



**Royal Commission**  
into Defence and Veteran Suicide

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**Interim Report**



Winner, Napier Waller Art Prize 2020

Matt Jones, *Yarn*, 2020

yarn and recycled waste fabric

183 x 183 x 18 cm

Matt Jones, a former Army major who served in East Timor, won the 2020 Napier Waller Art Prize for his work *Yarn*. His artist statement for *Yarn* reads as follows:

There have been times when I didn't want to communicate. I didn't want to admit to the difficulties I had encountered. I felt I didn't have the language to describe the sense of shame that I could neither name nor admit to experiencing.

Alienation is the idea at the heart of this artwork, expressed from my personal experience.

Its inspiration comes from the blue and yellow maritime signal flag, Kilo, which has the meaning 'I want to communicate with you.'

The act of making this oversized signal flag is a declaration that I wish to leave the messiness of the past behind me. It's time to pick up the loose threads and broken relationships, be they personal, societal or institutional.

The dimensions of the work mirror my height and arm span to create an unorthodox self-portrait.

The materials used are unapologetically crude, gathered while I had an opportunity between a period of quarantined self-isolation after returning from Korea, and the subsequently imposed national lockdown. We tell our stories with what we have, not with what we hope that we might have.

Yarning is where we connect. To listen and understand. The Furphy wagon. The familiarity of mates.

Comms check.

The way Matt describes *Yarn*, as symbolic of his desire to communicate, resonates with us as Commissioners of this Royal Commission. We acknowledge the poignant beauty, the deceptive simplicity and the power of the work. We thank Matt and the Australian War Memorial for giving us permission to reproduce *Yarn*.

*The Napier Waller Art Prize is open to all current and former service personnel in the Australian Defence Force. The prize encourages artistic excellence, promotes the transformative power of creativity, and raises awareness of the experiences and talent of service personnel. Initiated in 2018, the Napier Waller Art Prize was named after Mervyn Napier Waller, an Australian artist who enlisted in the Australian Imperial Force in August 1915 and was wounded in 1917.*

*More detail about the Napier Waller Art Prize and the life of Napier Waller is available at the Australian War Memorial website: [www.awm.gov.au/napier-waller-art-prize-hub](http://www.awm.gov.au/napier-waller-art-prize-hub).*

Cover image: Matt Jones, *Yarn*, 2020, yarn and recycled waste fabric, 183 x 183 x 18 cm.  
Collection of the Australian War Memorial, AWM2020.792.1.

Inside cover image: Napier Waller Art Prize 2020 winner Matt Jones with his work, *Yarn*.  
Photographed by David Whittaker, Australian War Memorial, AWM2020.4.96.4.1.



# **Royal Commission** **into Defence and Veteran Suicide**

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## **Interim Report**

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# Content warning

This report is about suicide and suicidality among serving and ex-serving Australian Defence Force (ADF) members. You may find that reading the report, or thinking about matters related to the Royal Commission, leads to the experience of distress. This may include remembering traumatic memories and strong emotional responses. We encourage you to use the available support services if you or someone you know needs help.

It is important to write about suicide, suicidality, traumatic experiences and their ramifications in a safe and responsible manner. This report uses guidance from the Mindframe program. We aim to avoid using language that might encourage suicide. We also wish to avoid language that might stigmatise suicide, suicidality or mental ill-health.

In the past, talking about these issues has been taboo. We aim to approach them in a constructive way, to help change attitudes, assumptions and behaviour while minimising risk and emphasising the importance of support. We recognise that because of the subject matter of this report, including our use of evidence and information provided by others, there may be times when the language used does not always meet best practice guidance.

## Urgent support

**If you require urgent or immediate help, please call:**

Triple zero (000) or present to your local emergency department.

## Support services

### **Suicide Call Back Service**

1300 659 467

24-hour counselling via telephone, online and video

### **Lifeline Australia**

13 11 14

24-hour crisis support line

Nightly text line 0477 131 114

### **Beyond Blue**

1300 224 636

Free, immediate, short-term counselling via phone, webchat or email

### **1800RESPECT**

1800 737 732

24-hour counselling service for sexual assault, family and domestic violence

### **Men's Referral Service**

1300 766 491

For men concerned about their own use of violence or abuse information

### **Open Arms**

1800 011 046

Free and confidential, 24/7 national counselling service for Australian veterans and their families, provided through the Department of Veterans' Affairs (DVA)

### **Defence Member and Family Helpline**

1800 624 608

### **Defence All-hours Support Line**

1800 628 036



# Acknowledgement of Country

We acknowledge the Traditional Custodians of Country throughout Australia.

The Office of the Royal Commission is located on the lands of the Gadigal people. There are about 29 clan groups of the Sydney metropolitan area, including the Gadigal people, referred to collectively as the Eora Nation.

We acknowledge the connection that First Nations peoples, including people of the Eora Nation, have with land, sea and communities. We pay our respect to Elders past, present and emerging, and extend that respect to all First Nations peoples today. We acknowledge all First Nations people who are serving or former members of the Australian Defence Force, and their families.



## Statement of support

Serving and ex-serving members of the Australian Defence Force (ADF) make unique contributions and sacrifices on behalf of the nation – on behalf of all of us. As Commissioners and members of the Australian community, we want to acknowledge and honour those who have served or are currently serving in the ADF. We recognise the pride many of you have in your service and in being part of something bigger than yourself. We also recognise that many have been adversely impacted by experiences related to service that are outside their control. From recruitment to active service in its many forms to transition from the ADF to post-service life, we thank you for your commitment to the Australian community.

We also pay our respects to the families and loved ones of serving and ex-serving ADF members. Your loved ones do not face the many demands of military life alone. You too make sacrifices, year in and year out: service life, transition and post-service life impact all facets of family life. We also know that families do not always receive adequate acknowledgement or effective support.

We acknowledge every serving and ex-serving member of the ADF who has died by suicide – each life lived and each life left behind. We also recognise the experiences of those serving or former ADF members who have experienced suicidality. And we acknowledge the grief, the pain, the challenges, the resilience, the strength, and the love of families and friends of serving and former ADF members who have died by suicide or faced suicidality.

Thank you for trusting us to hear your stories, and the stories of your loved ones. Thank you for shedding light on what needs to change.

We will continue to listen, to consult, and to learn. All of us must deliver a better future for current and former ADF members, their families and their loved ones.





**Royal Commission**  
into Defence and Veteran Suicide

11 August 2022

His Excellency General the Honourable David Hurley AC DSC (Retd)  
Governor-General of the Commonwealth of Australia  
Government House  
CANBERRA ACT 2600

Your Excellency

In accordance with the Letters Patent issued on 8 July 2021, as amended on 10 April 2022, we have made inquiries and now submit to you the interim report of the Royal Commission into Defence and Veteran Suicide.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Nick Kaldas'.

**Mr Nick Kaldas APM**  
Chair

A handwritten signature in blue ink, appearing to read 'James Douglas'.

**The Hon James Douglas QC**  
Commissioner

A handwritten signature in blue ink, appearing to read 'Peggy Brown'.

**Dr Peggy Brown AO**  
Commissioner



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# List of recommendations

## Recommendation 1: Simplify and harmonise veteran compensation and rehabilitation legislation

The Australian Government should develop and implement legislation to simplify and harmonise the framework for veterans' compensation, rehabilitation and other entitlements. To this end:

- (1) By no later than 23 December 2022, the Australian Government should:
  - (a) accept or reject recommendations made by the Productivity Commission in its report, *A Better Way to Support Veterans*, that relate to reforming the legislative framework
  - (b) if it rejects Productivity Commission recommendations 8.1, 8.4, 13.1, 14.1 and 19.1, adopt alternatives that will achieve similar or better levels of harmonisation and simplification of the legislative framework, and
  - (c) identify and decide all other policy questions relevant to designing a harmonised and simplified legislative framework.
- (2) By no later than 22 December 2023, the Australian Government should complete drafting of the legislation.
- (3) By no later than early 2024, the Australian Government should present to the Parliament, and seek passage of, its Bill for the proposed framework.
- (4) If the legislation is passed, the Australian Government should, by no later than 1 July 2024, begin the process of implementing and transitioning to the new legislative framework.
- (5) If the legislation is passed, the Australian Government should ensure that, by no later than 1 July 2025, the new legislation has fully commenced and is fully operational. (This does not preclude setting later deadlines for any choices that might need to be made by veterans.)
- (6) The Australian Government should allocate to the Department of Veterans' Affairs (DVA), the Office of Parliamentary Counsel and other relevant agencies adequate resources to design, prepare, draft and implement the proposed legislation within the timeframes above, and to administer the new legislation once it has commenced. The allocation of these resources to DVA should not be offset by reductions in other resourcing of DVA.

## **Recommendation 2: Eliminate the claims backlog**

The Department of Veterans' Affairs (DVA) should eliminate the backlog of claims under the *Veterans' Entitlements Act 1986* (Cth), the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) and the *Military Rehabilitation and Compensation Act 2004* (Cth) by 31 March 2024. To this end:

- (1) DVA should accurately advise the Australian Government on the resourcing that it needs to eliminate the claims backlog by 31 March 2024.
- (2) The Australian Government should provide DVA with the resources it needs to eliminate the claims backlog by 31 March 2024. The allocation of these resources to DVA should not be offset by reductions in other resourcing of DVA.
- (3) Leading up to 31 March 2024, DVA should undertake regular monitoring of claims and other data, to check whether the elimination of the backlog is on track.
- (4) Leading up to 31 March 2024, the Australian Government and DVA should implement corrective action(s) if the elimination of the backlog is not on track. DVA should monitor the effectiveness of corrective actions taken.
- (5) DVA should routinely, publicly and meaningfully report on its progress in reducing the claims backlog and claim processing times.
- (6) DVA should ensure that efforts to reduce the backlog do not reduce the quality of decisions made about claims, and do not adversely affect veterans' experiences of the claims process.

### **Recommendation 3: Improve the administration of the claims system**

The Australian Government should improve the administration of the Department of Veterans' Affairs (DVA) claims system by 1 July 2024. The changes pursued should aim to improve veterans' experience of the claims system, remove complexity from the system and enhance efficiency in claims processing. To this end:

- (1) DVA, having taken account of the advice received from McKinsey & Company and other relevant sources, should advise the Australian Government about potential measures it could include within a program of work aimed at improving the administration of the claims system.
- (2) The Australian Government and DVA should decide upon the improvement measures to be undertaken within the program of work.
- (3) The Australian Government should provide DVA, and any other relevant agencies, with the resources needed to implement the agreed program of work. The allocation of these resources to DVA should not be offset by reductions in other resourcing of DVA.
- (4) The Australian Government should seek passage of any legislative amendments required to implement the agreed program of work.
- (5) DVA, and any other relevant agencies, should implement the program of work by 1 July 2024.
- (6) DVA should publicly report on progress towards implementing the program of work on a quarterly basis.
- (7) DVA should publicly report on the expected benefit of each measure included within the program of work, and, once implemented, report on the degree to which each benefit has been realised.

#### **Recommendation 4: The Department of Veterans' Affairs to provide advice on its funding needs**

The Department of Veterans' Affairs (DVA) should provide advice to the Australian Government about its funding needs. To this end:

- (1) By 31 March 2023, and at least twice per year thereafter, DVA should provide advice to the Australian Government about:
  - (a) its future departmental funding needs, and
  - (b) factors leading to uncertainty about DVA's future departmental funding needs.
- (2) The Australian Government should use this advice to inform the departmental funding it provides to DVA.
- (3) The Australian Government should provide any resources to DVA, and any other relevant agencies, to enable DVA to provide adequate advice regarding its future funding needs as specified above. The allocation of these resources to DVA should not be offset by reductions in other resourcing of DVA.

#### **Recommendation 5: Remove the Department of Veterans' Affairs Average Staffing Level Cap**

The Australian Government should remove, on a permanent basis, the application of the Average Staffing Level (ASL) cap policy on the Department of Veterans' Affairs.

### **Recommendation 6: Increase protections for persons engaging with this Royal Commission**

The Australian Government should work closely with this Royal Commission to design urgently an amendment or series of legislative amendments that provide protections for persons who wish to provide relevant information to this Royal Commission, including the two following cohorts:

- (1) For serving ADF members disclosing sensitive personal information who are currently, and intend to remain, in service, similar protections to section 6OP of the *Royal Commissions Act 1902* (Cth) should be introduced.
- (2) For serving and ex-serving ADF members whose lived experience is intrinsically linked to security classified or operationally sensitive information, the defence available under the Criminal Code section 122.5(5) should be extended to cover information communicated to a Royal Commission. A defence to other secrecy offences will also be needed.

### **Recommendation 7: Provide exemption from parliamentary privilege**

Where their terms of reference require an examination of government, Royal Commissions should be made exempt from section 16(3)(c) of the *Parliamentary Privileges Act 1987* (Cth).

### **Recommendation 8: Limit public interest immunity claims**

The Australian Government should reform immediately policies and practices related to public interest immunity to limit claims to where there is a specific harm contemplated from disclosure to Royal Commissions. Where there is uncertainty about potential harm, mechanisms within the *Royal Commissions Act 1902* (Cth) should be used to support the production of the document or information.

### **Recommendation 9: Improve administrative release of information**

The Australian Government should:

- (1) by March 2023, produce and publish administrative release guidelines to better support applicants to access information held by the Department of Veterans' Affairs and Defence, and
- (2) immediately prioritise use of administrative release and proactively work with applicants to facilitate access via this process, including following a request for information under the *Freedom of Information Act 1982* (Cth) and the *Privacy Act 1988* (Cth) – but without delaying or restricting processes under either of these Acts.

### **Recommendation 10: Co-design information to increase awareness of redactions for access requests**

The Australian Government should engage with serving and ex-serving Australian Defence Force (ADF) members and their families to complete by March 2023 co-design information to raise the awareness of redaction and how it might apply to information provided to applicants seeking information from Defence or the Department of Veterans' Affairs under all information access request mechanisms.

### **Recommendation 11: Embed trauma-informed practices for information access**

Trauma-informed practices should be embedded in Defence and the Department of Veterans' Affairs (DVA) interactions with individuals seeking information from either department. These trauma-informed practices should form part of ongoing training for relevant personnel in each department.

Where possible, there should be a single point of contact within each of Defence and DVA to provide continuity and consistency to applicants seeking information from within each agency.

### **Recommendation 12: Encourage up-to-date consent for information access**

By March 2023, the Australian Government should increase the number of opportunities for serving or ex-serving ADF members to provide or amend their consent to disclose, information to family members or nominated representatives.

### **Recommendation 13: Co-design education on information access mechanisms**

The Australian Government should engage with serving and ex-serving ADF members and their families in order to complete, by March 2023, co-designed education material on information access mechanisms used by Defence and the Department of Veterans' Affairs (DVA). Educational material should be targeted to serving and ex-serving ADF members and their families.



# Executive summary

## Introduction

1. This Royal Commission's Letters Patent, which provide our terms of reference, recognise 'the unique nature of military service, and the ongoing impact such service may have on the physical and mental health of defence members and veterans'. The Letters Patent say 'that as a community Australians value the contribution and sacrifice made by defence members and veterans in their service, and the sacrifice of their families' – and that 'every death by suicide is a tragic event'.<sup>1</sup>
2. We could not agree more. The prevalence of suicide and suicidality among serving and ex-serving Australian Defence Force (ADF) members is something that should concern us all. Each death by suicide, each life lost, has profound effects on family, friends, colleagues and the wider community.
3. As Commissioners, we intend through our investigation to develop recommendations that result in long-lasting, effective and compassionate change. By listening to the stories of people with lived experience of suicidality and suicide, we hope we have provided an environment that is physically, psychologically and emotionally safe for survivors, families and friends, the community, and Royal Commission staff. We are here to listen and learn – and then to act.
4. This inquiry's wide-ranging terms of reference include the requirement that we identify systemic problems relating to the prevalence of suicide and suicidality among serving and ex-serving ADF members. In turn, the Letters Patent require us to deliver an interim report that focuses on 'issues requiring urgent or immediate action'.<sup>2</sup> This interim report makes a limited number of recommendations about urgent and immediate issues, as well as a range of preliminary observations.
5. We note the considerable number of previous reports delivered and inquiries conducted since 2000 that are relevant to the topics of suicide and suicidality among serving and ex-serving ADF members. We have identified over 50 previous reports, and more than 750 recommendations. While we acknowledge that many of these reports and inquiries were about discrete topics, we have been dismayed to come to understand the limited ways that Australian Governments have responded to these previous inquiries and reports.

6. Our assessment of current systems and processes will continue to include consideration of any reforms commenced during the life of the Royal Commission. We note also that the requirement that we deliver this interim report by a prescribed time means that we have been unable to include some information and evidence we have received very recently. We will consider all relevant information and evidence provided to us before we deliver our final report.

## Lived experience

7. This inquiry is anchored by the personal stories, experiences and perspectives that people – including serving and ex-serving ADF members and their families, friends and support networks – have described to us. Chapter 2 summarises some of the personal stories and perspectives we have received in submissions, as well as oral and written evidence we have heard from lived experience witnesses. We also note, in summarised form only, key themes that have emerged from private sessions.

## Preliminary observations

8. In Chapter 3, we make preliminary observations about a range of matters. These are:
  - suicide prevention and wellbeing
  - data and suicide prevention
  - coronial matters
  - families
  - ADF culture
  - transition from the ADF
  - a possible body to follow this Royal Commission.
9. The principles and contemporary theories of suicide prevention, postvention and lifetime wellbeing underpin our inquiry. We continue to consider the best ways to apply these to all aspects of ADF service and beyond – and across the lifecourse of serving and ex-serving members and their families.
10. Data provides an evidence base to inform our understanding of deaths by suicide and how these deaths may be prevented. Chapter 3 covers the importance of data, data collection practices, and how data is used. We set out what is known and not known in the data landscape about suicide, suicide attempts, self-harm, suicidality and associated risk and protective factors for serving and ex-serving members. We note issues of immediate concern and opportunities for improvement. We will have more to say about data-related matters in our final report.

11. Coroners and Coronial Courts investigate sudden and unexpected deaths, including suicide deaths of serving and ex-serving ADF members. Our inquiry has revealed a number of issues with the coronial system that warrant further consideration. Among these issues are complexities with defining suicide and understanding the intent of the deceased, the timeliness of coronial findings, limitations with or gaps in Coronial system data, and the extent of support coroners can or should offer family members. We will continue to inquire into the Coronial system in the context of understanding and reducing suicide deaths.
12. Families are inexorably linked to the health and wellbeing of serving and ex-serving ADF members, and vice versa. There is insufficient awareness and recognition of the key role families play. Information about available support is limited and the quantity, quality and accessibility to supports too varied. We have heard numerous stories of children and families who have been adversely affected by the death by suicide of a loved one, or by deterioration in their loved one's mental and/or physical health. Chapter 3 includes a profile of military families and discusses various impacts of military life on family. We will continue to consider what obligations Defence and DVA have to families, as well as the obligations of state and territory governments and other agencies.
13. For the past year we have spent many hours hearing first-hand accounts of individuals' experiences of ADF culture – positive and negative. We are concerned about a range of cultural issues within the ADF, and the negative impacts that these have had and continue to have. Our preliminary observations about culture include discussing abuse as a risk factor for suicide and suicidality, the progress and monitoring of cultural reform in Defence, recent inclusion and diversity initiatives, the adequacy of reporting and support systems, and accountability. We will have more to say about culture in our final report.
14. Transition from service to civilian life is a significant event for ADF members and their families. It can be associated with increased risk of suicide and suicidality. For the approximately 6,000 personnel who leave the ADF each year, transition requires major readjustments. For some, it can be a challenging and traumatic time, particularly if they are left without financial means. While the ADF has taken some promising steps to improve the transition process, we are considering the effectiveness of these changes – and asking what more should be done. We are concerned that the Joint Transition Authority is not scheduled to reach full operating capacity until 31 December 2022, despite being established nearly two years ago. We will continue to focus on contemporary veterans' experiences of leaving the ADF, and on ensuring that systems are in place so that every veteran has sufficient time and support to make a smooth transition.
15. We have already noted the number of previous reports and inquiries into matters relevant to our terms of reference. We consider there is a compelling case for a permanent entity to monitor and report on the progress of implementation of inquiries and reviews, including this Royal Commission's interim report and final report. Such an entity could also have a range of supporting functions. In 2023, we will explore this further, including by public consultation, and release a special report with a preferred model. This will allow for such a body to be ready to commence in 2024, when this Royal Commission ends.

16. This inquiry has nearly two years still to run. We will continue to review each submission we receive and to consider the evidence and information we gather from hearings, roundtables, private sessions and internal and commissioned research. We are already considering, and will continue to consider, a wide range of matters not aired in this interim report. This is consistent with the terms of reference, which require us to consider systemic issues relating to suicide and suicidality among serving and ex-serving ADF members.

## Urgent and immediate recommendations

### Legislative reform

17. It is clear to us that Australia's veteran compensation and rehabilitation legislative system is so complicated that it adversely affects the mental health of some veterans – both serving and ex-serving ADF members – and can be a contributing factor to suicidality. In Chapter 4, we recommend that the Australian Government should, without delay, implement legislative reforms to simplify and harmonise the veteran entitlement system (see Recommendation 1). We have heard evidence and received submissions that suggest that the system is too complex. Previous reports and inquiries – including the Productivity Commission's 2019 report, *A Better Way to Support Veterans* – have called for legislative simplification and harmonisation. We recognise that making change will not be easy, but the difficulties of reform provide no justification to delay any further.

### Claims processing at the Department of Veterans' Affairs

18. In Chapter 5, we recommend that the Australian Government and Department of Veterans' Affairs (DVA) take urgent and immediate steps to fix problems with the processing of claims for veterans – both serving and ex-serving ADF members. We have heard from many veterans and families that the claims system is complex and difficult to navigate and that veterans wait for long periods of time to receive a decision about their claims – sometimes more than 300 days. As of 31 May 2022, DVA had 41,799 claims in its backlog – claims waiting to be allocated to a decision-maker. The backlog should not be allowed to continue. We recommend that the Australian Government and DVA should eliminate the backlog by 31 March 2024 (Recommendation 2).
19. In Chapter 5, we also consider other ways to address the backlog and prevent it reoccurring in the future. It is clear to us that the Australian Government should resource DVA to implement a program of work aimed at improving the administration of the DVA claims system (Recommendation 3). DVA should report to the Government on its future funding needs, and the Government should use this advice to inform the departmental funding it provides to DVA (Recommendation 4). We also consider that the Australian Government should remove the application of the Average Staffing Level cap policy on DVA – a policy which has limited the number of Australian Public Service staff DVA could employ (Recommendation 5).

## Protections to engage with us

20. In Chapter 6, we express concern about inadequate legal protections for persons who may want to engage with us. These include, but are not limited to, serving members who intend to stay in the ADF and have concerns about the impact their disclosure of sensitive information may have on their career. In addition, some serving and ex-serving ADF members may consider themselves constrained from telling us their lived experiences due, for example, to those experiences occurring on operationally sensitive activities. These people deserve and need to be heard and should be afforded adequate confidentiality protections via amendments to the *Royal Commissions Act (1902)*, as has happened with other current and previous Royal Commissions. We recommend that the Australian Government work closely and urgently with this Royal Commission to design legislative amendments that provide protections for these two cohorts (Recommendation 6) and allows us to receive information potentially vital to the fulfillment of our terms of reference.

## Parliamentary privilege and public interest immunity

21. In Chapter 6, we also consider that the legal concepts of parliamentary privilege and public interest immunity claims have seriously, adversely constrained our ability to inquire into and receive the necessary evidence from prior inquiries conducted by parliament and to examine government decision-making. Our terms of reference require us to conduct a broad-ranging inquiry and to consider a wide variety of material, including products developed for previous related inquiries and matters that may be confidential.
22. We are concerned about the impact that the use of parliamentary privilege and public interest immunity may have on our ability to achieve lasting, meaningful change for serving and ex-serving ADF members and their families. Those who advocated for years to establish this Royal Commission expect us to ask the hard questions of the Australian Government, Defence and DVA. We are not afraid to ask hard questions. But we are constrained – unreasonably so, in our view.
23. We recommend that the Australian Government immediately address the barriers which arise from parliamentary privilege for this Royal Commission. The Government should also introduce an exemption for future Royal Commissions (Recommendation 7). We also recommend that the Australian Government reform immediately the policies and practices related to public interest immunity to limit claims to where there is a specific harm contemplated from disclosure (Recommendation 8).

## Access to information

24. We have heard numerous concerns about accessing information held by Defence and DVA by serving and ex-serving members of the ADF and their families, as Chapter 6 outlines. These concerns are not limited to the difficulties encountered by serving or ex-serving members seeking access to their own information – but also family members of deceased members who are seeking to access information about that member from Defence and/or DVA. We make recommendations about administrative release guidelines (Recommendation 9), embedding a trauma informed approach and developing and implementing improvements to information-seeking processes (recommendations 10 and 11), and consent to disclose processes (Recommendation 12). We also recommend Defence and DVA co-design and refresh the information available to members, ex-serving members and their families to better support those seeking information from both departments (Recommendation 13).

## Next steps

25. This Royal Commission's terms of reference are detailed but require us to complete a systemic investigation. We welcome this obligation. What we have heard so far shows that the problems are multi-layered.
26. We will continue to hold private sessions, roundtables and hearings in locations around Australia. We want to build a comprehensive understanding of both common themes and diverse experiences among serving and ex-serving ADF members and their families. We need to test and re-test our thinking on a range of key matters. To help do this, we will listen to as many people and organisations as possible between now and the end of the inquiry.
27. This Royal Commission is a once in a generation opportunity to make real and lasting change. We are determined to take the time to understand complex systems and processes before we make detailed recommendations in our final report. As noted above, we will deliver a special report in 2023. We will deliver our final report in June 2024.

## Endnotes

- 1 Commonwealth of Australia, Letters Patent, 8 July 2021.
- 2 Commonwealth of Australia, Letters Patent, 8 July 2021, paragraph (za) (i).



# Part 1

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**Context and  
preliminary observations**



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**About this Royal Commission**



# 1 About this Royal Commission

## 1.1 Introduction

1. This Royal Commission's Letters Patent, which provide our terms of reference, recognise 'the unique nature of military service, and the ongoing impact such service may have on the physical and mental health of defence members and veterans'. The Letters Patent say 'that as a community Australians value the contribution and sacrifice made by defence members and veterans in their service, and the sacrifice of their families' – and that 'every death by suicide is a tragic event'.<sup>1</sup> We could not agree more.
2. According to the Letters Patent, 'there is an overrepresentation of defence and veteran deaths by suicide in Australia, and ... this overrepresentation should be acknowledged and understood to ensure that learnings are made and to prevent future deaths by suicide'.<sup>2</sup> The terms of reference ask us, among other things, to consider systemic issues relating to suicide and 'lived experience of suicide behaviour or risk factors (including attempted or contemplated suicide, feelings of suicide or poor mental health outcomes)'.<sup>3</sup> As such, the focus of our inquiry, and this report, is both suicide and suicidality.
3. As Commissioners, we intend through our investigation, inquiry and policy work to develop recommendations that result in long-lasting and effective change. Our inquiry is underpinned by what we see as an overarching objective: lifetime wellbeing for serving and ex-serving Australian Defence Force (ADF) members and their families. We are also continually and consciously incorporating evidence-based research about principles, theories and best practice into our recommendations about suicide prevention and postvention.
4. As we continue our work, we will consider how best to apply these principles, theories and practices in an ADF context. We will continue to listen to, and consult with, people with lived experience of suicide and suicidality. In our final report, we are determined to propose changes and make recommendations that are system-wide and practical – and that will drive down the rates of suicide and suicidality among serving and ex-serving ADF members.
5. This inquiry is focused firmly on identifying systemic problems and finding systemic solutions, as the Letters Patent require. It is clear to us that serving and ex-serving ADF members, and their families, friends and support networks, must receive better support within an improved system. We acknowledge that these issues are complex and that many people are committed to improving the situation. Our final report will set out a comprehensive reform plan and a set of concrete recommendations.

6. The Letters Patent require us to deliver an interim report that focuses on ‘issues requiring urgent or immediate action’ or other matters that we consider necessary.<sup>4</sup> We have sought to balance our obligation and desire to make urgent recommendations that can make an immediate difference to people’s lives with the need, in our final report, to propose better systems that are sustainable and robust over the long term. The recommendations in this interim report do not represent our thinking about the parts or whole of a redesigned system. They are about making an immediate difference and, in turn, helping lay the foundation for further change.
7. As Commissioners, we express our appreciation of, and admiration for, those people who have chosen a career of military service. We also acknowledge their families and loved ones, their formal and informal support networks. And we thank everyone who has chosen to talk to us, make a submission, or engage with us in other ways. People with lived experience have told us their stories with candour and courage. We thank all of you for reminding us many times over that, while we must acknowledge and learn from the past, we are here to help find solutions and to look to the future. We know that you will continue to hold us to account, and are grateful for your scrutiny.
8. We want and need to hear from more people who have lived experience of suicide and suicidality: more survivors and more parents, partners, children, friends, peers and supporters of individuals who have died by suicide or have experienced suicidality.
9. We also thank the representatives of non-government organisations and government departments, and experts from various fields, for engaging with us in good faith and with a shared desire to improve people’s lives – including those working within the Defence Taskforce.
10. We thank the staff of the Royal Commission for their dedication, hard work and support of us.
11. While we know much more than we did when we commenced this Royal Commission, we have much still to learn. Our promise is to keep listening. We ask members of the general community, all the people of Australia, to listen with respect and compassion to the experiences of serving and ex-serving ADF members and their families.

### 1.1.1 First steps

12. On 10 May 2021, Dr James Pople was appointed as Official Secretary to the Royal Commission. On 8 July 2021, the Governor-General, His Excellency General the Honourable David Hurley AC DSC (Rtd), issued Letters Patent and appointed the three of us as Commissioners. From 11 July 2022, Ms Tracey Bell was appointed as acting Official Secretary.
13. On 11 August 2021, King & Wood Mallesons was engaged as Solicitors Assisting the Royal Commission. This followed a process through which we asked law firms on the Whole of Australian Government Legal Services Panel to quote to provide Solicitor Assisting services.



**Commissioners Dr Peggy Brown AO, Mr Nick Kaldas APM (Chair) and the Hon James Douglas QC at the Australian War Memorial, Canberra.**

14. On 8 September 2021, acting under section 6FA of the *Royal Commissions Acts 1902* (Cth), the Attorney-General appointed Mr Kevin Connor SC, Mr Peter Gray QC, Mr Peter Singleton, Ms Gabriella Rubagotti, Mr Leonid Sheptooha and Ms Madeleine Bridgett as Counsel Assisting the Royal Commission. On 27 April 2022, the Royal Commission engaged Ms Erin Longbottom QC and Ms Sophie Molyneux as counsel.
15. In July 2021, the Royal Commission secured temporary office accommodation in Brisbane, for the remainder of 2021. The Ceremonial Hearing, Hearing Block 1, first roundtables and first private sessions were held in Brisbane in November and December 2021. In November 2021, the Royal Commission's Sydney office opened. Sydney will remain the central location for the Royal Commission's duration, but we will hold public hearings, private sessions and roundtables around Australia.
16. The Letters Patent made on 8 July 2021 required us to deliver our final report to the Governor-General no later than 15 June 2023. On 30 March 2022, we wrote to the Prime Minister to ask for an extension of time within which to complete our work. On 10 April 2022, the Governor-General issued Letters Patent that amended our original Letters Patent so that we are now required to deliver our final report no later than 17 June 2024.

17. The Letters Patent of 8 July 2021, including the terms of reference, and the Letters Patent of 10 April 2022, which extend the deadline for our final report to 17 June 2024, are reproduced as this report's Appendix 1. Each of the states has made Letters Patent, or comparable instruments, in similar terms to those of the original Commonwealth Letters Patent. Each of the states is in the process of issuing Letters Patent to the same effect as the amending Commonwealth Letters Patent. The state Letters Patent are reproduced on the Royal Commission's website.

### 1.1.2 Defining key terms

18. According to the Royal Commission's Letters Patent, a veteran:

means a person who has served, or is serving, as a member of the Permanent Forces (within the meaning of the Defence Act 1903) or as a member of the Reserves (within the meaning of the Defence Act 1903).<sup>5</sup>

19. As a Royal Commission, we adopt the definition given in the Letters Patent. But we note that this definition sees all serving and ex-serving members as veterans. We know that the term veteran is often understood to have different meanings. In particular, it is often taken to mean 'ex-serving' or 'former serving' ADF members. For clarity, this report specifies cohorts of veterans when necessary, including:

**serving ADF member:** any person currently serving as a member of the Australian Defence Force, whether permanent forces or reserves, and who has served at least one day.

**ex-serving ADF member:** any person who has served in the Australian Defence Force, whether permanent forces or reserves, and who served at least one day and has since discharged from the Australian Defence Force.

20. We use the term 'Defence' to mean the diarchy of the leadership of the Department of Defence and the ADF.

### 1.1.3 Structure of this report

21. The executive summary provides a brief overview of key points.
22. This chapter provides broad context about the need for this Royal Commission. It describes the approach we have taken so far. It sets out what we intend to do between now and the completion of our final report.
23. Chapter 2 summarises the lived experience evidence and information we have received so far. In this chapter, we do not include our own commentary. We prefer to give space for the voices and perspectives of people who have taken the time and effort to engage with us. When quoting, we retain the original words of the person making the submission – we only use the term *[sic]* to indicate what may be a typographical error when necessary to understand the meaning. We want to assure everyone who has engaged with us that we are listening and that we will take all views into account as we prepare our final report.

24. In Chapter 3, we offer preliminary observation on a range of matters. These relate to:
- suicide prevention and lifetime wellbeing
  - data and suicide prevention
  - coronial matters
  - families
  - ADF culture
  - transition from the ADF
  - a possible permanent entity with certain oversight responsibilities and powers.
25. We have not yet made recommendations about these topics, but we share our thinking so far. Chapter 3 also notes that there are a range of topics and issues that we do not discuss in this interim report but that will be part of our thinking in the final report.
26. In chapters 4 and 5, we describe urgent issues and deliver recommendations for immediate action. These recommendations relate to two parts of the Department of Veterans' Affairs (DVA) work:
- the need for action on legislative reform and simplification (Chapter 4)
  - improving claims processing (Chapter 5).
27. In Chapter 6, we identify three procedural matters that are hindering our ability to do our work and/or creating problems or concerns for stakeholders. These relate to:
- the legal concepts of parliamentary privilege and public interest immunity in certain contexts
  - protections for certain people who engage with us
  - information sharing with families by Defence, the ADF and DVA.
28. Appendix 1 is a reproduction of the Commonwealth Letters Patent. Appendix 2 is a list of previous inquiries and reports from 2000 to 2021.

## 1.2 The Royal Commission's purpose

### 1.2.1 The importance of this inquiry

29. Serving and ex-serving members of the ADF make unique sacrifices on behalf of the nation. We acknowledge the many challenges of ADF service, for individuals and families, from recruitment onwards. We acknowledge the challenges involved in transition from military to civilian life. Governments and the community – all of us – have an obligation to provide compassionate support to serving and ex-serving members. In many instances, we know that individuals experience difficult times for a range of reasons beyond their control.
30. We should not and cannot leave families and friends of serving and ex-serving members to fend for themselves or to try to comprehend processes or systems that are too complex or that disregard them. Families and friends deserve our active and ongoing support. As Ms Deborah McKenner told us while giving lived experience evidence:
- A soldier may receive the pay cheque, only in the Australian Defence Force the whole family is employed by the Government. It's our family lifestyle, our legacy.<sup>6</sup>
31. From recruitment to transition to post-service life, we need processes and systems that give each serving and ex-serving ADF member, and the people closest to them, the best opportunity to live satisfying lives during and after service.
32. We note that our role is not to fix every perceived issue within the ADF, the Department of Defence or DVA. Neither can we respond to every individual circumstance. Rather, our task is to consider systemic issues that relate to suicide and suicidality.
33. At the Ceremonial Hearing, held in Brisbane on 26 November 2021, we each set out key issues and priorities. Commissioner Kaldas said:
- We acknowledge the lives lost. We acknowledge those who have made an attempt on their life or are vulnerable to suicide. And we acknowledge those bereaved by suicide – their families, partners, children, parents, friends, colleagues and supporters.<sup>7</sup>
34. Commissioner Kaldas recognised the ADF community as dynamic and varied. He went on to say:
- It is my hope that our work over the coming two years will not only raise Australia's understanding of the complex nature of suicide in the defence and veteran community, but will positively contribute to better mental health supports and responses to suicide on a national level.<sup>8</sup>
35. Commissioner Douglas said that a 'complex matrix of legal and policy issues will influence our work and how we formulate our response to the questions that have been put to us'.<sup>9</sup> He put this Royal Commission into wider historical and legal context. And he said:
- We acknowledge that, despite a collective experience of service, any Defence Force member's individual experience is unique. Their recruitment, training, service type, their rank, gender, sexuality, cultural heritage, where they serve, the duration of their service, and overall deployment pattern, including whether this has involved service in armed conflict, in peacekeeping, or in service to community, the account of their transition and separation from defence and return to civilian life, all frame their experience and their reaction to it.<sup>10</sup>

## 36. Commissioner Brown said that:

Our job as this Royal Commission, is to identify the real root of the problem, or problems, that are leading so many to think about suicide, attempt suicide, or to take their own lives, because they perceive, and believe, there is no other option. We intend to work with you and to lead this work with compassion, focusing on understanding and accountability.<sup>11</sup>

37. Commissioner Brown emphasised the importance of ‘accountability and compassion’ to this Royal Commission’s approach.<sup>12</sup>38. To decrease suicides and suicidality among serving and ex-serving ADF members, there must be tangible actions. In her *Preliminary Interim Report* (Boss report), the interim National Commissioner, Dr Bernadette Boss CSC, said that a ‘single suicide death of an ADF member or veteran is one death too many. We must put in place actions that address this critical issue’.<sup>13</sup>39. In the context of the support system for veterans, the Productivity Commission’s 2019 report, *A Better Way to Support Veterans*, puts it like this: ‘the important question is not so much the quantum of supports, but their outcomes. Put simply, does this unique system deliver for veterans and the community?’<sup>14</sup> According to the Productivity Commission:

The key principles that should underpin a modern veteran support system are that it be: wellness focused (ability not disability), equitable, veteran centric, need and evidence based, administratively efficient, affordable and sustainable, and responsive to the unique needs resulting from military service.<sup>15</sup>

## 40. We see long-term and sustained success as involving the lowest numbers of suicide and suicidality possible – a sustained decrease. Suicide and suicidality are societal issues. We recognise that there exist community-wide strategies, plans, programs, research and philosophies that aim to reduce prevalence. At the same time, military life brings a distinct set of challenges and circumstances. Systems and processes should be capable of delivering on lifelong wellbeing for serving and ex-serving ADF members in a sustainable way. These systems and processes should embrace individuals and their families, including recognising the key role that families play and, in turn, the support they need. We see the need for leadership at all levels to measure progress and to take accountability seriously.

## 1.2.2 Prevalence

### Census 2021

41. Little is known about those living Australians who have served in the ADF. To improve what is known about this group, a question on service in the ADF was included for the first time in the 2021 Census.<sup>16</sup> The Census question was whether the person ‘had ever served in the Australian Defence Force?’

42. The results from this question will provide more accurate information about how many veterans – both serving and ex-serving – live in Australia, the demographics of the veteran population, and the geographic spread of veterans throughout Australia. This information can be used to plan, cost and target services for veterans and their families.<sup>17</sup>
43. The Boss report noted:
- I recognise that the inclusion of this question will facilitate an improved understanding of veteran numbers in Australia. I am also optimistic that this question will contribute to an improved understanding of the life circumstances of Australian veterans.<sup>18</sup>
44. Results from the 2021 Census, which became available on 28 June 2022, include more than half a million Australians (581,139) reporting as serving (84,865) or having served (496,276) in the Australian Defence Force.<sup>19</sup>
45. As Commissioners, we will use the Census data to further inform our knowledge of the veteran population and how veterans and their families can be best supported.

### **Suicide reporting**

46. In September 2021, the Australian Institute of Health and Welfare published its most recent annual report of the rates of suicide among serving and ex-serving ADF members.
47. The report identified 1,273 deaths by suicide that occurred between 1 January 2001 and 31 December 2019 in those who had served at least one day since 1 January 1985. Of these 1,273, a total of 211 were serving (permanent and reserve) and 1,062 were ex-serving ADF members.<sup>20</sup>
48. The Australian Institute of Health and Welfare report is more comprehensive than those previously completed, principally because more veterans were included in the study. Previous reports had only included veterans who had served at least one day since 1 January 2001. But we know that it still does not capture the full extent of death by suicide in veterans, especially for the estimated more than 200,000 veterans who served prior to 1985, and for those that died by suicide before 2001.
49. The Australian Institute of Health and Welfare have told us they may be able to identify some suicide deaths that occurred prior to 2001.<sup>21</sup> We will monitor their progress with interest. Chapter 3 discusses data and suicide prevention in more detail.

