteran use of these services are available.
- b. Social and Family Services. Considering the mental health problems of a significant minority of Veterans, especially those transitioning with the stress this entails with job change, home and school changes etc, it is not surprising the higher incidence of family breakdowns and domestic violence amongst discharged Veterans. While counselling is provided by Open Arms (DVA), not all are comfortable using a DVA service strongly linked to Defence, and in any event social service provision and intervention are a State responsibility.
- c. Ambulance Services. As first responders to a suicide or attempted suicide, leading to initial treatment then transport to Emergency Departments of State-run hospitals, these are the only source of firsthand initial medical interventions concerning suicides. While their evidence may inform Coronial input to the NC, such would not address actual or suspected attempted suicide, the circumstances and the actual intervention stopping the suicide.
- d. Homelessness Services. These are totally State provided services, along with charities. It is noted that the RSL Qld is teaming with the Salvation Army to provide support in this area. However, there is some reluctance to use RSL services by some disenchanted Veterans and reluctance by some Veterans to use Salvation Army due to its stance on LBGQT matters.
- e. Policing. (Legislation is restricted to State police support for Commission operation (search warrants and disclosure of resulting information etc). Veterans, especially with mental health and substance abuse problems, frequently come to the attention of police and in cases of violence and domestic violence. Police involvement may have prevented a suicide (which does not get reach the Coroner) or been part of a build-up towards suicide, which may be considered by Coroners. There have been cases of confiscation by police of DVA provided medication as part of normal procedures.
- f. Incarceration services, including prison and mental health. Veterans incarcerated by the State, cease to have any continuity of any DVA treatment while incarcerated.

11. **Voluntary Evidence.** State bodies covering these services “*may on their own initiative or at the request of the Commissioner, disclose information (including personal information) for the purpose of assisting in the performance or exercise of the Commissioner’s functions or powers*”³.

12. **Doubtful Requirement to Compel Evidence.** There are statements where the Commissioner can **require** disclosure of information. If occurring, for Commonwealth entities, notice is required to be given to “*the accountable authority of the Commonwealth entity*”⁴. There is no similar requirement to notify the head of the relevant State entity as would be expected if the NC could require evidence from a State organisation. There may be a reasonable assumption that States are fully co-operating after lengthy delays to gain agreement regarding Coronial Services which is part of the judiciary, but there is no reference to this. Given that State co-

³ Legislation Para 41 (1)

⁴ Legislation 32 (6) (b).

operation is essential for other non-Coronial services, it would be expected that the accountable authority of the State body, would be afforded the same courtesy extended to a Commonwealth entity.

13. **Evidence Excluded from Consideration.** 26 (1) (c) states, *“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 following is noted:

- a. Reference to *“support services to the person in the person’s capacity as a defence member or Veteran”* explicitly excludes consideration of such general services provided to the broader population by States as listed in para 10, yet these are provided to Veterans.
- b. The only entities that would be included are those provided by Defence/ ADF, DVA and, strangely, Ex-Service Organisations.
- c. This limitation seems to be based on an assumption that State provided services had no part in the circumstances or environment leading up to any of the 419 suicides, i.e., there were no instances of homelessness, couch-surfing, living rough, no ambulances or emergency admissions to hospitals, no arrests for social disorder, AVO breaches, no social services for Veterans or families – all State provided services. These State services were not involved at all, and if they were, it is of no consequence – and won’t be in the future either. No need to look there or explore any need to better communicate and co-ordinate services. The apparent exclusion of a requirement for State entities or their agents to provide evidence, makes a huge unjustified assumption regarding State total non-involvement. It excludes even considering a question like:
 - i. *“If the DVA services failed, why wasn’t it picked up by State bodies providing the services to the Australian population generally (suicide in general being regarded as a National Issue) and then referred to DVA?”* or
 - ii. *“Are there different practices between States, that make a difference?”*

14. **Past Practices - Powers of Royal Commissions.** For Royal Commissions involving co-operation with States, the common practice has been for State Governors to issue parallel *“letters patent”* under State legislation so in effect while Federal led, the Royal Commissions have been *“joint”*. E.g., The Royal Commission into child sexual abuse.⁵ There are many others, deaths in custody, bushfires etc.

