



Australian Government

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Submission to the Review of Schedule 9 of the Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Act 2025 by the Senate Foreign Affairs, Defence and Trade Legislation Committee

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Introduction

1. I welcome the opportunity to provide a submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee's (the Committee) review of Schedule 9 of the *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Act 2025* (the VETS Act). As the independent Interim Head of the Defence and Veterans' Services Commission (the Commission) I look forward to engaging with the Committee on this important review and remain available to attend a hearing if that would assist in further informing the Committee's review of the legislation.
2. On 17 January 2025, I was appointed by the Australian Government to head an interim organisation, to be legislated as the Defence and Veterans' Services Commission, and to work across government to deliver the establishment of the ongoing statutory Commission by September 2025. I am undertaking this work on a part-time basis, assisted by a small team based in the Department of the Prime Minister and Cabinet.
3. We are working across government to deliver the establishment of a legislated oversight body by the end of September 2025. This specifically involves the review of the enabling legislation and the establishment of the Commission as a new Non-corporate Commonwealth Entity. To ensure that I provide independent and informed advice to the Committee and to Government, I commenced undertaking engagements across the defence and veteran sector, and related entities, while observing Caretaker conventions during the Caretaker period of the recent Federal Election from 28 March 2025 to 3 May 2025. These engagements are continuing.
4. The passage of the VETS Act by the Parliament in February 2025, which will commence the Commission on 29 September 2025, is an important and significant step to give effect to Recommendation 122 of the Royal Commission into Defence and Veteran Suicide (the Royal Commission).
5. In its Final Report, the Royal Commission put forward a compelling case for the establishment of a new statutory oversight entity, and highlighted its importance:

*Having now concluded our inquiry, we re-affirm our view that establishing a new entity with a dedicated and sustained focus on suicide prevention is the most significant action the Australian Government can take to address defence and veteran suicide.*¹
6. The enduring oversight body, as envisaged by the Royal Commission, will provide serving and ex-serving members, families and friends of the Australian Defence Force (ADF) with surety that the important matters, issues and concerns that the Royal Commission recommended be addressed, and as agreed in the Government Response, are implemented by the responsible

¹ Royal Commission into Defence and Veteran Suicide (Royal Commission), [Final Report](#), report to the Australian Government, Royal Commission, 2024, accessed 21 May 2025, volume 6, chapter 30, p 278, para 8.

agencies in a way that drives system reform to improve suicide prevention and wellbeing outcomes for serving and ex-serving ADF members.

7. The Royal Commission helpfully provided a comprehensive model for the role of the Defence and Veterans' Services Commissioner (the Commissioner) and the design of the new entity. Its key features are outlined in the Royal Commission's Final Report in Chapter 30: Beyond the Royal Commission.

8. Section 5 of the VETS Act provides that the Senate Foreign Affairs, Defence and Trade Legislation Committee must:

(a) begin a review of the amendments in Schedule 9 to this Act as soon as practicable after the day this Act receives the Royal Assent; and

(b) report the Committee's findings to the Senate by 29 August 2025.

9. The Committee's review of the legislation prior to its commencement on 29 September 2025 provides an important opportunity to consider the extent to which the legislation as passed gives effect to the model for a new entity as proposed by the Royal Commission, and other relevant matters.

10. I further note that section 110ZLE of the VETS Act also provides for an independent review of the operation of the Commission to be undertaken as soon as practicable after the end of the period of 36 months after commencement of the relevant provisions on 29 September 2025. This review must consider:

(a) the effectiveness of the functions and powers of the Defence and Veterans' Services Commissioner and the Defence and Veterans' Services Commission to achieve the objects of this Part; and

(b) whether it would be appropriate to provide for the future operation of the Defence and Veterans' Services Commissioner and the Defence and Veterans' Services Commission in standalone legislation.

11. In preparing this submission, I have considered the:

- Royal Commission's proposed model, captured in Chapter 30 of the Final Report,
- Public consultations undertaken by the Royal Commission on the creation of a new entity,
- Legislation to establish the new entity as passed by the Parliament,
- Input from consultations I have undertaken to date in the time available, including during the Caretaker period, with government agencies, a number of non-government stakeholders, direct contact with the interim Commission by members of the public via the interim Commission's dedicated webpage on the Department of the Prime Minister and Cabinet's website, and direct engagement with individuals with lived experience of suicide and suicidality,

- Analysis of the features of the new statutory oversight entity as set out by the Royal Commission in Chapter 30 and how they are given effect in the VETS Act (see the [Attachment](#) to this submission for further detail), and
- Inclusion of other provisions in Schedule 9 of the VETS Act that were not referenced by the Royal Commission.

12. I have also considered the legislation against the:

- National Commissioner for Defence and Veteran Suicide Prevention Bill 2020 (lapsed) to establish a National Commissioner for Defence and Veteran Suicide Prevention,² and
- Relevant provisions in other existing legislation, including:
 - *Inspector-General of Aged Care Act 2023* (Cth) (IGAC Act);
 - *Defence Act 1903* (Cth) (the Defence Act), Part VIIIB—Inspector-General of the Australian Defence Force (IGADF);
 - *National Anti-Corruption Commission Act 2022* (Cth) (NACC Act);
 - *Royal Commissions Act 1902* (Cth) (RC Act);
 - *Ombudsman Act 1976* (Cth) (Ombudsman Act); and
 - *Inspector-General of Intelligence and Security Act 1986* (Cth) (IGIS Act).

13. As detailed in this submission, I consider Schedule 9 of the VETS Act³ as passed by the Parliament would permit the new Commission to commence with effect on 29 September 2025. Schedule 9 provides for the appointment of the Commissioner and the establishment of the Commission, and confers on the Commissioner a range of duties, functions and powers sufficient for the Commissioner to fulfil the role that the Royal Commission envisaged. I note that the Commissioner will also be subject to strong accountability requirements in addition to the measures in Schedule 9. For example, as a *Public Governance, Performance and Accountability Act 2013* (PGPA Act) entity, the Commission will be subject to the requirements of annual reporting, as well as oversight of the Australian National Audit Office and the Commonwealth Ombudsman, and the APS Code of Conduct.

14. However, I consider there are areas in which the legislation may be strengthened to more fully capture the Royal Commission's intent and to clarify aspects of the legislation. A consistent message I have received from stakeholders is that the most important element to ensure the success of the Commission is that it not only be seen to be independent, but that it is truly so. To this end, this submission recommends amendments to the legislation for the Committee's consideration to strengthen the independence of the Commissioner. I have also provided some additional comments where I consider the legislation could be enhanced to remove ambiguity and to ensure that the Commissioner is well positioned to undertake their functions.

² [National Commissioner for Defence and Veteran Suicide Prevention Bill 2020](#).

³ The [Veterans' Entitlements, Treatment and Support \(Simplification and Harmonisation\) Act 2025](#) (VETS Act), passed the Parliament on 13 February 2025 and received Royal Assent on 20 February 2025. Schedule 9 amends the Defence Act.