### **Serving ADF members**

50. For serving male members, the 2021 Australian Institute of Health and Welfare report found that age-standardised rates of death by suicide were lower than the general population (51% less for permanent and 48% for reserves). The 2021 Australian Institute of Health and Welfare report did not present the respective rates of death by suicide for serving female members due to the comparably smaller number of suicide deaths in this group.<sup>22</sup>

51. We recognise that ADF service can expose members to factors that are protective against suicide. As noted in the Boss report, this can include a sense of purpose and identity, as well as a sense of mateship and family.<sup>23</sup>
52. However, we also recognise that although male suicide rates are lower in service, rates of suicide ideation and planning have been found to be higher among ADF personnel relative to an Australian community sample.<sup>24</sup>

### **Ex-serving ADF members**

53. For ex-serving ADF members, the 2021 Australian Institute of Health and Welfare report found that the age-adjusted rate of death by suicide when compared to the general population was 24% higher for men and 102% higher for women – that is, women who served in the ADF were more than twice as likely to die by suicide than those who had not.<sup>25</sup>
54. When individuals transition out of the ADF, the presence of in-service protective factors can be removed. In addition, the individual may have to manage the impact of earlier risk-factors, such as mental or physical health concerns, that originated in the ADF.<sup>26</sup>
55. The Boss report also cites research by Phoenix Australia which found that one in three ex-serving ADF members experienced ‘high to very high psychological distress’, and one in four reported ‘some form of suicidality’.<sup>27</sup>
56. Rates of suicidality are concerning, and are higher among those who no longer serve full-time in the ADF. A study of regular ADF members and members who transitioned out of the ADF or to the reserves found that:
  - 13.2% of regular ADF members and 28.9% of transitioned ADF members felt life was not worth living
  - 8.6% of regular ADF members and 21.2% of transitioned ADF members felt so low that they thought about committing suicide
  - 1.8% of regular ADF members and 7.9% of transitioned ADF members had made a suicide plan
  - 0.6% of regular ADF members and 2.0% of transitioned ADF members had attempted suicide.<sup>28</sup>

## Looking beyond statistics

57. What we are discussing here is much more than statistics. Each death by suicide is a tragedy. Suicide, self-harm and suicidality profoundly affects individuals, family, loved ones, friends and colleagues, and resonates within the broader community. It is an issue that should belong to all of us. Dr Nikki Jamieson gave evidence to us both as the mother of Private Daniel Garforth, who died by suicide in 2014, and as an expert on the subject of moral trauma. Dr Jamieson noted US research by Dr Julie Cerel and colleagues that each death by suicide directly or indirectly impacts approximately 135 people:

Now, think about that for a minute. 135 people. If we have over 3,000 people a year dying by suicide in this country, that is over 450,000 people in this country who are impacted by suicide every single year. And that's why we are here; a large portion of them, as we have heard today, has been Defence and veteran members.<sup>29</sup>

58. This inquiry deals with confronting subject matter – and so it must be. We must identify the issues to be addressed so as to prevent suicide, suicide attempts and suicidality among serving and ex-serving ADF members. But as Commissioners – and, in our view, as a community – we must also recognise and acknowledge the positive contribution that serving and ex-serving ADF members make to Australia.
59. Ex-serving ADF members are not ‘damaged goods’. We have heard examples of survival and recovery among serving and ex-serving members who have experienced self-harm or suicidality. They show us that a history of suicidality and self-harm need not be a barrier to a life of purpose and meaning. Ex-serving ADF members make diverse and wonderful contributions to our communities and our society overall.

### 1.2.3 Moving pieces

60. Our assessment of the current system will include consideration of any reforms commenced during the life of the Royal Commission. We note, for example, that the previous Australian Government said it could not wait for us to deliver our final report to simplify the DVA claims process and to cut waiting times.<sup>30</sup> We will monitor relevant policies and initiatives of the new Australian Government, elected on 21 May 2022.
61. Where we think it necessary and appropriate in this report, we have commented on ongoing reforms. We will continue to monitor and assess any reforms between now and our final report. In the final report, we will also assess the implementation of the recommendations we make in this interim report.
62. As the title suggests, an *interim* report marks a point in time in an ongoing inquiry. The requirement that we deliver this report by a prescribed time means that we have been unable to include some information and evidence we have received very recently. We will consider all relevant information and evidence provided to us before we deliver our final report.

## 1.2.4 Previous inquiries and reports

63. Our terms of reference instruct us to focus on any matters we consider ‘should be referred to the interim National Commissioner for Defence and Veteran Suicide Prevention or the National Commissioner for Defence and Veteran Suicide Prevention’.<sup>31</sup> The office of the National Commissioner for Defence and Veteran Suicide Prevention is currently in suspension pending the outcome of our inquiry. We have examined the Boss report, as part of our wider consideration of various previous inquiries and reports.
64. The Boss report is the latest in a chain of relevant reports produced over the last 20 years. Our terms of reference require us to consider the findings and recommendations of these. We have identified over 50 previous reports, and more than 750 recommendations, that have examined the legislative frameworks, structures, policies, practices, culture or operational dimensions of the ADF and DVA. Previous inquiries addressed issues that both directly and indirectly affect the health and wellbeing of serving and ex-serving ADF members. Appendix 2 of this report lists previous reports and inquiries from 2000 to 2021.
65. The findings and recommendations of these previous inquiries are relevant but cannot be a substitute for our own work. Many of these reports tended to focus on a single, discrete issue, policy question, operational matter, event or perceived crisis, or may have assessed a standalone strategy. Often their terms of reference were drafted to address significant but confined issues, providing limited scope for inquirers, no matter how diligent, to broaden their investigations or undertake a deeper systemic review.
66. Some key themes that emerged from these reports were:
- the culture of the ADF and DVA
  - support for serving and ex-serving ADF members during and after service
  - mental ill-health and wellbeing experienced by serving and ex-serving ADF members
  - allegations of abuse and inappropriate behaviour in the ADF
  - support for ADF members and their families during transition to civilian life
  - the complexity and inconsistency of claims processes and the multiplicity of legislation that underpins the compensation system’s administration
  - access to, and the adequacy of, the service and support infrastructure, including the intersection between government and non-government providers
  - governance and accountability measures to support reform.
67. This Royal Commission’s extensive powers means we can undertake a thorough systemic analysis of risk factors relevant to deaths by suicide and suicidality in serving and ex-serving ADF members. Our recommendations will be based on the evidence we independently accumulate and analyse. But the existence of more than 750 recommendations drawn from over 50 previous inquiries into the ADF and DVA not only assists our work, it informs us of the chronic intractability of the problems.

68. Australian Governments have tabled responses to 22 of these previous reports. We have been keen to hear what implementation plans and changes DVA and ADF have made in response to these reports, as a measure of the seriousness of this issue. During Hearing Blocks, representatives of DVA and the Department of Defence have outlined some of the actions they have taken in response to the previous recommendations. We have used our coercive powers to require the Australian Government to provide us with updates on their response to recent key reports, including the Boss report and the Productivity Commission report. Where relevant in this interim report, we refer to specific elements of previous reports, inquiries and recommendations.
69. The accumulated impact of over 750 recommendations made this century has resulted in some change, but not the level of reform envisaged or needed. It has not prevented the need for the establishment of this national Royal Commission.
70. Many people with lived experience participated in previous inquiries in constructive and forward-thinking ways. We acknowledge how hard and frustrating it is for people to endure inquiry after inquiry. We are committed to this Royal Commission genuinely making a difference in people's lives.

## 1.3 What we have done so far

### 1.3.1 Trauma-informed approach

71. Our first and highest priority has been to hear from people who have lived experience of suicide or suicidality. This includes serving and ex-serving ADF members who have experienced suicidality. It also includes family members and friends of serving or ex-serving ADF members who have experienced the death by suicide of a loved one or supported a loved one experiencing suicidality. We understand how difficult it is to speak about painful events. We thank everyone who spoke to us for their courage and candour, for sharing their knowledge, and for proposing solutions.
72. From the first days of the Royal Commission, we have been determined to take a trauma-informed approach to our work. By listening to the stories of people with lived experience of suicidality and suicide, we hope we have provided an environment that is physically, psychologically and emotionally safe for survivors, families and friends, the community, and Royal Commission staff. We are here to listen and learn – and then to act.

### 1.3.2 Counselling and enquiry support

73. Our counselling and enquiry support team assists people with lived experience who engage with us. We adopt a trauma-informed approach, putting the person at the centre of all our processes during any part of that person's experience with the Royal Commission and emphasising safety, choice, collaboration, trust and empowerment.

74. Our enquiries team receives enquiries from serving and ex-serving members, their families and loved ones, professional and non-professional supporters of serving and ex-serving members, and members of the general public. People may be seeking general information about the Royal Commission. They may want to know how they can contribute. They may seek help to share their story with us.
75. Our counselling team, consisting of trained counsellors, social workers and psychologists, assesses submissions from people with lived experience to identify potential support needs. We also undertake counselling outreach to people with lived experience to offer support based on their individual circumstances, needs and wishes. Our counselling model includes:
- short-term trauma-informed and trauma model counselling to support people as they make decisions about engaging with the Royal Commission
  - crisis counselling and intervention, including collaborative risk assessment and safety planning
  - care coordination with people with lived experience and their existing support networks
  - care coordination to support people with lived experience to connect with new support networks.
76. During hearings, our team of counsellors, social workers and psychologists supports people with lived experience as they prepare to give evidence, during their time giving evidence, and after they have finished doing so. When a witness is preparing a written statement of evidence, we support them to engage with Counsel Assisting the Royal Commission and Solicitors Assisting the Royal Commission. Independent legal advice is available from the Defence and Veteran Legal Service.

### 1.3.3 Community engagement

77. Our Community Engagement team engages in outreach to key community and stakeholder groups who represent and work closely with serving and ex-serving ADF members, their families and communities.
78. The Community Engagement Statement, available on the website, set outs our key strategies and objectives for engagement. It provides the principles and methods for engagement that guide the Royal Commission's person-centred approach for two-way engagement, that is both transparent and trauma-informed.
79. We are committed to putting the care and safety of people engaging with us at the centre of our work. We listen, respond and adapt our activities to meet the needs of community groups and ex-service organisations. Through this engagement, we can better understand the experiences of the people and communities that these organisations represent.

80. We collaborate constructively with a wide range of stakeholders and ex-service organisations, some of which represent people with lived experience. The Community Engagement team undertakes face to face meetings, webinars, and other information sessions with stakeholders. This includes working with relevant services to engage with people from a diverse range of cultures, backgrounds and circumstances.
81. Transparency is essential to our community engagement work. We work closely with a reference group made up of key stakeholders and community organisations to help us deliver engagement approaches that are safe, appropriate and effective. The reference group includes 11 stakeholder organisations representing the spectrum of organisations working with serving and ex-serving ADF members, their families and communities.
82. The Royal Commission will conduct hearings at different locations around Australia. We know that the topics and themes we raise through our inquiries are confronting for some people. We are committed to not causing further harm. A stakeholder resource kit is available to support stakeholders and community groups to support their members and communities.
83. We are committed to engaging with serving and ex-serving ADF members and the people and organisations that support them as we travel around Australia to undertake our inquiries. Our Community Engagement staff are developing a program of two-way engagement activities at hearing locations.

#### 1.3.4 Private sessions

84. The *Royal Commissions Act 1902 (Cth)* and the *Royal Commissions Regulations 2019* allow the Royal Commission to hold private sessions. A private session is a confidential meeting with up to two Commissioners where individuals can voluntarily provide information related to the terms of reference. The information participants provide does not appear on the public record. Participants are not identified in any reports. The person attending the private session is not treated as a witness and does not give evidence.
85. Those people eligible for private sessions are:
  - serving and ex-serving ADF members who have lived experience of suicidal behaviour or risk factors, including those who have attempted or contemplated suicide or those who have experienced feelings of suicide or poor mental health outcomes
  - family members of serving and ex-serving ADF members who have died by suicide or who have supported a serving or ex-serving members with lived experience of suicide behaviour or risk factors.

86. The Royal Commission developed Practice Guideline 6 to provide a framework for the private sessions and establish internal policies and procedures to guide their running.<sup>32</sup> A Guide to Private Sessions and a number of Frequently Asked Questions appear on the Royal Commission website to assist participants to request and prepare for a session.
87. The online request for a private session form is designed to elicit demographic information and a short reason for the request, reviewed to confirm eligibility. People requesting a private session can indicate their preference for face-to-face, phone or video.
88. The Royal Commission advises each participant about their eligibility or seeks further information. We sometimes clarify the focus of the private session to ensure it is within our terms of reference. We do so again before we schedule a session.
89. Session Support Officers contact each participant with an available date and time. The Officer is the one consistent point of contact with the participant to assist with scheduling and session preparation, and is present at the session. The officer asks each participant about their support network and links them with counselling support if needed.
90. As of 31 July 2022, we have received 462 eligible requests. Of the eligible requests, 77% have requested face to face sessions with a Commissioner and 23% have requested either video or phone conferencing. Of eligible requests, 15% were from serving members, 71% from ex-serving and the remainder from family members.
91. We have received ineligible requests for private sessions from professionals and organisations supporting serving or ex-serving ADF members. Some friends and colleagues of serving or ex-serving ADF members have requested private sessions to tell us their perspective on how service and post-service has impacted the mental health of the person they know. These requests are also ineligible. Royal Commission staff members have encouraged all people making these requests to make a submission. The eligibility criteria and information about making a submission are in the Frequently Asked Questions section on the Royal Commission website.
92. As of 31 July 2022, there have been 178 private sessions, of which:
- 118 have been face-to-face in Sydney, Brisbane, Canberra, Townsville and Hobart
  - 60 have been by video or phone.
93. All participants were sent a survey following their session to provide an opportunity to give feedback on the quality of their experience. Of the sessions to 31 July 2022, 32% of participants responded:
- 90% reported that they felt heard and were safe and supported in the session
  - 86% reported that the session met their expectations and 92% reported that the information about the private session was clearly communicated to them
  - 92% said the session was well organised.

94. The confidentiality of private sessions has been important to participants, with many seeking assurances that what they are saying in the private session will not be used in any report or in any way which identifies them. Chapter 2, a summary of lived experience information and evidence, notes the main five issues raised by participants.

### 1.3.5 Submissions

95. It is important we hear from a range of people, including serving and ex-serving ADF members, their families, carers and advocates. We also welcome submissions from members of the public and organisations or institutions. Each submission we receive adds to the body of information we will use to inform our investigation.
96. Up to 31 July 2022, we received 1,912 submissions from individuals and organisations. Chapter 2, a summary of lived experience information and evidence, describes some of the key themes to have emerged in submissions.
97. We are grateful to everyone who has taken the time to write a submission. Each submission is valuable to us. Collectively, they are helping us understand the problem in its widest sense. We will continue to accept public submissions until 13 October 2023.

### 1.3.6 Public hearings

98. The public hearings process began with a Ceremonial Hearing, held in Brisbane on 26 November 2021. Between November 2021 and June 2022, we held five hearing blocks, in Brisbane, Sydney, Canberra and Townsville. We heard evidence from 179 witnesses – as individuals, pairs or panels. Witnesses appeared either in person or via video feed. In some cases, we de-identified witnesses. In August 2022, Hearing Block 6 took place in Hobart. Given the requirement that we deliver this interim report by 11 August 2022, we do not discuss evidence received during Hearing Block 6 – but will do so for it and future hearing blocks when we deliver our final report.
99. Witnesses appearing before us have included people with lived experience. These accounts were sometimes harrowing and confronting, especially where people shared their pain, grief and frustrations, but were also distinctive for their constructive tone and the expressions of love and compassion for ADF members who had experienced suicidality or who died by suicide
100. The evidence from people with lived experience gives us an opportunity to hear their subjective impressions and experiences relating to suicide or suicidality of serving and ex-serving ADF members. To this point, lived experience witnesses have not been subject to cross-examination because they are telling us about their lives and their perceptions. We have encouraged lived experience witnesses to give their oral evidence in a way that avoids specific allegations against identifiable individuals. In this report, we have not used lived experience evidence to make specific findings. This is partly because this Royal Commission is focused on solutions rather than attributing individual blame. It is partly to ensure fairness, as individuals have not had the opportunity to consider allegations made against them.

101. Public hearings have been broadcast live via the internet. The videos and written transcripts of completed hearing days are available on the Royal Commission's website.

### 1.3.7 Roundtables

102. We have heard from a range of stakeholders in roundtable discussions. Those stakeholders include non-government organisations, clinicians, experts, academic researchers, and representatives of national and state institutions. Between November 2021 and 31 July 2022, we held 11 roundtables with 88 participants.
103. Participants in roundtables did not give evidence as they would in a public hearing. The less formal setting of roundtables is designed to prompt discussion. We have not cited individuals who participated in roundtables, but have found them a constructive forum to hear new ideas and test our thinking.
104. The roundtables we have held so far have been about the following topics:
- support and advocacy for serving and ex-serving ADF members
  - understanding suicide and suicidality in the general population
  - suicide, mental health and wellbeing among serving and ex-serving ADF members: a quantitative and qualitative data perspective
  - research into suicide among serving and ex-serving ADF members
  - health and wellbeing on the ground for serving and ex-serving ADF members
  - chronic pain and mental health
  - Queensland Government stakeholders
  - Australian Government stakeholders (two roundtables)
  - support and service organisations
  - optimising successful implementation for systemic change.
105. An overview of key themes raised in discussions at the roundtables held in November and December 2021 is published on the Royal Commission's website.

### 1.3.8 Notices

106. As Commissioners, we have compulsory powers, with very limited constraints, to gather evidence and information. These powers include the power to issue notices for the production of information and production of documents. We have the power to require individuals to give information or a statement in writing and give oral evidence.

107. We have issued more than 180 compulsory notices to third parties – including Defence, DVA and other Commonwealth or state/territory government agencies and departments – to produce documents that may assist with our inquiry. In response to those notices, to 13 July 2022, the Royal Commission has received more than 450,000 pages of material to review.

### 1.3.9 Research

108. Staff of the Royal Commission are undertaking policy and data research under our guidance. This research aligns with our terms of reference and feeds into the full range of our activities, including hearings, roundtables, consultation and report writing. Where helpful, we will publicly release consultation papers about a range of matters.
109. Where we have identified gaps that warrant large-scale research projects, including data projects, we have commissioned independent researchers or research teams. This work will take time. As commissioned research is completed over time, we will release it publicly and may use it in our final report. The views expressed in commissioned research papers will not necessarily reflect the views of us as Commissioners. The first two such examples of commissioned research are now published on the Royal Commission’s web page. They are:

- A Flego and others, *Suicide and self-harm monitoring of the serving and ex-serving Australian Defence Force member population –The data landscape and short-term opportunities Report, 2022*
- P Sutherland, *Military Compensation Law in Australia: 2004–2021*.

### 1.3.10 Department of Defence and DVA background papers

110. Each of the Department of Defence and DVA provided us with introductory background papers, in August and September 2021. The Royal Commission published them on our website in September 2021, for the information of the public. The views expressed in these papers are those of the Department of Defence and DVA – they are not necessarily our views.

### 1.3.11 Communications and media

111. How the Royal Commission communicates with the public is essential to ensuring that serving and ex-serving ADF members, as well as their families, communities and support people, can share their story, access appropriate counselling and support, provide feedback and keep up to date with the Royal Commission’s progress.

112. Our communications are focused on providing accurate information to highlight the ways people can engage with the Royal Commission – with support available to help people understand the submissions process, alternative ways to engage, and the protections in place.
113. We want anyone who is interested in the Royal Commission to have access to the information they need to share their story in a medium that suits them. We want people to know the value of making a submission to us and that we are here to support them as they share their stories. Our strong guiding principle is to do no further harm.
114. Our Communications team has prioritised usability, readability and accessibility in all our communications, making sure to meet people on their terms and share key information in a trauma-informed and responsive way. We are responsive to queries and issues raised by stakeholders, experts and individuals who provide feedback. With a mindset of continual improvement, we have made timely updates to our website and print and digital resources and our ways of communicating. We have listened to the feedback collected from participants in the Royal Commission and have made changes accordingly.
115. We also communicate with the public through the media, including but not limited to newspaper opinion pieces, radio and television interviews and social media posts. A designated spokeswoman responds to media enquiries during public hearings. The aim of any media engagement is to educate and inform the community about the work of the Royal Commission, highlighting the support available to people who wish to make a submission.

### 1.3.12 International engagement

116. Our terms of reference require us to consider ‘the support available to members of the defence forces of other countries and veterans of such defence forces, particularly in Canada, New Zealand, the United Kingdom, and the United States of America’.<sup>33</sup> To help us understand the ways other jurisdictions have addressed issues of suicide and suicidality in military contexts, Royal Commission staff members have engaged with representatives from Canada, New Zealand, the United Kingdom and the United States.
117. In September 2022, we will undertake research in the United Kingdom and Canada, with visits to New Zealand and the United States to follow in 2023. We will meet with military and government officials, representatives from community and service organisations, and researchers. Broadly, we will learn about the similarities and differences regarding:
- risk and protective factors relevant to suicidality and death by suicide among serving and ex-serving members, including the contribution of pre-service, service, transition to civilian life, separation and post-separation issues
  - support programs provided to serving and ex-serving members or their families (including social or family, housing, education, economic or financial programs) and service benefits (during or post service) such as compensation, health care and rehabilitation

- any outcomes or recommendations based on similar research and inquiries conducted into systemic issues and risk factors that may contribute to suicidality and death by suicide.

### 1.3.13 Staff wellbeing

118. Mental health and wellbeing are important to how we function and participate in our lives at home and at work. We have developed a comprehensive staff wellbeing program to support the diverse needs of our people. The program focuses on identifying and reducing or mitigating systemic and local issues that could have a negative impact on individual and organisational health and wellbeing.
119. We know that good work provides structure and purpose, a sense of identity, and opportunities to develop skills and increased feelings of self-worth. We go beyond the minimum requirements to address lifestyle and general health as well as work health and safety. Psychosocial risk management is a continuous exercise within the Royal Commission due to its unique environment.
120. The wellbeing program includes psychological wellbeing checks, critical incident stress management, and confidential counselling through the employee assistance program.

## 1.4 Next steps

121. The terms of reference are detailed but require us to complete a systemic investigation. We welcome this obligation. Everything we have heard so far shows that the problems are multi-layered. We will fulfil our commitment to complete a systemic review over the life of this Royal Commission. In 2023, we will deliver a special report that considers what form of permanent entity might follow this Royal Commission to sustain the momentum for change and maximise achievement of the outcomes envisaged by the Royal Commission. In June 2024, we will deliver our final report.
122. We are firm in our conviction that formal and informal leaders at all levels must embrace their responsibility to make a difference in the occurrence of suicide and suicidality among serving and ex-serving members. Whole systems for serving and ex-serving members need to be re-imagined and re-engineered. The theory of reform must translate into a reality in which people believe in change and will take action. It must also include a commitment to evaluate the effectiveness of changes made, to revise plans and activities as needed, to recognise and accept mistakes and limitations, and to improve continually.
123. Over the coming months, we will continue to hold private sessions, roundtables and hearings in locations around Australia. We will continue to accept written submissions until 13 October 2023. We want to have a comprehensive understanding of both common themes and diverse experiences. We want to continue to test our thinking. To achieve this, we will listen to as many people and organisations as possible between now and the end of the inquiry.

124. Our research program, which includes commissioned research, will produce results in the next months and will help guide our conclusions in the final report. We will release research for the benefit of the public, stakeholders, and current and future researchers.
125. We want to assure every person who has met us in a private session, every person who has given evidence, every person who has made a submission, every roundtable participant, every organisation that has engaged with us, that we are considering everything you have told us. We will continue to listen and learn. This Royal Commission is a once in a generation opportunity to make real and lasting change. We are determined to take the time to understand complex systems and processes before we make detailed recommendations in our final report.
126. As we look ahead to the final report in June 2024, we affirm the words that Commissioner Kaldas made on behalf of all three of us at the Ceremonial Hearing: ‘We are honoured and humbled by the gravity of the task ahead, and we are focused on the opportunities for change and healing.’<sup>134</sup>

## Endnotes

- 1 Commonwealth of Australia, Letters Patent, 8 July 2021.
- 2 Commonwealth of Australia, Letters Patent, 8 July 2021.
- 3 Commonwealth of Australia, Letters Patent, 8 July 2021, paragraph (a).
- 4 Commonwealth of Australia, Letters Patent, 8 July 2021, paragraph (za) (i)–(ii).
- 5 Commonwealth of Australia, Letters Patent, 8 July 2021.
- 6 Transcript, Deborah McKenner, Hearing Block 2, 17 February 2022, p 4-1253 [37–49].
- 7 Transcript, Ceremonial Hearing, 26 November 2022, p 0-5 [8–11].
- 8 Transcript, Ceremonial Hearing, 26 November 2022, p 0-9 [9–12].
- 9 Transcript, Ceremonial Hearing, 26 November 2022, p 0-10 [25–26].
- 10 Transcript, Ceremonial Hearing, 26 November 2022, p 0-11 [20–26].
- 11 Transcript, Ceremonial Hearing, 26 November 2022, p 0-17 [38–42].
- 12 Transcript, Ceremonial Hearing, 26 November 2022, p 0-17 [5].
- 13 Interim National Commissioner for Defence and Veteran Suicide Prevention, *Preliminary interim report*, September 2021, p 293 [10.91] (Exhibit 01-01.013, Hearing Block 1, INQ.0000.0001.1584).
- 14 Productivity Commission, *A Better Way to Support Veterans*, No. 93, June 2019, vol 1, p 11 (Exhibit 01-01.010, Hearing Block 1, INQ.0000.0001.2299).
- 15 Productivity Commission, *A Better Way to Support Veterans*, No. 93, June 2019, vol 1, p 163 (Exhibit 01-01.010, Hearing Block 1, INQ.0000.0001.2299).
- 16 Australian Bureau of Statistics, ‘Service with the Australian Defence Force: Census’, web page, last updated 28 June 2022, [www.abs.gov.au/statistics/people/people-and-communities/service-australian-defence-force-census/latest-release](http://www.abs.gov.au/statistics/people/people-and-communities/service-australian-defence-force-census/latest-release), viewed 12 July 2022 (Exhibit C-01.033, STU.0006.0001.4956).
- 17 Australian Bureau of Statistics, ‘Service with the Australian Defence Force: Census’, web page, last updated 28 June 2022, [www.abs.gov.au/statistics/people/people-and-communities/service-australian-defence-force-census/latest-release](http://www.abs.gov.au/statistics/people/people-and-communities/service-australian-defence-force-census/latest-release), viewed 12 July 2022 (Exhibit C-01.033, STU.0006.0001.4956).
- 18 Interim National Commissioner for Defence and Veteran Suicide Prevention, *Preliminary Interim Report*, September 2021, p 283 [10.43] (Exhibit 01-01.013, Hearing Block 1, INQ.0000.0001.1584).
- 19 Australian Bureau of Statistics, ‘2021 Census will help deliver better outcomes for veterans’, web page, last updated 28 June 2022, [www.abs.gov.au/media-centre/media-releases/2021-census-will-help-deliver-better-outcomes-veterans](http://www.abs.gov.au/media-centre/media-releases/2021-census-will-help-deliver-better-outcomes-veterans), viewed 28 June 2022 (Exhibit C-01.033, STU.0006.0001.4956).
- 20 Australian Institute of Health and Welfare, *Serving and ex-serving Australian Defence Force members who have served since 1985: suicide monitoring 2001 to 2019*, September 2021, p iv, 7 (Exhibit 16-1.012, Hearing Block 3, STU.0000.0001.2861).
- 21 Transcript, Louise Gates, Hearing Block 3, 9 March 2022, p 18-1623 [13–18], 18-1641 [29–33].
- 22 Australian Institute of Health and Welfare, *Serving and ex-serving Australian Defence Force members who have served since 1985: suicide monitoring 2001 to 2019*, September 2021, p 9 (Exhibit 16-1.012, Hearing Block 3, STU.0000.0001.2861).
- 23 Interim National Commissioner for Defence and Veteran Suicide Prevention, *Preliminary Interim Report*, September 2021, pp 91–92 (Exhibit 01-01.013, Hearing Block 1, INQ.0000.0001.1584).
- 24 AC McFarlane and others, *Mental Health in the Australian Defence Force: 2010 ADF Mental Health and Wellbeing Study: Full Report*, 2011, pp xx-xxi (Exhibit 20-03.019, Hearing Block 3, DEF.0001.0001.0542).
- 25 Australian Institute of Health and Welfare, *Serving and ex-serving Australian Defence Force member who have served since 1985: suicide monitoring 2001 to 2019*, September 2021, p 9 (Exhibit 16-1.012, Hearing Block 3, STU.0000.0001.2861).
- 26 Interim National Commissioner for Defence and Veteran Suicide Prevention, *Preliminary Interim Report*, September 2021, p 283 [10.42], 285 [10.57] (Exhibit 01-01.013, Hearing Block 1, INQ.0000.0001.1584); M Romaniuk and C Kidd, ‘The Psychological Adjustment Experience of Reintegration Following Discharge from Military Service: A Systematic Review’, *Journal of Military and Veterans’ Health*, vol 26, 2, 2018, pp 60–73 (Exhibit 01-05.012, Hearing Block 1, EXP.0001.0017.0329).
- 27 Interim National Commissioner for Defence and Veteran Suicide Prevention, *Preliminary Interim Report*, September 2021, p 19 [35–36] (Exhibit 1-01.013, Hearing Block 1, INQ.0000.0001.1584), citing K Jones and others, *Defence Force and Veteran Suicides: Literature Review*, Phoenix Australia, 2020 (Exhibit 08-06.017, Hearing Block 1, EXP.0001.0015.0004).

- 28 M Van Hooff and others, *Mental Health and Wellbeing Transition Study: Mental Health Prevalence*, 2018, p 180 (Exhibit 20-03.043, Hearing Block 3, DEF.0001.0001.0145).
- 29 Transcript, Nikki Jamieson, Hearing Block 1, 29 November 2021, pp 1-53 [46]–1-54 [7].
- 30 The Hon Andrew Gee MP, Minister for Veterans' Affairs, Minister for Defence Personnel, *Veterans claim system to be overhauled*, media release, 16 October 2021 (Exhibit 23-03.063, Hearing Block 3, STU.0003.0001.0836).
- 31 Commonwealth of Australia, Letters Patent, 8 July 2021, paragraph (za) (ii).
- 32 Royal Commission into Defence and Veteran Suicide, 'Practice Guidelines 6', web page, last updated 2 November 2021, [www.defenceveteransuicide.royalcommission.gov.au/publications/practice-guidelines-6](http://www.defenceveteransuicide.royalcommission.gov.au/publications/practice-guidelines-6), viewed 14 March 2022.
- 33 Commonwealth of Australia, Letters Patent, 8 July 2021, paragraph (m).
- 34 Transcript, Ceremonial Hearing, 26 November 2021, p 0-5 [22–23].



# 2

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**Lived experience: a summary  
of evidence and information**



## 2 Lived experience: a summary of evidence and information

### 2.1 Introduction

1. This Royal Commission's terms of reference requires us, among other matters, to consider the lived experience of suicide and suicidality for serving and ex-serving Australian Defence Force (ADF) members, family members and their support networks.<sup>1</sup> Lived experience reflects 'having experienced suicidal thoughts, survived a suicide attempt, cared for someone through suicidal crisis or been bereaved by suicide'.<sup>2</sup> Understanding lived experience is profoundly important in the military context, in which the lives of serving and ex-serving members, their families, formal and informal support networks, and countless others are affected by suicide and suicidality. We undertake this task willingly, with open hearts and minds.
2. Since this inquiry began, we have heard powerful accounts from serving and ex-serving ADF members who have experienced suicidality. We have also heard about the impact this has had, and continues to have, on their lives and that of their loved ones. We have heard from witnesses who have lost people they love to suicide. They articulated with dignity and candour the long-lasting impact that trauma has had on their families. We have also heard accounts of healing and resilience.
3. This chapter describes some of the main themes we have heard so far from lived experience submissions, oral evidence, and written statements produced by witnesses. We also note the key themes we have heard from private sessions. However, due to confidentiality agreements, and following the *Royal Commissions Act 1902* (Cth), we do not discuss private sessions except in summary.
4. We are deeply moved by lived experience accounts of suicide and suicidality. The courage people have shown to speak out, write, be heard, and willingly share their stories, is remarkable. For the three of us, it is a potent reminder that for the individuals and families involved, the impact of suicide does not end. The determination of people with lived experience to communicate with us shows the urgency of the issues they are raising. We are determined for this inquiry to make a real and lasting difference. We will continue to listen with respect and empathy. We know that your experiences and your ideas and suggestions are central to all of us prioritising a system in which compassion and wellbeing are embedded into systems and processes that support serving and ex-serving ADF members and their families.

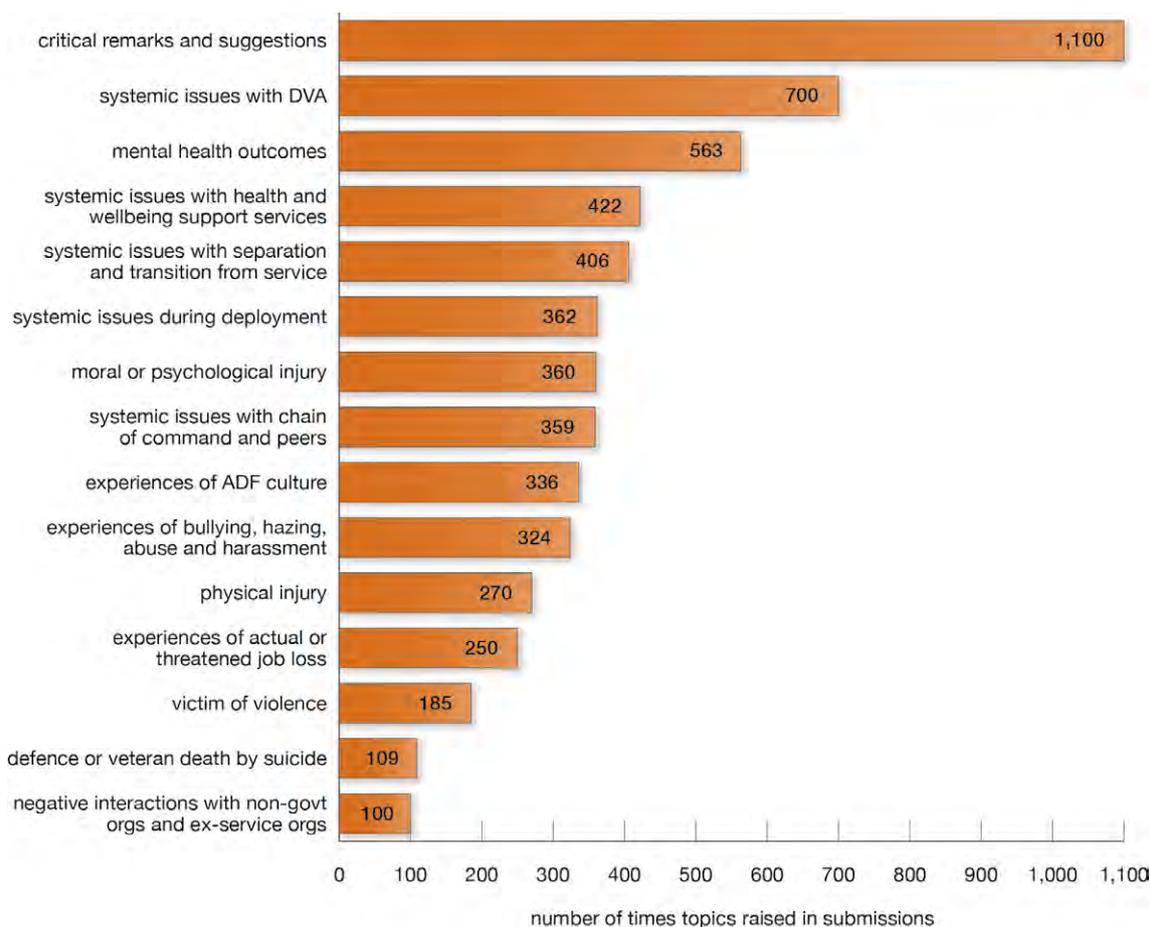
5. We have considered carefully every submission we have received – and we will continue to do so. In addition, our research staff conducted a qualitative analysis of 489 (36%) of the submissions received between July 2021 and March 2022. Within the 489 submissions we have so far analysed in this way, submissions were made by, or about, 550 individuals. Of these 550 individuals, 65% were male, 21% were female and the gender of 14% was unknown. When analysing the 489 submissions, we recorded the branch of service relevant to authors' lived experience, where identifiable. The submissions most frequently referred to service in the Army, followed by the Navy, RAAF, and Reserves and other/unknown. In the 489 submissions, three submissions were made by, or about, people who identified as First Nations peoples. Six submissions were made by people who identify as LGBTIQ+. Five submissions were made by individuals who identified as having a cultural or linguistically diverse background.
6. People making submissions selected one of three options: permission to publish, permission to publish anonymously, or permission to publish withheld. In this chapter, and elsewhere in this report, we only quote from submissions where the person making the submissions has agreed to have their submission published, and only use people's names with permission. We support people's desire to engage with us in whatever way they prefer.
7. Serving and ex-serving ADF members made lived experience submissions. A range of other individuals – including peers, children, grandchildren, spouses, parents, siblings, friends, and legal and other representatives – made submissions on behalf of serving or ex-serving ADF members, or reflected on their own experiences.<sup>3</sup> Some submissions were made by experts, professionals or organisations. But in this chapter, we focus on lived experience – that is, we use submissions only where the person making the submission has lived experience of suicide or suicidality. When quoting, we retain the original words of the person making the submission – we only use the term *[sic]* to indicate what may be a typographical error when necessary to understand the meaning.
8. The chapter takes the same approach to oral evidence and statements provided via public hearings. We have heard oral evidence from people with lived experience across the hearing blocks. This lived experience evidence has provided us an opportunity to hear the subjective impressions of those witnesses relating to their experiences of suicide or suicidality of serving an ex-serving ADF members. To this point, lived experience witnesses have not been subject to cross-examination because they are telling us about their lives and their perceptions. In this report we do not use subjective evidence to make specific findings.

## 2.2 Overview of themes and topics

9. Using qualitative research methods (NVivo 20), our researchers analysed 489 submissions, including supplementary material such as images, medical records and service records to understand the lived experiences they presented. As noted above, this research is additional to the careful consideration we give to every submission.

10. Common issues arose in our analysis of the submissions, based on the terms of reference. Figure 2.1 highlights the most frequent topics described in the 489 submissions reviewed between July 2021 and March 2022. Submissions highlighted interactions with Defence, DVA and the ADF, including pre-service, service, transition and post-service.

**Figure 2.1 Frequent topics arising from submissions**



Note: Figure 2.1 is a visual guide of the most frequent topics that were raised in the submissions analysed. The order of topics is not hierarchical: they are not ranked in order of importance.

11. Many submissions also contained comments and suggestions to improve organisational processes, systems and policies. We coded these as ‘critical remarks and suggestions for future policy’. Critical remarks are comments that we perceive both as negative and pertinent. Some of the critical remarks were stand-alone observations, while others were accompanied by suggestions for future policy, or recommendations for change.
12. Table 2.1 summarises the critical remarks and suggestions for future policy reflected in the 489 submissions analysed, and their correlation with the terms of reference. Prominent remarks and recommendations related to changes to health and wellbeing, improved provision of services, evaluation of DVA and ADF culture, and enhanced transition support.

**Table 2.1 Critical remarks and suggestions associated with the terms of reference**

Critical Remarks	Number of submissions	Number of references
health and wellbeing support services	89	211
DVA culture and engagement	85	203
mental health outcomes	102	177
ADF service	83	164
ADF culture	83	161
engagement with Defence support services	64	147
separation and transition processes	61	110
legislative and policy frameworks	49	83
information sharing	32	67
peers and chain of command	34	61
pre-service, recruitment, training	30	60
psychological and moral injury	43	54
post-service	32	48

13. In the thematic discussion that follows, this chapter summarises these themes and presents examples of lived experience consistent with issues raised with us during the first five hearing blocks (the deadline for this interim report did not allow us to consider evidence received during Hearing Block 6, held in Hobart in August 2022). We have chosen to hear from particular lived experience witnesses for a range of reasons related to the relevance of their experiences and perspectives. We have heard evidence from lived experience witnesses as individuals or in pairs. In some cases, witnesses were de-identified to protect their identity.
14. Key themes that have emerged from lived experience evidence include:
- issues with ADF service, pre-service, transition and post-service
  - risks and protective factors for serving and ex-serving ADF members and their families, including engagement with DVA, the Department of Defence and ADF support services.