15. Due to the separation between State and Judiciary, there may have been some difficulties with this approach and the Coroners’ courts’ status, however there is no reference to any other sort of formal agreement with States or funding arrangements to support State involvement. In any event, there is no provision for compelling evidence regarding circumstances involving Veteran interaction with State bodies as would normally occur in joint Royal Commissions.

16. Royal Commissions are time limited. The enduring nature of the National Commission may have precluded the possibility of States agreeing to such an arrangement. However, the requirement for a time limited Initial Report, inquiring only into approximately 419 instances may have provided an arrangement where full input by State bodies could have been achieved with more inclusive and appropriate terms of reference. However, that is conjecture.

⁵ From: Royal Commission into Institutional Responses to Child Sexual Abuse. Final Report. Volume 1, 15 December 2017 Page 4. *The Letters Patent – or Terms of Reference, as they are generally referred to in this report – set out the scope of the inquiry. Each state government also issued Letters Patent in the same or similar terms (see Appendix A). Establishing the Royal Commission in this way meant that there were in effect seven concurrent commissions of inquiry...*

17. Conclusions. It is concluded that:

- a. The National Commissioner does not have the same powers as Royal Commissioners where co-operation of States was required.
- b. The “requirement” powers are not as clearly defined as it in Royal Commissions involving States where the Federal letters patent were reflected in those Commissions/enquiries established by the States.
- c. There is a need to require evidence from State bodies and agents involved in provision of services to Veterans.
- d. The National Commissioner’s powers to require evidence from or work in collaboration with Coronial courts or funding arrangements is unclear and should be transparent.
- e. It appears that the National Commissioner’s powers to require evidence from officials of State bodies may be, at best unclear and worst, non-existent, and should be as explicit as for officials of Commonwealth bodies.

18. Recommendation. It is recommended that:

- a. Para 26 (1) be amended to include a new sub-para (g), “*the circumstances of any engagement with health, wellbeing and counselling support services and other services provided by State and Territory bodies by the defence member or Veteran*” or words to that effect. This does not require any investigation or inquiry into the effectiveness or otherwise of those State services, only that they engagement occurred and whether any liaison with DVA occurred as a result.
- b. Para 30 regarding conditions around summoning, giving evidence and producing documents and things be amended to include a new sub-section (7) relating to State bodies in same manner Commonwealth bodies addressed in sub-section (6), viz “*(7) If the Commissioner gives a notice under subsection (1) to an official of a State or Territory body, the Commissioner must give a copy of the notice to the accountable authority of the State or Territory body*” or words to that effect.
- c. Greater public visibility of evidentiary a financial arrangement between the National Commissioner and the Coronial Court services be provided

LIMITED SCOPE OF “TERMS OF REFERENCE”

19. General. To state the obvious, there are many issues which can adversely impact on the mental health and well-being of all Australians, any one or more of which may trigger suicide ideation and tragically suicide. There is a complex continuum of inter-related stressors which exacerbate situations and have a multiplier effect. Some sections of society are more vulnerable than others. Many of the issues and stressors will be common.

20. Veterans. For Veterans, the triggers may have origins of physical and mental trauma and moral injury as result of service, leading to one or more of relationship and family breakdowns, domestic violence, financial distress, self-harm, substance abuse, homelessness and incarceration to name some. These can be magnified by Transition with the loss of a social and team support structure.

- a. Tragically this has led to some taking their lives.
- b. Some attempt suicide, but fortunately fail.
- c. Tragically, some live with suicidal thoughts plaguing them (and their families) for years, a lifetime, but, again thankfully, do not take the final step of suicide.

- d. Many Veterans and families experience live or exist with the ongoing dysfunctional effects on life and families. Some may come close to suicide at times. Some family members may also become prone to suicidal ideation.
- e. Apart from contributing factors unique to military service, Veterans and families experience similar stressors and circumstance impacting on all other Australians. The effects of those similar stressors, especially after Transition, may be magnified due to the unique factors related to military service.