15. I have proposed an option for how these amendments may be prioritised into Category A and Category B recommendations, i.e. Category A proposals are those I consider should be progressed urgently, and ideally by 29 September 2025 or prior to the Commissioner's appointment. Category B proposals would be beneficial to do now, however could be progressed later, or as part of the three-year review. Whether amendments are considered necessary prior to the commencement of Schedule 9 of the VETS Act on 29 September 2025, or after commencement, is a matter for Government and the Committee's consideration.
16. I acknowledge that the Senate Standing Committee for the Scrutiny of Bills has considered the VETS Act as passed by the Parliament.⁴ I recommend below that the legislation in Schedule 9 of the VETS Act should be in a stand-alone Act. Should this recommendation be accepted, there will be an opportunity to address this Committee's scrutiny concerns in the development of that stand-alone legislation and its accompanying explanatory materials.
17. I also acknowledge all agency, organisational, and individual stakeholders with whom I have engaged to date. While there are different views on aspects of the new entity, the overarching message I have received is one of unified support for this entity to be created. I particularly thank those individuals with lived experience of suicide and suicidality who have willingly and directly shared with me their insights, views, expectations, and hopes for the new Commission going forward. Their deeply moving and tragic experiences bring into sharp focus the importance of this legislation in shaping the role, functions, and powers of the Commissioner, the construct of the new Commission, and the need to get this right.

⁴ Senate Standing Committee for the Scrutiny of Bills, [Scrutiny Digest 3 of 2025](#), 2025, accessed 21 May 2025, pp 14-23, paras 1.36-1.67.

Context of the legislation and the interim Commission

18. The Royal Commission was established by Letters Patent on 8 July 2021.⁵ Over three years the Royal Commission undertook a comprehensive inquiry into suicide and suicidality in the Defence and veteran communities. This work included the release of an interim report on 21 August 2022 which made 13 recommendations.⁶
19. The Royal Commission delivered its final report on 9 September 2024, making a further 122 recommendations. It was the 122nd recommendation of this final report that gave rise to the work that is enabled by Schedule 9 of the VETS Act.
20. Recommendation 122 states:

The Australian Government should establish a new statutory entity with the purpose of providing independent oversight and evidence-based advice in order to drive system reform to improve suicide prevention and wellbeing outcomes for serving and ex-serving Australian Defence Force members.

21. On 2 December 2024, the Australian Government provided the following by way of agreement to this recommendation:

*The Government **agrees** to establish a new statutory entity to oversee system reform across the whole Defence ecosystem as a priority.*

The Government will appoint an interim head of the oversight body to work across government and provide advice on the establishment of the permanent oversight entity, including legislation required, to enable its establishment by September 2025.⁷

22. The Royal Commission considered that:

By monitoring, reviewing, investigating and reporting on actions taken to prevent suicide and suicidality, a new entity can be a catalyst for change across Australian Government agencies. It can improve transparency, accountability and performance around the policies,

⁵ Commonwealth of Australia, [Letters Patent](#), 8 July 2021, accessed 21 May 2025.

⁶ Royal Commission, [Interim Report](#), 11 August 2022, accessed 21 May 2025.

⁷ Commonwealth of Australia, [Australian Government Response to the Final Report of the Royal Commission into Defence and Veteran Suicide](#), 2024, accessed 21 May 2025, p 145.

*programs, systems and practices that impact suicide and suicidality among serving and ex-serving ADF members.*⁸

23. The Royal Commission set out the functions through which the Commissioner would achieve their purpose.⁹ These functions have effectively been reflected in Schedule 9 of the VETS Act.¹⁰

⁸ Royal Commission, Final Report, volume 6, chapter 30, pp 278-9, paras 8-9.

⁹ Royal Commission, Final Report, volume 6, chapter 30, pp 283-4, para 38.

¹⁰ VETS Act, Schedule 9, section 110ZJB.

Recommended Amendments

24. The independence of the Commissioner and the Commission, and the alignment of the legislation to the intent of the Royal Commission's recommendation (122) will be key to the successful operation of the Commission.
25. As noted in the Introduction above, Schedule 9 of the VETS Act as passed by the Parliament provides for the appointment of the Commissioner and the establishment of the Commission and confers on the Commissioner duties, functions and powers sufficient for them to fulfil the role that the Royal Commission envisaged. The legislation as it currently stands within Schedule 9 would permit the Commission to commence with effect from 29 September 2025.
26. However, in order to establish the Commissioner and Commission on a sound and enduring basis, I consider it highly desirable that the changes recommended in this submission to enhance and protect the Commissioner's independence, including providing for appointment of the Commissioner by the Governor-General and the creation of a stand-alone Act, are put in place before 29 September 2025. These are provided for in Category A below.
27. In addition, I have reviewed Schedule 9 against a variety of other comparable Acts and identified a number of areas that could be further considered to enhance the operation of Schedule 9 (Category B). I provide this to the Committee to enable full consideration of the legislation.

Category A: Changes recommended

Independence

28. There are a number of changes that could be made to further enhance the independence of the Commissioner and the Commission.

Stand-alone Act

29. I recommend that the legislation currently contained in Schedule 9 of the VETS Act, which amends the Defence Act by inserting Part VIIIE, should be excised and placed into its own Act earlier than the 36 month review provided for in section 110ZLE. This would help to address a key concern of stakeholders with the perceived and actual independence of the Commissioner, the Commission and its staff.
30. While the legislation does include a provision that sets out the independence of the Commissioner's role (see section 110ZJD), a stand-alone Act will appropriately recognise the significance and independence of the Commission as a new stand-alone body to oversee the defence and veteran ecosystem, and lend appropriate gravitas to its creation.
31. This would also be consistent with enabling legislation of similar bodies where the perception of independence is critical to that body's effectiveness, such as the Inspector-General of Aged Care

(established under the IGAC Act), the Inspector-General of Intelligence and Security (established under the IGIS Act) and the Commonwealth Ombudsman (established under the Ombudsman Act).

32. The argument for a stand-alone Act is further supported by the legislative provisions establishing the Commission – it is a separate Non-corporate Commonwealth Entity responsible for its own administration as an independent agency.¹¹ To support the perception of independence, it is intended that, in setting up the Commission, it has a separate physical and electronic identity distinct from Defence.

Appointment of the Commissioner

33. I recommend that changes be made to the legislation to ensure that the process for appointment of the Commissioner and the terms of the appointment are as transparent and robust as possible.
34. I recommend that the Governor-General make the appointment on advice from the Minister. This would be consistent with the appointment of statutory office-holders in similar oversight roles, including the National Anti-Corruption Commissioner, the Inspector-General of Aged Care and the Commonwealth Ombudsman.¹² The Royal Commission also proposed this in Chapter 30.¹³
35. The process for appointment should be merit-based, publicly advertised, and candidates should be assessed as suitable for appointment by an assessment panel.¹⁴
36. In addition, the eligibility requirement¹⁵ should be amended to include that the chosen Commissioner is not a recent (5 years or fewer) serving member of the ADF. This will enhance the independence of the office and is consistent with the expectations of the Royal Commission.¹⁶

Appointment terms and conditions

37. The primary legislation should include provisions that deal with the administrative matters pertaining to the Commissioner's role. At present these can be provided for in rules,¹⁷ however this is inconsistent with the enabling legislation of similar statutory appointments, such as the Commonwealth Ombudsman, National Anti-Corruption Commissioner and Inspector-General of Aged Care.¹⁸ These should include, at a minimum, provisions that clarify acting appointments, leave arrangements, engaging in other paid work, disclosure of interests, resignation and termination of appointments.