15. We have also held private sessions to meet with people with lived experience. As of 31 July 2022, we have held 178 private sessions in Sydney, Brisbane, Canberra, Townsville and Hobart. In Chapter 1, we describe in more detail the importance of private sessions, and our approach to them.
16. To this point, the main issues raised by participants in private sessions have been:
- **ADF Culture:** participants gave their perception of an organisational culture where disclosing mental health issues can be detrimental to a career and can contribute to serving members not seeking help.
  - **DVA claims management and processing:** many participants spoke about their frustration and disappointment with claims processing and what they experienced as an unhelpful and negative attitude by DVA staff.
  - **The role of families in suicide prevention and the impact on families:** family members spoke about not being advised about mental health issues in the ADF member and not being included in ongoing management plans.
  - **Suicide prevention and support given following a death by suicide:** participants spoke about a lack of understanding of the impact of deaths by suicide on colleagues and minimal debriefing or support.
  - **Health care provided to serving ADF members:** participants described a lack of comprehensive mental health services within Defence and concerns about privacy and confidentiality.

## 2.3 Thematic discussion

### 2.3.1 Culture

17. In the submissions analysed, serving and ex-serving members narrated their diverse experiences within the culture of the ADF. As the discussion below shows, many submissions provided detailed accounts of a culture of silence and ‘cover ups’.<sup>4</sup> This involved mistreatment of members during service, including physical and psychological abuse, or bullying by peers and chain of command, threats of further violence and punishment, demotion, or downgrade of medical status.<sup>5</sup>
18. Within the context of these predominantly negative cultural experiences, some recalled positive outcomes of their ADF service, including making lifelong friendships, feeling pride in their service and gaining irreplaceable life skills.<sup>6</sup> We received a submission from an ex-serving Navy member. The submission said:
- Recruit school was not a good way of initiating a young person into a career within the military... What I can say is that I was fortunate enough to travel to far away lands, experience camaraderie that you can only dream of albeit it in snippets ... I just wish the Military is more accommodating for people that need support, but don't want their job to be affected.<sup>7</sup>

19. Mr Isaac Adams, who voluntarily discharged from the Army in 2013 because of mental health issues, gave evidence during Hearing Block 1. While expressing disappointment in the treatment he received at the time, Mr Adams acknowledged the support he had received from colleagues and his previous chain of command:

The soldiers that were mentoring me or were a part of my chain of command were guys that I looked up to. They were, in my opinion, very proficient and experienced soldiers. So having that mentoring and that guidance gave me a lot of reassurance, and at that time it gave me hope that I could stay in, because I did have all the backing and their door was open, so to speak. And yes, it was very supportive.<sup>8</sup>

20. Some submissions referred to a perceived culture of silence, including suggestions of 'cover ups' of physical and/or psychological abuse during service.<sup>9</sup> Other submissions described bullying by peers and chain of command.<sup>10</sup>

21. Additionally, many submissions described threats of further abuse, punishment, medical downgrade, demotion or discharge if incidents were reported.<sup>11</sup> According to one submission:

I was advised that my complaint had been reviewed and that nothing has come from it ... He also advised me that if the school had the time, I would have been sent for a further Psych Assessment. ... It also indicated to me that any further complaints I make about Equity and Diversity within Defence, would eventually pave a path to a Psych Discharge or get swept under the carpet by the authorities.<sup>12</sup>

22. We also heard lived experience evidence about bullying.<sup>13</sup> During Hearing Block 3, a de-identified witness, SY4, recounted their perspective of their time in the Navy. SY4 described degrading and humiliating abuse.<sup>14</sup>

23. Some lived experience submissions recounted experiences of racial and gender discrimination.<sup>15</sup> One woman serving member said:

I have served for 7 years in the Royal Australian Navy as a Marine Technician (MT). As a female MT I have experienced my fair share of sexism, exclusion, discrimination, racism, etc, in the work place.<sup>16</sup>

24. During Hearing Block 4, a de-identified witness, CB1, described experience of threats and punishment, including threats of docked pay or extra duties for minor infringements.<sup>17</sup> During Hearing Block 3, Mr Kyle Hose gave lived experience evidence about his experiences in the ADF, including physical and sexual abuse he said he faced when an apprentice. Mr Hose revealed his reluctance to report abuse or suicidality, for fear of retribution.<sup>18</sup>

### 2.3.2 Duty of care

25. Some submissions by serving or ex-serving ADF members described the emotions they experienced because of what they saw as a lack of duty of care towards them or their loved one.<sup>19</sup>

## Injury and illness

26. Several submissions described what they saw as inadequate support by commanding officers after becoming injured or ill, or needing to go home to care for family members.<sup>20</sup> Others described examples of perceived diminished care, including administrative errors, inaccurate reporting and recording.<sup>21</sup> According to one submission:
- Recruits are often tormented if they are injured whilst undertaking activities that require medical attention. They are often told to 'suck it up', 'build a bridge and get over it', 'stop being a woos' and many other demeaning or derogatory sayings. This often leads to the Recruit not attending sick parade to rectify what might on the surface be a minor issue but is something that can come back later in life as a major problem but because it wasn't reported in the first instances the injury claim is denied because there was no record of it lodged on the persons medical file.<sup>22</sup>
27. Other submissions described inappropriate referrals to allied health services and limited rehabilitation after injury or illness.<sup>23</sup> Some submissions described inadequate physical and mental health support, resulting in a person's deterioration in health and wellbeing and an inability to return to service.<sup>24</sup>
28. Many family members considered that the ADF or DVA did not adequately care for their loved one following injury, illness, deployment or discharge.<sup>25</sup> One submission suggested if there was greater support for psychological injury, their loved one might still 'be alive'.<sup>26</sup> Another suggested that 'with early intervention, appropriate support and advocacy', their son 'would still be with us today and contributing to the country he served so well in a time of war'.<sup>27</sup>
29. Some submissions also suggested the duty of care had been breached due to unsanctioned practices and behaviours – such as restricted access to care when serving members were injured.<sup>28</sup>
30. Several families shared their concern about care of their family members, both during and after service, including noting commentary about increased alcohol consumption.<sup>29</sup> One sibling described their brother's use of alcohol as a 'primary coping mechanism'. According to the submission: 'Since he couldn't talk about what he saw and experienced, he drank to cope. They all do.'<sup>30</sup>
31. Some submissions described a culture discouraging the reporting of mental illness, as well as a fear of reprisal or negative career impacts.<sup>31</sup> One submission described this in two of the branches of service:
- From what my brother and army friends have described with their experience, I believe there to be a systemic culture in the ADF to be quiet, to not talk about mental health, to say you're okay, you're fine, and definitely don't ask help, especially if that goes on your record. My brother lived in constant fear of being kicked out of the Army, then the RAAF if he asked for help. The help he needed it desperately due to what he experienced at work.<sup>32</sup>
32. During Hearing Block 2, Ms Glenda Weston gave evidence about her son, Private Bradley Carr. According to Ms Weston's witness statement, Private Carr:
- had not had any kind of post-deployment debriefing. He was mentally in a bad place. He was so touchy. The Army had allowed this young bloke to return to his family in a small country town when he was so explosive.<sup>33</sup>

33. During Hearing Block 2, Ms Bonita Perry gave lived experience evidence about the death by suicide of her husband, Flight Sergeant Andrew Perry. Ms Perry described delays in Flight Sergeant Perry having timely access to mental health support:

It took a very long time for Andrew to be diagnosed with PTSD and anxiety following his return from his deployment in Afghanistan in December 2013. He was not given access to a psychologist until July 2014, 6 months after his return, and by then he had already made two attempts at taking his life.<sup>34</sup>

34. Ms Teresa Pyne gave lived experience evidence during Hearing Block 4, recalling her father's smoking and alcohol use, spending habits, and the change in his behaviour before and after his service in Vietnam. According to Ms Pyne, 'Mum and Dad told us there was no counselling help for anyone when the soldiers returned from Vietnam and, in my opinion, this is very wrong and shouldn't happen again.'<sup>35</sup> According to Ms Pyne:

It put a fair bit of strain on Dad's mental health. By the time we moved to Singapore, which was 1970, our father was an alcoholic and smoked very heavily and this was his way of dealing with the undiagnosed PTSD. These behaviours impacted our family in many ways. We didn't have much money for food and Mum made our clothes.<sup>36</sup>

## Continuity of care

35. Some lived experience submissions told us about what they perceived as inadequate continuity of care.<sup>37</sup> One submission described serving ADF members not seeking help due to fear of reprisal by the ADF, despite them requiring urgent help for physical and/or mental ill health.<sup>38</sup> Several submissions suggested that ADF members received little support when they sought it.<sup>39</sup> One submission said:

In my personal experience I sought treatment for my mental health in 2014 and since that time posted 4 more times with absolutely no continuity of care (these postings include the time I was posted to the location of my trauma).<sup>40</sup>

36. During Hearing Block 2, we also heard descriptions of experiences of inadequate mental health support during and after deployments.<sup>41</sup> Ms Weston told us that, in her view, serving Army members were not comfortable reporting mental health issues:

Because they are suffering in silence. They think they are the only one it is happening to. And they feel ashamed. They've been to Afghanistan, they've worked with their unit. When they come home, because they don't see anybody else suffering from what they are suffering from, they try and hide it. So they really keep it quiet as best they can.<sup>42</sup>

37. Many submissions reported concerns with being discharged against their will.<sup>43</sup> Another submission, from a civilian health worker with lived experience, stated:

Conversely, I have experienced members threatening or attempting to self-harm or suicide as they feel there is no other way out of their contract. This is particularly evident in recruits and trainees, as they often misperceive that threatening suicide will result in a speedy separation.<sup>44</sup>

38. Several ex-serving members and their families did not use, or were unaware of, the discharge support available and how to access it.<sup>45</sup> One submission said:

These medical issues, I should have been medically discharged for, continue to adversely affect me more than 50 years later.

As a person who has never actively sort out/chased to see what my entitlements are, I was never aware I could apply for a retrospective medical discharge until 2019.

When sharing this story with an Admin on a supportive veterans Facebook page I was advised that my mode of discharge could be challenged ...

A retrospective medical discharge was approved and backdated a few months short of 50 years.

... I have since encouraged several of my mates to apply for a retrospective medical discharge. All have been successful resulting in backpays of hundreds of thousands of dollars. ALL suffer from PTSD. One attempted suicide soon after discharge when destitute.<sup>46</sup>

39. An ex-serving ADF member shared his observations of the level of care given to serving ADF members while in a civilian mental health ward. The submission said that in their view, the 'immediate treatment from the hospital back to their units was generally poor'.<sup>47</sup> Emphasising the decline in in-patient care, the submission continued:

In all my admissions, I did not see one officer visit his men, not one.

...

One soldier who lost his medication on weekend leave from the hospital was ... accused of double dosing. His medication was not replaced, which had tremendous effects on him. (trembling, headaches, bashing his head against a wall, screaming for help.) No blood tests were taken, which would have cleared him. He was given a choice between readmission to the mental health unit or medical discharge!<sup>48</sup>

40. One de-identified witness, SY5, gave lived experience evidence during Hearing Block 3 about bullying and harassment, and their request to transfer. According to SY5:

But when I came back from deployment – or prior to going on deployment I was told, 'Yes, you're transferring to that particular area in the following year', and there had been an analysis of the people within the whole regiment and I was in the top two to be able to post to that area the following year. So that was all good, happy about that, go on deployment, come back and was told if I wanted to do that I had to signed on to the regiment for an extra year. And I – given the experiences I had in the previous year, I just was unwilling to do that, and I said that to them at the time. I'm like, you know, given the bullying harassment and my chain of command was aware of that, I said 'I can't do that, I can't take that risk that I'll be subject to that again'. I said, 'So what are my options'. It was – they were very unpalatable.<sup>49</sup>

## Abuse

41. Many lived experience submissions described instances of physical abuse they said happened to them during their early ADF life.<sup>50</sup> Concerning his experience as a recruit and Officer Cadet, one ex-serving ADF member reflected: 'I and my colleagues were subjected to "bastardisation" and abuse and personal ridicule.'<sup>51</sup>

42. Other submissions described instances of bullying, physical and/or sexual abuse, and the risk of medical downgrade. Many said they experienced isolation or felt ignored when attempting to report abuse or after filing a report.<sup>52</sup>

43. Mr Hose, who also gave evidence during Hearing Block 3, said in his written submission:

Terrified and fearing for my life, I was not sleeping in the days and weeks following and therefore was awake the third time he broke into my room. I thought I was going to die, and I screamed out and chased him out of the room. Thankfully he was startled and ran out of the room. Some of the other apprentices heard the commotion and came out into the stairwell. They asked me what was wrong and why I was upset? Because of the 'blanket bashings' and what had happened to others who spoke out against their peers, and frightened for my life, I said nothing.<sup>53</sup>

44. One de-identified witness, BR1, gave evidence at Hearing Block 1 about a lack of help or support after they were sexually assaulted.<sup>54</sup>

45. In Hearing Block 1, Ms Alexandra Bailey gave lived experience evidence about the experiences of her sister, Ms Teri Bailey who joined Navy and died by suicide. Ms Bailey described to us the ramifications of bullying and abuse on her sister, including abuse from people who her sister had considered friends:

when she initially started, as I said, she was happy, loved everything, was thriving. She had made a lot of close relationships, and then ... from the point of her injury, it was really difficult for her to understand how all of a sudden her peers are treating her in such a different way. For her, she had felt that she had made family bonds and to then be treated that way just because she injured herself, really took a toll on her mental health and her, I guess ... feeling of belonging there and feeling safe.<sup>55</sup>

46. Ms Colleen Pillen gave lived experience evidence about her son, Private Michael Powers, who received an administrative discharge from the ADF and later died by suicide. Speaking about her son's bullying, victimisation and the decline in his mental health, Ms Pillen said:

He was very apologetic ... he was feeling depressed and ... severely anxious where he couldn't sleep, and stop intrusive thoughts. ... I think it was about that point in time where he told me the abuses that he'd been undergoing in the Army, that he'd been victimised and bullied, and that he just wanted to stop it all from happening ... he was immediately placed in hospital for about six to eight weeks, I think it was ...<sup>56</sup>

47. Ms Pillen said that when she saw her son after his administrative discharge:

He was smoking again, drinking. He wasn't a drinker ... but he began drinking heavily and getting into fights with people. He couldn't stay with one job. He said he couldn't sleep, he was losing weight, and the thoughts of how he was discharged were really haunting him at that point.<sup>57</sup>

48. Several submissions from family members also described supporting their loved one through suicidal behaviour, and observing substance use following sexual assault and/or trauma from workplace bullying.<sup>58</sup>

49. Serving ADF members described their loss of trust in the chain of command, resulting in uncertainty and insecurity in the ADF system.<sup>59</sup> One submission described the ultimate effect of this on serving ADF members who took their lives:

Prior to the event PTE [Private] Garforth had been subjected to bullying and harassment by a ... and ... within his unit. PTE Garforth had disclosed this to other persons and many of his peers had seen or been victims of the same bullying, abuse and harassment. One of those ... himself had attempted suicide but was saved by PTE Garforth. There had also been a female soldier known to PTE Garforth who had committed suicide.<sup>60</sup>

50. Dr Nikki Jamieson, Private Garforth's mother, gave evidence during Hearing Block 1 that she considered bullying and harassment had contributed to her son's death by suicide:

What led to his death and the significant contributing factor in his death was the endless torment of being bullied, belittled, ostracised and targeted by certain members of his chain of command. He was fearful, he reported being in fear of going to work. He was fearful of being ridiculed and being considered a malingeringer and a failure.<sup>61</sup>

51. Others said that they had found it difficult to discharge, despite their wish to do so.<sup>62</sup> According to one submission, 'I was threatened with a DFDA [*Defence Force Discipline Act 1982 (Cth)*] charge which prevented myself from discharging, despite the decline of my mental health'.<sup>63</sup>

52. During Hearing Block 1, Mrs Patricia Fernandez de Viana and Mr Michael Fernandez de Viana recalled their son, Flying Officer James Fernandez, who died by suicide. Mrs Fernandez de Viana said her son wanted to transfer from the Air Force to the Navy but experienced tremendous difficulty when he requested to transfer. According to Mr Fernandez de Viana:

he felt like he came up from a bureaucratic administrative brickwall, it just wasn't happening, and the only way he could do that was totally throw everything on the line and resign altogether, and being a loyal, dedicated and sensitive sort of person, he just didn't want to do that. He just didn't want to cut it all off and throw himself into the wind. So that's where he was stuck.<sup>64</sup>

53. Mrs Fernandez de Viana said:

he was told he would have to discharge from the Air Force and reapply to the Navy, that there was no chance of a transfer, and with the poor experience he had had with recruiting in the first place, there was no way he was going to do that so he stayed with the Air Force, but his heart was really with the Navy and he's always loved the sea.<sup>65</sup>

## Reporting and recording of health information

54. In submissions, many serving and ex-serving ADF members believed they did not receive appropriate healthcare support.<sup>66</sup> This was particularly in the context of individuals reporting their own mental health decline or experiences of abuse.<sup>67</sup> Examples included the release of medical reports to commanding officers or peers.<sup>68</sup> These concerns were sometimes compounded by further bullying, loss of trust in command, pressure to voluntarily discharge and declining mental and physical health.<sup>69</sup>

55. In submissions, we read concerns from family members and colleagues about serving and ex-serving ADF members receiving inadequate support from the ADF or DVA.<sup>70</sup>

56. Submissions described inadequate recording of service, health and discharge information, and improper or neglected referrals to appropriate services.<sup>71</sup> Others provided detailed accounts of a lack of support during medical discharge.<sup>72</sup> One submission said that:

Both my brothers committed suicide. They both had issues with both Departments, Defence and DVA ... prior to discharging, the medical advise should have assisted in getting the person to a point that they are ready for transition and when the soldier is medically discharged from the ... service that no support from the Medical side of Defence is or was given other than a 30 days notice of discharge. It takes anywhere of up to 2 years for DVA to action a claim from a soldier that has served either 7 years or 10 years.<sup>73</sup>

57. During Hearing Block 3, Ms Pillen described what she saw as a lack of communication from both the ADF and DVA during her son's discharge and transition, including lack of support for his mental health during the process of administrative discharge.<sup>74</sup>

### 2.3.3 Purpose and identity

58. Submissions described the importance of belonging and identity during service, with some serving and ex-serving members explaining how service provided a sense of self, purpose, pride and belonging – including, in some cases, describing military service as their lifelong aspiration.<sup>75</sup> According to one submission:

... Kapooka was the start of me being a soldier and living my dream. ... All I wanted was the Army, I was in cadets from a very young age ... I did my testing and was excepted into medics. Happiest day of my life.<sup>76</sup>

59. During Hearing Block 2, Ms Yvonne Sillett described why she wanted to join the Army:

it was something I had always wanted to do since I was a child. I just saw myself up there. I had always wanted to be a member of the ADF and I wasn't sure if that would be Navy, Army or Air Force. I wanted to follow in my parents' footsteps from a very young age.<sup>77</sup>

### Expectations for service

60. Several submissions showed that recruits joined the ADF expecting that service would be a lifetime career.<sup>78</sup> One submission said: 'I joined in 2010 and expected to be a "lifer." I didn't ever want to do anything else.'<sup>79</sup>

61. However, several serving members expressed difficulties when their service and career expectations did not align with reality.<sup>80</sup> According to one submission:

I ended up hating every moment of being on board and everything about the Navy, even though I joined with an intended long term career prospect.<sup>81</sup>

62. Another submission said:

When I realised what had taken place I spent 2 days waiting for my plane to take me back home. I was in a state of emotional hopelessness. I fully realised the extent that we were considered the absolute scum of this hopeless campaign. I came home a completely broken man. I contemplated the end. ... You cannot, not recognise our service.<sup>82</sup>

63. Some serving and ex-serving ADF members described warfare as being morally incongruent and psychologically damaging.<sup>83</sup> For some, this was experienced as being unlike their expectations for service, as well as their sense of identity and purpose. One submission shared the following response:

There needs to be recognition of 'moral injury' ... which has left us with a sense of hopelessness, shame, guilt, loss of identity and no purpose. The self-condemning behaviours and the feeling of betrayal. There is lot of issues where leaders will act and behave a certain way that is creating moral problems for people and that's manifesting as all sorts of symptoms, numbing suicide behaviours, these people do bad things and get promoted – that needs to change.<sup>84</sup>

64. Mr Danny Liversidge, who gave lived experience evidence during Hearing Block 2, said:

Back then you only had to do 20 years, you could retire on your pension ... And so my goal and career aspirations was to be the '20-Year-Man' who had done his 20 years and got his pension ... So everyone just called me the '20-Year-Man' ...<sup>85</sup>

65. Mr Liversidge described a military interview where the military police asked him about his sexuality and presented what were to him disagreeable options for discharge:

They said that if I didn't accept to leave of my own accord, then I would have – I will be dishonourably discharged, my records will be marked that I was discharged for being a homosexual and my training records would be withheld from my final exit papers. So they were suggesting that they would out me and ruin any other chances of reemployment if I didn't agree to leave of my own accord. So that was option 2 ... So, a stalled career or a dishonourable discharge or leave quietly of your own accord right now. And they wanted a decision there and then. While I was under much duress and much pressure, they wanted an answer straight away. So I selected the least traumatic option of the day, which was to go quietly...It meant the end of my career, everything I had been working for. It meant to me that no matter how much I went in every day to do the job to the best of my ability, it was worthless because my job performance wasn't the first criteria of the Air Force, heterosexuality was the first criteria. I didn't make the first criteria so, therefore, I was already incompatible from that point of view.<sup>86</sup>

### **Suitability for service**

66. Several submissions described experiencing physical and psychological injury as a ramification of medical or administrative discharge due to being deemed unfit for service.<sup>87</sup>

67. Some submissions attributed being unfit for service to unrealistic expectations of service or youthful naivety, with many recruits having joined the ADF in their teens or twenties.<sup>88</sup> One submission suggested that young recruits joined 'straight out of school with little to no life experience'.<sup>89</sup> Submissions suggested that the ADF has, in the past, recruited individuals as young as 15 years.<sup>90</sup>

68. In another submission, an ex-serving ADF member discussed the possibility that a military career may not measure up to an individual's initial expectations:

It could therefore be a reasonable presumption that, at commencement, an individual is comfortable with the decision to join the military. However for some, this may change over time due to events or to becoming 'damaged' either physically or mentally or both. the worst possible result emanating from such scenarios is suicide.<sup>91</sup>

69. One submission said '[w]hen I first enlisted, I felt like the Psychological testing was not in-depth enough and that people already affected by mental health could easily get through without notice'.<sup>92</sup> According to another submission:

My academic history was never checked by the military. I had an appointment with a psychologist on the day of testing. And again the psychologist recommended I be deferred from enlistment for 12 months, but after talking to a captain, the psychologist had given in to pressure to make up the numbers. Then they let me pass the psychological test even though I had not passed it. So I was enlisted with a known mental condition which was later used against me when I applied for DVA help. The mental illness was caused before the military, not during the military.<sup>93</sup>

70. Recruits with underlying physical injuries had the potential to exacerbate these during training and service.<sup>94</sup> One ex-serving member discussed the harm caused by poor psychological and physical fitness:

In 2013 I was unable to keep up the way I wanted to. I was never going to be the fittest but I tried to be. I had no idea that I had an injury that would eventually lead to me being unfit to do my role and succeed in my goal of staying in the ADF for life ... It must be said that no soldier or officer is individually at fault, nor am I complicit or exempt ... I decided I needed to leave the ADF. I did in 2014. My father would pass away in september of the same year and I would decide to end my life on anzac day ... Thankfully for multiple reasons i chose not to.<sup>95</sup>

71. During Hearing Block 1, Mr Adams told us he decided to voluntarily discharge:

I felt that my mental health at the time, I wasn't in a position to give my service as best as previously had, so I felt it was in the best interests of myself and the Defence Force to voluntarily discharge.<sup>96</sup>

72. Mr and Mrs Fernandez de Viana told us about their son's struggles following the difficult training to become an Air Force pilot. Due to what Mrs Fernandez de Viana understood as a lack of support, 'being shunted into the position' and not 'getting the practical time in a plane that others were getting', their son did not pass the testing to become a pilot.<sup>97</sup> According to Mr Fernandez de Viana, the training:

got harder and harder and eventually he felt like he was getting behind and not doing too well, which was really stressful for him. Certainly, there was some failure of some flying tests. Although he did certainly pass the initial solo flying, as he got past that, it became harder and harder and really stressful for him and failed, and he got to the point where he was just about at the end of the line and had one more chance and he decided not to do is oral appeal for that. He basically I think had given up, lost hope.<sup>98</sup>

## Identity after service

73. In submissions, people with lived experience expressed a loss of identify following transition to civilian life, regardless of the reason for discharge.<sup>99</sup> One submission said:

Myself and hundreds of other veterans deal with a key problem when we leave the Defence Force. We lose everything. Our identity, our families, and our belongings.<sup>100</sup>

74. Ex-serving members expressed a sense of worthlessness when leaving the ADF because they saw their purpose, self-worth and success as tied to their job.<sup>101</sup> One submission said:

When you join the Army you are aware it isn't just a 9-5 job. After years and years of hard work, dedication and sacrifice the uniform becomes part of your identity ... I remember telling my psychologist 'the Army is my life'. My job was my everything, and to lose that made me feel like I was going to lose myself, and that life was no longer worth living. This challenge is still ongoing ... since separating I often think that my life is complete after my military career – no other jobs are going to compare ...<sup>102</sup>

75. Some ex-serving members experienced difficulty with creating a new purpose after their ADF career.<sup>103</sup> One serving member attributed this to the ADF's lack of assistance in 'deconstructing that identity and helping them on the path towards a new one'.<sup>104</sup> Some ex-serving members said they believe re-conditioning for civilian life is as important as preparation for service and warfare.<sup>105</sup>

76. During Hearing Block 1, a de-identified witness, BR2, discussed their loss of identity after leaving their military career and losing connection with peers:

You know, let's talk about loss of identity, let's talk about someone who spent their entire military career around like-minded people, and we've all joined for similar reasons. To an extent it makes us pretty alike in a way. We are associated as a tribe, right. These things – these are the things we know and understand in military life. When you take someone out of that situation and you put them back into society, they don't have an idea of where they stand or fit. When you are in the military, you are given a rank or a trade. When you are no longer employed by Defence, you are not really trained in anything else, and I can attest to this because I have no qualifications outside of Defence in my 10 years, almost 10 years served. Essentially, you feel like nothing.<sup>106</sup>

### 2.3.4 Engagement with DVA

77. A considerable number of submissions we received addressed issues with DVA (see Figure 2.1). Some submissions referred to DVA entitlements, legislation and policy, support services, and what some saw as experiences of administrative violence.<sup>107</sup>
78. Negative engagement with DVA staff regarding claims and entitlements was pervasive. Long waiting times to action and pursue claims produced considerable frustration for ex-serving members.<sup>108</sup> Many said that they dealt with simultaneous injuries, mental ill health and complex socioeconomic pressures.<sup>109</sup>

79. Ex-serving members struggled to navigate their compensation eligibility according to the three main Acts: the *Veterans' Entitlements Act 1986* (Cth) (VEA), the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) (DRCA), and the *Military Rehabilitation and Compensation Act 2004* (Cth) (MRCA). They described the legislation as complex and in need of overhaul and simplification.<sup>110</sup> The son of an ex-serving ADF member stated:

My mother is a veteran after 8 years service in the RAN.

I have experienced the lived experience of assisting and supporting her in the struggles of her life and fight against DVA to win support for injuries ...

I assist her daily with simple tasks like cutting her food up, assisting her with general domestic duties ...

This is all because of DVAs neglect of its people that it strives to serve.

The discrimination between MERCA, DRCA and VEA is appalling ...

I believe that there should be new legislation that combines and is a benefit to all members of the ADF...<sup>111</sup>

80. According to another ex-serving ADF member:

I went 24 years not knowing that I was even eligible for DVA assistance. There was no education to help me transition out of the Army ... It was only the advice of my fellow Veterans that told me about DVA. I spent 24 years of misery, torture, and suffering all totally needlessly if I had have been shown the correct duty-of-care by the Army, DVA, and the government. There needs to be automatic systems in place for military personnel to transfer to civilian life. This system must outline ... ALL the help available.<sup>112</sup>

81. One submission suggested that DVA staff were unable to provide accurate information according to the relevant Act:

On top of this, it appears that DVA Staff are not even aware of different entitlements under different acts themselves. I applied for Dad's funeral benefit on a DRCA Form as he passed away due to an accepted condition under the DRCA, yet the initial payment received for his funeral benefit was paid as a VEA entitlement. Dad did not have any conditions accepted under the VEA. ... If the system is too hard for staff to understand, how is the layman, mentally ill veteran or the average person meant to deal with this system.<sup>113</sup>

82. Some submissions suggested that general practitioners lacked the necessary time and resources to provide support adequately to serving and ex-serving ADF members.<sup>114</sup>

83. Submissions revealed the psychological toll placed on ex-members and their families when dealing with the DVA system.<sup>115</sup> One submission said:

To tell the truth, I wouldn't know how and I don't have the time to filter out the appropriate solutions for my family's needs due to the complexity of the system. I am a strong woman but I admit that I am intimidated by it. I go online and I am overwhelmed with so much information. I am an English teacher and I struggle with the complexity and understanding of forms and webpages.<sup>116</sup>

84. One Vietnam veteran was disillusioned to learn that specific services would not be reimbursed, and expressed concerns that similar issues would also impact other veterans:

I would be out of pocket for about three months ...

My concern is that a young Afganistan veteran initially dealing with DVA could be subject to the same delays getting reimbursed for expenses.

Get frustrated with DVA and take his own life.<sup>117</sup>

85. Ex-serving members frequently reported feeling obstructed, disrespected and ignored by DVA administrative staff.<sup>118</sup> In the experience of one person making a submission:

Veterans go from being impowered while serving to being treated as worthless, the tone and attitude from people in DVA is disrespectful and 9/10 you come away from talking with DVA with nothing as DVA first responders don't know the answers and try get the same person twice in row is near impossible ...<sup>119</sup>

86. During Hearing Blocks, we heard family members discuss the psychological impact of dealing with DVA.<sup>120</sup> Glenda Weston recounted her son's depression following a lengthy Gold Card application process:

Bradley was the one who dealt with DVA, not myself ... But every time he would call me, he would say, 'Mum, I'm just about there. I know I got my Gold Card'. Then it would stop. He said someone wasn't there or no one signed a paper or they dropped my points back, so there is a point system and every time he got almost to that point, he was knocked back. So the impression that makes on them, it just depresses them. It puts them back again, way back. Years back. They start again, and they fight again. The goalpost is too far away, and they just don't have that fight left in them. As the years go by they lose their fight and their drive.<sup>121</sup>

87. During Hearing Block 1, Ms Jasmin Carmel described her son's sense of hopelessness after seeking DVA assistance:

He came home. I was already home. And he told me that he had been to the Centrelink, they had sent him to DVA. He had rattled off the processes of everything he had to do, and it was just this whole long list. And I'm like – I had no idea where to start with any of this. I have never seen my son so hopeless, so devastated and broken – the exact opposite to this photo that we see here. And I held him in my arms and he was sobbing, and I had no idea what to do.<sup>122</sup>

### 2.3.5 Impact of ADF service on families

88. Family members have shared their stories with us, including the impact of supporting both serving and ex-serving ADF members. Partners, parents and children have described living with PTSD, domestic violence, limited support from the ADF and DVA, suicidality, and helplessness.<sup>123</sup> Submissions illustrated the extent of lived experience of suicide within ADF service, including those who have cared for someone with suicidal behaviours.<sup>124</sup> One submission said:

I have lived the experience of an 'Army wife' for 20 years. I am the mother of a veterans' three children. I experienced isolation, loneliness, loss of employment, depression, and anxiety. There was little support available to me or my children.<sup>125</sup>

89. In many submissions, family members shared their experiences of witnessing their loved ones suffer the sustained effects of service. This included restraining their loved one from death by suicide and witnessing the pain of alcohol use and mental ill health.<sup>126</sup> Family members described struggling to cope with the grief of loss.<sup>127</sup>

90. Many submissions described the positive impact of family members, especially spouses. This included describing the efforts of family members as the reason the person making the submission had not ended their life.<sup>128</sup>

91. In one submission, an ex-serving member described the support provided by their wife:

During this time a lot of alcohol abuse. Thanks to a very understanding wife I am still alive. One thing the Navy instilled into me was if you can't handle it don't drink it. I have never lost a days work from the grog bit I've made some major fuckups ... I also know my health would be a lot better without the punishment I have given it. Some of the low times i have visited that black dog but had more reason to live than top myself. Please do it better to the current group of service people than the last.<sup>129</sup>

92. During Hearing Block 2, a de-identified witness, SY1, described her husband's struggle with mental health, which led to his death by suicide. According to SY1, her husband was given a 30-day termination notice when he sought mental health support from his superiors:

Once he signed that notice he was then banished to shipping container connex. He wasn't allowed to see anyone. He was banished with his weapon, knowing that he was mentally unstable. He felt that they were implying that it would just be easier for him to take his own life over there than it was to deal with everything else at home.<sup>130</sup>

93. SY1 described her husband when he returned from Afghanistan: 'The first thing I noticed when he got off that plane is his eyes were black is the easiest way to describe them. That's the day that I knew I lost my husband.'<sup>131</sup> SY1 went on to say:

He wasn't that man before his mental health – he just was stuck. He was a man that reached out for mental health support and was shut down, so I just felt like his fight was over.<sup>132</sup>

## Impact on children

94. Several submissions described adverse childhood events and negative memories of their parent(s).<sup>133</sup> These included domestic violence and behaviours associated with depression, anxiety and post-traumatic stress disorder, such as poor temper, stress, strict routines, nightmares and excessive drinking.<sup>134</sup> For some, this resulted in feelings of helplessness and burdensomeness.<sup>135</sup> One submission said:

I'm damaged.

All families direct from a veteran be removed from Centrelink and placed with veteran affairs,

Why,

The abuse is traumatic today as much as it was when my father and stepfather came back from Vietnam when I was a child, I was born in 68.

There was 5 of us kids to my mum and dad but one committed suicide.

That destroyed our family just as much as the violence we where subjected to.<sup>136</sup>

95. Another said:

My mum, 3 sisters and I, have experienced first hand waking up each day not knowing if my uncle is alive and feeling helpless when he or my father are having a bad day with ... PTSD or depression. It is safe to say that the effects of years of having to cope with this has influenced two of my siblings being diagnosed with depression and anxiety. I sometimes find myself having feelings of anxiousness over worrying about them.<sup>137</sup>

96. Parents made submissions that reflected guilt due to the impact of their mental ill health on their children.<sup>138</sup> Parents discussed the burden associated with family breakdown, instability and poor parental modelling.<sup>139</sup>

97. In other submissions, spouses described helplessness due to a lack of available support for children following the suicide death of a parent.<sup>140</sup> A spouse of a deceased ex-serving ADF member described the detrimental impact of suicide on her daughter:

People deal with grief differently. Some people get angry or depressed, others, like me, escape it by working or travelling non-stop. And others still, like my daughter, start self-harming. The first year after [her husband] died, [her daughter] was in year 6. The suicide of her father, combined with puberty, the transition and loss of her friendships due to moving from primary to secondary school and the ending of the Open Arms grief counselling ... reinforced to [her daughter] that everyone she ever cares about will leave her. So, she started internalising her grief and disengaging from everyone.<sup>141</sup>

98. Several lived experience witnesses described the impacts of being a child of a serving or ex-serving ADF member.<sup>142</sup> During Hearing Block 2, Ms Kamaia Alexander explained her relationship with her stepfather:

It was always a strained relationship, or since he came back it was a strained relationship and with the attempts that I was around for that I had stopped, there was a period that he couldn't even look at me in the same house. He couldn't talk to me, couldn't look at me and so it was easier for him to pretend I didn't exist, but when it came time that he actually needed someone, I was that person that he was able to communicate with on a human level, on a level that was understanding of his situation, because I could also match with the sarcastic and the serious just as much as he could. So there was not so much of a barrier.<sup>143</sup>

### 2.3.6 Critical remarks and suggestions for future policy

99. In addition to lived experience narratives, most of the submissions contained detailed suggestions or recommendations to improve quality of life and to reduce suicide deaths among serving and ex-serving ADF members. This included commentary on DVA policies and procedures; ADF health and wellbeing services (including mental health support); ADF culture; the transition process; and service life and training (See Table 2.1).
100. Critical remarks and suggestions concerning DVA were most prominent in submissions.<sup>144</sup> One ex-serving member said he found the DVA claims process:

so frustrating, prolonged and biased that it is not worth the stress and aggravation. The Departments of Defence and Veterans Affairs should be more closely integrated for the management of medical discharge.

This should be an automatic system that the member should not have to try and prove that they are injured ...

If I need to find an advocate to prepare my submission, then DVA has completely failed in its mission.<sup>145</sup>

101. Remarks reflected serving and ex-serving ADF members' lived experiences during and after service.<sup>146</sup> They highlighted relevant and appropriate processes that might better assist the members.<sup>147</sup> One submission suggested:

Soldiers and Officers returning from overseas operations and then posted as married separated must be given consideration for short leave for returning home or short periods for at least 12 months after returning from operations.<sup>148</sup>

102. A serving ADF member proposed an improvement to the transition process:

My honest opinion is there needs to be some form of tertiary education or proper employment program so soldiers within combat corps have a chance to find meaningful employment and not just become labor hire for the rest of their lives ...

Meaningful employment and genuine gratitude for veterans is i believe the key to solving the veteran suicide issue in this country.<sup>149</sup>

103. Several submissions also suggested the need for improvements within the ADF health system.<sup>150</sup> According to a serving member:

I think one of the fundamental flaws with the Defence Medical system, is that they scare, inhibit our members at the first stage of signs of mental health issues to seek help. If we can fix our people at the early stages of when mental health issues present them, let them seek a qualified mental health professional without the threat of medical downgrade and put them on the right path, it may result in a more positive outcome rather than letting the mental health issue linger and become a bigger problem at a later stage (which I have seen personally turn people to suicide).<sup>151</sup>

104. During hearings, witnesses were also given the opportunity to provide suggestions for improvements to ADF and DVA policies and processes.<sup>152</sup> During Hearing Block 1, Mr Peter Jenkins reflected on his son's deployment and suggested:

I think that there needs to be better post-deployment support for all veterans. Just simply asking a question if you're okay is never going to be sufficient for people that have been in those types of situations, and the follow-up needs to go on for a period of time. Like, if you have got someone that deploys now, in two years' time leaves the military, they can still have or develop PTSD as a result of their service and what they saw and did, a couple of years down the track.

...

I think that the Army needs to ... have people, psychologists or counsellors speaking to our veterans, our soldiers and airmen and airwomen and sailors whilst they are deployed, prior to them returning, and then at regular intervals after returning from deployment. Even if they have made the decision to transition out of the military, there still needs to be follow-up down the track.<sup>153</sup>

105. During Hearing Block 3, Ms Danielle Wilson proposed the ADF needs more training in the area of sexual harassment and sexual assault. In her view, ADF personnel:

need to know the impact that this has on people. It might just seem like a joke or a bit of banter to them but it's not. It is impactful. It stays with someone their whole life. They don't have the right to take those liberties with somebody. They don't have the right to touch someone, to assault someone, to verbally abuse someone. There needs to be training to know it's not tolerable, it is not acceptable, especially in this day and age.<sup>154</sup>

## 2.4 Conclusion

106. To date, we have heard lived experience information and evidence from ADF serving and ex-serving members, their families and support networks. This chapter offers a summary of some of what we have heard so far, relevant to our terms of reference. We reiterate that the perspectives of people with lived experience are central to us understanding the issues and seeking sustainable solutions.
107. A range of issues has emerged from our analysis of lived experience information and evidence. These include issues with ADF service, pre-service and post-service. Also prominent were concerns related to the risks and protective factors faced by serving and ex-serving ADF members and their families, particularly regarding engagement with DVA, the Department of Defence and ADF support services.

108. People shared detailed stories about the stigma of mental ill health, reflecting the need for greater support for mental and physical health. Lived experience narratives also highlighted instances of what individuals saw as bullying and abuse within ADF culture. Some suggested the need for improved duty of care, and recording and reporting of injury and illness. Some ex-serving members suggested the need for increased transition support for those returning to civilian life. There were many suggestions for improvement and recommendations for change, mostly concerning interaction with DVA, health support and ADF culture.
109. Throughout this Royal Commission, we will continue to read and listen to the lived experiences recounted by individuals and their families for each and every submission that we receive. We will continue to conduct private sessions where that forum represents an individual's preferred way to engage with us. And we will continue to hear from lived experience witnesses during hearing blocks. We thank everyone who has taken the time to engage with us. We acknowledge with gratitude the challenges involved in sharing private and painful experiences.