21. **The Overarching Terms of Reference – The Legislation Objects.** The objects⁶ are focused on Veteran suicide instances and their circumstances. Many of the circumstances that led to suicide would apply to a lesser or possibly even to greater extent to some of those other Veterans who did not commit suicide but who made suicide attempts, had suicidal thoughts but made no attempt and to those who just managed to cope with similar circumstances and teeter on the edge of suicide for years.
22. The focus on comparatively recent identified Veteran suicides has brought with it an unconscious focus on suicides on younger Veterans. These are from a completely different demographic of suicides of older Veterans who served in the Vietnam War. Some of these were two-year National Servicemen who, in some instances, were transitioned back into civilian life in a matter of days from being in actual combat, with little or no support. Most were totally unaware of DVA. Others continued to serve for 20 years or more, remaining in a supportive Army team environment, before discharge. Many of these also, were unaware of DVA support. All experienced the unwelcome homecoming and failures of Agent Orange Royal Commissions with inadequate letters patent. Many, together with their families, coped quietly with mental health and other service caused issues. For some, those conditions did not materialize or were not diagnosed until much later in life, and some suicided. There are anecdotal accounts of Veterans 30 and 40 years after Vietnam, suddenly reliving and exhibiting symptoms of PTSD, with some being treated successfully, and others tragically committing suicide. There are no hard statistics as these have not been identified or counted. These are not in the 419, but there are stories to tell and there would be lessons to be learned of survival over many years before suicide taking its toll.
23. **Object Requirement.** There is also a requirement for the Commissioner to make findings, recommendations and identify risks related to suicide and factors that can improve wellbeing of Veterans and families.
- a. Flexibility is specifically given to the Commission to inquire into suspected suicides or other deaths.
 - b. However, there is no specific requirement for the Commissioner to also inquire, seek information about, and from Veterans, their families, and others about attempted suicide or the risk was mitigated by improvements to wellbeing or by other happenstance events. There is no requirement to for the Commissioner to inquire to identify what was different for those who did not suicide, or what worked in avoiding or preventing it. The inquiry is focused on “successful” suicides or

1. The main object of this Act is to provide for a Commissioner **to examine defence and Veteran deaths by suicide**, in order to support the prevention of future such deaths. To achieve this object, the other objects of this Act are to:

- a. establish the National Commissioner for Defence and Veteran Suicide Prevention; and
- b. empower the Commissioner:
 - i. to **inquire into the circumstances of defence and Veteran deaths by suicide**; and
 - ii. to make findings and recommendations on systemic issues contributing to defence and Veteran deaths by suicide and on trends and suicide risk factors for defence members and Veterans; and
 - iii. to hear about the impact of defence and Veteran deaths by suicide on families and others affected; and
 - iv. to promote understanding of suicide risks for defence members and Veterans and factors that can improve the wellbeing of defence members and Veterans.

suspected suicides, where the prime “witness” regarding causes is, tragically, but put bluntly, not available.

- c. Legislation section 11 (Functions), limits any recommendations regarding “wellbeing” to only those stemming from suicide, viz:

“(1) *The Commissioner has the following functions:*

(a) *to inquire into the circumstances of defence and Veteran deaths by suicide (see section 26) (the inquiry function);*

(b) *to make findings and recommendations following such inquiries [i.e. into suicide], including:*

(i) *recommendations in relation to the wellbeing of defence members and Veterans and defence and Veteran suicide prevention strategies; and*

(ii) *recommendations in relation to any policy, legislative, administrative or structural reforms;”*

- d. Whilst it may be argued that the Commissioner would seek or hear such evidence as a matter of course, this cannot be assumed. History has shown that unless directed and when time is short and resources are limited, aspects which are not specifically mandated in the letters patent are not heard or taken into account, even if the Commissioner has the flexibility of initiating own motion investigations, time and resources, sometimes limit. The AGD can also use its employment power to stifle the work of the Commission.
- e. Flexibility seems also to have been given in **section 26 (1)**, “*the circumstances that the Commissioner may inquire into include, but are not limited to, the following matters in relation to a defence member or Veteran who has, or is suspected to have, died by suicide*”. However, while it states it is not limited to the matters then listed, all of those matters are limited by the caveat in relation to Veterans who have died or suspected of dying by suicide. This obscuration regarding flexibility needs to be removed.
- f. Flexibility also seems to have been given in **Section 26 (2)** “*To avoid doubt, the Commissioner may perform the Commissioner’s inquiry function on the Commissioner’s own initiative.*” But this too is bound by the bounds put on “*the Commissioner’s inquiry function*”. Examination of Para 11 Functions, shows that the Commissioner’s inquiry functions are only those related to instances of suicide. It does not include circumstances of attempted suicide or where suicide has been avoided but the circumstances, on the surface, indicated there was a high risk.
- g. It is generally accepted that in some cases, family breakdowns can contribute to suicide ideation. The legislation recognizes that families “*have a unique contribution to make to the Commissioner’s functions*”⁷ which includes making recommendations regarding Veteran wellbeing. It is recognized that family support and wellbeing can reduce risk. Currently, the Commissioner seems limited to making recommendations to “*factors that can improve the wellbeing of defence members and Veterans.*” While it may be implied that such factors would allow factors supporting wellbeing of the family to be recommended as well, it should be explicit. This beneficial effect of families seems to be recognized by “Open Arms” counselling services recently being made available to families of Veterans.