¹¹ VETS Act, Schedule 9, section 110ZKA.

¹² See for example NACC Act, section 241; IGAC Act, section 31; Ombudsman Act, section 21.

¹³ Royal Commission, Final Report, volume 6, chapter 30, p 287, para 64.

¹⁴ Royal Commission, Final Report, volume 6, chapter 30, p 288, para 65.

¹⁵ VETS Act, Schedule 9, subsection 110ZJE(4).

¹⁶ Royal Commission, Final Report, volume 6, chapter 30, p 288, para 66.

¹⁷ VETS Act, Schedule 9, section 110ZJK.

¹⁸ See for example Ombudsman Act, sections 25-29; NACC Act, sections 243-250; IGAC Act, sections 33-39.

38. In particular, strong provisions should be included that prevent the arbitrary termination of an incumbent Commissioner's appointment in order to protect the Commissioner's independence. This approach would be consistent with similar statutory appointments, including the Inspector-General of Intelligence and Security and the Inspector-General of Aged Care.¹⁹
39. These changes would enhance stakeholder confidence in the effective operation of the Commission.

Inquiry into or advice on specific matter on request by Minister

40. The Minister may request the Commissioner to conduct research and inquire into and report on, or to advise on a specific matter.²⁰ It would support the independence of the Commissioner and the effective operation of the Commission if additional parameters were placed around this power, specifically to ensure that the Minister must have regard to the objects of the legislation establishing the Commissioner, the current and planned inquiries for the year, and whether the Commission has sufficient resources to conduct the activities directed. The Minister's power to direct the Inspector-General of Aged Care to conduct a review is limited in similar terms.²¹

Removal of special inquiry rule-making power

41. I further propose the removal of the rule-making power in relation to the circumstances where the Commissioner may determine an inquiry is a special inquiry.²² The ability for the Minister to constrain the Commissioner's discretion to determine a special inquiry by requirements prescribed in the rules raises a risk that the Commissioner's independence could be unduly impacted.
42. Subdivision B of Division 3 sets out the powers the Commissioner can use for the purposes of a special inquiry. The Commissioner's compulsive powers are only available in relation to special inquiries and it is critical to the independence of the Commissioner to have full discretion over whether an inquiry warrants use of those powers.
43. At present, the Commissioner can make a determination that an inquiry under Division 2 is to be a special inquiry if public notice has been given of the inquiry and the Commissioner is satisfied that it is in the public interest that compulsive powers may be exercised in relation to the inquiry. Should additional requirements be considered appropriate in relation to the making of this determination, these should be made through amendments to the enabling legislation. An example of such a requirement could be that the Commissioner is satisfied that the compulsive powers are necessary for the purposes of the inquiry.

¹⁹ See for example IGIS Act, section 30; IGAC Act, section 39.

²⁰ VETS Act, Schedule 9, section 110ZFB.

²¹ IGAC Act, subsection 17(3).

²² VETS Act, Schedule 9, paragraph 110ZGA(1)(c).

Independence of the Commissioner

44. Section 110ZJD provides for the Commissioner's independence. I recommend this provision be strengthened by specifying that the Commissioner is not subject to direction in relation to the conduct of an inquiry, including its terms, timing and priority, or how it is to be conducted. The independence of the Inspector-General of Aged Care is described in this way.²³

Transparency and accountability

Procedural Fairness

45. I recommend that procedural fairness requirements be enshrined in the legislation by requiring the Commissioner to afford an opportunity to respond before including information critical of an agency, official or other person in a draft report.
46. An important aspect of the functions of the Commissioner is to report on the progress of implementation of the Government's response to the Royal Commission's recommendations, and to review and inquire into other matters relating to suicide and suicide prevention. In this regard, there should be provisions that mandate the operation of procedural fairness. That is, any person or body who is the subject of an adverse comment in a draft report of the Commissioner should be provided with the opportunity to respond to any such comment in advance of the report being finalised and tabled or published. Procedural fairness does not require a specific provision for it to apply. However, it is good practice to make it specific in the legislation, rather than the rules as currently contemplated,²⁴ to ensure a proper and consistent approach is taken. This is also consistent with the approach in other legislation including the IGAC Act.²⁵ Similarly, any comments made, or responses given on the draft report should be required to be considered by the Commissioner in preparing the final report. Where the final report includes a recommendation that a certain action is taken by a government entity or official or any other person, the Commissioner should have discretion to seek their views.

Inadequate Action on Commissioner's recommendations

47. A specific provision enabling the Commissioner to further report to the Prime Minister and Minister where they are of the opinion that adequate and appropriate action has not been taken in respect of matters contained in a report of the Commissioner would provide confidence to stakeholders that an escalation mechanism to the highest level of government exists if there is inadequate action.²⁶

²³ IGAC Act, paragraph 11(2)(b).

²⁴ VETS Act, Schedule 9, paragraph 110ZFG(e).

²⁵ IGAC Act, sections 22 and 24.

²⁶ See National Commissioner for Defence and Veteran Suicide Prevention Bill 2020 (lapsed), section 62.

Publication on own initiative

48. While the VETS Act stipulates that some of the Commissioner's reports will be tabled by the Minister in the Parliament,²⁷ there may be some things that the Commissioner may want to publish on their own motion. I recommend that the legislation clarify that the Commissioner is empowered to publish reports at the Commissioner's discretion. This would promote transparency by making the Commissioner's findings readily available to the public and bolster the independence of the Commissioner as publication of reports would not be dependent on the Minister tabling reports before Parliament.
49. I also suggest the inclusion of a provision that provides that nothing in the legislation precludes the Commissioner from disclosing information or making public statements about an inquiry or the performance of the Commissioner's functions, where the Commissioner considers it in the public interest to do so. This would include publishing of reports on the Commissioner's own motion on the Commission's website. This could be modelled on section 35A of the Ombudsman Act, which includes exemptions regarding certain information which should not be published. In the case of the Commissioner, this power should be subject to section 110ZHM (Unauthorised use or disclosure of protected information), and the Commissioner must have regard to whether the material to be published includes the types of information that would give rise to a private hearing under section 110ZFE, for example personal information, operationally sensitive information or material that would present a risk of prejudice to national security.
50. I note that the Royal Commission observed: *'[w]e do not believe every report should be addressed to Parliament'* and that, for example, a matter specific to the Army could be addressed to the Chief of Army, as well as published by the Commissioner.²⁸

Annual report requirements

51. The Commissioner will need to prepare and table an annual report to fulfil obligations under the PGPA Act. I recommend that the legislation is refined to make it clear that any annual report also needs to explicitly outline other requirements, including information about the performance of the Commissioner's functions, including the number of reviews undertaken in the reporting period, and the use of any of the legislative powers afforded the Commissioner in discharging their functions. Consideration could also be given to including the number of notices given, and any other matters prescribed. This would be consistent with reporting requirements in the IGAC Act.²⁹
52. This change would ensure regular, comprehensive and transparent information is available on the operation of this important body.

