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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**VETERANS' ENTITLEMENTS, TREATMENT AND SUPPORT  
(SIMPLIFICATION AND HARMONISATION) BILL 2024**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

and

Requests to the House of Representatives for Amendments to be Moved

(Circulated by authority of the Hon Matt Keogh MP,  
Minister for Veterans' Affairs and Minister for Defence Personnel)

# Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024

(Government)

## General outline

This supplementary explanatory memorandum provides further details on the amendments and requests for amendments that are being moved on behalf of the Government to the Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 (the Bill). The amendments will give effect to recommendation 122 of the Royal Commission into Defence and Veteran Suicide (the Royal Commission) report, published in September 2024. In this supplementary explanatory memorandum, a subsequent reference to an amendment includes a reference to a request for amendment to be made by the House of Representatives unless stated otherwise.

In the report,<sup>1</sup> the Royal Commission recommended that—

a new entity with the purpose of...providing independent oversight and evidence-based advice to drive system reform to improve suicide prevention and wellbeing outcomes for serving and ex-serving ADF members.

These amendments—

- set up the new Defence and Veterans' Services Commission (the DVSC) in the *Defence Act 1903*; and
- set up the independent office of the Defence and Veterans' Services Commissioner (the Commissioner), who will lead the DVSC; and
- set out the functions and powers of the Commissioner, including—
  - overseeing, and advising on, systemic reforms across the entire Defence ecosystem to prevent suicide by defence personnel and veterans, and improve their general wellbeing; and
  - exploring better ways to—
    - prevent suicide by defence personnel and veterans; and
    - improve the general wellbeing of serving and ex-serving members of the Australian Defence Force; and
  - investigating systemic issues contributing to defence and veteran deaths by suicide, including listening to the voices of their families as to the impact of the deaths; and
  - making recommendations based on the investigations; and
  - promoting awareness of suicide risks for defence personnel and veterans, and ways to improve their wellbeing.

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<sup>1</sup> *Royal Commission into Defence and Veteran Suicide* (Final Report, September 2024) vol 6, 283 [37].

The Royal Commission considered that the new entity should have the following key design features:<sup>2</sup>

- a) to be a listed entity within the meaning of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act);
- b) the entity is not only independent but is also seen to be independent;
- c) the entity be given express powers of inquiry to obtain relevant information from Australian Government agencies;
- d) the entity is to have regular reporting obligations.

The amendments implement those comments of the Royal Commission through the following new provisions forming part the amendments being moved:

- a) new paragraph 110ZKA(3)(a) makes the Commission a listed entity within the meaning of the PGPA Act;
- b) new section 110ZJD provides that the Commissioner is to have complete discretion in performing their functions, and is not subject to the directions of any person;
- c) new section 110ZGE gives the Commissioner power to require a person to give them any information relevant to an inquiry determined as special inquiry;
- d) rules made under new section 110ZLD for the new section 110ZLA may provide for the reporting obligations of the Commissioner.

#### Review of arrangements

The interim Commissioner will review the mechanisms put in place by these amendments and advise Government on their effectiveness and may recommend adjustments for Government and Parliament to consider. Moreover, under clause 110ZLE, the Minister must cause an independent review of the operation of this Part to be undertaken as soon as practicable after the end of the period of 36 months after the commencement of this Part.

#### **Financial impact**

Nil.

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<sup>2</sup> Ibid 284-287.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Government Amendments to the Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024**

The amendments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the amendments**

These amendments will implement recommendation 122 of the Royal Commission into Defence and Veteran Suicide report. It will do this by establishing the Defence and Veterans' Services Commissioner to lead a commission to inquire into systemic issues related to defence and veteran deaths by suicide. To allow the Commissioner to exercise their functions effectively, the Commissioner is given extensive powers to gather and share information from a wide range of sources.

#### **Human rights implications**

The amendments are compatible with the right to health as contained in article 12 of the *International Convention on Economic, Social and Cultural Rights*. The amendments are also compatible with the rights of people with disability as contained in the *Convention of the Rights of Persons Disabilities*. By driving reform across the Defence and veteran support system through evidence-based findings, the new Defence and Veteran Services Commission will advance the health outcomes of veterans experiencing risk of suicide, including veterans with disabilities.

The amendments are compatible with the right to life as contained in article 6(1) of the *International Covenant on Civil and Political Rights* by establishing a dedicated body to inquire into the prevention, and promote understanding of, deaths by suicide in the Defence and Veteran community.