## Endnotes

- 1 Commonwealth of Australia, Letters Patent, 8 July 2021, paragraphs (a), (e)–(g), (o), (q).
- 2 Transcript, Bronwen Edwards, Hearing Block 1, 8 December 2021, p 8-696 [36–38].
- 3 Name withheld, Submission, ANON-Z1E7-Q1QR-C, pp [2–3]; Name withheld, Submission, ANON-Z1E7-Q8SR-N, p [2]; Name withheld, Submission, ANON-Z1E7-Q1XK-C, p [2]; Name withheld, Submission, ANON-Z1E7-Q82E-7, pp [2–3]; Name withheld, Submission, ANON-Z1E7-Q1YG-9, pp [2–3]; Lesley Little, on behalf of Alexander Little, Submission, ANON-Z1E7-Q12R-D, p [2]; Alison Whitfield, Submission, ANON-Z1E7-Q8JB-V, p [2]; Glenda Weston, Submission, ANON-Z1E7-Q198-T, p [2]; Lisa Togafau, Submission, ANON-Z1E7-Q874-U, pp [2–3]; Name withheld, Submission, ANON-Z1E7-Q18N-F, p [2]; Joanna Martin on behalf of Matthew Grant Martin, Submission, ANON-Z1E7-Q8J5-F, p [2]; Paul Collier, Submission, ANON-Z1E7-Q8ZN-R, pp [2–3]; Name withheld, Submission, ANON-Z1E7-Q1JE-R, pp [2–3]; Paul-Raymond James, on behalf of Daniel Steven Garforth, Submission, ANON-Z1E7-Q1R1-C, pp [2–3]; Paul James, Submission, ANON-Z1E7-Q8KY-M, pp [2–3]; Name withheld, Submission, ANON-Z1E7-Q1AS-W, pp [2–3]; Richard Barry OAM, Submission, ANON-Z1E7-QMGG-K, pp [1–8].
- 4 Mel Baker, Submission, ANON-Z1E7-Q82F-8, p [2]; Name withheld, Submission, ANON-Z1E7-Q1AP-T, p [2]; David F Palmer, Submission, ANON-Z1E7-Q1B3-X, p [2].
- 5 Name withheld, Submission, ANON-Z1E7-Q8KK-6, p [2]; Name withheld, Submission, ANON-Z1E7-Q18Y-T, p [5]; Name withheld, Submission, ANON-Z1E7-Q8EG-V, p [2]; Toby Maughan, Submission, ANON-Z1E7-Q1CS-Y, p [2]; Name withheld, Submission, ANON-Z1E7-Q1Q2-C, p [2]; Name withheld, Submission, ANON-Z1E7-Q1B7-2, p [17].
- 6 Name withheld, Submission, ANON-Z1E7-Q1EZ-8, p [2]; Rod Halliday, Submission, ANON-Z1E7-QMJ8-7, p [2]; Name withheld, Submission, ANON-Z1E7-Q198-T, p [2]; Name withheld, Submission, ANON-Z1E7-Q1C5-1, p [3]; Name withheld, Submission, ANON-Z1E7-Q18Z-U, p [2].
- 7 Name withheld, Submission, ANON-Z1E7-Q1VB-1, pp [2–3].
- 8 Transcript, Isaac Adams, Hearing Block 1, 3 December 2021, p 5-419 [35–40].
- 9 Name withheld, Submission, ANON-Z1E7-Q8KK-6, p [2]; See also: Name withheld, Submission, ANON-Z1E7-Q18Y-T, p [5]; Name withheld, Submission, ANON-Z1E7-Q8EG-V, p [2]; Toby Maughan, Submission, ANON-Z1E7-Q1CS-Y, p [2]; Name withheld, Submission, ANON-Z1E7-Q1Q2-C, p [2].
- 10 Name withheld, Submission, ANON-Z1E7-Q1VT-K, p [2]; Scott Jeffrey, Submission, ANON-Z1E7-Q1PK-4, p [5]; Ernie Norley, Submission, ANON-Z1E7-Q145-J, p [2]; Name withheld, Submission, ANON-Z1E7-Q195-Q, p [2].
- 11 Name withheld, Submission, ANON-Z1E7-Q87T-U, p [2]; Name withheld, Submission, ANON-Z1E7-QMB6-W, p [3]; Lisa Togafau, Submission, ANON-Z1E7-Q874-U, p [3]; Name withheld, Submission, ANON-Z1E7-Q18Y-T, p [5]; Name withheld, Submission, ANON-Z1E7-Q1MB-R p [2]; Name withheld, Submission, ANON-Z1E7-Q86Y-Y, pp [2–3]; Name withheld, Submission, ANON-Z1E7-Q8QK-M, p [2]; Justin White, Submission, ANON-Z1E7-Q873-T, see supplementary material.
- 12 Name withheld, Submission, ANON-Z1E7-QMB6-W, p [3].
- 13 Transcript, Danny Liversidge, Hearing Block 2, 15 February 2022, p 12-1085 [4–13]; Transcript, SY4, Hearing Block 3, 9 March 2022, p 18-1572 [42–45]; Transcript, CB1, Hearing Block 4, 5 April 2022, p 25-2249 [25–36], 25-2250 [42–47].
- 14 Transcript, SY4, Hearing Block 3, 9 March 2022, p 18-1579 [26–32, 42–43].
- 15 David Michael Bean, Submission ANON-Z1E7-Q8EE-T, p [2]; Name withheld, Submission, ANON-Z1E7-Q86Y-Y, pp [2–3]; Name withheld, Submission, ANON-Z1E7-Q8M2-F, p [2].
- 16 Name withheld, Submission, ANON-Z1E7-Q8C1-4, p [2].
- 17 Transcript, CB1, Hearing Block 4, 5 April 2022, p 25-2251 [9–17].
- 18 Transcript, Kyle Hose, Hearing Block 3, 14 March 2022, p 20-1773 [30–38], 20-1774 [10–20, 43–47].
- 19 Name withheld, Submission, ANON-Z1E7-Q18Y-T, pp [5–6]; Name withheld, Submission, ANON-Z1E7-Q198-T, p [4]; Name withheld, Submission, ANON-Z1E7-Q1AG-H p [2].
- 20 Name Withheld, Submission, ANON-Z1E7-Q1V9-R, p [2]; Name withheld, Submission, ANON-Z1E7-Q8BB-M, pp [2–3] of supplementary material; Lesley Little, on behalf of Alexander Little, Submission, ANON-Z1E7-Q12R-D, p [2]; Name withheld, Submission, ANON-Z1E7-Q115-F, p [2]; Matthew Williamson, Submission, ANON-Z1E7-Q173-K, p [2]; Phillip Brooks, Submission, ANON-Z1E7-Q19H-A, p [2]; Name withheld, Submission, ANON-Z1E7-Q19X-T, p [2].
- 21 Arthur Ventham, Submission, ANON-Z1E7-Q8VW-W, p [2]; Paul James, Submission, ANON-Z1E7-Q8KY-M, pp [2–3]; Joanna Martin on behalf of Matthew Grant Martin, Submission, ANON-Z1E7-Q8J5-F, p [2].

- 22 Arthur Ventham, Submission, ANON-Z1E7-Q8VW-W, p [2].
- 23 Greg Warren, Submission, ANON-Z1E7-Q172-J, p [3]; Ryan Tiralongo, Submission, ANON-Z1E7-Q865-U, p [2]; Name withheld, Submission, ANON-Z1E7-Q18Y-T, p [2]; Name withheld, Submission, ANON-Z1E7-Q1CA-D, p [2]; Name withheld, Submission, ANON-Z1E7-Q18W-R, p [2].
- 24 Name withheld, Submission, ANON-Z1E7-Q198-T, p [3]; Name withheld, Submission, ANON-Z1E7-Q17P-G, p [2]; Name withheld, Submission, ANON-Z1E7-Q1C1-W, p [2].
- 25 Phill and Bronwyn Goodwin, Submission ANON-Z1E7-Q146-K, p [3]; Name withheld, Submission, ANON-Z1E7-Q18N-F, p [2]; Name withheld, Submission, ANON-Z1E7-Q1JH-U, p [3]; Name withheld, Submission, ANON-Z1E7-QMRM-4, pp [2-4] Name withheld, Submission, ANON-Z1E7-Q1QU-F, p [2].
- 26 Name withheld, Submission, ANON-Z1E7-Q8TK-F, p [2].
- 27 Phill and Bronwyn Goodwin, Submission, ANON-ZIE7-Q146-K, p [3] of supplementary material.
- 28 Yvonne Sillett, Submission, ANON-Z1E7-Q1R9-M, p [2]; Name withheld, Submission, ANON-Z1E7-Q1GV-6, p [5].
- 29 Name withheld, Submission, ANON-Z1E7-Q8TK-F, p [2]; Diana Lord, Submission, ANON-Z1E7-Q1YC-5, p [1]; Name withheld, Submission, ANON-Z1E7-Q8JD-X, p [2]; Joanna Martin on behalf of Matthew Grant Martin, Submission, ANON-Z1E7-Q8J5-F, p [2].
- 30 Joanna Martin on behalf of Matthew Grant Martin, Submission, ANON-Z1E7-Q8J5-F, p [2].
- 31 Name withheld, Submission, ANON-Z1E7-Q1CT-Z, p [2]; Phillip Brooks, Submission, ANON-Z1E7-Q19H-A, p [2]; Name withheld, Submission, ANON-Z1E7-QIJH-U, p [3]; Name withheld, ANON-Z1E7-Q1VB-1, 3 August 2021, p [2].
- 32 Joanna Martin on behalf of Matthew Grant Martin, Submission, ANON-Z1E7-Q8J5-F, p [2].
- 33 Exhibit 12-01, Hearing Block 2, GWE.0000.0001.0001\_R at 0003 [29].
- 34 Exhibit 13-02, Hearing Block 2, BPE.0000.0001.0001\_R at 0007 [33].
- 35 Transcript, Ms Teresa Pyne, Hearing Block 4, 5 April 2022, p 25-2234 [36-38].
- 36 Transcript, Ms Teresa Pyne, Hearing Block 4, 5 April 2022, p 25-2234 [43-47].
- 37 Name withheld, Submission, ANON-Z1E7-Q8KM-8, p [3]; Name withheld, ANON-Z1E7-Q1XK-C, p [4]; Name withheld, Submission, ANON-Z1E7-Q18Y-T, p [3]; Name withheld, Submission, ANON-Z1E7-Q18A-2, p [2].
- 38 Name withheld, Submission, ANON-Z1E7-Q1J8-B, p [2].
- 39 Name withheld, Submission, ANON-Z1E7-Q1VC-2, p [2]; Joanna Martin on behalf of Matthew Grant Martin, Submission, ANON-Z1E7-Q8J5-F, p [2].
- 40 Name withheld, Submission, ANON-Z1E7-Q18A-2, p [2].
- 41 Gwen Cherne, Hearing Block 2, 17 February 2022, p 4-1299 [10-19]; Witness SY1, Hearing Block 2, 14 February 2022, p 11-1035 [14-31]; Witness SY2, Hearing Block 2, 16 February 2022, pp [13-1184[44]-13-1185[47], 13-1188[11-23].
- 42 Glenda Weston, Hearing Block 2, 15 February 2022, p 12-1060 [11-15].
- 43 Matthew Williamson, Submission, ANON-Z1E7-Q173-K], p [2]; Major AF (Des) Scheidl, Submission, ANON-Z1E7-Q174-M, p [2]; Name withheld, Submission, ANON-Z1E7-Q1GV-6, p [4]; Name withheld, Submission, ANON-Z1E7-Q1VC-2; Matthew Williamson, Submission, ANON-Z1E7-Q173-K, p [2].
- 44 Name withheld, Submission, ANON-Z1E7-Q14C-Z, supplementary material, p [12].
- 45 Name withheld, Submission, ANON-Z1E7-Q19N-G, p [2]; Name withheld, Submission, ANON-Z1E7-Q19P-J, p [2].
- 46 Alan Ashmore, Submission, ANON-Z1E7-Q14U-J, p [2] (emphasis in original).
- 47 Lee Borradaile, Submission, ANON-Z1E7-Q8ZZ-4, p [2] of supplementary material.
- 48 Lee Borradaile, Submission, ANON-Z1E7-Q8ZZ-4, p [2] of supplementary material.
- 49 Transcript, SY5, Hearing Block 3, 17 March 2022, p 23-2082 [17-27].
- 50 Name withheld, Submission, ANON-Z1E7-Q1A9-3, p [1]; Name withheld, Submission, ANON-Z1E7-Q1JR-5, p [2] ; Name withheld, Submission, ANON-Z1E7-Q1PA-T, p [2]; Name withheld, Submission, ANON-Z1E7-Q8ZY-3, pp [2-3]; Angelo Fraietta, Submission, ANON-Z1E7-QMBG-E, p [2]; Name withheld, Submission, ANON-Z1E7-Q824-P, p [1] of supplementary material.
- 51 David Maiden, Submission, ANON-Z1E7-Q8SB-5, p [1] of supplementary material.

- 52 Lee Borradale, Submission, ANON-Z1E7-Q8ZZ-4, p [2] of supplementary material; Name withheld, Submission, ANON-Z1E7-Q1F3-2, p [2]; Name withheld, Submission, ANON-Z1E7-Q1CA-D, p [2]; Name withheld, Submission, ANON-Z1E7-Q198-T, pp [2–6]; David Michael Bean, Submission, ANON-Z1E7-Q8EE-T, p [2]; Name withheld, ANON-Z1E7-Q1Q2-C, pp [2–6]; Name withheld, Submission, ANON-Z1E7-Q13G-3, p [2]; Name withheld, Submission, ANON-Z1E7-Q1JR-5, p [2]; Name withheld, Submission, ANON-Z1E7-Q17N-E, p [2]; Name withheld, Submission, ANON-Z1E7-Q1F3-2, p [2]; Name withheld, Submission, ANON-Z1E7-Q1AS-W, p [2]; Name withheld, Submission, ANON-Z1E7-Q1CP-V, p [2]; Peter Grayson, Submission, ANON-Z1E7-Q1Q5-F, p [2]; Stephanie Kerr, Submission, ANON-Z1E7-Q1XJ-B, p [2].
- 53 Kyle Hose, Submission, ANON-Z1E7-Q16R-H, p [2].
- 54 Transcript, BR1, Hearing Block 1, 10 December 2021, p 10-936 [5–45].
- 55 Transcript, Ms Alexandra Bailey, Hearing Block 1, 1 December 2021, p 3-240 [10–16].
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**Preliminary observations**



## 3 Preliminary observations

### 3.1 Introduction

1. In this chapter we provide preliminary observations about a number of topics relevant to suicide and suicidality among serving and ex-serving Australian Defence Force (ADF) members. These topics include: theories of suicide; data and suicide prevention; coronial processes; families; ADF culture; transition from the ADF; and consideration of what is required after this Royal Commission to achieve sustainable change.
2. In Chapter 4, we make a recommendation to simplify and harmonise the key legislation that supports Australia's veteran compensation and rehabilitation system. The legislation is mostly administered by the Department of Veterans' Affairs (DVA). In Chapter 5, we make recommendations that DVA improve its approach to claims processing and eliminate the large backlog of claims.
3. We make these recommendations in chapters 4 and 5 not because we have concluded our examination of DVA but because the Australian Government and DVA can and should act immediately and decisively to deal with certain matters. This approach aligns with the terms of reference, which require that this interim report focus on 'issues requiring urgent or immediate action'.<sup>1</sup>
4. Similarly, in Chapter 6, we make several recommendations about procedural matters that concern us, relating to: protections for some individuals who engage with us, either voluntarily or because of our coercive powers; parliamentary privilege and public interest immunity; and information access matters, including for families.
5. In contrast to chapters 4 to 6, in this chapter we do not yet make recommendations about the topics discussed. We will continue our inquiries and make recommendations on a wide range of matters in the final report. But we want to be clear: the issues raised in this chapter are not of secondary importance. Individually and collectively, they are key parts of the existing systems, processes and cultures that we will continue to scrutinise between now and June 2024. We note that there is a range of additional topics that we are already considering, and will continue to consider, that we do not discuss at all in this interim report.

6. We have much listening and work still to do. But it is clear to us that the issues of suicide and suicidality among serving and ex-serving ADF members are complex problems that need sustainable and evidence-based solutions. Our final report will address these matters. In this chapter, we set out some of our thinking and concerns so far.

## 3.2 Suicide protection and lifetime wellbeing

7. We are committed to understanding deeply the needs of serving and ex-serving ADF members and their families. As we continue our inquiry, we are seeking to identify the systemic levers that, when activated, will optimise lifetime wellbeing and promote wellness and recovery. The 2019 Productivity Commission report, including its Recommendation 4.1, and the Boss report both articulated the need for a lifetime wellbeing approach.<sup>2</sup> Lifetime wellbeing and evidence-based suicide prevention are integral to our work.
8. We know that suicide is a complex issue. There are several causes, some of which are similar for everyone and some that are different – a combination of the interplay between the individual, their history, their current context and a loss of hope. We know that people who attempt suicide are despairing and believe there are no other possible solutions.<sup>3</sup> The factors that contribute to suicide, such as isolation, poor mental health, despair and relationship breakdown, and factors that provide buffers, such as having a sense of purpose, a job, belonging, and having good health, may be experienced by anyone – including serving and ex-serving ADF members. We also appreciate there are stressors for serving and ex-serving ADF members because of the specific nature of their job, their commitment to protect Australia with their lives if necessary, extended periods away from family and friends, exposure to trauma(s), and critical stress points, such as transition. We are examining a number of these as part of our ongoing work, informed by contemporary theories of suicide and suicidality and by a growing body of international and national evidence-based research. We are focusing a systemic lens to find answers.
9. To do this, we have heard from a number of theorists, researchers, and clinicians working in suicide prevention. Some of these differ in their approach to suicide and suicidality or in the emphasis they place on various factors influencing them. For example, as Professor Jane Pirkis, Director for the Centre for Mental Health at the University of Melbourne, told us, the approach of population health to suicide prevention is to focus on risk and protective factors for suicide and their implications for early intervention. According to Professor Pirkis, these approaches might give way to approaches more closely resembling crisis intervention, treatment, or postvention in the clinical or frontline space.<sup>4</sup> Both are crucial to the work of understanding and preventing suicide. We will continue to explore both in detail for the lifespan of ADF members, including recruitment, training, service life, deployment, transition and the rest of their lives post service.

10. The military context lies at the heart of our inquiry. The ADF environment, including the post-service lives of former ADF members, has its own challenges and opportunities for serving and ex-serving ADF members and their families – and for those working among them to prevent suicide and reduce suicidality. As the Department of Defence puts it, the mission of Defence ‘is to defend Australia and its national interests to advance Australia’s security and prosperity’.<sup>5</sup> This Royal Commission’s role is to make recommendations to help reduce the prevalence of suicide and suicidality among serving and ex-serving ADF members. In our view, it is possible to pursue suicide prevention and lifelong wellbeing without any compromise to the ADF’s mission. In actuality, it is likely to assist the ADF in achieving its mission.

## 3.3 Data and suicide prevention

### 3.3.1 Putting data in context

11. The terms of reference require us, among other matters, to inquire into and conduct a ‘systemic analysis of the contributing risk factors relevant to defence and veteran death by suicide’, and ‘systemic issues and any common themes among defence and veteran deaths by suicide, or defence members and veterans who have other lived experience of suicide behaviour or risk factors’.<sup>6</sup>
12. Consideration of data will be vital to our inquiries. It will provide an evidence base to inform our understanding of death by suicide and suicide behaviour, the circumstances of those events and, critically, what can be done to prevent future deaths. Suicide behaviour will, in particular, be a focus of our examination of the data.
13. This section explores why data is important; what is known about suicide, suspected suicide, self-harm and risk and protective factors relating to serving and ex-serving ADF members; and what is not known. In particular, we focus on the importance of monitoring self-harm behaviour. We set out our preliminary views and highlight issues of concern. Data will continue to be an area of focus throughout the life of this Royal Commission. We will have more to say on this subject in our final report.
14. Before going further, we emphasise that we are acutely aware that behind every number is a person. What we are discussing here is much more than statistics. Each death by suicide is a tragedy. Suicide, self-harm and suicidality profoundly affect individuals and family, loved ones, friends and colleagues, and resonate within the broader community. They are issues that should belong to all of us. Numbers help inform our thinking, but they do not and will not overshadow the personal experiences that we have heard from people who have chosen to share their stories with us.

### 3.3.2 Why is data important?

#### Surveillance is essential

15. Surveillance refers to the systematic collection of outcome-specific data for use in the planning, implementation, and evaluation of public health practice.<sup>7</sup> In the context of suicide prevention, surveillance includes collecting and using data about suicide and suicide attempts.
16. Surveillance is critical to prevent suicide deaths. This is because, as the World Health Organization puts it:

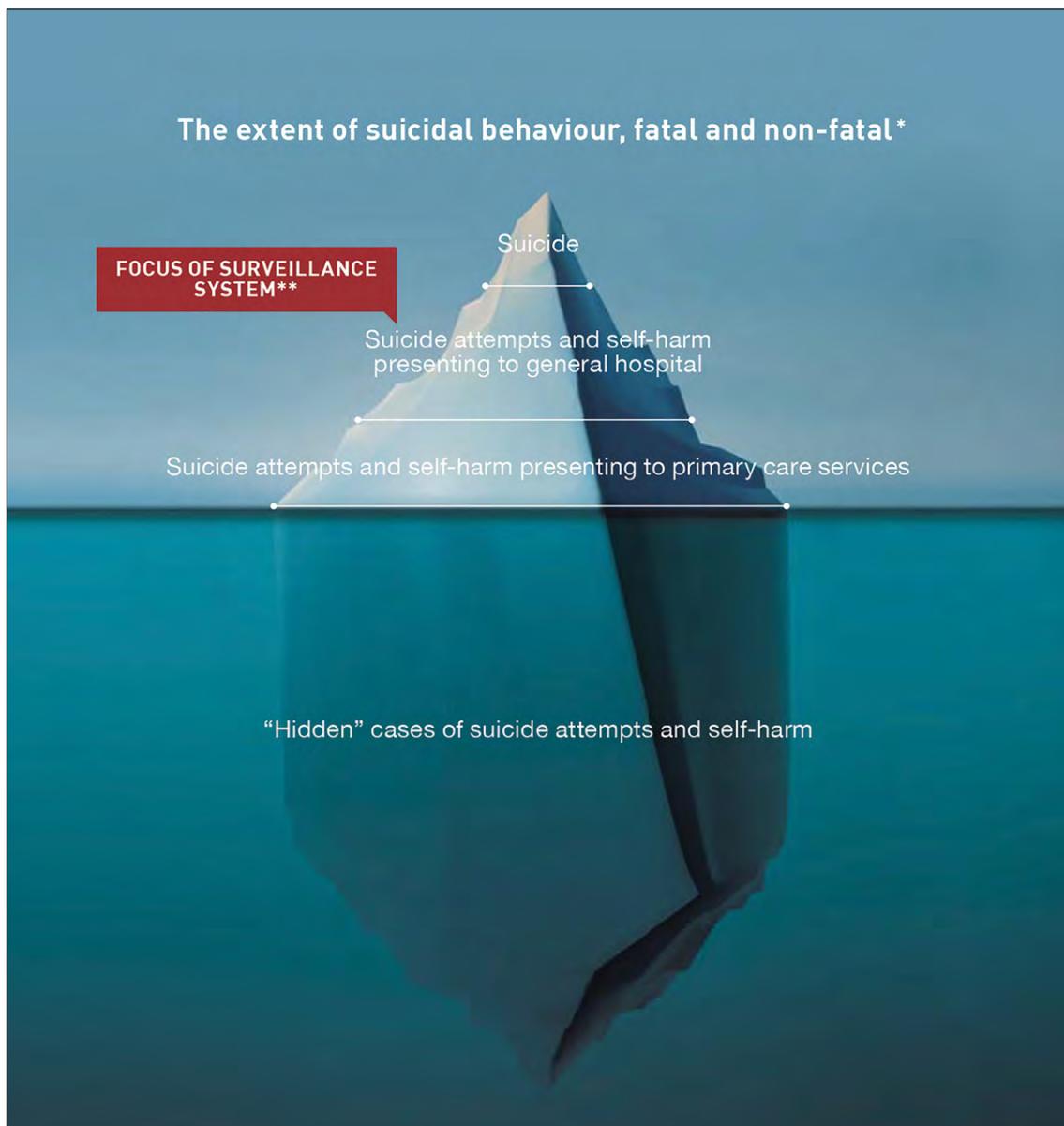
the prevalence, characteristics and methods of suicidal behaviour vary widely between different communities, in different demographic groups and over time. Consequently, up-to-date surveillance of suicides and suicide attempts is an essential component of national and local suicide prevention efforts.<sup>8</sup>
17. The use of surveillance data provides a basis for understanding where and how to best direct efforts to prevent suicide. According to the World Health Organization:

Timely and effective evidence-based interventions play a key role in preventing suicides and, in order to determine what is effective, good data are needed as a priority. Governments are in a unique position to develop and strengthen surveillance and to provide and disseminate data that can help to inform action.<sup>9</sup>
18. Evidence and information available to this Royal Commission suggests that in Australia, data is increasingly viewed as important to understand the scope of suicide, enable effective monitoring and develop targeted solutions. This view has been expressed by the National Suicide Prevention Adviser; the National Suicide Prevention Office; the interim National Commissioner for Defence and Veteran Suicide Prevention, Dr Bernadette Boss CSC; and in expert testimony to this Royal Commission.<sup>10</sup>
19. In research commissioned by us, serving and ex-serving ADF members noted data can be used to better describe ADF members, identify trends, identify gaps in resourcing, and to better focus existing resources for issues related to suicide and self-harm in the ADF.<sup>11</sup>

#### Without good data on suicide behaviours, surveillance is incomplete

20. Data on deaths by suicide is a necessary part of suicide surveillance, but this data on its own does not provide a full picture of suicidal behaviour. The World Health Organization estimates that for each adult who has died by suicide, more than 20 others may have attempted suicide.<sup>12</sup> This is a startling statistic, especially as a prior suicide attempt is a robust predictor of future suicide.<sup>13</sup>
21. Figure 3.1, based on a figure developed by the World Health Organization, illustrates how surveillance to inform suicide prevention should focus on identifying suicide attempts and self-harm.
22. Given this understanding, monitoring self-harm behaviour, including suicide attempts, should be a cornerstone of suicide prevention. Identifying high-risk individuals and providing them with follow-up care and support should be a key component of all comprehensive suicide prevention strategies.<sup>14</sup>

Figure 3.1 The extent of suicidal behaviour



\* Proportions illustrated in this diagram stem from international research findings; however, these proportions may vary between countries and regions.

\*\* While increased accuracy and uniformity of information is needed at all levels, the focus of this manual is on suicide attempts and self-harm presenting to general hospitals.

Source: World Health Organization, *Practice manual for establishing and maintaining surveillance systems for suicide attempts and self-harm*, 2016, p 8.

### 3.3.3 Current suicide data does not give a true picture

#### Deaths by suicide are not always counted as such

23. Evidence available to us indicates suicide may be underreported in official statistics in Australia. There are several reasons for this, including the following points:
- **Coroners do not use a consistent definition of suicide.**<sup>15</sup> Coroners have different views and practices when it comes to making findings of suicide, and their findings are reflected in official statistics.<sup>16</sup>
  - **Intent is not always clear.** Coroners consider the intent of the deceased in making a finding of suicide.<sup>17</sup> However, intent is not always clear, and in such cases, coroners may not be able to make a finding that a death was a suicide.
  - **Gaps in coding.** There are gaps in the availability of reports in the National Coronial Information System.<sup>18</sup> These reports are used by the Australian Bureau of Statistics to code cause of death information. Due to these gaps, the Australian Bureau of Statistics may not always be able to code cause of death accurately.<sup>19</sup>
24. Issues related to coroners are explored further in Section 3.4 of this chapter.

#### Serving and ex-serving ADF members are not always identifiable in suicide data

25. As noted in Chapter 1, the Australian Institute of Health and Welfare reports that there were 1,273 deaths by suicide among serving and ex-serving ADF members between 2001 and 2019 – that is, 211 serving (permanent and reserve) members and 1,062 ex-serving members.<sup>20</sup>
26. However, we consider these numbers are likely to understate the true extent of suicide deaths among serving and ex-serving ADF members, for two main reasons:
- (1) **Veterans who served prior to 1985 are not included.** Defence records prior to 1985 are not available in digital form. The records remaining to be digitised by Defence – if laid out, would be over 130km in length, including 65km of personnel and health files.<sup>21</sup>

As at December 2019, about 358,000 living Australians have served at least one day in the ADF since 1985.<sup>22</sup> In the 2021 Census, 581,139 Australians reported being current or ex-serving members of the ADF.<sup>23</sup> Using these numbers, we can estimate that over 220,000 living Australians served in the ADF prior to 1985.

The Australian Institute of Health and Welfare cannot include these 220,000 living veterans, plus those who are deceased, in its data analysis if Defence cannot provide service information about them.

- (2) **Deaths by suicide that occurred prior to 2001 are not included.** Accurately matching mortality data with Defence personnel data prior to 2001 is problematic due to the quality of information. This issue is greater still for earlier data.<sup>24</sup>

27. We welcome work to overcome these issues. We also acknowledge previous work to gather more information about suicide of serving and ex-serving members has led to some changes in reported suicide rates (Table 3.1).

**Table 3.1 Rates of serving and ex-serving ADF member suicide, as presented at the time of each Australian Institute of Health and Welfare annual monitoring report**

	2018 report <sup>25</sup>	2019 report <sup>26</sup>	2020 report <sup>27</sup>	2021 report <sup>28</sup>
serving males	10.6	12	11.5	11.3
reserve males	11.8	12	12.0	12.5
ex-serving males	26.2	27	28.4	29.8
ex-serving females	9.9	15	15.8	14.9

28. Potential reasons for the differences in the numbers and rates of suicide reported by Australian Institute of Health and Welfare in each reporting period are considered in Box 3.1.

### **Box 3.1 Why do reported rates and numbers of suicide among serving and ex-serving ADF members keep changing?**

Reasons for the differences in rates of suicide (see Table 3.1), and the numbers that underpin these rates that are reported by the Australian Institute of Health and Welfare in each reporting period include:

- **Revised information on causes of death:** There can be a lag in finalising the cause of a death.<sup>29</sup> The Australian Bureau of Statistics may also revise cause of death information.<sup>30</sup> In either case, if this results in additional deaths being categorised as suicides, the Australian Institute of Health and Welfare adds those deaths to the total reported in subsequent annual reports.
- **More veterans are captured in the study:** As more historical ADF personnel data becomes available, the Australian Institute of Health and Welfare is able to identify additional deaths. For example, its 2021 report expanded the population included in the dataset from those who had served at least one day since 1 January 2001 to those who had served at least one day since 1 January 1985.<sup>31</sup> This means the absolute number of suicide deaths reported increased. However, the suicide rates remained very similar to those previously reported.<sup>32</sup>

*(continued over)*

- **Older suicides are captured in study:** To date, the Australian Institute of Health and Welfare’s annual monitoring reports have only included deaths that occurred from 2001 onwards. The Australian Institute of Health and Welfare has told us that it may be possible to identify some suicide deaths that occurred before this.<sup>33</sup>
- **People join and leave the ADF:** The serving and ex-serving ADF population studied by the Australian Institute of Health and Welfare changes each year. Each year more individuals join the ADF. More people also leave the ADF and increase the number of ex-serving personnel.
- **New suicide deaths occurring:** Any new deaths occurring in preceding years are added to the total number of suicide deaths previously reported in earlier annual reports.

### 3.3.4 Defence data collections are disjointed and incomplete

#### No dataset within Defence contains comprehensive information on suicide

29. Since 2015, Defence has created three datasets which hold data on confirmed and suspected suicide. These datasets all record different numbers of suicides (Box 3.2).

#### Box 3.2 Suicide datasets created by Defence

Defence holds data about suicide in three main datasets.

##### ***Defence Suicide Database (DSD)***

Started in 2015 and maintained by Joint Health Command, the Defence Suicide Database was established to record the number of suspected and confirmed suicide deaths of members serving full-time at the time of their death.<sup>34</sup>

The Defence Suicide Database covers deaths from 2000 onwards.<sup>35</sup> The Defence Suicide Database included 183 deaths at 6 April 2022.<sup>36</sup>

*(continued over)*

In ‘very recent’ times, Defence has included deaths of ex-serving and reserve members, though these are not automatically included.<sup>37</sup> Defence does not have a formal mechanism in place to gather information on suspected or confirmed deaths of ex-serving and reserve members and has low confidence in the numbers of deaths of these individuals it has recorded.<sup>38</sup>

### ***Joint Military Police Unit (JMPU) Suicide Register***

Defence established the Joint Military Police Unit Suicide Register in 2019 to centralise information from Military Police records. The register provides a list of suicide deaths from 1970 to 2021.<sup>39</sup> The register contains 328 confirmed or suspected suicide deaths, primarily of full-time serving members but also reserves, ex-serving members, foreign personnel and civilians.<sup>40</sup>

### ***Consolidated Register of Suspected and Confirmed Suicides***

Defence developed the Consolidated Register in September 2021, in anticipation of providing data to this Royal Commission.<sup>41</sup> It includes data from the Australian Institute of Health and Welfare, Defence Suicide Database, Joint Military Police Unit Suicide Register and the Interim National Commissioner’s register.<sup>42</sup>

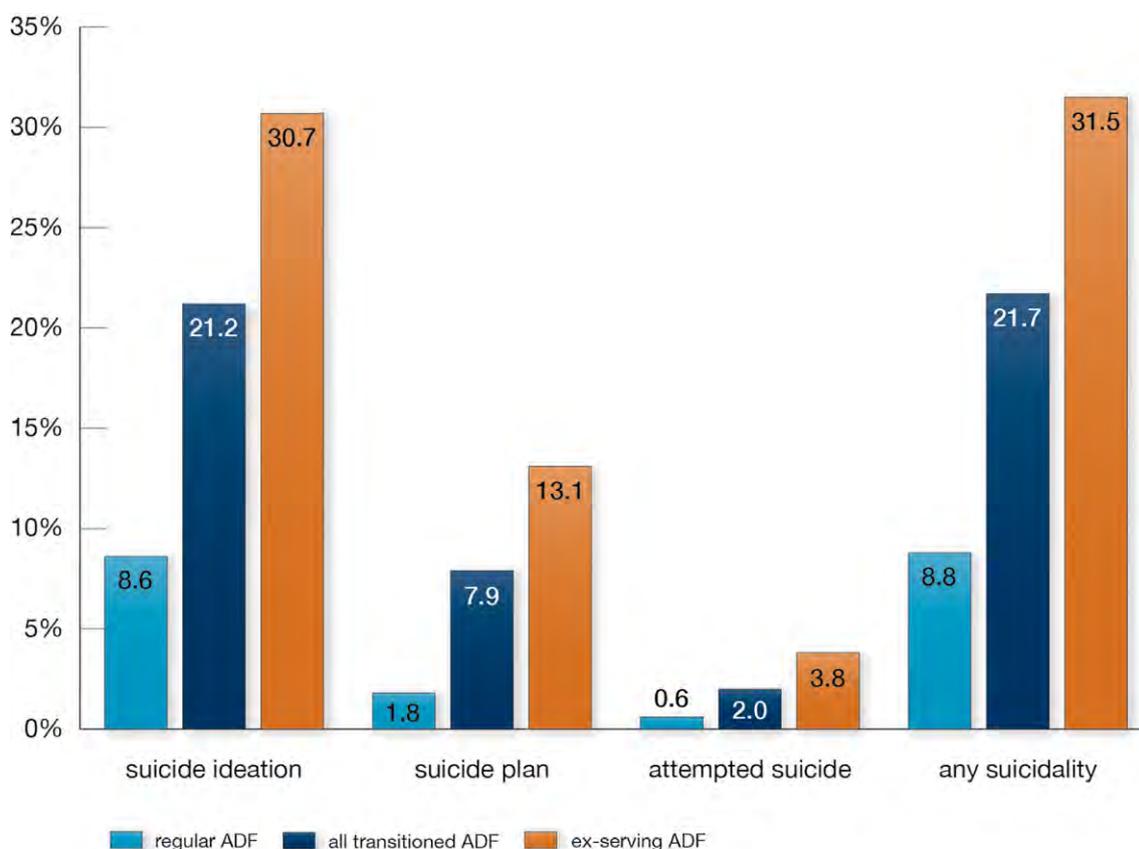
30. In addition, Defence has access to the data compiled by Dr Boss. Between November 2020 and September 2021, Dr Boss compiled a record of 648 individuals suspected or confirmed to have died by suicide between 1970 and 2020.<sup>43</sup>
31. From what we have been able to determine to date, none of the datasets provide a reliable and comprehensive source of information on serving and ex-serving suicide deaths.
32. Further, information related to reserve or ex-serving personnel is a notable gap in Defence’s suicide datasets. Defence told us that:

there is no formal mechanism for Defence to be advised of reserve or ex-serving personnel that are suspected or confirmed to have died by suicide. In very recent times, JHC [Joint Health Command] has commenced monitoring the deaths of reserve or ex-serving personnel to include in the DSD [Defence Suicide Database] when they become aware of a suspected or confirmed suicide by way of news outlets, social media, or other sources. However, due to the inability to verify this information, it is not included in Defence statistics.<sup>44</sup>

### **Data on suicide ideation, self-harm and attempted suicides is sparse**

33. There is only very patchy data on suicide ideation, self-harm and attempted suicides among serving and ex-serving ADF members. The most recent publicly reported survey data is the 2015 Mental Health and Wellbeing Transition study. It reveals high rates of suicidality, particularly for individuals no longer serving as full-time members (Figure 3.2).<sup>45</sup>

**Figure 3.2 Self-reported suicide ideation, suicide plans and attempts, in the last 12 months, by service status<sup>46</sup>**



Note: Regular ADF is defined as ADF members serving full-time in the ADF in 2015. Transitioned ADF is defined as those who transitioned from full-time service between 2010 and 2014, either to the reserves or to be an ex-serving member. Ex-serving ADF is those who transitioned from full-time service in 2010–14 and are longer serving in the ADF at all (this is a subset of the transitioned ADF).

34. We welcome the collaboration between DVA and Phoenix Australia to develop the Transition and Wellbeing Research Programme High Risk Follow-up Study. The study will follow up individuals who reported suicide plans and attempts over the 12 months to 2015 through the original Transition and Wellbeing Research Programme study.<sup>47</sup>
35. The Chief of the Defence Force, General Angus Campbell AO DSC, provided information on the number of suicide ideation, self-harm and attempted suicide events that are known or reported to Defence chain of command, including events involving serving, ex-serving and reserve ADF members. General Campbell advised that there have been:
  - 213 events for Navy personnel from 2017 to 7 June 2022
  - 721 events for Army personnel from 2007 to 7 June 2022
  - 371 events for Air Force personnel from 2015 to 7 June 2022.<sup>48</sup>

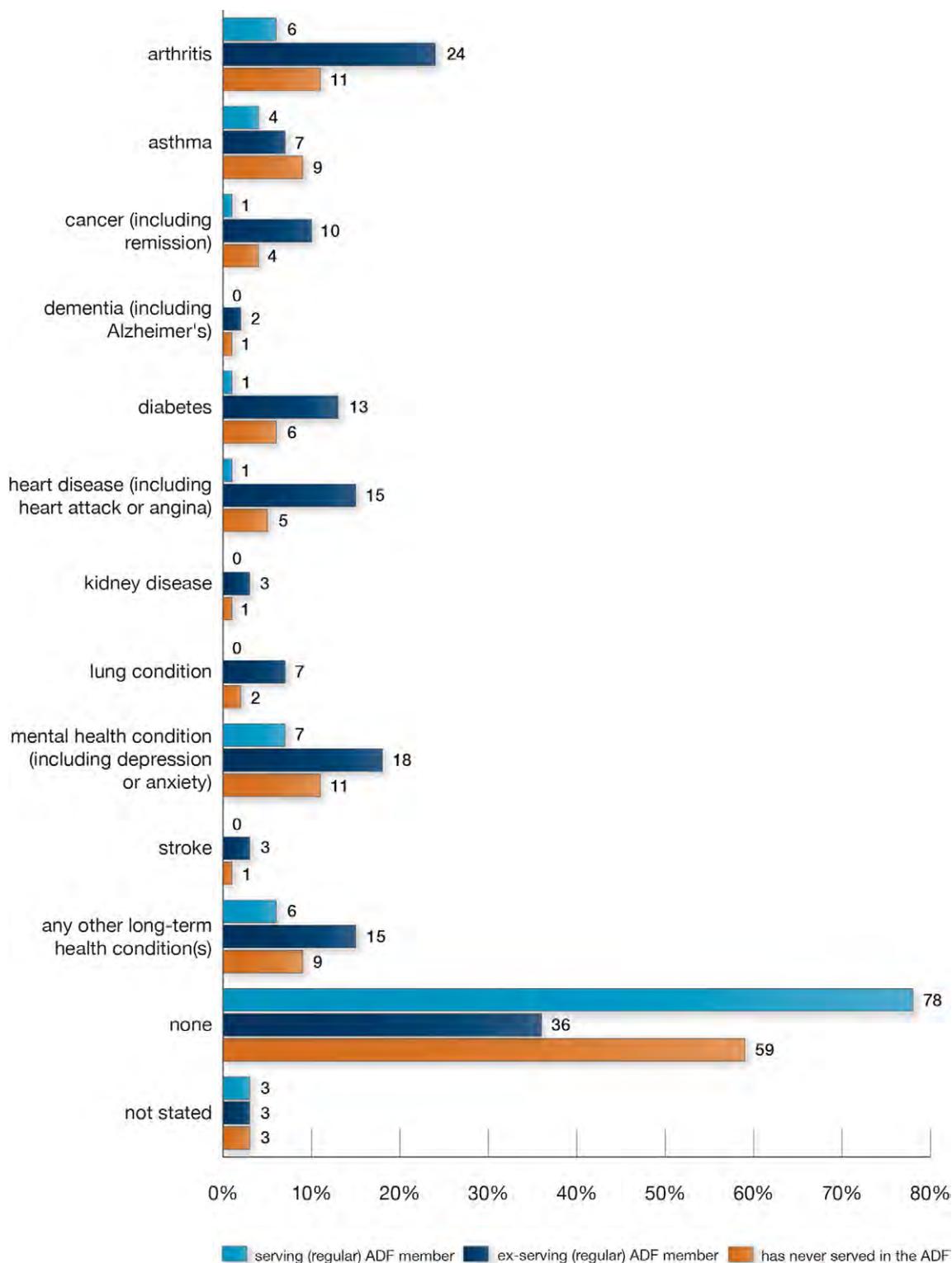
36. This data on suicide ideation, self-harm and attempted suicide is drawn from the Army Incident Management System and the Defence Policing and Security Management System. The data are not available before 2017 for Navy, 2007 for Army and 2015 for Air Force.<sup>49</sup>
37. General Campbell also provided information specific on suicide attempts from the Defence Electronic Health System. The information showed that from 2015 to 7 June 2022, 336 ADF members attempted suicide.<sup>50</sup> The number of ADF members who attempted suicide prior to 2015 is not known.<sup>51</sup>
38. In an internal report in September 2020, Defence identified that between 1 January 2016 and 31 July 2020 a total of 60% (160 of 266) of members who attempted suicide had not presented to the Defence Health System with ideation or intent.<sup>52</sup>
39. We present this data with some caution, noting that recorded numbers of suicidality and self-harm may be a function of people disclosing these issues to health practitioners, practitioners asking about them, or data recording practices.
40. We also note the concern expressed in a December 2021 report that inconsistent data entry meant the Defence Electronic Health System was ‘not suited to effective analysis’.<sup>53</sup>
41. Defence has told us that work has recently begun to enhance the monitoring of suicidal ideation, attempts, and self-harm from the Defence Electronic Health System.<sup>54</sup> We look forward to hearing more about this work.