⁷ Legislation Para 12 (3) (a).

24. **Jesse Bird – Coroner’s Report.** The Coroner’s report into the Jesse Bird case, referred to the establishment of this National Commission. It specifically mentioned that, bearing in mind the prevention role, an oversight body, i.e. the National Commissioner, should not be confined solely to investigating Veteran suicides⁸, but rather have an extended remit to review and investigate other areas to assist in assuring Veterans are appropriately supported “*particularly where Veterans may be at risk of suicide*”. While the Coroner made specific mention of DVA for Jesse Bird tragedy, DVA are not alone. There are other parties involved in supporting Veterans and families generally, including State and charitable organisations, and examination of this support needs to be included in any review. The Report re-emphasises the need to investigate more broadly than instances of suicide as currently intended by this Legislation.

25. **Spin Approach?** A cynic might wonder that the initial focus on the 419 suicides is what defensive bureaucrats might do to quell the immediate storm, especially by an Initial Report in 18 months – like a Royal Commission, but another name. The continuance of such a limited aim for future annual reviews of the (hopefully) reducing number of suicides, also avoids on-going independent review of DVA practices and performance, that the Jesse Bird Coroner stated was necessary. Throw in a Veterans Family Advocate as proof of an independent voice, and life can continue without heat. The effect is that in spite of claims to the contrary:

- a. the Veteran Family Advocate may have a voice, but has no teeth (separate but related issue);
- b. the limitations placed on the Object of this enduring Commission, removes some key teeth in investigating issues and identifying wellbeing issues that may reduce suicide; and
- c. the Commission can be limited in its capability through the AGD restricting resources.

26. **Conclusion.** It is concluded that:

- a. Limiting the NC’s inquiry function to only instances of Veteran suicide or suspected suicide:
 - i. severely limits the Commissioner’s ability to identify suicide risks for defence members and Veterans and factors that can improve the wellbeing of defence members and Veterans.
 - ii. Severely limits the Commissioner’s ability to consider evidence from surviving Veterans, their families and support organisation of circumstances around attempted suicides, and where suicide has been avoided through deliberate action or happenstance.
 - iii. Ignores the Victoria Coroner’s finding that, the National Commissioner as an independent oversight body with a preventative role, should not be confined to investigating suicides only, but examine other areas where Veterans are at risk of suicide.
- b. Claims of flexibility of the Commissioner to “own initiative inquiries” appear severely limited;
- c. The Object of the Commission should be amended to address these limitations.

27. **Recommendation.** It is recommended that the Object of the Bill be amended to:

⁸ “Finding - Inquest into the Death of Jesse Stephen Bird” Coroners Court of Victoria at Melbourne COR 2017 3044 dated 7 April 2020. Para 249.

- a. Include a sub-para at 3 (2) (b) empowering the Commissioner “to hear about circumstances of attempted suicide and where there has been risk of suicide but was avoided due to deliberate or happenstance events by Veterans or others,” or words to that effect.
- b. Amend sub-para 26 (1) (f) to include attempted suicide and suicide ideation to read:
*(1)For the purposes of paragraph 11(1)(a), the circumstances that the Commissioner may inquire into include, but are not limited to, the following matters in relation to a defence member or Veteran who has, or is suspected to have, died by suicide, **or attempted suicide or reported suicide ideation.***
- c. Direct the Commissioner to also make recommendations regarding factors that can improve the wellbeing of defence members and Veterans, **and where appropriate, the wellbeing of defence and Veteran families.**

John Lewis
President
Defence Force Welfare Association (Qld Inc)

9 October 2020