The amendments engage the right to privacy as contained in article 17 of the *International Covenant on Civil and Political Rights*. The amendments make provision for the Commissioner to undertake a special inquiry which contains a range of powers for the effective conduct of such inquiry. For instance, the amendments will give powers for the Commission to compel a person to provide it with information it requires, including a document that is subject to legal professional privilege under certain circumstances. It is an offence for a person to fail to comply. The amendments also engage the right to be free from self-incrimination as contained in the *International Covenant on Civil and Political Rights*.

#### **Conclusion**

These amendments to the Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 are compatible with human rights listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. because it promotes the advancement of higher standards of health and life through the establishment of an investigatory body that can drive reform.

## NOTES ON AMENDMENTS

### Objects of the amendments

New Part VIIIIE in the *Defence Act 1903* will establish a new body to be called the Defence and Veterans' Services Commission (DVSC). The body will be a non-corporate Commonwealth entity within the Defence portfolio. The DVSC and its Commissioner will provide independent oversight and evidence-based advice to drive system reform to improve suicide prevention and wellbeing outcomes for serving and ex-serving members of the Australian Defence Force (ADF).

The DVSC will be established under the *Defence Act 1903* because it is this Act which gives the Minister for Defence the general control and administration of the Australian Defence Force (ADF). In discharging this responsibility, the Minister will be able to rely on the DVSC to provide evidence-based advice to drive system reform to improve suicide prevention and wellbeing outcomes for serving and ex-serving members of the ADF.

### Extraterritorial operation

The ADF operates both within and outside Australia. As the DVSC will be responsible for inquiring into systemic issues impacting on wellbeing outcomes for serving and ex-serving ADF members, it is necessary for it to be able to exercise its functions and powers in relation to acts, omissions, matters and things outside Australia and the external territories.

### Investigations by the Defence and Veterans' Services Commissioner

The Commissioner has the power to conduct inquiries in the following circumstances:

- on their own initiative;
- on request by the Minister for Defence;
- into the Commonwealth's implementation of the recommendations of the Royal Commission into Defence and Veteran Suicide.

The first two circumstances are discretionary, and inquiries may be conducted as and when appropriate. However, the third circumstance is mandatory. The Commissioner will conduct a minimum of two inquiries before the Commonwealth finalises its implementation of the Royal Commission's recommendations.

### Hearings

The Commissioner has the discretionary power to convene a hearing for the purposes of performing their functions. If the Commissioner decides to convene a hearing, the default is that it will be a public hearing. However, the Commissioner may convene a private hearing where they are satisfied that:

- the following kinds of personal and private information may be disclosed at a hearing:
  - information relating to a deceased person or the family, friends or associates of a deceased person; or

- information about a defence member or veteran's lived experience with a suicide risk.
- a person appearing at the hearing may give evidence that discloses operationally sensitive information.

In addition, a hearing, or part of a hearing, may be held in private in any other circumstances prescribed by the rules.

The Commissioner would also have an obligation to consult with relevant stakeholders before disclosing or using evidence given in a private hearing.

### Special inquiries

The Commissioner is empowered to determine that a particular inquiry is a special inquiry. In so determining, the Commissioner must be satisfied of the notice requirements and that the exercise of the additional powers in Division 3 is in the public interest. When a special inquiry is formed, Division 3 gives the Commissioner additional powers which are not otherwise available under Division 2. These include powers to:

- summon a person to attend a hearing to give oral evidence or to produce documents or things: clause 110ZGC;
- require a witness to either take an oath or an affirmation: clause 110ZGD;
- require a person to give information relevant to the special inquiry: clause 110ZGE;
- inspect, retain and make copies of documents or things produced or given to the Commissioner: clause 110ZGH;
- apply to a Judge for the issue of a search warrant (including by telephone in urgent circumstances): clauses 110ZGJ and 110ZGK;
- permit the examination and cross-examination of a witness: clause 110ZGL.

The establishment of a special inquiry under Division 3 also permits the Commonwealth, and State and Territory bodies, to disclose information to the Commissioner.

### *Clause 110ZGC Summons*

The Commissioner may summon a person to attend a hearing to give evidence or produce documents or things. The Commissioner may also summon a person to attend a hearing to give evidence or produce documents or things, at a time and place specified in a written notice. The power of the Commissioner to require a person to give information or produce a document or thing includes the power to require these things even if they are subject to legal professional privilege. Failure to comply with a notice to produce under this section is an offence under section 110ZHA.