²⁷ VETS Act, Schedule 9, subsection 110ZFA(3) and paragraph 110ZFC(3)(b).

²⁸ Royal Commission, Final Report, volume 6, Chapter 30, p 286, para 58.

²⁹ IGAC Act, section 71.

Timing for Royal Commission implementation inquiries

53. The Commissioner must conduct at least two inquiries into the Commonwealth's implementation of the Government's response to the Royal Commission recommendations.³⁰ Currently, the timing of these inquiries is to be provided for in the rules. I recommend statutory timeframes for each of those inquiries, with the first inquiry to be completed by 2 December 2027 and the second to be completed by 2 December 2030. This will provide transparency for relevant government stakeholders and those in the defence and veteran community that the two reports will be undertaken in a timely manner. The proposed timing is intended not only to take account of budget cycles and implementation timeframes such that agencies have sufficient time to make meaningful changes, but also that the Commissioner's reports are delivered within timeframes that ensure its findings have value and impact.
54. This is consistent with other statutory reviews into the implementation of Royal Commission recommendations. The IGAC Act, for example, provides statutory timeframes for its reviews of the Commonwealth's implementation of recommendations from the Royal Commission into Aged Care Quality and Safety.³¹ These requirements would not preclude the Commissioner inquiring and reporting on specific recommendations or related reforms more regularly.

Adequacy of powers

Power to access premises

55. I recommend inclusion of a general power to access Commonwealth premises for the purposes of a special inquiry. This power would be subject to the Commissioner's discretion and no warrant would need to be issued by a judge. It would confer on the Commissioner a power to enter and remain on premises occupied by Commonwealth entities and bodies, including the ADF, Department of Defence or Department of Veterans Affairs and their contractors. This would strengthen the Commissioner's powers of special inquiry, consistent with equivalent powers of other oversight bodies, including, for example, the Inspector-General of Aged Care³² and the Commonwealth Ombudsman.³³
56. Schedule 9 currently includes a power for the Commissioner or an authorised police officer to apply to a judge for a search warrant in circumstances where there is a risk that things relevant to a special inquiry may be destroyed if a summons for their production were issued.³⁴ I consider a general power to access premises is a stronger and more appropriate power for how the Commission interacts with Commonwealth bodies and the kind of oversight functions performed by the Commissioner. This would obviate the need for search warrants for Commonwealth

³⁰ VETS Act, Schedule 9, section 110ZFC.

³¹ IGAC Act, subsections 28(5)-(7).

³² IGAC Act, section 50.

³³ Ombudsman Act, section 14.

³⁴ VETS Act, Schedule 9, section 110ZGJ.

agencies but retain the availability of search warrants for other bodies for use in rare circumstances as required. Whether search warrants are needed in the longer term can be reviewed in the three-year review required by section 110ZLE.

Category B: Suggestions for consideration

Objects clause

57. Objects clauses outline the purposes of an Act or Part of an Act and assist courts in the interpretation of legislation. When interpreting a provision of an Act, a construction that would promote the object of an Act is to be preferred to one that would not.³⁵
58. The provision setting out the objects could be enhanced to make the legislation's specific purposes clearer.³⁶ At present, this section only provides a very brief outline and does not reference the establishment of a Commissioner or the Commission or the requirement to report publicly on the implementation of the Government's response to the Royal Commission recommendations. These are key purposes of Schedule 9 and I would suggest that it would be helpful to courts and stakeholders if the objects clause fully details these.
59. Similarly, the simplified outline could also be amended to provide a more fulsome explanation of the matters provided for in the legislation.³⁷ For example, key components of the legislation such as the establishment of the Commissioner and the Commission should be referenced. Information should also be included regarding the Commissioner's independence and functions and the provisions for the protection of witnesses as well as the offences and penalties regime should also be highlighted.³⁸ Such provisions would provide a road map for stakeholders unfamiliar with legislation regarding the key elements of the Act.

Definitions

60. Updates should also be made to the definitions with the inclusion of definitions for ADF, Commissioner, documents, and legal practitioner.³⁹ These changes would make the legislation clearer and more accessible for stakeholders.

Definition of intelligence information

61. The Committee may wish to consider recommending that the definition of 'intelligence information' be refined to ensure it does not capture information that is not classified or sensitive in nature. The current definition of intelligence information outlined in Schedule 9 includes any

³⁵ *Acts Interpretation Act 1901* (Cth), section 15AA.

³⁶ VETS Act, Schedule 9, section 110ZEA.

³⁷ VETS Act, Schedule 9, section 110ZEB.

³⁸ See, for example, IGAC Act, section 4.

³⁹ VETS Act, Schedule 9, section 110ZEE.

information acquired or prepared by or on behalf of an Australian intelligence entity in connection with its functions or that relates to the performance of its functions.⁴⁰ However, not all of an intelligence entity's functions will necessarily be classified or otherwise sensitive. This definition may also capture information that is already lawfully in the public domain, such as an intelligence entity's annual reports.

62. The broad nature of this definition risks imposing an undue impost on the Commissioner's performance of their functions. For example, the requirement in section 110ZGQ for the Commissioner to ensure intelligence information is obtained, stored, accessed, used and disclosed for the purposes of a special inquiry only in accordance with an arrangement between the Commissioner and the head of the relevant intelligence entity may require that such an arrangement is made and complied with even in circumstances where the Commissioner is dealing only with publicly available information about an intelligence entity. There is also a risk that the current definition of intelligence information may act as a disincentive to persons required or wishing to provide information to the Commissioner due to concerns about whether they could be exposed to a penalty under section 110ZHC if unclassified and benign information is captured by the definition.

Summarised reference to functions of the Commissioner

63. Schedule 9 of the VETS Act summarises the functions of the Commissioner in these terms in the following important provisions: 'improve suicide prevention for serving and ex-serving ADF members; or improve wellbeing outcomes for serving and ex-serving ADF members':

- Section 110ZFA - Investigation on [Commissioner's] own initiative
- Section 110ZFB - Inquiry into or advice on specific matter on request by Minister

I am concerned that there is a risk that this phrase may be interpreted as not sufficiently broad to capture all the Commissioner's functions set out in section 110ZJB, leading to a limitation in the scope of the Commissioner's investigative functions. I consider a better approach would be to replace this phrase with cross references to the Commissioner's functions as set out in section 110ZJB.

64. The references to the Commissioner's powers to do all things necessary or convenient in connection with performance of their functions in sections 110ZJB(4) and 110ZKC could also be removed due to duplication of the content of section 110ZJC.