## **Defence does not collect a range of key data on risk and protective factors**

### ***Risk and protective factors in the general population***

42. When exploring risk and protective factors, it is important to consider factors relevant for the general Australian community as well as those factors specific to the military. This is because almost everyone who joins the ADF lived in the general Australian community before they served, and will return to that community when they leave the ADF.
43. Data from the 2021 Census that has been analysed by this Royal Commission reveals that ex-serving regular members of the ADF were more likely to report a mental health condition (18%) than those who have never served in the ADF (11%) or those who are serving regular members of the ADF (7%). Rates of mental health conditions for ex-serving regular ADF personnel were greater than for those who had never served for both males and females across all age groups (15–34 years, 35–54 years, and 55 years and over).<sup>55</sup>
44. Rates of all other long-term health conditions, as well as the rate of those needing assistance with activities of self-care, mobility or communication, were also higher in ex-serving regular ADF personnel.<sup>56</sup> Relative to those who have never served, the greatest health condition disparities were for arthritis, heart disease, mental health, cancer and lung condition – see Figure 3.3.

Figure 3.3 Long-term health conditions by service status, 2021<sup>57</sup>



Note: Self-report data from the 2021 Census based on analysis provided by the Australian Bureau of Statistics. Long-term health conditions were measured by asking whether the person had ever been told by a doctor or nurse that they had a long-term health condition. Multiple conditions could be recorded. Those who never served only includes those aged 15 years and over.

45. New analysis undertaken for this Royal Commission by the Australian Institute of Health and Welfare, using ADF members alive in the 2011 Census, has found that risk of suicide among ex-serving males between the years 2011–2018 was:
- more than four times as high for those who are widowed, divorced, separated or never married relative to couples in a registered or de facto marriage
  - more than four times as high for those aged 17–24 years as those aged 45–80 years
  - about seven times as high for those earning \$200–\$599 per week relative to those earning \$1,500 or more.
46. These risk factors exist in the general male population also, but the size of the suicide risk for each of them is two to three times as high in the ex-serving male population as in the general male population.<sup>58</sup>
47. Risk and protective factors can provide valuable information about areas or population groups that are at higher and lower risk of suicide. This information can be used to guide efforts to prevent suicide deaths, such as programs that can be targeted to areas or population groups that are in most need.
48. Risk and protective factors are, however, indicative only. They do not determine the risk for any given individual and what their experience will be. Although suicidality increases the risk of a death by suicide, most people who die by suicide have not had a previous suicide attempt.<sup>59</sup>
49. There is not a good understanding of how risk factors interact (that is, the effect of them operating together) and how they emerge (that is, their chronology). The strength of evidence to support risk factors is highly variable.<sup>60</sup>

### ***Military-specific risk and protective factors***

50. The Australian Institute of Health and Welfare has identified a number of serving and ex-serving population subgroups that are at higher or lower risk of suicide. These groups include:
- lower risk for officers, relative to those in the other ranks
  - lower risk for ex-serving males with 10 years of service, relative to those with less than one year of service
  - higher risk for ex-serving males who separated for medical or other involuntary reasons, relative to those who separated for voluntary reasons
  - higher risk for ex-serving males who separated from the ADF less than one year ago, relative to those who had transitioned 10 or more years ago
  - higher risk for ex-serving males who are DVA clients, relative to those who are not.<sup>61</sup>

51. Generally, there is a higher rate of suicide for ex-serving females relative to serving and reserve females and females in the general population. There is also a higher rate of suicide for ex-serving males relative to serving males, reserve males, and males in the general population.<sup>62</sup>
52. Experts have identified a large number of military-specific risk and protective factors. Serving members benefit from mental and physical fitness, and access to comprehensive health care. However, they also experience unique workplace stressors: exposure to combat and life-threatening situations; periodic geographical relocations; and separation from family.<sup>63</sup> For example, research involving US military personnel who deployed to Afghanistan and Iraq shows that high combat severity and certain combat experiences are associated with suicide attempts.<sup>64</sup>
53. To date, the Australian Institute of Health and Welfare has not explored the impact of deployment on members as a risk factor, or a number of other military specific risk factors identified through research. Under current arrangements, Defence provides limited risk and protective data information to the Australian Institute of Health and Welfare.<sup>65</sup> We discuss some reasons for this below.

***The Defence Suicide Database lacks information on many risk and protective factors***

54. In 2021, an external report commissioned by Defence pointed out a range of risk and protective factor data that would be valuable to record in the context of the Defence Suicide Database. That report stated that:

This information might include, for example, the nature or method of the suicide, circumstances surrounding the suicide, and non-service factors including social, psychological and mental health factors (e.g., relationship and family breakdown, social isolation, substance misuse, mental health problems) that may have increased the risk of suicide.<sup>66</sup>
55. General Campbell has provided us with lists of the factors he considers to be protective factors and risk factors for suicide and/or suicidality. But, as outlined in Tables 3.2 and 3.3, many of these factors are not available in the Defence Suicide Database.<sup>67</sup>

**Table 3.2 Protective factors for suicide and suicidality, as listed by the Chief of the Defence Force, and their status in the Defence Suicide Database<sup>68</sup>**

Protective factor	Present in Defence Suicide Database (DSD)	Comment
Being a current serving ADF member	✓	DSD includes a data item on serving status.
Recruited and trained to be fit and resilient	✓ ✗	DSD includes a data item on service category (SERCAT), which goes to fitness. DSD does not include a data item on resilience.
Access to health care	●	DSD includes a data item on serving status. In theory, all serving members have access to health care, but the DSD does not contain a specific data item on health care.
Strong sense of purpose, meaning and identity	✗ ✗ ✗	DSD does not include data items on purpose, meaning or identity.
Secure income, employment and housing	● ● ●	DSD includes a data item on serving status. In theory, all serving members have secure income, employment and housing, notwithstanding the impact of postings to different geographic areas. But the DSD does not contain specific data items on income, employment or housing security.
Voluntary separation from the ADF	✗	DSD does not include data on mode of discharge from the ADF.
Adaptive cognitive coping styles (acceptance and reappraisal)	✗ ✗	DSD does not include data items on cognitive styles.
Adequate levels of sleep, social support, high unit morale and fewer negative interactions with others	✗ ✗ ✗ ✗	DSD does not include data items on levels of sleep, social support, unit morale or interactions with others.
Evidence of resilience, spirituality, positive temperament, employment.	✗ ✗ ✗ ✓	DSD does not include data items on resilience, spirituality or temperament. DSD includes data on serving status, and hence on employment.

Note: Tick marks indicate factor is present in the DSD. Crosses indicate factor is not present in the DSD. Circle markers indicate factor is not fully or precisely included in the DSD as noted in the 'Comment' column.

**Table 3.3 Risk factors for suicide and suicidality, as listed by the Chief of the Defence Force, and their status in the Defence Suicide Database<sup>69</sup>**

Risk factor	Present in Defence Suicide Database (DSD)	Comment
Being male and aged below 30 years	✓ ✓	DSD includes data items on sex and age.
Lower rank (any other than Commissioned Officer)	✓	DSD includes a data item on rank.
Stigma – reluctance to seek help	✗ ✗	DSD does not include data items on stigma or willingness to seek help.
Relationship stress	●	DSD contains a data item on marital status, but does not include information on other relationships or the stress in marital or other relationships.
Removal from networks when ill or injured	✗	DSD does not contain data items on illness, injury or removal from networks.
Involuntary separation	✗	DSD does not include data on mode of discharge from the ADF.
Medical separation	✗	DSD does not include data on mode of discharge from the ADF.
Increasing age and single relationship status	✓ ✓	DSD includes data on age and relationship status
An underlying mental health condition	✓	DSD includes a range of data items on mental health status and service use.
Depression, sleep problems, childhood anxiety, trauma, and anger	✗ ✗ ✗ ✗ ✗	DSD does not include data on depression, sleep problems, childhood anxiety, trauma or anger but does include some information on mental health engagement.
Transition out of full-time service within three years	✗	DSD does not include data on timing of discharge from the ADF.
Being aged under 30 years	✓	DSD includes a data item on age.
Financial strain and housing instability.	● ●	DSD includes a data item on serving status. In theory, all serving members have secure income and housing, notwithstanding the impact of postings to different geographic areas. But the DSD does not contain specific data items on income or housing security.

Note: Tick marks indicate factor is present in the Defence Suicide Database. Crosses indicate factor is not present in the Defence Suicide Database. Circle markers indicate factor is not fully or precisely included in the Defence Suicide Database, as noted in the ‘Comment’ column.

***Belated efforts to address gaps in information on risk and protective factors***

56. We do not believe the data currently held in the Defence suicide datasets can be used to understand meaningfully death by suicide of serving members.
57. In 2012, Defence was provided with a list of possible military-specific risk factors in a report from the Australian Institute of Suicide Research and Prevention.<sup>70</sup> Although some risk and protective factors from this report have been captured in the Defence Suicide Database, Defence accept that a number have not.<sup>71</sup> These include factors unique to serving in the military.
58. In our view, Defence has had ample time to capture data systematically and comprehensively about these factors into one or more of its suicide registers.
59. We echo the sentiment expressed in the Boss report that more should be done to collect data on service-related risk and protective factors. Dr Boss said that:
- Defence and DVA should ensure that they are capturing all data relevant to service, and issues arising during service, that may be useful when investigating ADF member and veteran suicide deaths and the patterns and trends associated with these deaths. Factors associated with ADF suicide deaths that I discuss ... should be included as part of this data capture.<sup>72</sup>
60. In March 2022, Defence advised us that it had invited:
- a number of organisations to partner with and assist Defence in a research activity looking into the important areas of suicidal behaviour.
- The goal of this research is to assess and analyse the pre and post transition health and non-health related information that is available to identify the protective and risk factors that may have been part of the experience of serving and ex-serving members.<sup>73</sup>
61. In June 2022, Defence told us that it now accepts there is a need to change the Defence Suicide Database:
- ... Defence now considers that a broader integrated database of Defence suicide should be established containing information available in other Defence systems, like unacceptable behaviour.<sup>74</sup>
62. We welcome these initiatives, and note that if a broader dataset of suicide, self-harm, suicidality and suicide risk and protective factors did exist it could be provided in de-identified format to an organisation such as the Australian Institute of Health and Welfare for analysis to inform suicide prevention approaches.

### 3.3.5 There are opportunities for Defence to use data to inform suicide prevention

63. We have considered how military suicide data is analysed and reported on internationally, including the approach taken to military suicide data in the United States (Box 3.3).

#### **Box 3.3 Learning from military suicide reporting in the United States**

Since 2009, the US Department of Defense has published the Department of Defense Suicide Event Report (DoDSER) annually. It provides detailed risk and contextual factors associated with suicide and suicide-related behaviour in the US Department of Defense. Over 500 data elements are included in the data collection form used for this report.<sup>75</sup>

When appropriate, data is collected from interviews with family members, friends, colleagues, or the service members themselves. According to the Department of Defense, 'Interviews with spouses, extended family, friends, and/or peers', if appropriate, are a common source of data used for the report.<sup>76</sup>

Since 2018, the Department of Defense has published a second type of report. The Annual Suicide Report serves as the official source of annual suicide counts and rates, and a way to increase transparency and accountability for US Department of Defense efforts to prevent suicide. This reporting is required under US legislation.<sup>77</sup>

The US Department of Defense also collects regular data on suicide ideation and suicide attempts for active duty Army personnel through the Army Behavioural Health Integrated Data Environment Surveillance System.<sup>78</sup>

64. In contrast to the US approach, and from the evidence available to us, we are concerned that there has been a sustained lack of curiosity and action from Defence in this area. We discuss this evidence and the particular issues that have come to our attention below.

#### **No person or entity within Defence is clearly responsible for data on suicide and suicidality**

65. Data sources on suicide, self-harm, suicidality and suicide risk and protective factors are owned and managed by a range of Defence data custodians.<sup>79</sup>
66. Instead of a single senior officer or centralised unit being responsible for analysing deaths of ADF members systematically – that is, investigating commonalities across deaths – this responsibility is held across various areas in Defence and the ADF.<sup>80</sup>

67. The absence of a senior responsible officer or central unit has a range of negative consequences, including:
- a lack of awareness across Defence about what datasets exist<sup>81</sup>
  - ingrained systemic conflicts regarding the integrity, availability or existence of relevant data<sup>82</sup>
  - datasets are not always well maintained. For example, according to the Australian Institute of Health and Welfare, there are problems with the ‘reliability, validity and comparability across multiple datasets containing mental health screening data’.<sup>83</sup>
68. However, we note that Defence are open to a central repository of data that is broader than the Defence Suicide Database.<sup>84</sup>
69. We also note that an internal central function in ADF Headquarters will be established in 2022.<sup>85</sup> During Hearing Block 5, General Campbell told us that the first task of this area will be to review 59 Inspector-General of the ADF reports concerning the deaths by suicide of serving members since 2016. He also said ‘the aspiration I have is to build a relationship with an external entity’ to take responsibility for this type of work.<sup>86</sup>

### **There are concerns over timely access to Defence suicide data**

70. A 2021 review commissioned by Defence which focused on the monitoring and evaluation of the Defence Suicide Prevention Program identified a ‘culture of reticence to release data from data custodians’ within Defence.<sup>87</sup> The review report notes that the reviewers experienced:
- ongoing delays in actually accessing the data that does/ may exist, concerns about the potential impact of confidentiality breaches, and observations that a new plan is imminent meaning data release would be more timely following that.<sup>88</sup>
71. The Australian Institute of Health and Welfare, as part of work it was doing to support Dr Boss, also experienced some challenges with data approval from Defence. It had intended to work with the Australian Bureau of Statistics to link Defence personnel data to the Australian Bureau of Statistics Multi-Agency Data Integration Project (MADIP) dataset.<sup>89</sup>
72. The MADIP dataset provides a range of information that has been used to identify suicide risk factors in the general population.<sup>90</sup> Defence approval for this work did not occur until it was too late to meet the timelines for the Boss report.<sup>91</sup>
73. According to Defence, it does not have a culture of reticence about releasing data.<sup>92</sup> Nonetheless, we welcome General Campbell’s statement to us that he is open to arrangements that may better streamline access to Defence data to support Australian Institute of Health and Welfare’s suicide monitoring.<sup>93</sup>

## Defence's data analysis and reporting efforts are limited

74. Defence has pointed to the existence of a number of documents and training programs as examples of how its analysis of the Defence Suicide Database has informed its suicide prevention efforts.<sup>94</sup>
75. However, Defence was only able to tell us about three occasions on which it had deliberately analysed the Defence Suicide Database for a specific purpose:
- to inform an internal inquiry by the National Mental Health Commission, in 2016
  - to inform this Royal Commission, in 2021
  - after this Royal Commission had commenced, in 2022.<sup>95</sup>
76. As Commissioners, we would expect Defence would be attuned to which groups were more at risk of suicide.
77. General Campbell advised us that Defence has not sought to target any population subgroup with its suicide prevention initiatives.<sup>96</sup> Further, Ms Justine Greig, the Deputy Secretary, Defence People Group, told us she only became aware of the worryingly high rates of suicide among younger ex-serving women with the release of the Australian Institute of Health and Welfare report in September 2021.<sup>97</sup>
78. In December 2021, independent experts commissioned by the Department of Defence recommended the introduction of '[i]mproved processes of documentation and data collection to provide the evidence required for evaluation and continual improvement'.<sup>98</sup>
79. We look forward to hearing more about Defence's approach to improving its data collection and analysis activities.
80. Defence uses its Defence Suicide Database for parliamentary and media reporting purposes.<sup>99</sup> However, Defence does not report publicly the data in the existing Defence suicide datasets.<sup>100</sup>
81. We note that General Campbell is open to public reporting of deaths and will raise this matter with the relevant Minister.<sup>101</sup> We will monitor developments with interest as our inquiry progresses.
82. Should public reporting occur, we hope that it could also be used to address the suggestion of some current and ex-serving ADF members, made in research commissioned by us, that data also be used to tell the positive stories about the strengths of people in the ADF Community.<sup>102</sup>

### 3.3.6 Improving data on suicide and suicidality

83. People with a lived experience perspective of ADF member suicide and self-harm have told researchers commissioned by us about the importance of accurate data and data analysis to inform useful, fast, and responsive actions to prevent suicide and self-harm.<sup>103</sup>

84. These same individuals also identified that some serving and ex-serving ADF members may have concerns about the privacy of their information and how it would be collected, shared and used. These individuals suggested that concerns would be drastically reduced if there was:
- transparency around the use of data, who would have access to it, and how and where it would be stored
  - anonymised data to be used where possible, including when data is used to identify trends, to respond to trends (such as putting in place services and supports) and when studying risk and protective factors
  - priority placed on the transfer of personal information to promote an individual's wellbeing.<sup>104</sup>
85. We will explore the potential for real time monitoring of suicide and self-harm of serving and ex-serving ADF members, and how to balance privacy concerns against actions that may enhance suicide prevention
86. In consultation with lived experience representatives, the National Suicide Prevention Office and the Australian Institute of Health and Welfare, we will assess potential strategies for collecting real-time data on serving and ex-serving ADF members who have died by suicide, as well as those who present with suicidal ideation or suicidal behaviours. Critically, we will also consider how real-time data can be used to inform real-time intervention and prevention.

## 3.4 Coronial matters

### 3.4.1 The coronial jurisdiction in context

87. State and territory Coroners Courts investigate sudden and unexpected deaths. This is called the coronial jurisdiction. In Australia, any death potentially caused by suicide must be referred to a coroner.<sup>105</sup>
88. Coronial findings and recommendations can identify patterns and trends which can help identify systemic risk factors and suggest ways to reduce risk factors. The coronial jurisdiction is an established impartial forum for the independent forensic investigation of deaths by suicide, including serving and ex-serving ADF members. A coronial prevention unit, such as in Victoria, can also analyse data and assist the coroner in identifying population-level risk factors. Coronial prevention units can identify patterns and trends in suicide, enabling coroners to make recommendations about effective countermeasures. The coronial jurisdiction holds the ongoing potential to advance significantly the central issue this Royal Commission is considering: how to help prevent future deaths by suicide of serving and ex-serving ADF members. Between now and our final report, we will continue to inquire into Coroners Courts and their processes in the context of understanding and reducing suicide and suicidality.

89. Here, we make preliminary observations about several coronial matters that concern us or warrant further consideration:
- the absence of a legislative definition of suicide
  - the complexity of considerations concerning the deceased's intent at the time of death
  - data gaps
  - the identification of the deceased as a serving or ex-serving ADF member
  - inability to identify serving and ex-serving ADF members in coronial data
  - the time it takes for coronial matters to result in findings
  - the extent of support that coroners can or should offer family members.
90. We emphasise that we have not reached conclusions about these matters. We will continue to engage with relevant stakeholders to inform our views further.

### 3.4.2 Suicide monitoring through the coronial system

91. Coronial findings are the source of all authoritative determinations of death by suicide and so inform Australian suicide data. The national analysis of suicide data is based on information provided by the coronial system, comprising state and territory Coroners Courts and the National Coronial Information System, and through the Australian Bureau of Statistics and the Australian Institute of Health and Welfare.<sup>106</sup> The National Coronial Information System was established in 2000 to provide Australia-wide infrastructure to support coronial data collection and its management.
92. Data is provided from state and territory Coroners Courts to the National Coronial Information System.<sup>107</sup> The information flow to the National Coronial Information System is voluntary – we commend the Coroners Courts for their collaboration.
93. The Australian Bureau of Statistics use National Coronial Information System information to produce coded cause of death information. The Australian Institute of Health and Welfare then use the Australian Bureau of Statistics coding in their reporting of suicide.
94. Generally, this system has been effective in ensuring the regular flow of suicide data. However, several issues impact the extent to which this data is timely and consistent. These issues, which we detail below, are relevant to this Royal Commission because the current public monitoring of suicide among serving and ex-serving ADF members is dependent on the flow of data from the coronial system.

#### **There is no legislative definition of suicide in Australia**

95. Coroners operate within parameters set by their respective state or territory legislation. No state or territory legislation defines what constitutes suicide. Such a finding is a matter of coronial discretion.<sup>108</sup>

96. One effect of this discretion is that different coroners can apply different standards when it comes to making a finding of suicide. Legal research published in 2019 states that:

coroners vary considerably in their approach to what constitutes a suicide, the circumstances that may or may not vitiate capacity to suicide, and the applicable standard of proof.<sup>109</sup>

97. Where a coroner makes a finding of suicide, it is reflected in National Coronial Information System data, which is in turn used by the Australian Bureau of Statistics in their statistical coding of Australian deaths by suicide. This means that any variation between coroners in their individual view of what constitutes sufficient evidence to make a formal finding of suicide affects the consistency of national suicide statistics.

### **Coroners consider complex issues around intent in investigating potential suicides**

98. The intent of the deceased is of key importance to coroners when making findings of suicide. For example, the Office of the Coroner, Queensland, told us:

The key determination of suicide is whether the deceased intended to take their own life... If there is sufficient evidence to draw a conclusion that the deceased intended to cause their own death, then such a finding should be made.<sup>110</sup>

99. Coroners use the evidence before them to determine intent. In some cases, this evidence provides a clear indication that a suicide has occurred. This may be the case when there is a suicide note, when the method of death indicates a suicide, and when there is a history of significant stressors, previous suicide attempts and/or mental health issues.<sup>111</sup>
100. The Officer of the Coroner, Queensland suggested that there are some deaths in which the circumstances around the death make it more difficult to determine intent.<sup>112</sup>
101. If evidence of a deceased's intent is unclear or ambiguous, a coroner may not be able to make a finding that a death was suicide. This means that the deaths coroners explicitly find to be suicide may underestimate the true number of suicides that actually occur.
102. The Australian Bureau of Statistics told us that, unlike coroners, it does not apply a legally prescribed standard of proof concerning intent. Instead, when coding deaths, the Australian Bureau of Statistics uses standardised statistical coding guidelines, namely the International Classification of Diseases 10th Revision (ICD-10).<sup>113</sup>
103. Use of the ICD-10 enables the Australian Bureau of Statistics to code a death as a suicide where a coroner has not made an explicit finding about the deceased's intent. The Australian Bureau of Statistics can also code a death preliminarily as a suicide if the case is still open by a coroner.<sup>114</sup> This practice may mitigate the assumed undercount of deaths by suicides identified by an explicit coronial finding.
104. To carry out this work, the Australian Bureau of Statistics says it relies on information in the National Coronial Information System.<sup>115</sup> Therefore, it is important that this information is complete, timely and readily accessible.<sup>116</sup>

## Gaps in National Coronial Information System data

105. In completing their cause of death coding, the Australian Bureau of Statistics told us they use information such as police reports, toxicology reports, forensic pathology reports, coronial findings and coded data entry fields that are available in the National Coronial Information System.<sup>117</sup>
106. There are gaps in the availability of these reports in the National Coronial Information System. For example, Ms Ally Watson, Manager of the National Coronial Information System, agreed in evidence that in South Australia, autopsy reports are included in only 1% of cases and toxicology reports are included in only 26% of cases.<sup>118</sup> In Queensland, toxicology reports are only included in 52% of cases. In New South Wales, police reports are only included in 59% of cases.<sup>119</sup>
107. The South Australian State Coroner has advised us that it has identified an information technology solution to facilitate the transmission of these reports, and that it expects work to implement this change to start in late 2022.<sup>120</sup> We commend this action.
108. Where information in the National Coronial Information System is not available, the Australian Bureau of Statistics may be unable to assign a specific cause of death.<sup>121</sup> The effect is that potential suicide cases may not be coded as such at the time of coding.<sup>122</sup>
109. The Australian Bureau of Statistics told us that their coding would be assisted by having reports uploaded to the National Coronial Information System as soon as they are available, having consistent access to reports across all jurisdictions, greater consistency of information contained within reports, receiving access to any report updates in the police investigation process, and through digitised innovations to enable more timely and interconnected information.<sup>123</sup>

## Identification of serving and ex-serving ADF members in coronial data

110. The National Coronial Information System Unit told us that to the best of their knowledge, ‘there is no single consistent data source across all Australian coronial investigations that documents either the occupation of the deceased, or whether they were a defence member or veteran’.<sup>124</sup>
111. The Australian Institute of Health and Welfare relies on the Australian Bureau of Statistics mortality data to perform its statistical analysis and suicide monitoring. However, due to limits in the information collected by coroners, the mortality data does not identify if a deceased person was a serving or ex-serving ADF member at the time of their death. Identification of service status requires the Australian Institute of Health and Welfare to link the mortality data with Defence personnel data.<sup>125</sup>
112. The linking process (see Section 3.3 on ‘Data and suicide prevention’) enables the reporting of statistics on suicide of serving and ex-serving ADF members, but it is not timely. The Boss report’s Recommendation 10.2 recommended that:

The Australian Government and state and territory governments should ensure that processes are in place so that deaths by suicide of ADF members and veterans are identified as early as possible and recorded consistently by Coroners.<sup>126</sup>

113. A number of states and territories are seeking to improve coronial data via the collection of serving and ex-serving ADF member status, including by including status in forms completed by police.<sup>127</sup> We will continue to explore what can be done to improve such identifications.

### **Timeliness of coronial matters**

114. The availability of information in the National Coronial Information System is affected by several factors including the length of time it takes to conclude coronial investigations. While coronial matters are open, available information varies from detailed police, autopsy and toxicology reports to no information.<sup>128</sup>
115. Ms Lauren Moran, Acting Director of the Mortality Data Centre at the Australian Bureau of Statistics, told us that coronial investigations typically take ‘one to two years’ to complete.<sup>129</sup> The Magistrates Court of Tasmania said that findings relating to suicide deaths can take, on average 234 days.<sup>130</sup> For coronial inquests Australia-wide, research from 2016 suggests that matters took a median time of 19 months, with nearly a quarter of inquests running for more than three years.<sup>131</sup>

### **Coronial communication and supporting families**

116. Lived experience witnesses – relatives of serving or ex-serving members who have died by suicide – have told us about their lack of contact with Coroner’s Courts investigating the cause and circumstances of death. We are concerned about the apparent lack of direct communication with close family members, particularly regarding the decision to hold or not hold a coronial inquest, ongoing communication with family members during the coronial process and the manner of communicating the coroner’s eventual findings. For example, during Hearing Block 2, a de-identified witness, SY1, told us about events following the death by suicide of her husband. According to SY1, the first indirect contact she had with the Coroner’s Court that examined the circumstances of her husband’s death was her receipt of a copy of the coroner’s report. She said she received this report from the brother of her deceased husband.<sup>132</sup> SY1 said she had no direct contact with anyone from the Coroner’s Office:

They didn’t ask me anything. They didn’t ask about the phone call we had prior to him going, that he had talked to me about his mental health prior, that he had told me about a will, that he told me about everything that he had. They didn’t talk to me about anything.<sup>133</sup>

117. SY1 said that the court did not offer her any psychological or other form of counselling.<sup>134</sup>
118. Several lived experience witnesses told us about other instances where grief counselling by coronial courts was not offered, and where there was no active referral to appropriate grief counselling services. For example, Ms Alexandra Bailey gave evidence about her sister’s death by suicide. When directly asked by Commissioner Kaldas whether she was aware of the Coroner or the Coroner’s Office making any offers of grief counselling to the family, Ms Bailey said ‘No’.<sup>135</sup>

119. We will continue to consider the operation of the coronial system as it pertains to the death by suicide of serving and ex-serving ADF members. This includes engaging with relevant parties to identify opportunities for improvements in coronial processes that may assist in reducing the current rate of suicide and improve engagement with families.

## 3.5 Families

### 3.5.1 Families in context

120. Families are central to supporting the health and wellbeing of serving and ex-serving Australian Defence Force (ADF) members. They significantly contribute to the ADF's whole-of-life focus. Its intent is that '[t]he health and wellbeing outcomes of Defence members are improved across their careers and beyond military service'.<sup>136</sup> In turn, families also need support. Their own health and wellbeing are vitally important in their own right, and can significantly impact the serving and ex-serving member.
121. Research conducted in 2012 for the Department of Veterans' Affairs (DVA) and 2018 for Defence and DVA suggest that for many serving and ex-serving members and their families, the impact of service and deployment is a positive one. In these instances, there is no discernible negative impact on their physical or mental health.<sup>137</sup> But this is not always the case.
122. We have heard from families where the physical and/or mental health of the serving or ex-serving member has significantly deteriorated. Some family members have told us about the anguish and pain of losing a loved one to suicide. Consistently, we have heard that families feel marginalised and invisible because the service system has diminished the potential of their support, even though family support is a significant protective factor for the serving or ex-serving member's health and wellbeing. We have heard of the invisibility of children and families who have not received timely or compassionate support from ADF, and who have lived with grief and trauma that have impacted across their lifetimes – people like Ms Deborah McKenner, who gave lived experience evidence during Hearing Block 2.<sup>138</sup>
123. It is clear to us that family support can be critical for serving and ex-serving ADF members coping with discharge and transition to civilian life, navigating a complex compensation system, finding their identity as civilians, living with mental and/or physical health issues, or experiencing suicidality. Family support can ensure that the person gets the help they need to live a full life. In some cases, it can mean the difference between life and death.
124. We understand that not all families can provide this level of protection, but many do. They can offer connection, hope, and emotional support. At times of acute illness, they can act as advocates and offer an intimate understanding of what is happening with their loved one. Practically, these family members sometimes need to reduce and/or monitor their loved one's access to lethal means, administer or supervise medication, and ensure follow-up care. These are key elements in a caring relationship, but also for suicide prevention. Families matter. The welfare of the family matters.

125. Family members – partners, spouses, children and stepchildren, siblings, parents, grandparents, and others – can be significantly affected when serving or ex-serving members experience poor mental or physical health. A key question becomes ‘who is caring for the family?’ We know that for a number of families, the impact of service and deployment has been detrimental to their wellbeing, particularly their mental health. These families are a vulnerable cohort. For family members with a partner, parent, adult child or sibling who experiences a service-related injury, is in a suicidal crisis, or takes their life, this will impact significantly on their own mental and physical health. We have received a number of submissions from family members, including siblings, who have had their lives significantly impacted by their family member’s suicidality or death by suicide.<sup>139</sup> Family members can also be significantly affected by a serving member’s negative service experience, poor mental health or other mental health disorders such as depression, post-traumatic stress disorder (PTSD), or substance abuse, which may be linked to military service.<sup>140</sup>
126. In the rest of this section, we:
- provide a profile of military families, including definitions in an ADF context and demographics
  - discuss various impacts of military life on families.
127. As our inquiry continues, we will consider the supports that families need. We will interrogate what obligations Defence and DVA have to these families. We will also consider what obligations state and territory governments and other agencies have to provide support to these families that is timely and sensitive to military culture.

### 3.5.2 Profile of military families

#### What constitutes a family?

128. There is no single consistent definition of what constitutes a family, or who constitutes a family member, across the ADF and DVA. The definitions in their policy documents usually relate to family members as dependants of the serving or ex-serving ADF member who can access benefits, support services or claims. The *Military Rehabilitation and Compensation Act 2004 (Cth)* (MRCA) defines both a ‘related person’ and the ‘relatives of a person’.<sup>141</sup> In the case of a claim in the event of death, a related person is a dependant who is a spouse, partner, sibling, parent, step-parent, grandparent, child, stepchild, grandchild, brother, sister, half-brother or half-sister.<sup>142</sup>
129. The difficulty of defining family is reflected in the National Mental Health Commission’s 2017 *Review into Suicide and Self Harm Prevention Services Available to current and former serving ADF members and their families*. The report concludes:

The notion of ‘family’ is itself a complex issue. Sometimes a member’s family is not easy to define, and depending on circumstances can include parents, siblings, spouses (legal de facto and same-sex), children, and an even wider variety of permutations if there are also former spouses and partners. Identifying just who the family is may be more difficult in some circumstances; however, it should not be a reason for not engaging with family.<sup>143</sup>

130. Although neither the *Defence Mental Health and Wellbeing Strategy 2018–2023* nor the *Veteran Mental Health and Wellbeing Strategy and National Action Plan 2020–2023* defines ‘family’, they frequently refer to the importance of families.<sup>144</sup> They occasionally reference the partners of military personnel, but give no acknowledgment that ‘family’ is a general descriptor that includes the partners of personnel, their children (both young and adult), their parents and siblings, same-sex family units, or extended family groups. There are few references to children. DVA’s decision in 2018 to extend mental health and counselling support to families through Open Arms was based on a broad definition of family that included partners, children and ‘immediate family members’ of ADF members who had one day of full-time service.<sup>145</sup>
131. The most detailed description of ADF engagement with families is found on the website of the Defence Member and Family Support, formally known as the Defence Community Organisation.<sup>146</sup> The site acknowledges the broad range of family relationships, and the changing nature of those relationships over time. There are specific pages on the site with information for parents, partners, young children and teenagers.

### Demographic profile

132. For the first time, the Australian Bureau of Statistics 2021 Census asked about current and former service in the ADF. According to the Census, on census day more than half a million Australians (581,139) had served, or were currently serving, in the ADF.<sup>147</sup>
133. Of these, 60,286 were permanent serving ADF members, 24,581 were reserve members and 496,276 were ex-serving members. A total of 3,159 (3.7%) of serving ADF members (permanent and reserves), and 11,610 (2.3%) of ex-serving, identified as First Nations people.<sup>148</sup>
134. The largest age cohort of permanent serving members is aged between 25–29 years (38.6%), followed by 30–39 years (28.6%). This trend holds true for female and male cohorts.<sup>149</sup>
135. These cohorts and their families move through significant life stages. For serving members and their families, each stage brings new challenges. For the younger serving ADF members, this might be the first time they have left home, their family and friends and the structure of school. For others, they might be creating their first or second partnerships, getting married or divorced and having their own children, who in turn progress through infancy to young adulthood and then maturity. This may occur within the context of military life, or when transitioned to civilian life.
136. We know at the time of this census that 78.3% of serving or ex-serving members were living in a family household, compared with 83.1% of people who had never served.<sup>150</sup>

137. The composition of the family household showed some variation. Serving (permanent and reserves) and ex-serving members were much more likely than people who had never served to be living in a couple relationship with no children (54.8% versus 31.6%); less likely to be living in a couple relationship with children (34% versus 49.2%); and less likely to be a one-parent family (7.1% versus 12.5%).<sup>151</sup>
138. Of those not living in a family household, serving (permanent and reserves) and ex-serving members were more likely to be living alone than those who had never served (18.6% versus 12.3%), and fewer were living in group homes (3% versus 4.5%).
139. The majority of ADF serving and ex-serving members live in a family, regardless of what that looks like. A significant subset of these families live with and help care for members with mental or physical health conditions. They need to be supported to provide these members with the best outcomes possible. Recognising these relationships, and the critical care and support they provide, is necessary to improve wellbeing outcomes overall for ADF serving and ex-serving members.