### *110ZGD Evidence on oath or by affirmation*

Clause 110ZGD confers powers on the Commissioner to require a witness to take an oath or affirmation at a hearing. The Commissioner may require a witness at a hearing to take an oath or affirmation and may administer an oath or affirmation to the witness. A person may also

give evidence by submitting a witness statement, and to verify its truth by oath or affirmation, if the person has been sworn or made an affirmation.

### *110ZHJ Contempt of Commissioner*

This section makes it an offence for a person to engage in conduct that obstructs or hinders the Commissioner in the performance or exercise of their functions or powers. A person also commits an offence if the person engages in conduct that would, if the Commissioner were a court of record, constitute contempt of that court.

### Offences

Division 4 would make the following conduct a criminal offence:

- failure to attend a hearing: subclause 110ZHA(1);
- failure to give information, or produce a document or thing: subclause 110ZHA(2);
- refusal to swear an oath, make an affirmation or answer a question: clause 110ZHB;
- failure to give a written notice to the Commissioner in relation to operationally sensitive information or intelligence information: clause 110ZHC;
- Failure to give information after the Commissioner has decided to reject a claim for legal professional privilege: clause 110ZHE.

## Establishment of the Defence and Veterans' Services Commission

The DVSC is established as a listed entity within the meaning of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), with the Commissioner as its accountable authority. The officials of the DVSC consist of the Commissioner, as well as any staff, persons assisting the Commission or consultants. The Commission's sole function is to assist the Commissioner in the performance of his or her functions.

## Establishment and functions of the Defence and Veterans' Services Commissioner

The DVSC's accountable authority, the Commissioner, will be responsible for monitoring, inquiring and reporting to the Minister for Defence, the Minister for Veterans' Affairs and the Parliament on various matters relating to suicide and wellbeing among serving and ex-serving members of the ADF. The advice provided by the Commissioner is to be evidence-based and focussed on systemic factors relating to the administration of policies, programs, systems and practices that contribute to suicide and suicidality among serving and ex-serving ADF members. The Commissioner will also be able to inquire into cultural factors within the Department of Defence, the ADF and the Department of Veterans' Affairs which have an impact on the prevention of suicide and suicidality.

The Commissioner will also monitor and report on the progress and impact of the Australian Government's implementation of recommendations made by the Royal Commission into Defence and Veteran Suicide.

In performing these functions, the Commissioner is to work collaboratively with coroner's courts in each State and Territory. However, the Commissioner's role is distinct from that of a coroner in that the Commissioner is not able to make findings on the manner or cause of death in individual cases. Moreover, the Commissioner is not able to make findings of civil or criminal wrongdoing and must seek to avoid prejudicing current or future criminal or civil proceedings. Nonetheless, findings made by the Commissioner may be referred to appropriate authorities for further consideration and action (civil or criminal) as appropriate.

Although the Commissioner will report to the Minister for Defence, the Minister for Veterans' Affairs and the Parliament, the Commissioner is not subject to direction by or on behalf of the Commonwealth in relation to the performance or exercise of functions or powers. However, the Minister for Defence is able to direct the Commissioner to conduct an inquiry into a particular matter related to the Commissioner's functions.

## Commissioner's information-sharing powers

Consistent with the comments of the Royal Commission, the Commissioner is authorised under section 110ZHN to share information (including personal information) to a wide range of entities, mostly comprising law enforcement entities and other related bodies of all Australian jurisdictions.



### Appointment of the Commissioner and other related provisions

The Commissioner is to be appointed by the Minister by written instrument. The note to this subclause clarifies that the Commissioner is eligible for reappointment, in accordance with section 33AA of the Acts Interpretation Act 1901. A person must not be appointed as the Commissioner unless the Minister is of the opinion the person is suitable for appointment because of their qualifications, training or experience. This will enable a broad range of potential candidates, with diverse backgrounds and experience, to be considered for appointment.

The Commissioner is to be paid the remuneration determined by the Remuneration Tribunal. In the absence of such a determination, the Commissioner is to be paid the remuneration prescribed by rules made under the Act.

Clause 110ZJK provides that the Minister may make rules on a range of issues, including provision of acting appointments, leave of absence, resignation and termination of appointment. Subclause 110ZJL allows the Minister to determine the terms on which the Commissioner holds office.

Clauses 110ZKB, 110ZKC and 110ZKD provide that the Commissioner is assisted by a Commission and has power to do all things necessary or convenient in the performance of the Commissioner's functions. Clause 110ZKF allows the Commissioner to engage consultants to assist the Commission to perform its functions.

### Review of the operation of the Part

The Minister must cause an independent review of the operation of this Part to be undertaken as soon as practicable after the end of the period of 36 months after the commencement of this Part.