Inquiry into implementation of Royal Commission recommendations

65. In addition to the suggestion regarding statutory timing for the two reports on the implementation of the Government's response to recommendations of the Royal Commission, I consider it would be beneficial to include a specific requirement that these reports be provided to

⁴⁰ VETS Act, Schedule 9, section 110ZEE, paragraphs (a) and (b) of the definition of intelligence information.

the Minister, published on the Commission's website and tabled by the Minister in Parliament. This is consistent with the obligations of the Inspector-General of Aged Care, who is also required to conduct two reviews of the implementation of the Royal Commission into Aged Care Quality and Safety recommendations.⁴¹

Response to report by the Commonwealth

66. The Committee may also wish to consider whether a provision should be included requiring the Commonwealth to respond in writing to a report by the Commissioner tabled in Parliament. Any response should also be tabled.⁴² This would increase government accountability, ensuring that any recommendations are appropriately considered and responded to by Government.

Powers related to Inquiries

67. Section 110ZFG currently provides that the Commissioner, subject to the legislation and any requirements prescribed by the rules, can conduct research and inquiries as they see fit. I consider that greater clarity and transparency could be provided around the operation of reviews, including the following matters.

Notices of Inquiry

68. The primary legislation should outline how an inquiry commences and the specific requirements of notices of inquiry. It should stipulate the form and required content of the notice, who the notice should be given to and the need to publish any such notice.

Invite submissions

69. There should be provisions that outline the approach to the inviting of submissions to an inquiry and including how to handle requests for confidentiality. The primary legislation should also make it clear that submissions will be made publicly available unless there is a genuine reason not to do so. Such provisions could be modelled on the IGAC Act, sections 18-20.

Offences and protections for witnesses

70. The legislation includes a range of protections for witnesses and offences for actions that hinder the ability of the Commissioner and the Commission to perform their functions or exercise powers effectively. By and large these offences, and the penalties they attract, are consistent with offences in place in relation to similar bodies, including those in the RC Act and the NACC Act. However, there are a small number of additional offences that the Committee may wish to consider, to

⁴¹ IGAC Act, subsections 28(3)-(4).

⁴² See National Commissioner for Defence and Veteran Suicide Prevention Bill 2020 (lapsed), section 61.

expand the scope of witness protections and in relation to the provision of false and misleading information or documents, or the destruction of documents or things.

71. There are also technical amendments that would ensure the existing offences apply in all appropriate circumstances, as outlined below.

Scope of protections for witnesses

72. Witness protections could be strengthened by broadening the circumstances that would constitute an offence for causing detriment to a person on account of their assistance to the Commissioner.
73. Schedule 9 of the VETS Act contains some protections against victimisation of a person who provides information or documents to the Commissioner.⁴³ However, these protections extend only to the dismissal of a person from their employment or to the prejudice of a person's employment for reason of their having appeared as a witness before the Commissioner, given evidence before the Commissioner, or given information or a statement, or produced a document or thing, in accordance with a summons to attend a hearing. Victimisation of witnesses may take many other forms that would not be covered by this offence. It is also not clear that the offence in subsection 110ZHG(1) applies in relation to a person providing information, documents or things outside the context of a hearing.
74. Broader witness protections exist in relation to persons who give information, documents or other forms of assistance to bodies similar to the Commission. For example, the RC Act includes offences not only for dismissal from employment,⁴⁴ but also for inflicting violence, punishment, damage, loss or disadvantage to a person.⁴⁵ The IGAC Act provides for offences for causing or threatening to cause 'any detriment' to a person for reason of that person providing (or potentially providing) assistance to the Inspector-General.⁴⁶
75. The witness protection provision should also be amended to make it clear that those protections apply regardless of whether the person is providing evidence or documents at a hearing, in response to a requirement to provide information or documents, or if the person is providing the information or documents to the Commissioner voluntarily, for example, in response to a call for submissions. Protections should also apply in circumstances where a person intends to provide information or documents to the Commissioner, or where the alleged offender suspects the person has, may or intends to do so.
76. Broadening the witness protection provisions in these ways would provide greater assurance to individuals providing information or documents to the Commissioner that they will not be

⁴³ VETS Act, Schedule 9, subsection 110ZHG(1).

⁴⁴ RC Act, section 6N.

⁴⁵ RC Act, section 6M.

⁴⁶ IGAC Act, section 56.

victimised for providing that assistance. It would also safeguard the effectiveness of the Commissioner by acting as a deterrent to those who may seek to hinder the work of the Commissioner.

Self-incrimination

77. Schedule 9 contains requirements and protections in relation to giving information to the Commissioner that might tend to incriminate a person.⁴⁷ Subsection 110ZHF(1) provides that an individual is not excused from giving information, evidence or a statement, or producing a document or thing, under section 110ZGC (when required to attend a hearing) on the ground that doing so might tend to incriminate them in relation to an offence. The Committee may wish to consider recommending this provision be expanded to include where a person is required by the Commissioner to provide information, documents or things under section 110ZGE (Commissioner may require information etc.).
78. Subsection 110ZHF(3) includes a use immunity, providing that information given by an individual in accordance with section 110ZGC is not admissible in evidence against that individual in any criminal proceeding other than for various offences in the *Criminal Code Act 1995*, the *Crimes Act 1914*, and Schedule 9 relating to the operation of the Commissioner and Commission. However, this use immunity currently only applies in relation to information provided in compliance with a notice to attend a hearing. The use immunity does not cover information obtained by the Commissioner under section 110ZGE, information obtained under a search warrant⁴⁸ or given voluntarily, either by a member of the public (whether in response to a request by the Commissioner or otherwise) or by a Commonwealth or State or Territory body.⁴⁹
79. The Committee may wish to consider recommending the use immunity be expanded to include information provided to the Commissioner in the above circumstances. This would be consistent with legislation enabling similar oversight bodies, such as the Inspector-General of Intelligence and Security⁵⁰ and the Commonwealth Ombudsman,⁵¹ which include a broad use immunity, including in relation to information provided voluntarily.
80. Such amendments would provide additional assurances to persons who possess information relevant to the Commissioner's functions that they would not face prosecution for potentially minor offences. This would increase the effectiveness of the Commissioner by facilitating access to information relevant to their functions.

⁴⁷ VETS Act, Schedule 9, section 110ZHF.

⁴⁸ VETS Act, Schedule 9, section 110ZGJ.

⁴⁹ VETS Act, Schedule 9, sections 110ZGN and 110ZGP.

⁵⁰ IGIS Act, section 32AC.

⁵¹ Ombudsman Act, subsections 7A(1B) (preliminary inquiries), 8(2B) (investigations) and 9(4) (in response to a requirement to provide information).