### 3.5.3 Families as key to wellbeing

140. The importance of families as supports for the health and welfare of serving and ex-serving ADF members is clear to us. The information and evidence we have considered attests to the importance of the family in providing this health and welfare support:
- research literature<sup>152</sup>
  - Defence and DVA Mental Health and Wellbeing Strategy documents<sup>153</sup>
  - expert witnesses who have given evidence at our Hearing Blocks<sup>154</sup>
  - lived experience witnesses who have given evidence at our Hearing Blocks<sup>155</sup>
  - submissions we have received.<sup>156</sup>
141. The *Defence Mental Health and Wellbeing Strategy 2018–2023* and the *Veterans Mental Health and Wellbeing Strategy 2020–2023* refer frequently to families, usually in the sense that the family supports the welfare of the individual serving or ex-serving ADF member.<sup>157</sup> These strategies see families as important providers of emotional support, as well as the practical support of connecting the serving or ex-serving member to services, particularly during transition to civilian life.<sup>158</sup>
142. Various civilian suicide assessment frameworks identify family connection as an individual protective factor in preventing suicide. For example, the US-based Suicide Prevention Research Council suggests that '[c]onnectiveness to individuals, family, community, and social institutions' is one of at least four major protective factors.<sup>159</sup>

143. Some research suggests a connection between supportive relationships and building resilience.<sup>160</sup> Resilience can be defined as ‘strengths that people and systems demonstrate that enable them to rise above adversity’.<sup>161</sup> According to Saltzman and colleagues, resilience includes:
- ‘*stress management and emotional regulation*’: the resilient family can identify and anticipate stressful situations, manage distress among family members, and provide mutual support<sup>162</sup>
  - ‘*goal setting and problem solving*’: family members can manage problems, make decisions and plan<sup>163</sup>
  - ‘*managing combat and deployment-related stress reminders*’: the resilient family can deal with loss and trauma by developing collaborative strategies to lessen their impact.<sup>164</sup>
144. Professor Sharon Lawn, Professor in the College of Medicine and Public Health at Flinders University, and Dr Elaine Waddell, a public health researcher affiliated with Flinders University, told us that family support is a central protective factor for suicide. Their research into families of ex-serving members found that families are the central point of personal intimacy and support for the individual.<sup>165</sup> A submission to us from Lived Experience Australia, authored by Professor Lawn, said that military families provide a connection with the outside world, and manage the stressors of the environment. Families provide ongoing encouragement to attend medical and other appointments. The submission suggested that families are the first to notice behavioural changes that warn of deteriorating mental health.<sup>166</sup> The Lived Experience Australia submission said that this role of connecting individuals to treatment and support services, especially at times of crisis, helps to protect vulnerable individuals from suicide.<sup>167</sup>
145. International research consistently shows a connection between relationship breakdown and enhanced risk of suicide.<sup>168</sup> A 2012 study of US veterans showed that nearly one of every two younger veterans (aged 18–34 years) who had died by suicide had experienced relationship problems shortly before death.<sup>169</sup> In this study, ‘veteran’ was defined as anyone who had served in the armed forces.<sup>170</sup> Separation or divorce appears to have a consistent association with suicide for military cohorts. This appears consistent with research into civilian cohorts. One Australian population study found that for both males and females, relationship separation significantly increased the risk of suicide. The risk was particularly high for males aged 15–24 years.<sup>171</sup>

146. The Australian Institute of Health and Welfare's *Final Report to the Independent Review of Past Defence and Veteran Suicides* (2021) also points to relationship breakdown as a risk factor for suicide. It found that the three most common psychosocial risk factors for those who died by suicide were the same for the serving ADF population and the Australian population. Within these three risk factors, the study identifies the following factors in a higher proportion of male serving ADF members:
- Personal history of self-harm: 1 in 3 (29%) ADF males compared with around 1 in 5 (21%) Australian males,
  - Disruption of family by separation and divorce: over 1 in 4 (27%) ADF males compared with around 1 in 6 (16%) Australian males, and
  - Problems in relationship with spouse or partner: 1 in 5 (21%) ADF males compared with around 1 in 9 (11%) Australian males.<sup>172</sup>
147. Healthy family connection then would appear to be a positive protective factor for suicide, while relationship breakdown, which can lead to isolation, disconnection and feelings of hopelessness, can significantly heighten the risk for suicide.
148. The role and importance of family is reflected in many of the submissions we have received. For example, the wife of an ex-serving Army member wrote:
- Every member of the ADF has a family, be they parents, siblings, partner/spouse, or children. Every person in these families is impacted by the members' service. It may not be practical to support each and every family member all of the time. However, it is vital to remember that suffering within their family can cause an ADF member to separate from service, and in extreme cases to take their own life.<sup>173</sup>
149. Another ex-serving ADF member outlined how crucial his wife's support was to him not taking his life:
- I have been saved by my ... wife's intervention from committing suicide, and I am forever thankful to her for that, I do not want to go back to that dark place.<sup>174</sup>
150. Professor Lawn told us that families are critical in supporting help-seeking and navigating the medical system during treatment. This is particularly important, she said, because military culture discourages help-seeking.<sup>175</sup> Dr Waddell said that help-seeking threatened the serving or ex-serving member's 'self-identity, the sense of stoicism, the sense of being a soldier ... the way they perceive themselves and the way they think others will perceive them'.<sup>176</sup>
151. Dr Waddell said the family's critical role in help-seeking is ignored or devalued by professionals. Families often tried to engage with professionals but were not included. They were not always given information about treatment plans, medications, or side effects.<sup>177</sup>

152. During Hearing Block 2, we heard lived experience evidence from Ms Gwen Cherne, whose husband, Sergeant Peter Cafe, had a stroke while on deployment, and consequently lost some cognitive and physical function. On Sergeant Cafe's return to Australia, Ms Cherne explained that she was told what medications he needed to take but received almost no information about what to expect for her husband's recovery or whether he would suffer permanent injuries. Ms Cherne told us that there was no recognition that she, as the primary carer and family member closest to him, needed to understand the rehabilitation process while juggling fulltime work and caring for children. She said there was no acceptance by ADF that her involvement in her husband's recovery was critical, nor any transparent discussions about whether he would need to transition out of the Army for medical reasons.<sup>178</sup>
153. Dr Angela Maguire, who led the research *Families with a Veteran: a Model of Care*, which was commissioned by the Returned & Services League (RSL), told us about the importance of ADF and DVA working in partnership with families to provide coordinated care to serving and ex-serving ADF members. For example, she said that families could engage with the Defence Member and Family Support to organise childcare for dependent children prior to relocation.<sup>179</sup> She emphasised that families want to be more engaged with service providers.<sup>180</sup> Families are, she said, 'best placed to understand where we should make changes to services, where the most important barriers are identifying facilitators for service access, things that will support treatment retention'.<sup>181</sup> The model of welfare for ex-serving members that Dr Maguire outlined focuses on recovery principles such as agency, connection and sustaining hope.<sup>182</sup>
154. Dr Maguire said stoicism and stigma were cultural features common to ADF families that negatively influenced help-seeking behaviours. Family members and ex-serving members sometimes appeared to have endured prolonged pain and hardship without complaining and had 'rational concerns that help-seeking may jeopardise current or future employment prospects'.<sup>183</sup> According to research conducted by Dr Maguire and colleagues in 2002, '[p]articipants expressed a strong preference for family-centred care that was informed by an understanding of military lifestyle and culture'.<sup>184</sup> Throughout this Royal Commission, we have heard about the importance for families of serving and ex-serving members receiving treatment from services and professionals who understand military culture and lifestyle – and we have heard about the dearth of these services.<sup>185</sup>

### 3.5.4 Impacts on families

155. We have heard how the children of Vietnam veterans and veterans of more recent conflicts have suffered mental health impacts of their parent's PTSD, depression, and suicidal behaviour, and how this has impacted on their educational outcomes and their mental health.<sup>186</sup> One lived experience witness described how it led to their own suicidal behaviour.<sup>187</sup>

156. We have also heard how partners have struggled with the ADF member's erratic and sometimes dangerous behaviour, their substance abuse, instances of domestic violence, and depression, anxiety and suicidality, because of injuries or mental disorders acquired due to their service.<sup>188</sup> For this reason, it is important to understand what the research says about the impacts on family members' wellbeing, and to what extent DVA and ADF are aware of the research findings.
157. We have heard that military families are exposed to a number of stressors not experienced by civilian families. Dr Maguire told us that being in a military family conveys some benefits, including a sense of belonging, identity and purpose. However, there are distinct challenges, including work-related absences of serving members from the family and adjustments within the family systems to accommodate those absences, and periodic work-related residential relocations due to postings. For the serving member, there were relatively high rates of occupational exposure to trauma, and a real risk of work-related injury and illness.<sup>189</sup>
158. We have heard how military culture and the veteran family experience affected the functioning of their families, both positively and negatively. Dr Maguire told us that participants in her study identified positive aspects such as:
- military values and beliefs that participants emphasised, so things like sacrifice, discipline, trust, respect, teamwork. ... the training-based opportunities for promotion, high levels of remuneration were also considered very positive, aspects of military employment and priority access to health and social services, membership of the military community was a source of pride for veterans and family members and provided a context for the sacrifices that they made in service of the nation.<sup>190</sup>
159. Over time, Dr Maguire said, participants considered that the demands an ADF career put on families. She described one participant as needing to make a choice between an ADF career and family.<sup>191</sup>

### **Impact of poor mental health, PTSD and suicide on family members**

160. The expert testimony given at the hearings, and the information we have received in submissions, tell us that there is a close connection between military service and subsequent mental health problems, not just for the individual but also for families.<sup>192</sup>
161. The Australian Institute of Health and Welfare's monitoring of serving and ex-serving deaths by suicide found that 83% of ex-serving ADF members who died by suicide had mental and behavioural disorders.<sup>193</sup> These mental and behavioural disorders included depression, PTSD and substance abuse.<sup>194</sup> The 2018 *Mental Health and Wellbeing Study* found high prevalence rates for lifetime mental disorders in ex-serving ADF members, with 46.4% estimated to have experienced a mental disorder in the previous 12 months. A total of 24.9% of ex-serving members were estimated to have met criteria for PTSD in their lifetime, 46.1% for anxiety and 47.5% for alcohol disorders.<sup>195</sup>

162. Research suggests that military deployment, as well as the mental and behavioural disorders arising from military service, can then increase the risk that partners, spouses, children and siblings develop mental health disorders. For instance, children of personnel with PTSD may also experience 'secondary traumatization' and exhibit similar symptoms of PTSD as their parents. This 'intergenerational transmission of trauma' has been seen especially in the families of Vietnam veterans.<sup>196</sup>
163. We know from a series of Australian studies that there are significant mental health impacts on partners, spouses and children as a result of the partner's/parent's deployment to Vietnam. A study by Yu and others for the Australian Institute of Family Studies found that spouses and partners of Vietnam veterans experienced a range of physical and mental health problems.<sup>197</sup> One 2008 US study that analysed deployment to more recent conflicts, such as Iraq and Afghanistan, suggested there are similar impacts on the children and partners of deployed serving and ex-serving members.<sup>198</sup>
164. A 2018 Australian study of military families, the Family Wellbeing Study, commissioned by the ADF and DVA, found that the great majority of partners and parents of ADF members were not showing mental health problems. However, 16.8% of partners and 14.4% of parents were classified as showing high or very high levels of psychological distress.<sup>199</sup> It also found 11% of partners and 12.9% of parents of ex-serving members reported high levels of PTSD. The study found higher rates of suicidality among family members, with a total of 13.4% spouses, 10.6% parents, and 18% of adult children having thought about taking their own life in the previous year.<sup>200</sup>
165. The 2018 Family Wellbeing Study also pointed to impacts on the mental health of adult children of both serving and ex-serving ADF members. Almost one third (29%) of adult children displayed very high levels of psychological distress over the previous four weeks.<sup>201</sup> Other signs of distress in this population were:
- 12% reported high levels of PTSD symptoms
  - 18% had shown signs of suicidality in the previous 12 months
  - 4% had made suicide plans or tried to commit suicide in the previous 12 months.<sup>202</sup>
166. The study found rates of emotional problems in the children of current ADF members (aged 2–17 years) at higher levels than community averages. For example, 16.9% reported problems with peers, 16.9% reported emotional problems, and 15.8% reported hyperactivity.<sup>203</sup>
167. In a further indication of stress within some families, spouses and partners of ex-serving ADF members had higher rates of suicidality and higher rates of problem drinking compared to both spouses of serving ADF members and the Australian population.<sup>204</sup>
168. We note several protective factors which determine how well families cope with service life and deployment. In a study of ADF members deployed to Timor-Leste, protective factors included parental and child wellbeing, relationship quality, access to care, social support, and the family's ability to function during times of increased stress.<sup>205</sup>

169. Results from the Family Wellbeing Study and Vietnam Veterans partners study are consistent with some submissions made to us. One officer described how the frequent dislocation of his family, as well as the suicide of a friend, led to deteriorating mental health of his wife and children:

In hindsight I was very lucky not to lose my family in this process. ... My wife was having suicidal thoughts, there was a real possibility I could have lost her. Or we separated because of the strain the situation put on our relationship.

...

My eldest two children went to 5 different primary schools. ... That's pressure, that's stress.<sup>206</sup>

170. Another woman said that her family felt unable to prevent her sister from dying by suicide. The submission said they struggled to know how to help her and how to deal with her PTSD and suicidality:

My family is struggling immensely with the constant fear of when our sister/daughter is going to take her life, how we tried everything to support her and how we will explain to her two young boys.<sup>207</sup>

171. A significant dimension of family welfare is the impact of trauma, parental suicidality, and adverse events on the psychosocial development of children.<sup>208</sup> The risk of intergenerational trauma runs high when children's needs are not seen and the required services are not put in place to support the child's psychosocial development. Professor Louise Newman AM, an expert in child development and trauma, told us about the importance of a child's attachment to a parent, and how this relationship influences brain development and psychosocial development across the child's lifetime. Professor Newman said that when this relationship is impaired, this will inhibit the baby or child's emotional (psychosocial) development. This could happen, for instance, if a parent has PTSD, depression or chronic suicidality, and is therefore less responsive to a baby or child.<sup>209</sup>

172. Professor Newman said children who grow up in a household characterised by family violence, or fear characterised by PTSD, are always on high alert and that can affect the child's brain development. It may make it difficult for them to recognise and manage their emotions. According to Professor Newman, this puts them at further risk of long-term psychological damage.

So adrenaline, noradrenaline, these are the hormones – and cortisol levels, are all elevated in situations of severe stress, high levels of stress and trauma. ...

...

So those high levels of hormones affect brain growth and particular parts of the brain are sensitised. ...

... growing up with a nervous system and a brain that's functioning as a highly stressed survival mode means that other parts of the brain that are needed for healthier development, particularly capacities to regulate feeling states and actually manage stress, are less operative.<sup>210</sup>

173. Professor Newman told us that children aged four to six years who lose a parent to suicide were likely to have feelings of ‘utter abandonment’.<sup>211</sup> They often blamed themselves: ‘So quite young children ... will say, “I must have been a bad child and behaved in a negative way for my parent not to want to live and to end their life”’.<sup>212</sup> Professor Newman said older children might also blame themselves, but be very angry. She suggested there should be child-adolescent practitioners trained in loss, grief and suicide for various age groups, because it is ‘quite a specialised task’.<sup>213</sup>
174. Professor Newman told us that relying on governments to establish the kind of specialist mental health services required for the children of ex-ADF or currently serving ADF members would be difficult: ‘I am not at all sure, but in the current resource crisis around mental health, that that would be seen as a priority.’<sup>214</sup>
175. Lived experience witnesses have shared courageously their individual and family stories with us.<sup>215</sup> So, too, have people making public submissions.<sup>216</sup> This has helped us to understand more deeply the impact of partner and parental suicide on the family. These stories highlighted the acute and lifelong distress and the desperate need for a compassionate response, and support that gives visibility to children and partners, siblings and parents.
176. In lived experience testimony, Ms Gwen Cherne told us of the destructive impact of an ADF suicide on her as a family member: ‘veterans and those who suicide do not understand that they are literally taking their pain and handing it to their family ... It is put on top of all the pain and trauma and we continue to carry it until our dying day’.<sup>217</sup> Ms Cherne noted that some research shows that children of parents who die by suicide are two to three times more at risk of dying from suicide.<sup>218</sup>
177. During Hearing Block 2, Ms Deborah McKenner described her experiences as the daughter of a Vietnam veteran – see Box 3.4. Ms McKenner’s experience shows the pain that children can suffer when their needs are not recognised – when they are ignored. It shows the hold that complex grief and trauma can have over a person for a lifetime.

### Box 3.4 Ms Deborah McKenner

Ms Deborah McKenner, as the daughter of a Vietnam veteran, told us about her lived experience of her father's PTSD behaviour, his attempted suicides, and of times when her father assaulted her mother. She described the devastating impact on her, as a teenager, when her father took the life of her mother and then himself.

Ms McKenner was placed in an orphanage, where she stayed until she was 17.<sup>219</sup> She said that at the orphanage, 'I suffered many forms of abuse, mentally, physically, spiritually'.<sup>220</sup>

Ms McKenner said that these experiences and the Army's failure to intervene and protect her and her family over many years, has adversely affected her mental health.<sup>221</sup> She reflected on four decades of trauma:

if I had a rose for every time I have attempted suicide, cried myself to sleep, praying, begging not to wake up or have a freak accident causing death, I would have a forest of rose bushes.<sup>222</sup>

According to Ms McKenner, the ADF 'and its subsidiaries' did not recognise her pain, calls for help and the impact on her life.<sup>223</sup> She called on the Australian Government to provide better support for the children of veterans.

I also keep fighting to be heard because during my time in rehab, boarding houses, women's shelters, on the streets and in the orphanage, I have met many other military children and spouses battling similar demons with no help to be seen anywhere. There are more people than you realise who suffer from the Vietnam War era and there is no support. We are stripped of our choices and I realised the only choice that I was ever given was to somehow survive the unsurvivable.<sup>224</sup>

178. A 2014 study commissioned by DVA considered the impacts of deployment on the children of Vietnam veterans. The study found high lifetime rates of suicidal ideation in the children of Vietnam veterans up to 40 years after their parent had been deployed. The study compared conscripted Vietnam veterans who had been deployed in any operational role to Vietnam (referred to as Vietnam veterans), with Vietnam-era military conscripts who had not been deployed to Vietnam (referred to as Vietnam-era personnel), and then controlled for socioeconomic and educational differences
179. Comparing adult children of deployed Vietnam veterans with those of Vietnam-era non-deployed personnel, the study found suicidal ideation rates of 41% for the children of deployed Vietnam veterans compared to 31% for non-deployed Vietnam-era personnel. In comparison, the rate for the general population was 16%. The study found that suicidal planning and actions for the children of Vietnam veterans (12%) was almost twice that of the children of Vietnam-era personnel (7%). Depression diagnosis rates were also far higher: 21% for the children of Vietnam veterans versus 14% of Vietnam-era personnel.<sup>225</sup>

180. The study suggests three possible factors to explain the intergenerational effects of military deployment in the Vietnam War:
- Vietnam veterans' PTSD
  - harsh parenting in childhood among the children of deployed Vietnam veterans
  - problems at school among the sons and daughters of deployed Vietnam veterans.<sup>226</sup>
181. The report noted that the influence of PTSD was often indirect. Children who experienced disadvantaged family environments and harsh parenting then displayed learning difficulties and problems at school.<sup>227</sup>
182. The Vietnam Veterans Family Study was a funded study by the Department of Veterans' Affairs. It was a large-scale study, with over 27,000 participants, including Vietnam veterans, partners and their children.<sup>228</sup> The study was primarily designed to ascertain the intergenerational effects of Vietnam War service on the offspring of veterans. During Hearing Block 5, researchers Associate Professor Ben Edwards and Dr Galina Daraganova, both of whom worked on the Vietnam Veterans Family Study, gave evidence. Associate Professor Edwards described the study as 'some of the most rigorous work that has been done in this regard on this particular topic'.<sup>229</sup>
183. This level of research has not been replicated in Australia for other theatres of war. Associate Professor Edwards and Dr Daraganova said that the study was relevant to other deployments, including Afghanistan and Iraq. According to Associate Professor Edwards, 'When you have parents who are deployed they are likely to potentially put children at risk as well.'<sup>230</sup>

### **Impact of discharge and transition on families**

184. Dr Maguire told us that military discharge and civilian reintegration are particularly vulnerable periods for some families. She said that 'families that were under the most pressure were those who were affected by a service-related injury and illness, where unresolved psychological trauma had persisted over a long period'.<sup>231</sup> Dr Maguire went on to say that 'those who were providing mental health services, advocacy, case management, referral support to families that were affected by mental illness' highlighted the overwhelming prevalence of complex needs in those families. She said that '5 to 30 per cent of those families were actively in crisis'.<sup>232</sup>

## Lack of information and poor communication

185. One veteran with many decades of ADF service described his family's experience following the suicide attempt of his daughter while she was at the Australian Defence Force Academy. The submission said:

What was also appalling was that never at any time were we, as her parents, advised of her actions or their intended care of our daughter. This was despite frequent ADFA emails advising that they took the care of our children seriously. I understand privacy concerns as our daughter is legally an adult – but if this is the case, then ADFA should not send out tokenal emails advising how much they care and that they take looking after our children's well-being seriously if there is never going to be any follow-through action.<sup>233</sup>

186. There have been multiple Defence and DVA key strategies over recent years that cite the importance of families.<sup>234</sup> These go as far back to the 2010 ADF Mental Health Reform Program, which 'recognised that families play a crucial role in the overall health and wellbeing of ADF members'. This program set a goal that '[w]herever possible Defence will ensure that families are engaged and have the opportunity to be involved in mental health support programs'.<sup>235</sup> In 2022, we are hearing a reality that is different to these stated ambitions.
187. A number of lived experience witnesses, expert witnesses and public submissions have described instances of poor communication and support during an ADF member's deteriorating mental health and suicidal crisis.<sup>236</sup> This sometimes included a wider failure to consider family members as key psychological supports, to engage with families to ensure the optimal amount of care was available for the person.
188. We have also heard from some families about restrictions placed on them following the death by suicide of a loved one. For example, one submission from the wife of an ADF member who died by suicide described her difficulty in locating and accessing her husband's records.<sup>237</sup> Ms Patricia Fernandez de Viana, who gave evidence during Hearing Block 1 about the death by suicide of her son, told us that the ADF did not follow her wishes to leave her son's room untouched until she had seen it.<sup>238</sup> In her written statement, Ms Fernandez de Viana also described the restrictions placed on her accessing her son's phone:
- I just wanted to piece together James' last communication and download any photos of him. The response remained no and that was the end of the matter.<sup>239</sup>
189. Ms Jasmin Carmel, whose son was an ex-serving ADF member who died by suicide, told us she struggled to access timely support for her son when he was discharged from hospital. In her view, there should have been a team that could come to the house, to support her and her son. She said that in her view, her son's death was preventable. She suggested the most urgent issue was the need for 'a single point of contact that is well publicised for absolutely everybody to have contact with, so that we can access timely support'.<sup>240</sup>

190. Dr Nikki Jamieson told us that she was not informed when her son, Private Daniel Garforth, experienced a mental health crisis at the base in Darwin. Dr Jamieson said she regrets that she was not told how serious his situation was:

had I had a hint from Defence that he was struggling in the way he was struggling, I would have been on the next flight up there and taken him home myself'.<sup>241</sup>

191. During Hearing Block 5, we heard evidence from Ms Lee Smallgood, Regional Indigenous Liaison Officer and Cultural Advisor to the Regional Indigenous Liaison Officer Network. According to Ms Smallwood:

Yes, from my line of work, and I've been in public service for over 20 years and I've been worked for Defence, and family support is critical and having the opportunity for the family to even know that their loved ones are going through a mental issue was one of the biggest things that often family don't even know that their kid is going through it until it is too late, till they get the phone call, that 'Sorry, but yeah, this is what's happened.'<sup>242</sup>

192. Ms Cherne recounted what she considered the insensitive way that the ADF informed her of her husband's suicide. She said 'it was one of the most dehumanising experiences of my life to be in the middle of a shopping centre and find out that my husband was dead'.<sup>243</sup> Ms Cherne said that the ADF should at least ensure that the family members are at home and surrounded by people they trust and/or family when they do this.<sup>244</sup>

193. We have heard from families who have been denied information or marginalised from knowing about the suicide attempt of their loved one, not being able to contribute to their care, and who have received suboptimal care following the death of their loved one by suicide. This is extremely distressing. It concerns us greatly. We will be examining this closely for the duration of this Royal Commission.

194. Information exchange is not a simple transaction or process. It is fundamental to the continuity of care and support for a person and family, at a point in time when they are most vulnerable.

### 3.5.5 Further questions

195. It is clear to us that families provide the central social support for serving and ex-serving ADF members, and can provide insight and understanding into their current and past life circumstances. Family connection also provides a protective factor against suicide, as disruptions to family relationships are associated with increased risk for suicide.
196. Families often provide an important point of connection between the individual and the range of health and welfare services needed when problems arise. Families hold hope, promote social connection, and support a person's sense of agency and dignity.

197. The intimate bonds that provide support also mean families can be profoundly affected by the poor mental health and suicidality of the serving and ex-serving member. Family members experience the distress of depression, PTSD, and suicidal ideation, and the stress of navigating complex service systems which do not include them or see them as significant in the care of their loved one. Families, especially young children and adolescents, are impacted by their serving and ex-serving ADF members' physical and mental health. When this is poor, and if that person is going through a suicidal crisis, has PTSD, or depression, it can potentially affect relationships within the family and children's psychosocial development. Without adequate support, it can cause lifelong mental health impacts on all members of the family.
198. Lived experience witnesses and submissions have made plain that, beyond statistics, each suicide represents not just the sad death of an individual, but the profound loss of a loved family member, and enduring grief and distress for the family left behind.
199. We are left wondering this question: who is responsible? It is not enough only to recognise a family's needs. We have to systemically understand the needs of families, how they are identified, the pathways of support available to them, the obstacles to getting timely care, and the gaps in that provision of care. This is something we are committed to considering in depth. Throughout the life of this Royal Commission, we will talk to the states and territories and service providers. We will ask what obligations the Defence and DVA have to provide for families. And we will ask what their generic statements about the importance of family really mean when things go wrong.

## 3.6 ADF culture

### 3.6.1 Key themes

What I can say is that I was fortunate enough to travel to far away lands, experience camaraderie that you can only dream of albeit it in snippets. I got to serve Australia on a Warship and deploy to The Middle East during our wars in Afghanistan an [sic] Iraq.

I just wish the Military is more accommodating for people that need support, but don't want their job to be affected. The legislation is too extreme! The restrictions on people are ... extreme.<sup>245</sup>

200. For the past year we have spent many hours hearing first-hand accounts of individuals' experiences of Australian Defence Force (ADF) culture. These accounts show the diversity of experiences for serving and ex-serving members. They show the impact that culture – positive and negative – can have on individuals, their mental health and their risk of suicidality, and on that of their family and loved ones.

201. We have heard many accounts of unacceptable behaviours in the ADF, including the long-lasting impact of abuse and how hard it is to report the abuse when it happens. One submission said:

Throughout my career I have lost count of the different manners in which I have been bullied ...

On all accounts I have never reported any of the abuse and simply sucked it up because I am supposed to be resilient and not be the so called 'Problem sailor'. The problem is bullying still occurs. I have still been on the end of bullying primarily from ... within my category who still use stand over tactics and was once again bullied in 2020 ... I had broken to the point I lost all identity in myself, with no self-confidence and it must be all my fault and to the point I attempted to take my life as I had both professionally and personally failed in life.<sup>246</sup>

202. Alongside these accounts, Defence told us about their cultural reform and we make preliminary observations here on its progress. Throughout the life of our inquiry we will examine the impact of these reforms. In this section, we:

- highlight what we have heard about abuse as a risk factor for suicide and suicidality and consider Defence's understanding of 'unacceptable behaviour'
- set out the recent history of previous reviews and inquiries and the related cultural reform commenced by the ADF services
- comment on recent inclusion and diversity initiatives
- describe and consider several reporting and support systems, the way Defence measures progress of cultural reform, its capacity and willingness to measure progress, and its level of accountability.

203. To conclude this section, we re-state our ongoing concerns about a number of cultural issues within the ADF.

### 3.6.2 What is culture?

204. Sex Discrimination Commissioner, Kate Jenkins, defined 'organisational culture' as:

the set of systems or processes or assumptions that apply in an organisation that determine how the organisation works and ... how those new entrants are introduced into the organisation. So it's – as often is said ... how we do things around here. So there is a distinction between what the rules are or what the guidance is and actually how that works in practice as to what the culture is.<sup>247</sup>

205. According to Commissioner Jenkins, elements of ADF culture are unique or unusual, compared with other workplaces.<sup>248</sup> Commissioner Jenkins said that:

- The ADF is a 'command and control organisation' in which its members have 'the unique responsibility and ability to use lethal force in an offensive or defensive way'.<sup>249</sup> In this environment, members 'are required to follow the directions of people in more senior roles, without question in some situations'.<sup>250</sup>
- The ADF requires 'physical prowess' in order to enter and remain a member.<sup>251</sup>
- The ADF 'has a very strong male history' and has been 'predominately male' throughout its history.<sup>252</sup>

- The ADF has ‘unique social conditions’, which include ‘deployments, regular posting cycles, social conditions that impact families’ movement and take people away from their homes and support services’.<sup>253</sup>
- The ADF is ‘both a job and an industry in one’. This means that, for those who wish to work in the military in Australia, their only option is the ADF.<sup>254</sup>
- The workplace and the work of the ADF are subject to ‘significant public and media scrutiny and often criticism’. Commissioner Jenkins notes that this may create conflict for people in Defence, who take on these roles ‘with the highest sense of public service and the preparedness to fight and die for our country’.<sup>255</sup>

206. During Hearing Block 5, the Chief of the Defence Force, General Angus Campbell AO DSC, said that:

the point that always is the one that concerns me about culture is – culture is what is happening when no one else is looking. What is happening when, in an organisation that is as widely diverse and as widely dispersed and as large as Defence is, at the most junior levels and at every level in between and in very far-flung places. So it is the culture that emerges in small groups, is there bullying, is there sexual misconduct and so on and so forth, is there inappropriate behaviour. This is what I would describe as the question of are the micro cultures right for the culture institutionally that we want. And when the micro cultures are right, you have the culture you want.<sup>256</sup>

207. We heard from the Hon Leonard Roberts-Smith RFD QC, Chair of the Defence Abuse Response Taskforce from November 2012 to November 2014, that fostering a positive ADF culture is not only important for the wellbeing of serving members, but also supports the effectiveness or ‘capability’ of the armed forces:

a good culture drives motivation, trust, teamwork, good performance and, in military terms, capability. If you have a bad culture, on the other hand, and I’m talking now about many of the things that we saw as reflecting bad culture in the taskforce, sexual assaults, other forms of abuse, that has the opposite effect of what any good organisation would want and certainly what Defence would want, I would suggest, because it demotivates people, it erodes and destroys their trust in – sometimes in themselves but certainly in their fellow soldiers, sailors and air people, it leads to unsatisfactory performance, and again, in the military context, it leads to a lack of capability.<sup>257</sup>

### 3.6.3 Abuse as a risk factor for suicidality

208. Historical abuse suffered in the ADF has had an ongoing and often devastating impact on serving and ex-serving members, and their families and loved ones.

209. Sociologists Associate Professor Ben Wadham, from Flinders University, and Associate Professor James Connor, from UNSW Canberra, told us that a range of cultural factors within military settings can present risks for individuals, foster unsafe workplaces and ‘create the pre-conditions for abuse’.<sup>258</sup> Some of these factors included ‘in/out group dynamics’, ‘hyper-masculine cultures’, ‘command secrecy’, ‘intense stigma’ against acknowledging injuries, whether they be physical or psychological, the ‘total authority’ commanders have over military life and, significantly, how ‘tribalism is a root cause of misconduct’.<sup>259</sup> They note that:

The challenge is to produce military personnel that can do both – be compassionate to others and self as well as undertaking a role of executing professional violence. This challenge cannot be understated.<sup>260</sup>

210. Mr Roberts-Smith identified structural and systemic risk factors that contribute to the perpetuation of abuse. These include the hierarchical command structures of the services, a culture that discourages the reporting of abuse, and Defence mismanagement of reports of abuse.<sup>261</sup> Mr Roberts-Smith referred to the replication of cultures through training and learning experiences, and the need for enhanced focus on the cultures of units and locations within the ADF where personnel are trained.<sup>262</sup>

211. In response to a question during Hearing Block 3 about whether a serving member's experience of abuse, unacceptable behaviour and other negative cultural issues in the ADF could increase the risk of suicide, Chief of Air Force from July 2019 to July 2022, Air Marshal Mel Hupfeld AO DSC said:

I would assess, and based on what I've seen and my own personal views, that they would definitely be risk factors that could contribute to the absolute outcome where someone may take their own life.<sup>263</sup>

212. Ms Justine Greig, Deputy Secretary Defence People, Department of Defence, gave evidence on abusive and inappropriate workplace behaviour:

So certainly from the research available, what may be the risk and protective factors around understanding suicide, certainly those sort of behaviours you have just described would be, and are very clearly, a risk factor if someone has experienced those.<sup>264</sup>

213. Air Commodore Lara Gunn, Chief of Staff of ADF Headquarters from November 2020 to January 2022, gave evidence on risk factors for suicide:

It is my observation that serious abuse suffered by ADF members in service, including the mismanagement of that abuse, can be a contributing risk factor in deaths by suicide, attempted suicide and poor mental health.<sup>265</sup>

214. In response to this evidence from Air Commodore Gunn, Mr Roberts-Smith said, 'I completely agree with that statement. There can be absolutely no doubt about it'.<sup>266</sup> Mr Roberts-Smith referred to numerous lived experience accounts reported to the Defence Abuse Response Taskforce, in which serving and ex-serving members described their personal experiences of abuse and mismanagement of that abuse by Defence, poor mental health and suicidal ideation.<sup>267</sup>

215. Air Commodore Gunn stated that many individuals who report they have experienced serious abuse:

articulate long-term impacts including continuing physical injuries, psychological impacts, challenges in personal relationships including direct impact on their family and friends, negative impacts on their social life, negative impacts on career and associated financial consequences associated with their abuse and in particular the mis-management of that abuse.<sup>268</sup>

216. The online legislative, policy and reference material for Department of Veterans' Affairs (DVA) staff also acknowledges that a 'common response' from survivors of abuse is:

In addition to guilt, shame and anger, survivors may feel flat, and lose interest in day-to-day activities. They may also feel isolated and cut off from friends and family. Over time, other issues may emerge such as depression, sexual difficulties, substance abuse, eating disorders, self-harm, and suicidality.<sup>269</sup>

217. Professor Megan MacKenzie, Simons Chair in International Law and Human Security at Simon Fraser University, commented on academic research showing that serving and ex-serving members who have experienced sexual violence within military contexts are at an increased risk of suicide and suicidality.<sup>270</sup>
218. Professor MacKenzie referred to a 2016 US study which reviewed the health care records of over six million US former serving members.<sup>271</sup> The study found that male ex-serving members who experienced sexual violence in the military were 70% more likely to die by suicide, and female ex-serving members were more than twice as likely to die by suicide when compared with equivalent ex-serving members who had not experienced sexual violence.<sup>272</sup>
219. A 2019 US study, referred to in oral evidence by the interim National Commissioner for Defence and Veteran Suicide Prevention, Dr Bernadette Boss CSC, examined surveys completed by 471 US Army soldiers and marines who had exhibited suicidal behaviour.<sup>273</sup> Among these serving members, the study found a link between workplace bullying and suicidal ideation.<sup>274</sup>

### 3.6.4 What is unacceptable behaviour?

Australians join the ADF for many reasons: for love of Australia and a desire to serve it in uniform; for the prospect of a challenging, demanding and rewarding career; for personal and professional development; and for comradeship. Whatever the reason, every person who joins the ADF deserves to be appropriately prepared for operations. Accepting that the rigors of training in the Army, Navy and Air Force will be tough and demanding every ADF member must be able to pursue their aspirations in an environment free from physical, mental and sexual abuse in accordance with the ADF's values and associated behaviours.<sup>275</sup>

220. Defence personnel are required to uphold Defence values, which includes not engaging in defined forms of wrongdoing called 'unacceptable behaviour'.<sup>276</sup> This is defined in Defence's *Complaints and Alternative Resolutions Manual* as:

unreasonable conduct at work or in any situation that may be connected to Defence that is offensive, belittling, abusive or threatening to another person or adverse to morale, discipline or workplace cohesion. This includes unlawful discrimination and harassment.<sup>277</sup>

221. Defence identifies the following types of unacceptable behaviour:

- harassment
- workplace bullying
- any form of sexual misconduct
- discrimination
- abuse of power
- conflict of interest and inappropriate workplace relations
- violent behaviour.<sup>278</sup>

222. The *Complaints and Alternative Resolutions Manual* defines sexual misconduct as ‘a spectrum of sexualised behaviours that are contrary to Defence, and community values’.<sup>279</sup> Sexual misconduct includes:

- sex discrimination
- sexual harassment
- sexual offences.<sup>280</sup>

223. The *Complaints and Alternative Resolutions Manual* further states that:

All Defence personnel have a role in preventing and resolving unacceptable behaviour. Incidents of unacceptable behaviour must be responded to in an appropriate and timely manner. When an incident results in a complaint of unacceptable behaviour, the complaint must be managed promptly, seriously, and with fairness and sensitivity in accordance with this Chapter. Defence is committed to ensuring that incidents of unacceptable behaviour are dealt with appropriately.<sup>281</sup>

### 3.6.5 Previous inquiries and reviews

224. We recognise the previous inquiries and reviews examining ADF culture and abuse in Defence. In response to these reviews, Defence has acknowledged that members have experienced abuse in the ADF. Defence has also accepted that, in the past, it did not take appropriate action to prevent abuse from occurring.<sup>282</sup>

225. These previous inquiries and reviews, discussed below, are relevant to our understanding of:

- possible contributing factors for deaths by suicide of serving and ex-serving members
- mental health issues for serving and ex-serving members because of what happened to them in the past
- potential systemic issues within Defence which are still to be reformed.

226. During his oral evidence, Mr Roberts-Smith said that the ‘effects of the [historical] abuse suffered by these complainants was still current’, as serving and ex-serving members were continuing to live with the ongoing impacts of this unacceptable behaviour.<sup>283</sup> He said:

It is no exaggeration to say that in very many, if not most of the cases that came to the Taskforce, the person who had been abused had his or her life literally destroyed as a consequence of the abuse. As I said before, the actual incident may not have lasted very long in a particular case, but the – sometimes even the physical, but certainly the mental and emotional and psychological consequences literally last a lifetime.<sup>284</sup>

## 'The Skype incident'

227. In April 2011, the Australian Government initiated a series of reviews in response to media reports about an incident, commonly referred to as the 'Skype incident', at the Australian Defence Force Academy. This incident involved a male cadet secretly filming himself having sex with a first-year female cadet. The footage was broadcast via Skype to other cadets in a nearby room, without the consent of the female cadet.
228. In response to the Skype incident, the then Minister for Defence, the Hon Stephen Smith MP, announced a series of reviews of:
- the management of the Skype incident – an inquiry, under Defence regulations, by Mr Andrew Kirkham QC
  - the treatment of women at the Australian Defence Force Academy and the treatment of women in the ADF and pathways for women into ADF leadership
  - employment pathways for women in the Department of Defence
  - the use of alcohol in the ADF
  - social media and Defence
  - personal conduct of ADF personnel
  - management of incidents and complaints in Defence.<sup>285</sup>

## The DLA Piper Review

229. In May 2011, after receiving hundreds of communications about abuse in Defence following the Skype incident, the then Minister for Defence announced the establishment of an independent review into allegations of sexual and other abuse in Defence.
230. The DLA Piper Review, as it is known, received complaints from 1,114 people relating to incidents of alleged abuse dating from 1951 to 2011, with complaints from 847 people found to be in scope.<sup>286</sup> These included complaints of sexual and physical abuse, sexual harassment, bullying and harassment across the Navy, Army and Air Force, allegedly perpetrated against both adults and minors.
231. The DLA Piper Review made a range of findings about the nature and prevalence of abuse in Defence, including:
- a significant number of serving members experienced abuse in the ADF and mismanagement by Defence of these allegations of abuse
  - a range of environmental factors within the ADF created a high risk of abuse
  - 'some, possibly many, perpetrators of abuse' and those who mismanaged cases of alleged abuse had not been 'called to account and/or rehabilitated'<sup>287</sup>

- some of these people may have moved into positions of authority within the ADF, as have those who witnessed and did not report incidents of abuse
- elements of Defence culture discouraged victims and witnesses of abuse from reporting
- many victims of abuse had likely never reported their experiences of abuse
- many serving and ex-serving ADF members who had experienced abuse were likely suffering or at risk of mental health issues and suicidal ideation, with many not receiving the support they need.<sup>288</sup>

232. The DLA Piper Review recommended the establishment of a new complaint resolution scheme, a 'capped compensation scheme', and a range of other proposals to support and provide redress to victims of abuse.<sup>289</sup>

### Reviews by the Australian Human Rights Commission

233. In April 2011, the then Minister for Defence announced that the Sex Discrimination Commissioner, Ms Elizabeth Broderick, would lead two inquiries by the Australian Human Rights Commission into the treatment of women at the Australian Defence Force Academy and the ADF.<sup>290</sup> During Hearing Block 1, Ms Broderick told us the focus of these reviews was 'gender equality, women's safety and the initiatives that were necessary ... to prevent sexual harassment, sexual abuse and discrimination'.<sup>291</sup> She also said ensuring equal treatment for women in the ADF 'was critical to the Defence Force's capability and operational effectiveness'.<sup>292</sup>

234. The Australian Human Rights Commission's November 2011 Phase 1 report, *Report on the Review into the Treatment of Women at the Australian Defence Force Academy*, found that the Australian Defence Force Academy's culture had 'improved significantly since the mid 1990s' when there had been 'extreme cultural concerns' about the Australian Defence Force Academy. However, it found 'further structural and cultural reform is necessary' for it to reach its aspirations of being an exceptional training facility.<sup>293</sup> The Phase 1 report contained 31 recommendations about the Australian Defence Force Academy's role and purpose, accommodation and supervision of undergraduates, minimising risk, and managing incidents.