Protections from criminal and civil penalties

81. Schedule 9 of the VETS Act includes protections from criminal and civil penalties for a person providing information to the Commissioner in some circumstances.⁵² Currently, a person is only protected from penalties in relation to secrecy offences (as defined in section 110ZEE) and, with the exception of disclosures by Commonwealth and State and Territory bodies, does not apply where information is provided voluntarily.
82. This is inconsistent with protections for persons providing information to other oversight bodies, both in terms of the range of applicable penalties and the circumstances in which information may be provided that are protected.
83. For example, the NACC Act provides broad protections for persons making a NACC disclosure, providing that the person is not subject to any civil, criminal or administrative liability for the NACC disclosure and that no contractual or other remedy may be enforced, and no contractual or other right may be exercised against the person on the basis of the disclosure.⁵³ The NACC Act also provides that a person does not commit an offence and is not liable to any penalty under any other enactment because the person gives information, or produces a document or thing, as required by a direction or notice to produce or as required at a hearing.⁵⁴
84. Similarly, the protections in the IGIS Act are not limited to secrecy provisions and include protections for voluntarily giving information to the Inspector-General of Intelligence and Security for specified purposes, including making a complaint and the Inspector-General of Intelligence and Security conducting inspections, preliminary inquiries and inquiries.⁵⁵ The Ombudsman Act also includes protections with a scope beyond secrecy provisions and that encompass the voluntary provision of information.⁵⁶
85. Expanding the scope of protections from criminal and civil penalties beyond those related to secrecy provisions, and to include the voluntary provision of information to the Commissioner for the purposes of the Commissioner's functions, would support the effectiveness of the Commissioner and mitigate against relevant information being withheld due to concerns by the person who possesses that information that they could be penalised for assisting the Commissioner.

False or misleading information or documents and destruction of documents or things

86. Schedule 9 currently does not provide for an offence for providing false or misleading information to the Commissioner. Such offences are generally included in the enabling legislation of oversight

⁵² VETS Act Schedule 9, section 110ZHQ.

⁵³ NACC Act, section 24.

⁵⁴ NACC Act, subsection 114(6).

⁵⁵ IGIS Act, section 32AC.

⁵⁶ Ombudsman Act, subsections 7A(1C), 8(2C), and 9(5).

and integrity bodies such as the Commission, including, for example, in the RC Act⁵⁷ and the NACC Act.⁵⁸ The Royal Commission's Final Report recommended the inclusion in the legislation of "offences for the provision of false or misleading information or documents".⁵⁹

87. Similarly, there is currently no recourse available to the Commissioner in the form of an offence where a person acts or omits to act resulting in a document or thing required by the Commissioner being destroyed. Examples of such offences can be found in both the RC Act⁶⁰ and the NACC Act.⁶¹
88. The effectiveness of the Commissioner's powers of inquiry could be strengthened by the inclusion of offences for providing false or misleading information or documents and for destroying a document or thing required by the Commissioner.

Technical amendments to offences

89. There are a small number of minor technical changes to existing offences and related provisions that would ensure that the offences apply in all relevant circumstances:
- The offence in subsection 110ZHE(1) for failing to give information or a statement, or produce a document or thing, in circumstances where the person has made a claim of legal professional privilege that has been rejected by the Commissioner, currently only applies to a requirement to give information, documents or things under section 110ZGC when a person is required to attend a hearing. However, the reference to the operation of section 110ZHE in both subsections 110ZGC(5) and 110ZGE(5) suggests that the offence was also intended to apply in relation to circumstances where a person is required to provide information under section 110ZGE (Commissioner may require information etc.). As such, an amendment would be required to clarify the application of the offence to section 110ZGE. I also note that the Scrutiny of Bills Committee discussed the provisions regarding legal professional privilege in their report (mentioned in paragraph 16 above).
 - Section 110ZHF provides that an individual is not excused from giving information, evidence or a statement, or producing a document or thing, under section 110ZGC (when required to attend a hearing) on the ground that doing so might tend to incriminate them in relation to an offence. As discussed earlier, the Committee may wish to consider recommending this provision be expanded to also include where a person is required by the Commissioner to provide information, documents or things under section 110ZGE.

⁵⁷ RC Act, section 6H.

⁵⁸ NACC Act, sections 61 and 71.

⁵⁹ Royal Commission, Final Report, volume 6, chapter 30, p 286, para 54.

⁶⁰ RC Act, section 6K.

⁶¹ NACC Act, section 70.

Delegation by Commissioner

90. Section 110ZLA currently provides that the rules may make provision for delegation of the Commissioner's powers and functions, and reporting in relation to performance of functions and exercise of powers. This latter reporting requirement I have addressed above under Annual Report requirements. I also consider that the nature and scope of the Commissioner's delegation powers should be expressly provided for in the primary legislation, consistent with similar legislation. This provides transparency and certainty as to what powers the Commissioner may delegate and to whom.
91. Given the breadth of the work to be undertaken by the Commissioner and the Commission, including the statutory requirement to conduct at least two inquiries into the implementation of the Government's response to the 122 recommendations in the Final Report of the Royal Commission, and to manage any conflicts of interests that may arise for the Commissioner, I also consider that the legislation should provide for the appointment of Assistant Commissioners and clearly specify their powers and responsibilities.⁶² These could be non-statutory appointees.
92. This would provide the Commissioner with the ability to delegate appropriate powers and functions to an Assistant Commissioner, for example, where the Commissioner has or is perceived to have a conflict of interest. This may include the ability to issue a summons or notice, hold a hearing or assess a claim for legal professional privilege. The legislation should also specifically set out the functions, duties and powers that the Commissioner cannot delegate – such as the power to publish a report into the implementation of the Royal Commission recommendations.

⁶² See, for example, Defence Act, Part VIIIB, paragraph 110P(1)(c): the Inspector-General ADF may appoint an Assistant IGADF.

Attachment

Analysis of the features of the new statutory oversight entity as set out by the Royal Commission into Defence and Veteran Suicide (Final Report, volume 6, chapter 30: Beyond the Royal Commission), and how they are given effect in Schedule 9 of the VETS Act.

Chapter 30: Beyond the Royal Commission – new entity paragraph references	Schedule 9 VETS Act
PURPOSE: 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 (paragraph 37)	110ZEA Objects of this Part 110ZJD Independence
FUNCTIONS: <ul style="list-style-type: none"> • monitor, investigate and report to the Minister and Parliament on: <ul style="list-style-type: none"> ◦ data and trends regarding suicide and suicidality among serving and ex-serving ADF members ◦ systemic factors relating to the Australian Government’s administration of policies, programs, systems and practices that contribute to suicide and suicidality among serving and ex-serving ADF members ◦ the progress and impact of the Australian Government’s implementation of our recommendations, and their outcomes once implemented ◦ the state of the defence and veteran ecosystem, as it relates to the prevention of suicide and suicidality, including: <ul style="list-style-type: none"> • the cultures of Defence and DVA • the availability and effectiveness of prevention and early intervention programs • levels of collaboration across the defence and veteran ecosystem, including engagement with families of serving and ex-serving ADF members • provide independent evidence-based advice, promote the voice of lived experience, build capacity, and improve supports for serving and ex-serving ADF members • anything incidental or conducive to the performance of the above functions, to help identify opportunities for improvement, priorities and interventions. This would include: <ul style="list-style-type: none"> ◦ collaborating with other agencies (government and non-government) and other relevant Ministers ◦ commissioning and undertaking research ◦ engaging with people with lived experience (paragraph 38) 	110ZJB Functions of the Defence and Veterans’ Services Commissioner
FEATURES: ... the new entity is a non-corporate Commonwealth entity – specifically, a listed entity. It should be established as a statutory agency through purpose-specific enabling legislation. (paragraph 42)	110ZKA(3) Defence and Veterans’ Services Commission Refer also to the proposed amendments in the covering submission on pp 7-8 relating to standalone legislation

Chapter 30: Beyond the Royal Commission – new entity paragraph references	Schedule 9 VETS Act
<p>FEATURES: <i>Independence</i> - The new entity must not only be independent but also seen to be independent. (paragraph 46)</p> <p>... we propose that the enabling legislation would expressly state the entity has discretion in performing its functions and powers. The Minister would not be able to direct the entity on these matters, but we propose that the Minister should have the power to direct the entity to conduct a particular review. This is so the entity can be responsive when different areas of government identify pressing matters requiring inquiry that relate to the entity's functions. (paragraph 48)</p>	<p>110ZJD Independence 110ZFA Investigation on own initiative 110ZFB Inquiry into or advice on specific matter on request by Minister</p> <p>Refer also to the proposed amendments in the covering submission on pp 7-10 relating to the independence of the Commissioner</p>
<p>FEATURES: <i>Information gathering powers</i> - ... it is necessary for the legislation to expressly provide the entity with appropriate powers of inquiry to obtain relevant information from Australian Government agencies. (paragraph 50)</p> <p>These powers will enable the head of the new entity to obtain necessary information from those agencies, or any other person or body, if they have reason to believe they have information or a document relevant to the new entity's functions. (paragraph 51)</p>	<p>110ZGC Summons 110ZGD Evidence on oath or by affirmation 110ZGE Defence and Veterans' Services Commissioner may require information etc. 110ZGJ Search Warrants</p> <p>Refer also to the proposed amendments in the covering submission on pp 12-13 relating to the adequacy of the Commissioner's powers (power to access premises)</p>
<p>FEATURES: <i>Information gathering powers</i> - To deliver on its core purpose, the new entity should prioritise inquiry into and reporting on:</p> <ul style="list-style-type: none"> • issues that are systemic, widespread and serious, including the prevention and reduction of suicide and suicidality among serving and ex-serving ADF members • decisions made in response to the recommendations of this Royal Commission, and such other inquiries as the new entity considers appropriate • the implementation of such recommendations as are accepted or any alternative measures that may be adopted. (paragraph 52) 	<p>110ZFA Investigation on own initiative 110ZFC Inquiries into implementation of Defence and Veteran Suicide Royal Commission recommendations 110ZJB Functions of the Defence and Veterans' Services Commissioner</p>

Chapter 30: Beyond the Royal Commission – new entity paragraph references	Schedule 9 VETS Act
<p>FEATURES: <i>Information gathering powers</i> - We recommend the enabling legislation give the entity the powers (to be exercised in pursuit of the new entity’s purpose and functions) to:</p> <ul style="list-style-type: none"> • issue notices requiring the production of documents and information • conduct hearings (summoning witnesses and requiring evidence on oath or affirmation). (paragraph 53) 	<p>110ZFD Hearings 110ZFE Private Hearings 110ZFG Other powers relating to inquiries 110ZGC Summons 110ZGD Evidence on oath or by affirmation 110ZGE Defence and Veterans’ Services Commissioner may require information etc. 110ZGJ Search warrants</p>
<p>FEATURES: <i>Information gathering powers</i> - Offences for failing to give the information, produce a document, or appear as requested should also be included in the legislation, as should offences for the provision of false or misleading information or documents. (paragraph 54)</p>	<p>110ZHA Failure to attend hearing, give information or produce documents etc. 110ZHB Refusal to take an oath, make an affirmation or answer a question</p> <p>Refer also to the proposed amendments in the covering submission on pp 18-19 (false or misleading information or documents and destruction of documents or things)</p>
<p>FEATURES: <i>Information gathering powers</i> – There is precedent for this approach in the <i>Inspector-General of Aged Care Act 2023</i> (Cth), which provides for coercive information gathering. ... Certain privileges (such as against self-incrimination, self-exposure to a penalty and legal professional privilege) apply in relation to the giving of information and how it may be used in the future. (paragraph 55)</p>	<p>110ZHD Legal professional privilege 110ZHE Offences relating to claims for legal professional privilege 110ZHF Self-incrimination 110ZHQ No criminal or civil liability under secrecy provisions 110ZLC Protection of Commissioner, legal practitioners, eligible Judges and witnesses</p> <p>Refer also to the proposed amendments in the covering submission on p 17 (self-incrimination) and p 18 (protections from criminal and civil penalties)</p>
<p>FEATURES: <i>Reporting</i> - The new entity would have routine reporting obligations as part of its obligations under the PGPA Act. This would include publishing an annual report, including an annual performance statement. (paragraph 56)</p>	<p>110ZKA(3) Defence and Veterans’ Services Commission [Requirements of the PGPA Act]</p> <p>Refer to the proposed amendment in the covering submission on p 11 (annual report requirements)</p>

Chapter 30: Beyond the Royal Commission – new entity paragraph references	Schedule 9 VETS Act
FEATURES: <i>Reporting</i> - The legislation should provide for the new entity to report to Parliament and/or the relevant Minister (where the Minister has requested such a report) on particular matters and/or investigations. (paragraph 57)	110ZFA Investigation on own initiative 110ZFB Inquiry into or advice on specific matter on request by Minister 110ZLA(b) Other matters Refer also to the proposed amendment in the covering submission on pp 14-15 (inquiry into implementation of Defence and Veteran Suicide Royal Commission recommendations)
FEATURES: <i>Reporting</i> - The new entity will, from time to time, need to examine matters dealing with national defence and, other times, matters of personal privacy. Therefore, while its primary requirement must be making reports public, it should be empowered to issue confidential reports in specific circumstances. (paragraph 59)	110ZHK Non-publication direction 110ZHN Authorisation to disclose information (other than intelligence information) 110ZHP Authorisation to disclose intelligence information
FEATURES: <i>Establishment date</i> – ... no later than 30 September 2025. (paragraph 60)	VETS Act, section 2 Commencement
FEATURES: <i>Accountable Authority</i> - All non-corporate Commonwealth entities have an ‘accountable authority’ that sits at the apex of the organisation and is responsible for: <ul style="list-style-type: none"> • governing the entity • contributing to the priorities and objectives of government • establishing and maintaining appropriate systems relating to risk management and oversight and internal controls • encouraging officials to cooperate with others to achieve common objectives • considering the effects of imposing requirements on others • keeping the relevant Minister and the Finance Minister informed. (paragraph 62) 	110ZJC Powers of the Defence and Veterans’ Services Commissioner 110ZKA(3) Defence and Veterans’ Services Commission
FEATURES: <i>Accountable Authority</i> - The head of the new entity should be its accountable authority. The title of this position is ultimately a matter for the Australian Government to determine. (paragraph 63)	110ZJA The Defence and Veterans’ Services Commissioner 110ZKA(3) Defence and Veterans’ Services Commission