235. In 2012, the Australian Human Rights Commission published its Phase 2 report, *Review into the Treatment of Women in the Australian Defence Force*.<sup>294</sup> It stated that there is an 'urgent and compelling need for change' and said the ADF must address:

the problem of a shrinking talent pool, the significant cost of unwanted departures, the lack of diversity at leadership level and its desire to be a first class employer with a first class reputation. Increasing the representation of women and improving their pathways into leadership goes to the very heart of the sustainability and capability of the ADF.<sup>295</sup>

236. The Phase 2 report included 21 recommendations for reform, which aimed to strengthen leadership and increase diversity. In particular, the recommendations aimed to increase the number of women in the ADF and in leadership positions, improve working conditions, increase participation, create more flexible career pathways for women, and boost support for and protections against gendered violence and harassment.<sup>296</sup> The recommendations aimed to produce meaningful cultural change within the ADF and address a ‘failure of leadership’ that had led to unacceptable behaviour.<sup>297</sup>

### Defence Abuse Response Taskforce

237. On 26 November 2012, the Australian Government established the Defence Abuse Response Taskforce as part of its response to the DLA Piper Review. Its purpose was to provide ‘practical outcomes’ for eligible people who reported sexual abuse, physical abuse, sexual harassment and/or workplace harassment in Defence before 11 April 2011 (when the Australian Government announced the DLA Piper Review).<sup>298</sup>

238. The Taskforce assessed complaints using the evidentiary threshold of ‘plausibility’, which meant that the allegation needed the ‘appearance of reasonableness’.<sup>299</sup> This threshold is lower than civil (‘balance of probabilities’) and criminal (‘beyond a reasonable doubt’) standards of proof.<sup>300</sup>

239. The plausibility threshold enabled the Taskforce to ‘accept and act upon allegations of abuse’ where ‘there was (and is) absolutely no prospect that they could obtain recourse through existing formal legal or administrative processes’.<sup>301</sup> During Hearing Block 4, Mr Robert Cornall AO, the Chair of the Taskforce from late 2014 to March 2016, gave evidence that this standard enabled the Taskforce to avoid an adversarial process and deliver outcomes for complainants that it ‘wouldn’t have been able to achieve if we had to have a higher level of proof and apply processes of procedural fairness and natural justice for the alleged abuser’.<sup>302</sup>

240. According to the Taskforce, it ‘received 2,439 complaints of which 1,751 were assessed as within scope and plausible’.<sup>303</sup> According to its *Final Report*, the Taskforce delivered the following outcomes to complainants:

- 1,723 complainants received a reparation payment of up to \$50,000 (totalling \$66.63 million).<sup>304</sup> These payments aimed to recognise the ‘nature and severity of the abuse’, rather than attempting to compensate complainants for the personal and subjective harm they suffered.<sup>305</sup> Separately, compensation for injuries arising from abuse occurring in service is available via the *Military Rehabilitation and Compensation Act 2004* (Cth) (MRCA), the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) (DRCA) and the *Veterans’ Entitlements Act 1986* (Cth) (VEA). In Chapter 5, we discuss DVA-related claims processing in more detail and make recommendations for change
- 577 complainants received counselling<sup>306</sup>
- 715 complainants participated in the Restorative Engagement Program, in which complainants could ‘have their personal story of abuse heard, acknowledged and responded to by a senior Defence representative – including, in some cases, an apology’<sup>307</sup>

- 133 complainants had their complaint referred to civilian police for possible investigation and prosecution<sup>308</sup>
  - 132 complainants had their complaint referred to the Chief of the Defence Force for potential administrative and/or disciplinary action.<sup>309</sup> Defence later confirmed that one of the complaints was inadvertently recorded twice, and so the correct number is 131 complainants.<sup>310</sup>
241. More than 97% of the complainants who received a reparation payment received a \$5,000 payment acknowledging Defence mismanagement.<sup>311</sup> This includes plausible incidents where abuse was observed by a senior officer but no action was taken, a complaint was made but no action was taken, and other scenarios where Defence turned a blind eye to abuse.<sup>312</sup>
242. Defence said that of the 131 complainants who had their complaint referred to the Chief of the Defence Force:
- three complaints resulted in formal administrative or disciplinary action
  - 21 complaints resulted in informal action
  - nine complaints resulted in no action
  - 28 complaints were found to have insufficient evidence to meet the standard of proof required
  - 22 complaints were found to previously have had appropriate actions taken
  - 35 complaints where the complainant withdrew support for further investigation
  - nine complaints could not be investigated as the alleged abuser was no longer serving in the ADF
  - four complaints where the perpetrator could not be identified.<sup>313</sup>
243. We wrote to relevant state and territory authorities about the 133 complaints referred to the police by the Taskforce. We are concerned that, despite the serious nature of the complaints, we have been unable to identify any clear procedures for the follow-up of these referrals. This includes understanding what organisation or body, if any, is responsible for overseeing the referrals and what communications, if any, there have been with complainants. We will examine these matters to determine any systemic failings or whether accountability processes are acceptable.
244. The Taskforce provided 12 reports to the Australian Government. These reports provide insight into the nature and extent of abuse in the ADF from the 1940s to April 2011. In November 2014, the Taskforce's *Report on Abuse in Defence* said these complaints 'indicate that abuse in Defence has been and is both serious and widespread'.<sup>314</sup> Findings included, among other things, that:

- despite women only comprising a small proportion of the ADF in the 1990s and 2000s, they were overrepresented in complaints of abuse<sup>315</sup>
- abuse has often been perpetrated by service members who hold positions of actual or perceived seniority over the victim<sup>316</sup>
- a culture of violent initiation and hazing has existed across services throughout the decades, particularly during initial recruit and employment training<sup>317</sup>
- many complainants told the Taskforce that more senior ADF members knew about, accepted and even implicitly endorsed the perpetration of abuse<sup>318</sup>
- ‘the ingrained nature of both formal and informal hierarchies has often restricted or removed the ability of complainants to report abuse through the chain of command’<sup>319</sup>
- the risk of abuse appears to increase when serving on deployment, particularly ‘because complainants are isolated, separated from social and familial ties of support, and appear to be increasingly reliant on the chain of command’<sup>320</sup>
- personal characteristics that marked out service members as ‘different’ amongst their colleagues would often increase the risk of abuse. In particular, the report singles out ‘gender, age, race, workplace performance, sexuality or perceived sexuality, physical limitations, and illness or injury’<sup>321</sup>
- ‘misuse of alcohol and other substances’ was a common feature in complaints of abuse<sup>322</sup>
- many complainants suffered serious short-term and long-term impacts of abuse, including physical injuries, psychological injuries, ruined careers, relationship breakdowns and suicidal ideation.<sup>323</sup>

245. The Taskforce’s *Final Report* made eight recommendations, including requiring that relevant criminal offences are investigated and prosecuted by civilian authorities, providing ADF authorities with best practice training for responding to victims of abuse, improving Defence’s management of complaints and ensuring complainants are kept informed about the progress of their complaints.<sup>324</sup>

## Royal Commission into Institutional Responses to Child Sexual Abuse

246. In August 2017, the Royal Commission into Institutional Responses to Child Sexual Abuse released the *Report of Case Study No. 40: The response of the Australian Defence Force to allegations of child sexual abuse*. This inquiry heard evidence of child sexual abuse at the following locations:
- HMAS Leeuwin between 1960 and 1980 – this naval base, located in Fremantle, Western Australia, accommodated and trained approximately 13,000 boys aged 15 or 16 between 1960 and 1984, when it was then closed to junior recruits<sup>325</sup>
  - The Army Apprentice School, Balcombe in the period 1970 to 1980 – located on the Mornington Peninsula, Victoria, Balcombe operated as an Army training facility for tradespeople, including approximately 5,000 young people aged between 15 and 19 years, who graduated between 1948 and 1982.<sup>326</sup>
247. Based on the evidence they heard during the Royal Commission into Institutional Responses to Child Sexual Abuse, the Commissioners concluded ‘physical and sexual abuse of child recruits was widespread at Leeuwin from the 1960s to 1972’, including violent bastardisation practices ‘that senior staff members knew of and tolerated ... within an unofficial hierarchy among junior recruits’.<sup>327</sup> From 1972, the incidence of abuse ‘lessened considerably’, following the implementation of a review report by the Hon Trevor Rapke QC in 1971.<sup>328</sup> These practices were also found to be prevalent at Balcombe in the 1970s and 1980s due to ‘a failure in the management’.<sup>329</sup> The Commissioners found that, in both locations, reporting of abuse was discouraged and could lead to acts of retribution towards children who made a report. The inquiry recognised the ‘lifelong and severe’ impacts of this abuse, including ‘mental illness, stress and physical health problems, suicide attempts and broken relationships’.<sup>330</sup>

### 3.6.6 Cultural reform

248. Defence commenced a cultural reform agenda in 2012 in response to the DLA Piper Review. The reform was detailed in its statement of cultural intent and strategy, *Pathway to Change: Evolving Defence Culture, A Strategy for Cultural Change and Reinforcement*.<sup>331</sup> At that time, Defence accepted it had a cultural problem, that needed to be solved. General David Hurley AC DSC FTSE, Chief of the Defence Force from July 2011 to June 2014, stated at the time:

The ADF has begun addressing these causes through its cultural reform program. But I, as the head of the ADF, recognise the suffering that some have experienced. On behalf of the ADF, I say that I am sorry to those who have suffered sexual, physical or mental abuse while serving in the ADF.

It is my responsibility as Chief of the Defence Force to lead the ADF in assisting the Government to implement the processes that it has put in place. Together with the ADF’s senior leadership, I will work to provide a fair, just and inclusive work environment. I repeat my previous personal undertaking to endeavour strenuously to defend the right of all members of the ADF to serve in an environment free from abusive behaviour of any kind.<sup>332</sup>

249. *Pathway to Change* 2012–2017 stated:

Despite our great strengths as an organisation, it is all too apparent that we are not uniformly good ...

we cannot be entirely satisfied with all aspects of our current culture; there are parts that serve us poorly, which limit our performance, hurt our people and damage our reputation.<sup>333</sup>

250. *Pathway to Change* 2012–2017 further explained the need for change:

In 2011 the Government called for, and Defence initiated, several independent Reviews to answer questions about the attitudes towards and treatment of women in Defence; our systems of accountability; grave misconduct perpetrated by some and implicitly condoned by others; and the causes of such behaviour.

...

There are those who would say, 'those incidents are about a few bad apples'. But we cannot afford to subscribe to such a view; for that would imply that they are unsurprising – even routine.

It is not an acceptable state for actions that affect the safety and wellbeing of our people, and compromise our capability, to be in anyway regarded as 'normal'. We should be surprised, angered, embarrassed and saddened – every time there is a revelation about unconscionable behaviour by a member of the Defence community.

Our reaction should be, 'how could that have happened?' and not, 'of course these things happen'.<sup>334</sup>

251. *Pathway to Change* 2012–2017 drew together a number of strategic reform directions, referring to 175 actions and recommendations made in the reviews into Defence culture announced by the Minister for Defence in April 2011.<sup>335</sup>252. In *Pathway to Change* 2012–2017, Defence identified six 'key levers for change' and 15 'key actions'. Defence said that implementation would be led from the top, and outcomes would be realised over five years.<sup>336</sup>253. We heard from the Chief of Army from July 2018 to July 2022, Lieutenant General Rick Burr AO DSC MVO, that '2012 was quite a watershed moment, quite a turning point for Defence to do better'.<sup>337</sup> In response, Army pursued a range of initiatives to improve diversity and inclusivity in the workplace, including strengthening female representation. These initiatives were captured in 2017 in Army's 'Good Soldiering Statement'.<sup>338</sup>254. Air Marshal Hupfeld said that in 2000, before the launch of *Pathway to Change*, the Air Force commenced its own cultural review process.<sup>339</sup> On 14 September 2012, Air Force launched the New Horizon program, to rethink Air Force culture and implement *Pathway to Change* initiatives.<sup>340</sup> On 31 March 2021, Air Force launched its new 'cultural transformation statement', 'Our Air Force, Our Culture'.<sup>341</sup>

255. The Chief of Navy from July 2018 to July 2022, Vice Admiral Michael Noonan AO RAN, also advised that in 2009 Navy commenced cultural reform through the New Generation Navy program.<sup>342</sup> New Generation Navy was aimed at addressing four key challenges: a significant recruitment and retention challenge; capability gaps; restructuring to provide clear responsibility and accountability for key activities; and the need to be resource-conscious.<sup>343</sup> Vice Admiral Noonan said that in 2018 he launched Next Generation Navy with a specific focus on five cultural pillars:
- valuing our people, developing leaders who value teams, enhancing resilience, instilling a sense of purpose to every person in the Navy and driving for professional and technical mastery across all elements of the Navy. We have since evolved this to include social mastery, so that every person in the Navy is being developed, they feel valued, they feel respected, they understand their position in the team and how they can contribute to the high performing team.<sup>344</sup>
256. These overarching cultural statements provide a framework to understand the key values, attitudes and beliefs promoted by senior members of the ADF. We will examine how these values are understood by serving members in the ADF and, more importantly, whether these values are embraced by and lived out by service members to create safe, supportive and inclusive workplaces.
257. Defence's second cultural intent statement and cultural reform strategy is *Pathway to Change: Evolving Defence Culture, 2017–22, Respectful, trusted and proven to deliver*.<sup>345</sup> In *Pathway to Change 2017–2022*, Defence highlighted what it saw as its achievements over the previous five years. These included:
- establishing the Sexual Misconduct and Prevention Response Office
  - establishing the Restorative Engagement Program, to acknowledge historical incidents of abuse
  - addressing the treatment of women in the ADF through strategies aimed at ensuring their safety, promoting equality, and increasing participation
  - removing gender restrictions from combat role employment categories
  - developing and implementing the ADF Alcohol Management Strategy
  - implementing a more contemporary employment model
  - improving work health and safety, including implementing the ADF Mental Health Strategy and introducing the Sentinel system to better capture and monitor work, health and safety incidents
  - introducing the Commanders and Managers Guide to Responding to Family and Domestic Violence
  - integrating agreed values and behaviours as core foundations of Defence education and training programs
  - attracting and retaining a more diverse workforce.<sup>346</sup>

258. In his statement to us, General Campbell said:

Evolving culture in an organisation as large, disperse, diverse and distributed as Defence requires sustained effort over many years.

The organisation has made progress and is invested in doing more.

Culture is a continuous journey, requiring Defence to continue to evolve its cultural approach, reflect, and acknowledge what is identified, irrespective of how challenging this may be at times.

To maximise Defence's capability, and sustain the trust of Government, the Australian community and each other, we must take the best of our culture forward, and hold to account those who do not meet our required standards.

Creating a positive culture, where our people live by the Defence values and behave accordingly, is at the heart of our reforms and what I have been seeking to achieve.<sup>347</sup>

259. Defence has given us information about its implementation of *Pathway to Change*. We will inquire further into whether the relevant actions and recommendations have been fully implemented, and whether they are making a difference to reduce unacceptable behaviour and improve the culture at all levels.<sup>348</sup>

### 3.6.7 Inclusion and diversity in the ADF

260. Research undertaken by the Australian Institute of Health and Welfare in 2021 found that:

ex-serving ADF members are at a higher risk of suicide than other Australians, with males 24% more likely to die by suicide, and females 102% more likely (or about twice as likely). However, some subgroups of the ex-serving ADF members have different rates of suicide.<sup>349</sup>

261. The research found that women who previously served in the ADF were 2.27 times more likely to die by suicide compared with other women in the Australian population.<sup>350</sup> The Australian Institute of Health and Welfare also found that for ex-serving women under 30, the suicide rate was three times higher than for women in the general community.<sup>351</sup>

262. Understanding the risk factors for women in the ADF continues to be a key priority for us. This includes understanding whether ADF culture and unacceptable behaviour increases the risk of suicide and suicidality for women.

263. As at 1 January 2022, 19.9% of permanent ADF members were women, compared with 13.8% at 1 January 2012.<sup>352</sup> This includes:

- 23.2% of permanent Navy members (compared with 18.4% at 1 January 2012)
- 15.1% of permanent Army members (compared with 10% at 1 January 2012)
- 25.6% of permanent Air Force members (compared with 17% at 1 January 2012)
- 16.7% of senior officer positions in the ADF (compared with 6.6% at 1 January 2012).<sup>353</sup>

264. Defence reports that ‘Sexual offences and sexual harassment disproportionately impact women in Australia, in the ADF, and the wider Defence community’.<sup>354</sup> This is consistent with the findings of the Defence Abuse Response Taskforce.<sup>355</sup> According to Defence’s *Pathway to Change: Evolving Defence Culture 2017–2022*, female serving ADF members are ‘twice as likely to experience sexual-related unacceptable behaviour’ than their male colleagues.<sup>356</sup> Defence’s *Women in the ADF Report 2020–2021* referred to unpublished military police data that identified women as the victim in more than 80% of reports of sexual misconduct.<sup>357</sup> In relation to unacceptable behaviour at ADFA at the time of her review work, Ms Broderick said ‘that pattern of more female cadets reporting unacceptable sex-related or gender harassment is a standard picture, so that wasn’t surprising’.<sup>358</sup>
265. The Director of the Australian Defence Force Cultural Reform Program from 2011 to 2015, Ms Alexandra Shehadie, gave evidence during Hearing Block 1. According to Ms Shehadie, women in the ADF told the Australian Human Rights Commission that, as a result of suffering abuse in the ADF, they
- experienced anxiety, depression, a sense of fear, a loss of self-esteem and confidence, relationship dysfunction or breakdown. We did hear from some that they had experienced suicidal ideation or were actually suicidal.<sup>359</sup>
266. Ms Broderick spoke of a hyper-masculine culture in Defence and how ‘when we bring women into a very male dominated environment or, indeed, men into very feminised environments, the group dynamics change and, actually, everyone lifts’.<sup>360</sup>
267. According to Ms Greig, Defence recognises the importance of diversity and inclusion in affecting cultural change and improving the capabilities of the ADF, and it is one of Defence’s six priority areas under *Pathway to Change*.<sup>361</sup> Defence and the ADF described to us key objectives, strategies and mechanisms for improving diversity and inclusion in the ADF. These include:
- female representation targets of:
    - 25% for Navy by 2023 and 35% by 2035
    - 15% for Army by 2023 – which has already been achieved, with revised targets of 18% by 2025 and 20% by 2035 set
    - 25% for Air Force – which has also been achieved, with an aspirational target of 35% by 2030 set.<sup>362</sup>
  - a range of initiatives to break down barriers to female participation in ADF workplaces, increase integration and amplify women’s voices, including in senior management positions
  - improving flexible working arrangements
  - improving socioeconomic outcomes for First Nations people through Reconciliation Action Plans, which include dedicated Indigenous Employment Pathways

- providing employment opportunities for people with disability through the Defence Administrative Assistance Program
  - improving policies, supports, recognition and training for members of Defence
  - implementing culture and inclusion training courses.<sup>363</sup>
268. During Hearing Block 5, in June 2022, we heard from a panel of First Nations serving members and Ms Lee Smallwood, Cultural Advisor, Regional Indigenous Liaison Officer Network. These witnesses spoke about their experience in the ADF and experiences of other First Nations members, the supports available to them, particular risk factors for suicide and suicidality faced by First Nations members, and recommendations for potential reform.<sup>364</sup>
269. We will continue to explore issues relating to diversity and inclusion in Defence. In particular, we hope to gain a greater understanding of how minority groups and potentially vulnerable people within Defence may have unique risk factors for suicidality and suicide.

### 3.6.8 Reporting and support systems

#### The Commonwealth Ombudsman

270. Following the conclusion of the Defence Abuse Response Taskforce in 2016, the functions of the Commonwealth Ombudsman were expanded to build on, but not replicate, the work of the Taskforce.
271. Part IIA of the *Ombudsman Act 1976* (Cth) gives the Commonwealth Ombudsman the statutory function of the Defence Force Ombudsman. In 1983, the then Minister told the Australian Parliament that the Ombudsman Act would be amended to create the Defence Force Ombudsman jurisdiction to ‘investigate administrative actions related to or arising from a person’s service in the Defence Force’.<sup>365</sup> In December 2016, the Ombudsman’s functions were expanded further through the introduction of the *Ombudsman Regulations 2017* to provide an independent, confidential mechanism for serving and ex-serving ADF members to report incidences of sexual abuse, serious physical abuse and serious bullying and harassment involving two or more Defence personnel.
272. Since December 2017, the Defence Force Ombudsman has been responsible for administering the Defence Abuse Reparation Scheme.<sup>366</sup> Under this scheme, the Defence Force Ombudsman makes recommendations to Defence for reparation payments of up to \$50,000, including:
- up to \$45,000 to acknowledge the ‘most serious’ forms of abuse
  - up to \$20,000 to acknowledge other abuse involving unlawful interference
  - an additional payment of \$5,000 where the Ombudsman forms the view that Defence mismanaged the incident.<sup>367</sup>

273. These payments are available to members who were allegedly abused on or before 30 June 2014, and whose allegation meets the standard of proof of 'reasonable likelihood'. To access a reparation payment, eligible members needed to have registered an intent to lodge a complaint by 30 June 2022. The final lodgement of completed applications must occur by 30 June 2023.<sup>368</sup>
274. As at 28 February 2022, the Defence Force Ombudsman had made 1,408 recommendations for reparation payments.<sup>369</sup> Of these recommendations, Defence fully accepted 1,225, and partially accepted one.<sup>370</sup> It had 182 under consideration.<sup>371</sup> In total, Defence had made \$51.665 million in reparation payments following Defence Force Ombudsman recommendations.<sup>372</sup> The Defence Force Ombudsman had also received 109 reports of abuse where one or more of the alleged incidents occurred after 30 June 2014.<sup>373</sup> These complainants are not eligible for a reparation payment for this alleged abuse. While we note that there are other avenues (including through the civil courts) for individuals to seek redress and recognition outside of the Defence Force Ombudsman, these processes can be costly and stressful.
275. The absence of a reparation payment option for serving and ex-serving members who suffered abuse after 30 June 2014 is a matter for further consideration. In this respect, we note General Campbell advised that he has:
- directed options be developed for an alternate mechanism of addressing complaints of this nature, historical or contemporary. The intent is to provide a further avenue of redress for current and former personnel who have suffered defined forms of mistreatment during their service. This mistreatment may have fallen outside the Ombudsman's Regulation which governs the DRS [Defence Reparation Scheme].
- Such a scheme, when developed, may have capacity to consider improved organisational visibility and management of perpetrators and include processes for the systematised use of lessons learned in ongoing culture change. The establishment, and parameters, of a new scheme will require significant policy and possibly legislative changes. The structure and requirements are currently being considered, a proposal is being developed and once approved an implementation plan will be designed. The intent is to provide a seamless transition from the DRS to a new scheme.<sup>374</sup>
276. We will seek further details on General Campbell's proposal and will closely monitor this situation. Depending on if and how the options for a new scheme progress, we may consider making recommendations about this matter in our final report.
277. The Defence Force Ombudsman may also facilitate a referral to counselling, prepare a case summary to Defence for further investigation, or facilitate the ADF member's participation in restorative engagement conferences.<sup>375</sup> As at 28 February 2022, 172 restorative engagement conferences had been held and 80 complainants received a facilitated referral to Open Arms, the mental health service.<sup>376</sup>

278. Since December 2016, the Defence Force Ombudsman has been responsible for inquiring into 'Defence's procedures relating to making and responding to complaints of abuse and the effectiveness and appropriateness of those procedures'.<sup>377</sup> Acting Commonwealth Ombudsman from August 2021 to July 2022, Ms Penny McKay, said that part of this function has involved a staged review process, involving the publication of three reports.<sup>378</sup> These are:

- *Defence's policies for receiving and responding to reports of abuse* (August 2019) – this report included six recommendations aimed at making Defence's reporting process more trauma-informed, accessible, understandable and effective.<sup>379</sup> General Campbell noted Defence has 'accepted and implemented' these recommendations and that the Commonwealth Ombudsman considered these recommendations to be 'closed'.<sup>380</sup> Ms McKay has confirmed with us that this is the case<sup>381</sup>
- *Overview of the Defence abuse reporting function by the Defence Force Ombudsman* (2019), with no recommendations<sup>382</sup>
- *Inquiry into behaviour training for Defence recruits* (July 2020) – this report assessed the 'curriculum and content, delivery and evaluation approach for measuring the effectiveness of training' delivered to ADF recruits about workplace conduct, including training to help them understand unacceptable behaviour and prevent misconduct and abuse.<sup>383</sup> General Campbell advised that Defence has implemented three of the five recommendations contained within this report, to the satisfaction of the Commonwealth Ombudsman, with the two remaining recommendations to be implemented by the end of 2023.<sup>384</sup>

279. The Office of the Commonwealth Ombudsman is preparing a report, which will evaluate whether Defence has implemented these 11 recommendations. According to its preliminary analysis, 'Defence has implemented or partially implemented all 11 recommendations'.<sup>385</sup> We are interested in what the Ombudsman's evaluation concludes.

### Defence's reporting and complaint systems

280. Defence has told us about policy, procedures and mechanisms that service members can use to report unacceptable behaviour.<sup>386</sup> These include:

- the Complaints and Alternative Resolutions Manual, which Defence describes as its 'single source document' for managing and resolving a range of employment related matters, including unacceptable behaviour (defined in Chapter 3 of the Manual) and sexual misconduct (defined in Chapter 9 of the Manual)<sup>387</sup>
- the Incident Reporting and Management Manual, which includes guidance about what constitutes an incident and how they are to be reported<sup>388</sup>
- the Joint Military Police Unit, which is authorised to deliver 'law enforcement, discipline, command and mission support effects'<sup>389</sup>
- the *Public Interest Disclosure Act 2013* (Cth), which enables Defence members to report any suspected wrongdoing.<sup>390</sup>

281. In 2013, Defence established the Sexual Misconduct Prevention and Response Office in response to a key recommendation of the Australian Human Rights Commission's *Review into the Treatment of Women in the Australian Defence Force*. This office is a confidential and 24/7 support service available to current and former Defence members, as well as their family and friends, who have been impacted by sexual misconduct.<sup>391</sup> According to Defence, the Sexual Misconduct Prevention and Response Office uses:

a 'trauma-informed, 'person-centric' approach in responding to individuals impacted by sexual misconduct and to provide them with support, advice and guidance in a way that preserves the well-being of those impacted.<sup>392</sup>

282. The Sexual Misconduct Prevention and Response Office also develops and delivers a range of training and education materials. According to Defence, 54,241 current Defence personnel undertook courses provided by the office between February 2015 and 30 June 2021.<sup>393</sup>

283. We have also heard evidence about the establishment of the Sexual Offence Response Team, which operates within the Joint Military Police Unit. General Campbell advised that the Sexual Offence Response Team:

is a multi-disciplinary investigation team, comprising ADF investigators and social workers, aimed at empowering the victims of sexual misconduct offences to make informed choices and decisions that in return will have a significant impact on their recovery process.<sup>394</sup>

284. According to Defence, the Sexual Offence Response Team's purpose is to support complainants 'through the process of making a complaint or choosing not to', address impediments in the complaint process and, where appropriate, help to convert complaints into investigations.<sup>395</sup> General Campbell advised that the Sexual Offence Response Team is being expanded to new locations. In addition to the Sydney/Canberra region, 'new social worker positions have been established and will be located at JMPU Stations in Melbourne, Sydney, Brisbane and Adelaide, providing coverage across all States and Territories'.<sup>396</sup> We will continue to monitor this expansion.

285. Outside of Defence, individuals can make reports to civilian police. Survivors of institutional child sexual abuse in Defence organisations can also make an application to the National Redress Scheme for a redress payment, counselling and a direct personal response or apology from Defence.

## **Reviewing reporting and complaints systems**

286. In her *Preliminary Interim Report* (Boss report), Dr Boss made the following recommendation (Recommendation 5.2):

Defence should implement a mechanism to enable reports of unacceptable behaviour to be made outside the chain of command, and to protect the identity of the complainant or witness, so that psychological and physical harm can be dealt with properly.<sup>397</sup>

287. The then Chiefs of Navy, Army and Air Force said they were open to considering this recommendation. When asked if it might be practical to have reporting outside the chain of command, Vice Admiral Noonan said:

short answer is 'yes'. And I don't discriminate against any reporting mechanism that an individual may seek to use to report an incident of unacceptable behaviour. Ideally I would like it to be within the Navy chain of command because that allows us to take very quick and decisive action. And typically, in the case of sexual misconduct, the sooner an investigation can be started the more likely there is of being able to hold someone properly to account. But where there might be reason for somebody to seek to report externally, and SeMPRO [Sexual Misconduct Prevention and Response Office] is a good example of that where people can report anonymously, they can immediately receive support. They can choose to name a respondent or not, and it allows them to be at the centre of the care and attention that is provided. I absolutely support a victim-centric approach to dealing with people who have experienced unacceptable behaviour, but ultimately I seek to hold perpetrators to account as well. And I absolutely take all action that is available to me when an official complaint is made and a perpetrator is named. And where that involves a case of sexual abuse we get State and Federal authorities involved immediately.<sup>398</sup>

288. We will continue to obtain evidence about this proposal and consider whether a new reporting mechanism should be established outside the chain of command.

289. Defence has also told us that 'having several systems to record complaints of unacceptable behaviour ... has made analysis, interpretation, assessment of change and evidence-based decision-making regarding unacceptable behaviour trends difficult'.<sup>399</sup>

290. According to a November 2021 report of the Inspector-General of the ADF, these differing systems have meant 'there is no integration of Defence's many data sources', with the various sources of unacceptable behaviour data characterised as 'a scattering of jigsaw pieces that have not yet been put in place to form the whole picture'.<sup>400</sup>

291. Defence recognised this issue, and told us that they are developing a new case management system to address the problem.<sup>401</sup> According to Defence:

The new system will provide an enterprise-wide capability to record an incident/event in one location and use information across functions, such as fraud, behaviour or security investigations. Additionally, it will provide senior leaders with a centralised single source of information for the management and identification of current and emerging issues and trends across Defence and enable Defence to better analyse behaviour category trends overtime.<sup>402</sup>

292. The new system is expected to 'go-live' from December 2022.<sup>403</sup> We will continue to monitor progress on this important project.

## Work health and safety regulatory framework

293. Over the last decade or more, there has been a significant shift in the way the Australian community perceives work health and safety. It is now clear that systems of work must ensure as far as reasonably practicable the safety of workers from foreseeable forms of psychological harm, including harm from bullying and harassment. From 2012, statutory obligations to that effect are imposed on Defence under the *Work Health and Safety Act 2011* (Cth). In addition, and by way of example, in Victoria under ‘Brodie’s Law’, bullying leading to mental harm, self-harm or suicide can lead to imprisonment under the *Crimes Act 1958* (Vic).<sup>404</sup>
294. These developments in the law are overdue and welcome. We are interested to learn about the systems of work in place within Defence, and whether they reflect adequately these obligations and are effective in reducing risks – and if there is appropriate internal monitoring and accountability, as well as external oversight.
295. We have begun the process of inquiry to learn more about how the work health and safety regulatory framework applies to Defence. During Hearing Block 4, we heard from Ms Sue Weston, the Chief Executive Officer of Comcare from April 2019 to April 2022, the regulator under the Commonwealth Model Work Place Health and Safety Laws, and the regulator for Defence.<sup>405</sup> Under the *Work Health and Safety Act*, Defence has a primary duty of care to ensure the physical and psychological health and safety of the people in its undertaking.<sup>406</sup>
296. The *Work Health and Safety Act* prescribes what incidents Defence (and other persons who conduct a business or undertaking) must notify to Comcare. We heard from Ms Weston about what incidents must be notified to Comcare, and where there are gaps:
- The notification provisions in section 35 through to 38 do have some impediments for us as a regulator. Section 35 defines what is a notifiable incident and includes the death of a person, a serious injury and a dangerous one. When it comes to the provisions in particularly section 36 and 37 are very prescriptive, and largely, to see a serious sexual assault or a physical assault you need to be – the injury needs to be sufficient to be considered for an in-patient at a hospital and that doesn’t always happen with these type of injuries. And, in addition, section 38 puts a duty on the PCBU [persons who conduct a business or undertaking] to – they need to determine whether the incident arose out of the workplace of the business or undertaking and it may be that we don’t see those because of that assessment.<sup>407</sup>
297. We asked General Campbell about Defence’s reporting of notifiable incidents, including the lower number of deaths by suicide Defence reported to Comcare as compared with the numbers identified by the Australian Institute of Health and Welfare, and any steps or actions he has initiated to ensure all notifiable incidents are reported to Comcare. General Campbell stated:
- I am not confident that all notifiable incidents, as defined by the *Work Health and Safety Act 2011* (Cth), are reported to Comcare as it will not always be immediately apparent if an incident falls within the WHS Act definition of a notifiable incident.
- Section 38 of the *Work Health and Safety Act 2011* states that notification to Comcare is required for ‘a notifiable incident arising out of the conduct of the business or undertaking’. Determining a work nexus for death by suicide and ADF service is often challenging and may not be apparent until after an inquiry into the circumstances of the incident has been conducted.

The ability of the AIHW [Australian Institute of Health and Welfare] to draw upon a broad range of data sources is another reason why the numbers provided by AIHW and Comcare are not directly comparable.

I have initiated the following steps and actions, through my delegate, the Assistant secretary Work Health and Safety, to ensure that notifiable incidents are reported to Comcare:

- a. Defence's Work Health and Safety Branch assure the process of reporting notifiable incidents for me by reviewing and crosschecking WHS incidents captured in the Defence Work Health and Safety Information Management System, Sentinel, against incidents that have been reported to Comcare.
- b. I monitor Defence's WHS performance monthly through the Defence Work Health and Safety Scoreboard as part of a roundtable discussion with my senior leadership team. The Scorecard provides an overview of WHS incidents and identified key risk areas across the organisation. Together with my leadership team, I use the Scorecard to drive work health and safety outcomes, including notifying incidents across the organisation.<sup>408</sup>

298. We also asked Ms Weston whether she had any views about whether Defence could take additional steps to mitigate the risk of deaths by suicide of serving and ex-serving members. Ms Weston answered:

Making workplaces within Defence and the ADF safer and healthier, with a focus on prevention of psychological injury and eliminating psychological hazards will mitigate the risk of deaths by suicide of Members and ex-serving Defence Members.<sup>409</sup>

299. Ms Weston described the importance of the Boland Review:

The Boland Review (**Review**) represents a key piece of work in the work health and safety jurisdiction which highlighted the need for a culture of understanding in addressing mental health in the workplace. In particular, a key focus of the Review was the elimination, or minimisation, of risk to worker's health and safety from psychological injuries.

In its submission to the Review, Comcare highlighted the significant rate and impact of psychological claims across its jurisdiction and recommended amendments to the model WHS laws – 'For example, specific provisions and a definition of psychological health in the WHS Act and Regulations'. Comcare and other Australian Government Departments also called for the inclusion of criteria for incident notification to include reporting of work-related psychological illness to the WHS regulators.

An overarching point of concern identified in the Boland Review was the lack of express notification triggers for psychological injuries. This in turn created confusion about whether psychological health issues need to be notified and when. In its submission, Comcare suggested that adding a notification trigger for psychological injury would 'send a clear message that this risk category is a priority just like the physical hazards'.

The Review recommended that there be a review of incident notification provisions in the model WHS Act, to ensure they meet the intention outlined in the 2008 National Review, that they provide for a notification trigger for psychological injuries, and that they capture relevant incidents, injuries and illnesses that are emerging from new work practices, industries and work arrangements (Recommendation 20).

The Review also recommended that the model WHS Regulations be amended to deal with how to identify the psychosocial risks associated with the psychological injury and the appropriate control measures to manage those risks (Recommendation 2).<sup>410</sup>

300. While these developments are encouraging, we are also concerned about the challenge of latent effects of exposure to traumatic events, and the psychological injury or impact not being immediately apparent. Comcare advised that the term 'latent harm' is not defined in the Work Health and Safety Act. However, Comcare stated it is aware that:

some injuries or illnesses, including psychological conditions are latent insofar as they may have a slow or delayed onset, manifesting sometime after exposure to a particular hazard in the workplace.

...

The concept of 'latent harm' is relevant to Comcare's regulatory work in relation to psychosocial risks and hazards and psychological injuries.<sup>411</sup>

301. Regarding the Consultation Regulation Impact Statement on the Recommendations of the 2018 Review of the Model Work Health and Safety Laws, Comcare noted that:

consideration should be given to introducing one or more new categories of notifiable incident to reflect the changing nature of work, e.g. slower-onset conditions and incidents arising from psychosocial factors. This has clear links to Recommendation 2 (regulations dealing with psychological health) and recommendation 3 (new industries, hazards and working arrangements) of the Review Report.<sup>412</sup>

302. We will continue to examine the impact of the steps put in place by General Campbell to ensure notifiable incidents are reported to Comcare. We are also interested in the work being undertaken by Safe Work Australia and Australian jurisdictions to improve the operation of the model work health and safety laws for people who experience work-related psychological injuries, and to improve the notification provisions so they capture all relevant incidents, including deaths by suicide where there is a workplace nexus. We will continue to monitor this reform process.

### 3.6.9 Measuring the progress of cultural reform

303. To understand the occurrence of unacceptable behaviour in Defence today, and whether the cultural reform agenda has been successful, we asked Defence for information about reports of unacceptable behaviour in Navy, Army and the Air Force from 1 January 2011 to present. Defence's response includes the quantitative data set out in Table 3.4.

**Table 3.4 Number of unacceptable behaviour reports by Navy, Army and Air Force 2011–21<sup>413</sup>**

Calendar Year	Navy	Army	Air Force
2011	205	152	22
2012	185	160	35
2013	172	266	38
2014	171	266	39
2015	174	250	189
2016	293	212	343
2017	258	223	345
2018	404	247	339
2019	365	223	412
2020	464	238	357
2021	453	197	361
<b>Total</b>	<b>3,144</b>	<b>2,434</b>	<b>2,480</b>

304. We have requested more detailed information about these complaints of unacceptable behaviour, which we will analyse for potential systemic issues and contributing risk factors of suicide, suicidality, and physical and mental wellbeing.
305. While the number of unacceptable behaviour reports is reason for concern, these reports are only indicative of the extent of unacceptable behaviour in Defence. There are many reasons why service members may not report this behaviour, and we note that General Campbell accepts ‘there will be a large portion of unreported [unacceptable] behaviour’ in the ADF.<sup>414</sup>
306. Before we can determine the nature and extent of unacceptable behaviour in the ADF, and make any potential recommendations for reform, we need to ensure we have data that accurately captures the incidence of unacceptable behaviour. On the challenge of collecting reliable data about unacceptable behaviour in the ADF, Professor MacKenzie told us that she ‘can’t imagine how you could solve a problem that you don’t understand the nature of’.<sup>415</sup>

307. We asked Defence how cultural change is evaluated within the ADF, including identifying any evaluation frameworks, methodologies, strategies, data collected and/or analysed, or other material used by Defence for the purposes of its evaluation. Defence has provided a range of material, from reports dating back to 2000 to draft evaluation frameworks currently under development, including:
- surveys of unacceptable behaviour<sup>416</sup>
  - organisational culture surveys<sup>417</sup>
  - reports on the development of frameworks for evaluating culture in Defence<sup>418</sup>
  - workplace dashboards.<sup>419</sup>
308. Our initial analysis of this information indicates Defence has made multiple attempts to measure effectively unacceptable behaviour and attitudes. Each attempt to improve the measurement of unacceptable behaviour and attitudes in Defence appears to have disrupted the continuity of data and reporting, further reducing the capability of Defence to compare and evaluate changes in values, attitudes and behaviour over time.
309. For example, in 2018 Defence changed how it measured unacceptable behaviour, and the 'Unacceptable Behaviour Survey' became the 'Workplace Behaviour Survey'. In a report on the results of the survey, Defence explained the comparability of the 2018 results to those from previous surveys, as follows:
- From 2013 to 2017, the Unacceptable Behaviour Survey measured unacceptable behaviour experiences by asking respondents to indicate if they had experienced different types of unacceptable behaviours based on a policy or legal definition which was presented to them. In contrast, the 2018 Workplace Behaviours Survey has adopted a more sophisticated behavioural-based measure that names specific behaviours, for example 'Spread gossip or rumours about you' and 'Made sexual comments or 'jokes' that made you uncomfortable'.<sup>420</sup>
310. We continue to consider whether the new Workplace Behaviour Survey helps Defence gain a better understanding of the prevalence and impact of unacceptable behaviour, attitudes to the prevention and response to unacceptable behaviour, and perceptions of formal complaint management and supervisors dealing with incidents.
311. We also recognise each service uses its own tools and methods to measure cultural reform and unacceptable behaviour. For example, since 2010, the Navy has used the Organisational Culture Inventory and Organisational Effectiveness Inventory. It appears to us that an advantage of the inventories is that scores are comparable with an historical average, or the median scores of over 1,000 other organisations.<sup>421</sup> This provides a baseline to evaluate culture. We continue to examine these evaluative mechanisms in an ADF context.

312. We also heard evidence about the role played by the Australian Human Rights Commission in measuring and evaluating the ADF's progress of cultural reform. A 2017 report about the Australian Human Rights Commission's collaboration with Defence for cultural reform described the collaboration as aiming to 'transform our armed forces into a more diverse, inclusive and capable working environment'.<sup>422</sup>
313. Established in 2014, this is, Commissioner Jenkins told us, 'the only collaboration between a national human rights institution and a military force across the world'.<sup>423</sup> Commissioner Jenkins said that the Australian Human Rights Commission's work in the collaboration falls into four categories:
- 'cultural temperature checks', which involves 'going into particular workplaces to investigate progress on the cultural reform and the objectives' and against previous recommendations made by the Australian Human Rights Commission<sup>424</sup>
  - 'individual investigation into particular individual workforces', often with a focus on 'quite specific or unique workforces'<sup>425</sup>
  - 'enterprise-wide projects' into issues such as unacceptable behaviour and First Nations inclusivity across the organisation<sup>426</sup>
  - 'observation papers and policy advice' about broad areas that come to the attention of the Australian Human Rights Commission.<sup>427</sup>
314. Commissioner Jenkins provided us with a high-level summary of what the Australian Human Rights Commission sees as some of the most pressing cultural reform issues or systemic issues within Defence:
- we have identified opportunities or systemic concerns about attraction and retention and promotion of the diversity of women or more diverse workers. We've identified unacceptable behaviours, again, especially directed towards women, LGBTIQ community, CALD [culturally and linguistically diverse] workers, Aboriginal and Torres Strait Islander workers and also concerns or questions about the reporting culture, although we've observed, in the time that we have been working with Defence, improvement, more confidence in the reporting systems. We've identified opportunities or concerns about flexibility and lifestyle or work-life balance which is a particular challenge given the nature of the work, the deployment cycles and those sorts of things. And we've also identified challenges around data collection and taking a one Defence approach.<sup>428</sup>
315. Additionally, Defence told us it is 'developing a Pathway to Change Monitoring and Evaluation Dashboard (Dashboard) that provides a retrospective analysis of Pathway to Change since 2013'.<sup>429</sup> Defence provided us with a copy of the draft Dashboard as at March 2022, which is expected to be launched in the second half of 2022.<sup>430</sup>
316. As at 7 March 2022, Defence had engaged in 'early thinking' about its next steps following the conclusion of *Pathway to Change 2017–2022*, including how the findings of this Royal Commission will inform any future strategies.<sup>431</sup> We will continue to monitor Defence's actions on this issue.