Chapter 30: Beyond the Royal Commission – new entity paragraph references	Schedule 9 VETS Act
<p>FEATURES: <i>Accountable Authority</i> - Consistent with the approach commonly adopted for other heads of statutory agencies, we propose that the Governor-General appoint the head of the new entity, on the recommendation of the Minister, for a term of up to 5 years. They should hold office on the terms and conditions determined by the Governor-General (to the extent that they are not covered by the Act). Their remuneration would be determined by the Remuneration Tribunal. (paragraph 64)</p>	<p>110ZJE Appointment of Defence and Veterans’ Services Commissioner (not by Governor-General) 110ZJF Remuneration of Defence and Veterans’ Services Commissioner 110ZJK Rules in relation to the Defence and Veterans’ Services Commissioner 110ZJL Other terms and conditions (determined by Minister)</p> <p>Refer also to the proposed amendments in the covering submission on p 8 (appointment of Commissioner) and pp 8-9 (appointment terms and conditions)</p>
<p>FEATURES: <i>Accountable Authority</i> - The new entity must have strong and effective leadership. To reduce the risk of actual or perceived politicisation of the appointment, we strongly recommend specific safeguards, including:</p> <ul style="list-style-type: none"> publicly advertising the role, along with the selection criteria establishing an independent panel to assess applicants against the selection criteria, and provide a shortlist of suitable candidates to the Minister limiting the Minister’s selection of the appointment from the shortlist. (paragraph 65) 	<p>110ZJE Appointment of Defence and Veterans’ Services Commissioner</p> <p>Refer to the proposed amendments in the covering submission on p 8 (appointment of Commissioner)</p>
<p>FEATURES: <i>Accountable Authority</i> - Consequently, in making their recommendation to the Governor-General, the Minister for Defence must have the concurrence of the Minister for Veterans’ Affairs and must be satisfied that:</p> <ul style="list-style-type: none"> the person for the appointment has relevant experience, and is not a recent (5 years or fewer) serving member the selection of the person for the appointment is the result of a merit-based process that included public advertising of the position. (paragraph 66) 	<p>110ZJE Appointment of Defence and Veterans’ Services Commissioner</p> <p>Refer also to the proposed amendments in the covering submission on p 8 (appointment of Commissioner)</p>
<p>FEATURES: <i>Staffing</i> - Legislation establishing statutory agencies needs to deal with the staffing of those agencies. It is proposed that staff of the new entity could be engaged under the <i>Public Service Act 1999</i> (Cth). This ensures matters such as engagement of Australian Public Service (APS) employees, classifications, terms and conditions, and moves between agencies can be dealt with consistently and fairly for APS employees. This is also the Australian Government’s preferred approach for statutory agencies of this type. (paragraph 67)</p>	<p>110ZKD Staff</p>

Chapter 30: Beyond the Royal Commission – new entity paragraph references	Schedule 9 VETS Act
FEATURES: <i>Staffing</i> - The legislation should also enable the head of the new entity to negotiate with states and territories to engage state and territory employees to assist with the performance of its functions, as well as to engage consultants. (paragraph 68)	110ZKE Persons assisting 110ZKF Consultants
FEATURES: <i>Secrecy Provisions</i> - It is proposed that the legislation include: <ul style="list-style-type: none"> • secrecy provisions that lift prohibitions on information that people can disclose (such that a person is not excused from disclosing relevant information, producing a document or a thing or answering questions despite a prohibition set out in another law) • any specific exceptions (where the secrecy provisions of another law would not be overridden, such that a person may not need to give certain information, produce a document or thing, or answer certain questions). (paragraph 70) 	110ZGN Disclosure of information to the Commissioner – Commonwealth 110ZGP Disclosure of information to the Commissioner – States and Territories 110ZGR Application of this Part in relation to current and former IGIS officials 110ZHQ No criminal or civil liability under secrecy provisions Refer also to the proposed amendments in the covering submission on p 18 (protections from criminal and civil penalties)
FEATURES: <i>Protections for disclosures</i> – The proposed new entity would not manage complaints from individuals relating to other Australian Government agencies, nor would it investigate individual disputes about them. (paragraph 73)	110ZJB(2)(c) Functions of the Defence and Veterans’ Services Commissioner
FEATURES: <i>Protections for disclosure</i> - The enabling legislation must set out the protections that may be available to persons who make a disclosure to the new entity. ... It is proposed the legislation include: <ul style="list-style-type: none"> • protections for those disclosing information to the entity (including provisions relating to confidentiality of the identity of people who make disclosures) • prohibitions on victimisation • immunity from liability for certain disclosures made to the entity. (paragraphs 74-75) 	110ZFE Private hearings 110ZFF Consultation in relation to certain private hearing evidence 110ZHF Self-incrimination 110ZHG Dismissal etc. of witness 110ZHK Non-publication direction 110ZHL Publication in contravention of non-publication direction 110ZHM Unauthorised use or disclosure of protected information 110ZHQ No criminal or civil liability under secrecy provisions Refer also to the proposed amendments in the covering submission on pp 15-18 regarding protections for witnesses

Chapter 30: Beyond the Royal Commission – new entity paragraph references	Schedule 9 VETS Act
<p>FEATURES: <i>Referrals of information</i> - The new entity may receive information that is highly relevant to the functions of another Australian Government agency. Subject to the necessary controls and consents, it is important that the entity can share such information with the other agency including to avoid ‘working in silos’, which could pose real risks to serving and ex-serving ADF members and others.</p> <p>The new entity should, therefore, have the power to make referrals to relevant agencies. (paragraphs 78-79)</p>	<p>110ZHM Unauthorised use or disclosure of protected information 110ZHN Authorisation to disclose information (other than intelligence information) 110ZHP Authorisation to disclose intelligence information</p>
<p>FEATURES: <i>Independent review of the new entity</i> - We see value in an independent review of the new entity after 10 years of operation. (paragraph 80)</p> <p>The review would seek to ensure that the entity’s functions and powers continue to be fit for purpose, and that it is achieving its purpose. (paragraph 82)</p>	<p>110ZLE Review of the operation of this Part (36 months)</p>
<p>FEATURES: <i>Interaction with other Australian Government agencies and states and territories</i> - see discussion paragraphs 83-86</p>	<p>110ZHN Authorisation to disclose information (other than intelligence information) 110ZHP Authorisation to disclose intelligence information</p>
<p>FEATURES: <i>Advisory council</i>- We see benefit in the new entity establishing a <u>non-statutory advisory council</u> made up of individuals with a mix of skills, experience and expertise. (see paragraphs 87-89)</p>	<p>Not statutory</p>