317. It appears that Defence is trying to understand and measure its culture and unacceptable behaviour. But there appears to be no unified method of measurement across Defence, and no consistent framework to evaluate change within Defence.<sup>432</sup> We will investigate further whether Defence is using best practice methods to measure and evaluate cultural change. We will also continue to investigate to what extent cultural reforms have become embedded among service members.

### 3.6.10 Accountability for reform

318. During Hearing Block 3, in March 2022, we heard evidence from Ms Greig, who said Defence's enterprise level Accountability Framework, which responds to recommendations pre-dating Pathway to Change 2012, has not yet been finalised. At the time of her oral testimony, Ms Greig said she expected it would be finalised soon.<sup>433</sup> We are concerned about the time taken as Defence still does not have a published performance framework.<sup>434</sup>

319. We also heard from the then service Chiefs about matters of accountability for cultural change:

- Vice Admiral Noonan called 'Plan Pelorus' his articulation of the plan for the Navy. Under this document, the Deputy Chief of Navy is responsible to the Chief of Navy for the governance of the Navy. It is an evolving document, which is reviewed and updated as things change within Defence.<sup>435</sup>
- Lieutenant General Burr told us that '[l]eaders are accountable for the culture in their organisation and that is reflected through the reporting process'.<sup>436</sup> According to Lieutenant General Burr, there are a number of ways to assess culture, including the PULSE surveys, which provide 'an assessment of the climate from the bottom up'. He also spoke about how information from the PULSE surveys are used to assess a leader's potential for promotion.<sup>437</sup>
- Air Marshal Hupfeld told us that the Air Force has a detailed accountability framework, which includes the delegation of accountability and authority as a matrix. A commander of a unit is accountable for the performance of their unit, including the unit's culture. Air Marshal Hupfeld said that surveys are only one means of measuring culture, as the Air Force engages with their people at all levels to hold officers accountable for their performance.<sup>438</sup>

320. We note the results of the 2020 Australian Defence Force Academy Workplace Behaviour Survey, which indicated that the incidence of unacceptable behaviour was the highest among the seven training establishments surveyed since 2018. The survey results indicate that in 2018, 32% of serving members at the Australian Defence Force Academy experienced unacceptable behaviour; in 2019 it was 54%; and in 2020 it was 61%. General Campbell and Ms Greig each told us the results were concerning.<sup>439</sup> Ms Greig said she wrote to the Commandant of the Australian Defence Force Academy about these results. She believed the Commandant reviewed the data to understand what is being done and what more can be done to reduce unacceptable behaviour.<sup>440</sup> According to General Campbell:

ADFA is an extremely important initiating point for service in the Defence Force. So we want it to be reflective of the best of standards. And I acknowledge some of the origins of our efforts emerge from the Australian Defence Force Academy or an incident occurred there.<sup>441</sup>

321. We note General Campbell's concerns about unacceptable behaviour at the Australian Defence Force Academy and his comment that 'we do not wish to be back there again'.<sup>442</sup> We will be examining progress with cultural reform at the Australian Defence Force Academy in greater depth.

322. We are interested in whether Defence's concerns about unacceptable behaviour, and its efforts to improve its understanding about these issues, are accompanied by meaningful on-the-ground action. Is Defence driving change, as opposed to simply asking the Commandant of the Australian Defence Force Academy to review the survey data? As we put it to Ms Greig, we are unconvinced that the data Defence collects on unacceptable behaviour is being followed through to enact behavioural change. Ms Greig acknowledged that there is room to improve Defence's feedback loops and holding those responsible to account.<sup>443</sup>

323. In relation to the Pathway to Change Monitoring and Evaluation Dashboard which Defence is developing, Commissioner Brown asked Ms Greig whether there is an accountability measure that looks at deaths by suicide of serving and ex-serving members. Ms Greig indicated a willingness to include deaths by suicide in the dashboard.<sup>444</sup>

324. We put to Vice Admiral Noonan the results of the September 2020 workplace behaviours survey for the Navy, which showed that violent behaviours were more likely to be experienced by: participants with under three years of experience; and by female participants. Sexual assault was more likely to be reported by participants with 3–5 years of experience, and the survey results made no distinction between male and female.<sup>445</sup> When asked why the trend in unacceptable behaviour seemed not to have improved, Vice Admiral Noonan said 'I am concerned and I don't dispute the figures'.<sup>446</sup>

325. Vice Admiral Noonan said that he was 'not satisfied' with the rates of unacceptable behaviour in the Navy:

Any incident of sexual misconduct or unacceptable behaviour means that we've got work to do. And I'm very proud of what we've achieved since the NGN [New Generation Navy] program was initiated in 2009, but it will be an ongoing program. It will continue to iterate. We will continue to learn and we will continue to modify, and we will continue to do everything we possibly can to ensure the safety, the respect, the inclusivity of our people at all levels.<sup>447</sup>

326. In considering the possibility that there may be cultural barriers to serving members seeking help and support, Lieutenant General Burr said:

I think culturally we are absolutely trying to put in place across the Army, throughout the Army, an environment where people can comfortably put their hand up, seek assistance and not be disadvantaged as a result of reaching out for help. Are there real or perceived barriers or impediments to that? You have to think that in some places that would be the case. We are trying to promote through positive examples of people doing that and being supported through that process, that – that increased awareness of others doing it promotes more people to do it and, hence, remove those impediments. So it is one of confidence and safety and without detriment is what we are trying to promote. As an Army culture, local climate and local environment those are the things we always need to continue to work on.<sup>448</sup>

327. We asked Air Marshal Hupfeld whether the prevailing attitude towards deaths by suicide was ‘we don’t know about it, or we don’t want to know about it, or it’s not us’ and we asked ‘whether now is the time that we need to change that’ attitude.<sup>449</sup> Air Marshal Hupfeld said there is more they can all do to improve their mentality. He said:

we are continuing to ask a lot of our people. We need to be able to care for them in order to do that. And for what reasons they decide to complete suicide, I would like to know the answer to it and whatever we can do to help is really vital.<sup>450</sup>

328. The comments from the then service Chiefs recognise that there is more work to be done to embed cultural reform across the ADF, including creating a safe and supportive culture where service members feel empowered to come forward and ask for the help they need, and changing Defence attitudes towards deaths by suicide. We are yet to understand whether this translates into greater responsibility and accountability in Defence to mitigate the risk of deaths by suicide of both serving and ex-serving members.

### 3.6.11 Concerns and next steps

329. We will continue to inquire into the link between ADF culture and abuse, and suicide and suicidality, with a focus on:

- leadership accountability
- how Defence’s senior leadership has communicated messages about cultural change down through the ranks
- building a greater understanding about the nature and extent of unacceptable behaviour and abuse in the ADF today
- whether the culture has changed in terms of the way members behave and how they treat each other, particularly in relation to mitigating the risk of harm and potential deaths by suicide
- what further actions Defence is taking to ensure current and past allegations of sexual crimes are investigated and prosecuted
- the management of reports of unacceptable behaviour

- unacceptable behaviour at the Australian Defence Force Academy
  - the work health and safety reforms for people who experience work-related psychological injuries, and improvements to the incident notification provisions under the Work Health and Safety Act.
330. We remain concerned that the ADF and others appear to have limited ability or willingness to investigate and prosecute allegations of historical cases of abuse in Defence identified by the Defence Abuse Response Taskforce. There appears to be a gap in responsibility within Defence and external oversight mechanisms to follow up referrals made by the Taskforce to state and territory police about allegations of serious abuse. We are concerned by Defence's apparent lack of ongoing interest and accountability to act in relation to these past allegations of criminal conduct.
331. We are interested in the Sexual Offence Response Team, and will continue to monitor its planned expansion to Joint Military Police Units in Melbourne, Sydney, Brisbane and Adelaide, providing coverage across all states and territories.
332. We will continue to consider whether there should be a reporting mechanism outside of the chain of command about unacceptable behaviour, in line with Recommendation 5.2 of the Boss report.
333. Before we deliver our final report, we hope to see evidence of a changed attitude in Defence. This should include Defence accepting greater responsibility for understanding the contributing risk factors for suicidality and deaths by suicide, and greater accountability for action to mitigate the risk of suicidality and deaths by suicide of both serving and ex-serving ADF members.

## 3.7 Transition from the ADF

### 3.7.1 Transition is a critical period in veterans' lives

334. The majority of veterans – defined here as serving and ex-serving members of the Australian Defence Force (ADF) – go on to lead productive, fulfilling civilian lives after leaving the service. Despite this, many veterans find the process of leaving the ADF and reintegrating into civilian society – a process known as transition – to be a significant and challenging life event. Transition can also be a difficult and disrupting time for veterans' families.
335. The cascade of changes that occur during transition can increase suicide risk. But the transition period is also an opportunity for protective factors to be put in place and strengthened.
336. Between 5,500 and 6,500 members transition out of full-time ADF service each year.<sup>451</sup> Many are relatively young – they are typically aged in their 20s.<sup>452</sup> The median length of service for transitioning members is eight years or fewer.<sup>453</sup> But shorter lengths of service are common, with nearly 40% of those leaving having served for five years or fewer.<sup>454</sup>

## Transition can be disorienting

337. People leave the military for a range of different reasons. Many have positive motivations for leaving, such as a new civilian career opportunity, retirement or a desire to try something different once they have completed their period of service.
338. For others – especially those who are required to leave because of illness, injury or disciplinary action – transition can be profoundly difficult. Just over a quarter of transitioning veterans are medically discharged. This proportion has risen over recent years – from under 10% in 2007 to 19.2% in 2019–20 and 27.2% in 2020–21.<sup>455</sup>
339. Regardless of the reason for leaving, transition from the ADF entails much more than ending one job and starting a new one. It involves forgoing positive factors associated with military service – a strong sense of purpose, identity, camaraderie, financial compensation, secure housing – and making one’s way in the world without these things, and without the structure and discipline that military life provides.
340. We are only in the early stages of our examination of the issues associated with transition. We have, however, already heard from a range of academics, experts and the ADF about the challenges that veterans face during the transition period and about the links between transition and suicide. For example, Dr Kieran McCarthy, a general practitioner and veteran himself, who specialises in treating veterans, testified that:
- simplistically, a lot of issues around veteran suicide is the transition piece. It is literally the coming out of a world which is completely different to the normal civilian life ... you leave the military but the military never leaves you, and that’s a lot of the struggles.<sup>456</sup>
341. We have received many submissions from veterans telling us how difficult they found it to find a place in the civilian world. Some examples are extracted in Box 3.5.

### Box 3.5 Veterans' views on the challenges of transition

My job was my everything, and to lose that made me feel like I was going to lose myself, and that life was no longer worth living. This challenge is still ongoing. The thought of death now doesn't scare me – since separating I often think that my life is complete after my military career – no other jobs are going to compare to what I experienced in the Army, especially since now that I have health issues.<sup>457</sup>

Transitioning out of the defence force was the loneliest time of my life. Suddenly, all your mates aren't your mates anymore. All of the relationships you have built disintegrate and you are left all on your own trying to navigate life outside of defence.<sup>458</sup>

In the Military, Kapooka (in my case), they break you, then remake you! That works, it works, to help you survive, to work in a team, to do your job and get thru any situation you may find yourself in, while your in the Military but what they don't teach you is how to leave that life, leave behind that functioning skill set that is reserved for War. They don't tell you how to let go and commence living in what is our communities and Society's reality back home, it becomes a foreign wasteland of confusion and individual hopelessness and sadness, one that you seek any comfort from, but for some of us the idea of death is more tempting than struggling alone with no direction or structure that was once our basic instinct and support.<sup>459</sup>

342. For veterans' families, transition can also be a time of stress, with tension in relationships and changing family dynamics. Families may need more support as they navigate this uncertain period – and separately from the support provided to the transitioning member.<sup>460</sup>

### Transition is a period of psychological transformation

343. A National Mental Health Commission report recognised that a key component of making a successful transition is undergoing a psychological transformation from being a warrior to becoming a civilian.<sup>461</sup> But this psychological transformation can be very challenging, as it is characterised by extensive and multiple losses – loss of purpose, loss of identity, and loss of culture and community.

#### *Purpose*

344. Serving in the military gives members a strong sense of purpose, and the satisfaction that comes from contributing to something greater than themselves. This purpose is often sorely missed by veterans during and after their transition.

345. Some struggle to regain a sense of purpose, and feel greatly diminished as a result. During Hearing Block 3, Mr Geoff Evans of Disaster Relief Australia testified that:

you will not move on to a successful transition unless you have a purpose in your life. Remember, we derive so much of who we are from what we do, and when you are in the military, these things are really intensified and when you leave it and you lose it, people just – they lose their entire sense of self ... some people get so wrapped up in their military identity, that when they leave they only see shadows of what they used to be.<sup>462</sup>

346. Loss of purpose can make it harder for veterans to find the motivation to participate in civilian activities, such as work or study, which in turn makes transition more difficult.<sup>463</sup>

### ***Identity***

347. When veterans are serving, their roles and ranks in the military are so intrinsic to their sense of self that it becomes a key component of their identity.<sup>464</sup> The loss of this identity at transition can be troubling.

348. In her *Preliminary Interim Report* (the Boss report), the interim National Commissioner for Defence and Veteran Suicide Prevention, Dr Bernadette Boss CSC, found that because a collective identity and ‘service before self’ are so strongly embedded in ADF culture, transitioning members do not always have a strong individual identity to fall back on.<sup>465</sup> Instead, they need to construct a new identity:

After leaving it was necessary to construct a new identity within which I could perceive myself in the world, separate from rank and uniform. This was more difficult than I thought, even though I was considered less ‘military’ than others in the ADF. I am still continuing this process four years on and only now feel I am 80% of the way there. I am not surprised that the more regimentally-inclined people struggle to self-validate outside of the ADF’s society (which is a separate society from Australia).<sup>466</sup>

349. One submission that we received told us that ‘loss of self-worth when leaving defence’ was one of the major reasons for suicide among his veteran peers.<sup>467</sup> Another said:

When you join the Army you are aware it isn’t just a 9-5 job. After years and years of hard work, dedication and sacrifice the uniform becomes part of your identity. When I was admitted to a health centre ... I remember telling my psychologist ‘the Army is my life’.<sup>468</sup>

350. Even those who served for only a short period of time have a distinctive perspective on life that significantly influences how they live after they have transitioned from the ADF.<sup>469</sup>

### ***Culture and community***

351. Many veterans told the Royal Commission about the profound challenges associated with losing the culture and community they had had with their ADF mates and peers. For example, one submission said that ADF members:

are used to having superiors that we can talk to, to get us through the tougher times and peers that are around our ages, experiencing the same things we are, that we know we can turn to for help.<sup>470</sup>

352. According to another submission:

A real difficulty with the process of transition is that a member is often removed from his last unit locality and thus deprived of the support from his fellow soldiers and mates.<sup>471</sup>

353. Veterans also struggle to overcome the significant differences between military and civilian cultures in their understanding of how the world works, and for whom it works. Associate Professor Ben Wadham, from Flinders University, and Associate Professor James Connor, from UNSW Canberra, both sociologists, described these differences to us:

Military organization is hierarchical, not egalitarian, and is oriented to the group rather than the individual; it stresses discipline and obedience, not freedom of expression; it depends on confidence and trust, not caveat emptor; it requires immediate decision and direct action, not thorough analysis and extensive debate; it relies on training, simplification and predictable behaviour, not education, sophistication and empiricism.<sup>472</sup>

354. According to service organisation The Oasis Townsville, these cultural differences lead some veterans to liken the experience of transitioning to migrating to a new land where their language, history, system of leadership and achievements are not recognised.<sup>473</sup>

### Transition brings practical challenges

355. Compounding the psychological losses of transition are the large number of practical tasks that veterans and their families must complete during or around the time of transition.

356. For most veterans, the first and most important task is to obtain civilian employment. A submission that we received from the Industry Advisory Committee on Veterans' Employment emphasised:

A successful transition from the defence forces into meaningful employment, and the ongoing connection to the workforce, not only provides financial stability to veterans but most importantly, particularly in the context of your current inquiry, the mental health and ongoing well being of veterans and their families.<sup>474</sup>

357. Obtaining civilian employment typically requires ex-serving members to do many things of which they may have very little – or no – experience, such as preparing résumés, applying for jobs and attending job interviews. Veterans can also find it challenging to communicate their aptitudes and achievements to potential employers.<sup>475</sup> Some ADF members are unsure how the skills and training they acquired during service are relevant to employment in the civilian workforce, and unsure whether or not they are understood or valued by civilian employers.<sup>476</sup>

358. In addition to finding employment, for most veterans transition also includes relocation, often to where they lived before joining the ADF or to their partner's home town.<sup>477</sup> With this comes the need to find new housing, community networks, health care providers and potentially also schools or early education providers.

359. A further challenge is for ex-serving members to take responsibility for a range of practical and administrative issues that the ADF handles on behalf of serving members. One submission said:

I observed from day one of my enlistment that the Army and the other Services are very paternalistic. Members are looked after with medical and dental issues, they are given housing and could be described as living in a cosy cocoon. Moving to the real world can be traumatic.<sup>478</sup>

360. One issue of particular concern to us is members being discharged from the ADF very quickly – before they have had time to make plans for their future lives, submit DVA claims, or have those claims determined. In some cases, this can leave transitioning members without a home or financial support. For example, Mr Danny Liversidge gave lived experience evidence as follows:

I do remember when the time came to exit the base for the last time. I lived on base, so it wasn't just my career I was losing, but also my home. I was told to pack at short notice and get ready to leave that day. ...

...

The Air Force provided no support for my transition out. I was not given any pay outs or a place to stay. I was just given the pay that was owed to me for that week, plus the contribution I had made into the retirement program at the time (which I think was about \$600). I left with a total of about \$1,500.

So began my search for somewhere to stay that night. I had very few friends outside of the Air Force, and only one number to call. Back then there weren't mobile phones, or internet for email, so I looked for a phone booth and tried calling over a period of hours to contact them.

With no answer, I experienced for the first time what homelessness felt like, and I slept in my car. I was in my car for two nights.

I was overwhelmed. I felt embarrassed, humiliated and ashamed, and a sense of worthlessness. I also felt suicidal.<sup>479</sup>

361. Discharging members from the ADF without the time and support necessary to plan for the essentials of life, such as income and housing, is unacceptable.

362. We heard that transition timeframes are now much longer than those experienced by Mr Liversidge in 1990. During Hearing Block 3, Major General Wade Stothart AM DSC CSC, the former Director-General of the Joint Transition Authority, told us that transition timeframes typically include a period of three to four months between the decision to discharge an ADF member and the date of the discharge:

For a medical transition, we have in place a standard operating procedure of about 120 days from notice of transition ...

...

For a voluntary transition, you would normally expect around three months, 90 days, for that transition period.<sup>480</sup>

363. While these timeframes might give veterans a reasonable opportunity to organise many aspects of their lives, there is a risk that some or many DVA claims lodged during this 90- to 120-day timeframe will not be processed before the veteran is discharged. For example, in May 2022, the median time taken to determine MRCA initial liability claims was 329 days.<sup>481</sup> Chapter 5 of this report considers issues regarding claims processing, and makes recommendations to reduce the claims backlog and improve the claims system.

### **Transitioning members may be at higher risk of suicide**

364. Transitioning members often have characteristics that make them more susceptible to suicidality and suicide. Young men, in particular, are more at risk of suicide than others in the general population.<sup>482</sup> Approximately 40% of those who transition are men aged 30 years or under.<sup>483</sup> Another cohort who face increased risk are veterans who struggle to find civilian employment, as unemployment is a known risk factor for suicide.<sup>484</sup>
365. ADF members who transition for medical reasons are also at greater risk of poor mental health and suicide.<sup>485</sup> This can be due to a variety of factors, including vulnerability due to the medical condition itself, stigma experienced because of the illness or injury, lack of control over the transition process, or challenges in arranging and accessing continuing care for their health issues.<sup>486</sup>
366. Changes brought about by the transition process can lead to the development or exacerbation of existing mental and physical health problems, leading to issues ranging from employment difficulties and relationship conflict, to mental health and substance abuse problems.<sup>487</sup>
367. These issues can be even more acute for veterans who are medically discharged:
- If a member has been medically discharged the adjustment to be made can be enormous. Members are accustomed to being high-achievers, and this is very much expected by Defence. Defence has also taught them repeatedly during initial training to push through pain/difficulties whilst on duty. Members with ongoing physical limitations often feel ashamed and worthless. They can also feel betrayed by the ADF's lack of reciprocity after all their years of going above-and-beyond the call.<sup>488</sup>
368. Mr Evans testified that these factors can combine to create a downward spiral:
- as people left the military, there was ... a turning point. They came out and they started to turn down and then, you know, despondency and loss of sense and self and purpose started to manifest as mental illness, then they started drinking and things started to build.<sup>489</sup>
369. For all of these reasons, it is essential that every veteran is well prepared for transition, and supported when the time comes.

### 3.7.2 For many years, transition preparation and support services were inadequate

#### A meagre entitlement-based scheme was in place for decades

370. Defence advised us that, until recently, serving members of the ADF were ill-prepared for transition. Transition supports were inaccessible to most, and inadequate at best. ADF members could only access the Career Transition Assistance Scheme (CTAS) – the primary ADF transition support program – if they had served for 12 years or more.<sup>490</sup> But, as noted above, most do not serve for that long.
371. Despite limited eligibility, only a small proportion of eligible members participated in the CTAS program, with under 10% of those eligible for most components of CTAS accessing those activities.<sup>491</sup>
372. Key shortcomings of the transition preparation and support system were noted numerous times in inquiries spanning the decade from 2009 to 2019. The shortcomings of the transition preparation and support system were noted in inquiries conducted by Professor David Dunt, the National Mental Health Commission, and the Productivity Commission.<sup>492</sup> All three of these inquiries raised concerns about the:
- length and complexity of transition processes
  - transition processes being focused on administrative tasks, rather than on individual needs or future plans
  - absence of support for ADF members at higher risk of poor outcomes, including those who served for less than a year and those aged 18 to 24 years
  - failure to properly prepare members for the social, cultural and psychological challenges of transition
  - absence of support for families.
373. Other inquiries that have considered this issue include ones conducted by the Australian National Audit Office, the Senate Foreign Affairs, Defence and Trade References Committee and the Joint Standing Committee on Foreign Affairs, Defence and Trade.<sup>493</sup> Parliamentary privilege has presented a barrier to the Royal Commission making full use of, or fully reviewing, these reports, so we merely mention their existence and draw no inferences from them. In Chapter 6, we consider further the ways in which parliamentary privilege has impeded our work.
374. Defence acknowledged the shortcomings listed above, telling us:
- Prior to 2017, ADF transition was an entitlements model, based on length of service, and there was little support for those members who were transitioning and had served less than 12 years. It was also limited in its ability to support at-risk cohorts and ADF families. Additionally, support was centred on the transition date, there was little consideration of preparing a member throughout their military career for transition and no post transition support.<sup>494</sup>

375. These shortcomings caused far-reaching, and sometimes significant, harm to veterans, who were left unprepared and alone to navigate the challenges of transition.

### **The harms caused by poor transition can be long-lasting**

376. Veterans told us how their poor transition experiences affected, and continue to affect, them. Ms Yvonne Sillett, who faced a difficult involuntary transition in 1989 due to her sexuality, said:

My transition out of the ADF was the most difficult time of my life, I joined at 18, I was now 28, I had no education or direction on how to live life as a 'civilian' I had no idea about Medicare, dental, housing ... this certainly made it so much more difficult for me than it already was, than it had to be!

There was no support for me, no follow up on my mental health and absolutely no interest what so ever from the Army after my discharge.<sup>495</sup>

377. In one submission, we heard that:

Once a soldier or ex-soldier has gone over the edge and crashes onto the rocks they come with in the orbit of DVA and other health officials. By this time the soldier is usually out of work, possibly penniless, homeless and suffering repeat bouts of mental health crisis and going through the revolving door of State based health systems. The soldier has lost his reason for being, his peer support group, his career, financial stability, possibly his family and self-worth. By this time the damage is done and if they can recover it is a very long and costly road to travel. No soldier should be released from the Army unless they are deemed fit and or a financial and medical support structure is put in place before they discharge.<sup>496</sup>

378. Another submission told us that poor communication about discharge from the ADF directly led to a suicide attempt:

When it comes down to it the reason I attempted suicide and others do is that defence didn't properly deal with me as a serving sailor and subsequent discharge, I should have received a medical discharge but at the time how was I supposed to know this was even an option for me? It was never raised to me ... That alone is disgraceful ...

It still makes me angry and very dissatisfied in the way I was discharged from the Royal Australian Navy.<sup>497</sup>

379. The long-term effects of poor transition, and the potential for difficult transition experiences to lead to suicidality and suicide, highlight the importance of ensuring that veterans receive transition preparation and support.

## **3.7.3 Improvements to transition preparation and support are promising**

### **More transition services for more veterans**

380. Since 2017, the ADF and the Department of Defence have adopted a range of new policies for the transition preparation and support system. Key elements include introducing different streams of needs-based support, strengthening the focus on employment and career development, increasing support for families during transition, and contacting veterans after they have transitioned.<sup>498</sup>

381. Many of these new services and supports are offered under the banner of the Defence Force Transition Program. The criteria governing eligibility for many elements of the Defence Force Transition Program have changed at various points since those elements commenced, sometimes more than once.<sup>499</sup> The broad structure is set out in Box 3.6.

### **Box 3.6 Defence Force Transition Program<sup>500</sup>**

According to the Department of Defence, the Defence Force Transition Program comprises general programs accessible to all transitioning members, and targeted programs for those at higher risk.

#### ***General programs***

- **Transition coaching.** All transitioning members are assigned an ADF transition coach, who works with members to set post-transition goals based on their unique skills, interests and aspirations and develop plans to meet those goals.
- **Job Search Preparation workshops.** All ADF members and their partners can attend job search preparation workshops at any time while serving, and for up to 24 months after discharge.
- **Career Transition Training.** Up to \$5,320 funding is available for training and education to achieve post-transition employment or meaningful engagement.
- **Financial Advice.** Up to \$1,000 is provided for professional financial advice to help ADF members and their families to plan for their financial security.
- **Post-transition follow-up phone call and survey.** Defence maintains contact with recently transitioned members for 24 months post-transition. A transition coach contacts all members approximately one month after discharge. This gives former members an opportunity to access further support if there have been changes to their transition goals or post-transition circumstances.
- **ADF Member and Family Transition Seminars.** A national program of oneday seminars, offered in person and remotely, is available at any time in a member's career. Family participation is encouraged.
- **Approved Absence.** Defence provides ADF members up to 23 days of approved leave to participate in approved transition-related activities, such as attending job interviews.

*(continued over)*

### **Targeted programs**

- **Personalised Career and Employment Program (PCEP).** Up to three months of accelerated job search and employment support is provided for younger members who have been involuntarily discharged with less than four years of service.
- **Transition for Employment (T4E).** Medically transitioning ADF members with complex circumstances are supported to secure employment or meaningful engagement.
- **Partner Employment Assistance Program.** This program provides to veterans' partners, including partners of medically transitioning veterans, employment services and support with the costs of professional re-registration.

382. The Productivity Commission found that the new services offered under the Defence Force Transition Program represented a 'significant departure from the entitlement-based logic that underpinned programs that operated until 2018, notably the Career Transition Assistance Scheme'.<sup>501</sup>

### **Joint Transition Authority**

383. On 27 June 2019 the Productivity Commission, by Recommendation 7.1 in its report *A Better Way to Support Veterans*, recommended that the Australian Government create a 'Joint Transition Authority' within Defence. Recommendation 7.1 also recommended that the functions of the Joint Transition Authority include:

- preparing serving members and their families for the transition from military to civilian life
- providing individual support and advice to veterans as they approach transition
- ensuring that transitioning veterans receive services that meet their individual needs, including information about, and access to, Department of Veterans' Affairs' processes and services, and maintaining continuity of rehabilitation supports
- remaining an accessible source of support for 12 months after discharge
- reporting publicly on transition outcomes to drive further improvement.<sup>502</sup>

384. The Joint Transition Authority was established in October 2020. We received testimony from the inaugural and incumbent Directors-General of the Joint Transition Authority, and were encouraged by their more holistic consideration of transition preparedness.

385. The Chief of the Defence Force, General Angus Campbell AO DSC, told us that he views a 'good transition' to be one in which three factors are accommodated:
- a. The first is that the member and their family have emotionally accepted the different way of life that will come with transition from a life centred on military service to a civilian centred life.
  - b. The second is that members and their families know where to go to for support and advice throughout the transition journey, and that they are able to do so when it is needed.
  - c. The third is that the member and their family are administratively ready to conclude service life and commence civilian centred life.<sup>503</sup>
386. When he testified, Major General Stothart identified the same three points.<sup>504</sup>
387. The Joint Transition Authority's annual report on progress described work being undertaken to map the processes that support transition across Defence, and their linkages to DVA and the Commonwealth Superannuation Corporation. The Joint Transition Authority has also developed a single ADF Transition Manual which unifies transition processes across the three Services.<sup>505</sup>

### 3.7.4 The effectiveness of recent changes has not yet been demonstrated

#### The Joint Transition Authority is still not fully operational

388. Despite being established nearly two years ago, the Joint Transition Authority is not fully operational and is not scheduled to reach full operating capability until 31 December 2022.<sup>506</sup> Defence witnesses acknowledged this slow progress, noting that 'there are some things we should have got out quicker than we have'.<sup>507</sup>
389. The Joint Transition Authority's Transition Strategy – which was due to be published in the first quarter of 2022 – is now overdue.<sup>508</sup> The relationships between the Joint Transition Authority and other relevant entities, such as DVA and the Commonwealth Superannuation Corporation, are still being worked through.<sup>509</sup>
390. We are particularly concerned that the Joint Transition Authority has not assumed the role and functions recommended by the Productivity Commission. The Department of Defence told us that:
- There is ongoing scoping and consideration of transition service delivery options for transition services. Noting Service Delivery options remain subject to Government decision, broadly the three Service Delivery options are as follows:
- a. Option 1. JTA as a Governance and Insights mechanism. JTA would set policy, synchronise across the Services and externally, and provide insight, assurance and governance over the transition system.
  - b. Option 2a. JTA assumes partial service delivery of transition functions in addition to the functions identified under option 1. These services would potentially include transition coaching and client communication.

- c. Option 2b. JTA assumes partial service delivery of transition functions in addition to the functions identified under option 1. These services would potentially include those identified under option 2a and extending to include potential services (at a local level) currently undertaken by single Services and/or DVA.
- d. Option 3. JTA assumes full delivery of transition services, which currently extend across Defence and DVA in addition to the functions identified under 2b. Functions could potentially extend to claims processing and rehabilitation for veterans. This is contentious, and would require considerable consultation and resourcing.<sup>510</sup>
391. The extent to which consideration of these options – and the consequent delay in decision-making – may further delay the commencement of the full operational capacity of the Joint Transition Authority is not yet clear.
392. We have also considered whether or not we should make any recommendations on what the Joint Transition Authority’s functions should be. We have concluded that we should not. The Productivity Commission has made its recommendation and since then one of the tasks undertaken by the Joint Transition Authority has been to study the issue closely. We may later review the issue, but it would be premature for us to do so in this interim report.
393. Finally, in respect of the Productivity Commission’s proposal that the Joint Transition Authority should have the functions identified in Recommendation 7.1, we note that the information provided by the Australian Government to the public has not been wholly accurate. In May 2021, in its ‘Update to Government Response to the Productivity Commission Report, *A Better Way to Support Veterans*’, the Government published a table that reported on the then-current status of, and anticipated next steps regarding, certain recommendations that the Productivity Commission had made.<sup>511</sup>
394. In respect of Recommendation 7.1, the table noted:<sup>512</sup>

Recommendation	Status	Next steps
...		
Rec 7.1 – Establish a Joint Transition Authority (JTA)	Implemented – announced measure in Budget 2020-21	Continue to implement the announced budget measure

395. Whatever the intention, this entry was apt to mislead, for the recommendation had not been fully implemented. Although a body with the *name* ‘Joint Transition Authority’ had been established, the more important part of the recommendation – the list of functions – had not be implemented at all. The significance of this will be a matter for further consideration by this Royal Commission.

## Expanded transition services do not appear to be reaching every veteran who needs them

396. Despite the expansion of transition services in recent years, we continued to hear from recently transitioned veterans about very poor transition experiences. One submission we received said that:

I was medically discharged 02 FEB 2022 and basically I am a basket case of Physical and Mental health conditions ... I served my country for over 31 years and now that I am broken I have been tossed to the curve by the ADF and DVA couldn't give a rats arse ...<sup>513</sup>

397. Another submission said:

I was medically discharged from the military due to PTSD (as a result of my time on board [a navy ship]) in Mar 2022.

Since leaving the military I have had little to no support with a severe deterioration in my mental health. ...

I suffer from debilitating mental health conditions as a result of my time in the military and I cant help but feel as though defence have just brushed their hands of me since my discharge. I have little to no support and no where to turn. Defence needs to acknowledge the damage they have caused and make it easier for people post separation to get the treatment required to recover and lead healthy and happy lives.<sup>514</sup>

398. Mates4Mates told us that there:

still appears to be limited understanding of what to expect when discharging from the ADF, the impact of military culture, indoctrination, regimentation, and adherence to cultural norms and values that may affect successful adaptation to civilian life. This is evident in the comments and reports made by ex servicemembers at Mates4Mates who have reported limited to no awareness of how their thinking and behaviours were shaped by their service, and how and why this may be detrimental to their ongoing successful functioning in the civilian world.<sup>515</sup>

399. The disconnect between the improvements to transition that Defence told us about, and the negative experiences we continue to hear about, suggest that more detailed examination is required.

### 3.7.5 Key issues for further examination

400. Given the importance of a successful transition to civilian life for veterans' long-term wellbeing, we will continue to examine transition issues. Key areas of focus will include:

- *Experiences* – contemporary veterans' experiences of transition support, and their views on the scope and quality of the services they receive before, during and after transition. This includes ensuring that transition preparation and support services are sufficiently tailored to veterans' diverse needs, and that veterans have sufficient time to prepare for transition.
- *Attitudes* – serving members' attitudes towards transition, and the way in which the views and actions of peers, immediate superiors and members of the wider Australian community can support or stymie smooth transitions. This includes the ways in which the Australian community recognises veterans for their service.

- *Organisational backing* – the resources that the ADF has committed to transition, including the structure, function and operations of the Joint Transition Authority. Like any resources, these could easily be squandered without committed leadership, and so we will also continue to explore ADF leaders’ understanding of the importance of good transitions for reintegration, recruitment, retention, reputation and the reserves.
- *Best practice* – new measures of veterans’ adjustment during the reintegration process have recently been developed.<sup>516</sup> These will help to inform our consideration of leading practices to support veterans’ transition. We will also look to learn from international experiences, including in Canada, New Zealand, the United Kingdom and United States.
- *Qualifications* – the Boss report recommended that Defence ‘explore initiatives that better support service members to gain civilian skills and qualifications in their intended post-service career path prior to their transition’.<sup>517</sup> Assisting veterans to obtain qualifications, whether through direct instruction or Recognition of Prior Learning, is a complex issue worthy of further consideration, and we will continue to examine how this might best occur.
- *Alignment between transition and claims process* – as noted above, many veterans also submit a claim to DVA, the Commonwealth Superannuation Corporation or both as part of their transition. Most find this process slow, complicated and frustrating, with some arguing that the ADF should not discharge members who have submitted a claim until that claim is processed.<sup>518</sup> We are very conscious of these concerns, and do not see that there is any justification for the ADF to discharge members, particularly on medical grounds, until their DVA claim is determined. In Chapter 5, we make recommendations to reduce the backlog and improve the claims system. To the extent that these initiatives are successful, claims will be processed in a timelier manner and there will be less need to mandate that claims are processed prior to discharge. However, we will keep this option under active consideration, especially if significant improvements to the claims process do not materialise.

401. The Joint Transition Authority is due to evaluate transition support services in 2022.<sup>519</sup> The results of that evaluation will also inform our work.

### 3.8 Beyond this Royal Commission

402. In the *Preliminary Interim Report* from the interim National Commissioner for Defence and Veteran Suicide Prevention (Boss report), Dr Bernadette Boss CSC identified 21 previous reports or inquiries that had been conducted in the 14 years prior to her work. From those, 335 recommendations were made to government. A total of 142 of those recommendations had been accepted in full, 107 had been implemented and 35 recommendations were in the process of being implemented.<sup>520</sup> We have also examined matters which may have been considered before this Royal Commission was formed, to identify other work which aligns with our terms of reference. As a result, we identified over 50 previous inquires or reports of relevance, resulting in more than 750 recommendations being made to government.

403. The topics of suicide among serving and ex-serving Australian Defence Force (ADF) members, and the cultural and administrative matters which could contribute to suicide and suicidality, have been subject to extensive prior inquiry. It is not through a shortage of reviews or inquiries that this Royal Commission was called. It is through a lack of transformative action to address the findings of those prior reviews and inquiries, and to learn from lessons of the past to inform current and future practices.
404. We are aware that enhanced monitoring and evaluation of Defence and DVA initiatives to address suicide and suicidality among serving and ex-serving ADF members has also been the specific subject of prior inquiry recommendations.
405. In 2020, the National Suicide Prevention Adviser recommended that the Australian Government monitor the impacts of suicide prevention initiatives in the general community.<sup>521</sup> Only then can it be determined if the measures are assisting. This logic extends to efforts to address suicide in Defence contexts.
406. There is no mechanism in place to monitor independently and evaluate the implementation of recommendations from each of the previous reports and inquiries relevant to suicide and suicidality in ADF contexts. We have found limited publicly available information on the implementation of recommendations and a lack of published government response to many previous reviews and recommendations. Of the over 50 previous inquiries or reports of relevance, the Government has publicly responded to 22 (or fewer than half) of these inquiries. The available public reporting on implementation can be opaque and may not align with independent assessments.<sup>522</sup>
407. We recognise that the Secretaries of the Department of Defence and DVA, as Accountable Authorities under the *Public Governance, Performance and Accountability Act 2013* (Cth), are responsible for the implementation of government initiatives and in doing this must also put in place suitable arrangements for performance monitoring, measurement and reporting of these through to the Parliament. However, evaluation and reporting does not allow for a proper assessment of effectiveness; accountability and transparency mechanisms lack cohesion and are in no way comprehensive, and the governance and institutional arrangements clearly fall short. Recommendation 3.1 of the Boss report said that:
- The Australian Government should ensure that the implementation of recommendations from former, current or future inquiries associated with veteran suicide are regularly monitored and publicly reported on. Evaluation processes should be used to measure the effectiveness of recommendations that have been implemented and facilitate the process of continuous improvement.<sup>523</sup>
408. We are also aware that the lasting impact of a Royal Commission comes from sustained implementation of the reforms or actions identified in their report by the Commissioners. The work of past Royal Commissions has been impacted by delayed or incomplete implementation as well as a lack of sustained change following the initial implementation of recommendations identified by those Commissioners.<sup>524</sup>

409. Actions to address systemic contributing factors influencing suicide and suicidality in the serving and ex-serving community require lasting change, across a myriad of sectors, service providers and institutions. Because of this, we are not convinced existing institutional arrangements are well placed to oversight implementation of the recommendations we make, those which have come before and the policy changes which need to be made in future.
410. In this regard, the Boss report also expressed concern. Its Recommendation 3.2 said that:
- An independent body should oversee the Australian Government’s monitoring, public reporting and evaluation of the implementation of recommendations associated with veteran suicide outlined in recommendation 3.1.<sup>525</sup>
411. We consider there is a compelling case for an entity with comprehensive oversight, responsibilities and powers to drive lasting reform to contribute to a reduction in the incidence of suicide and suicidality in serving and ex-serving ADF members. Such an entity could have responsibilities for monitoring and reporting progress towards implementation of inquiries and reviews, including this Royal Commission’s interim report and final report. It could also have a range of supporting functions, including systematic data collection and analysis, conducting research, co-design of policy and programs and preparing reports to Parliament.
412. We will analyse other state, federal and international models to identify best practice examples, review why prior efforts to address particular inquiries or reforms have not been optimal, and consider the potential functions, operating model and legislative requirements to establish such an entity.
413. We will explore this matter further in 2023, including public consultation, and release a special report with a preferred model. This will allow for such an entity to be ready to commence in 2024, when this Royal Commission ceases.

### 3.9 Further questions

414. We will consider a range of other topics for the duration of our inquiry, for discussion in future consultation papers and reports. Our final report may include conclusions and recommendations about topics discussed both in this chapter and other chapters of this interim report.
415. We want to be clear that we are already considering, and will continue to consider, a wide range of matters not aired in this report. This is consistent with the terms of reference, which require us to consider systemic issues relating to suicide and suicidality among serving and ex-serving ADF members. We will respond to the terms of reference in full in our final report.
416. As we consider new evidence and information, we expect our thinking to continue to develop. We will continue to consult, and will provide further conclusions and recommendations in a special report (2023) and the final report (June 2024).

## Endnotes

- 1 Commonwealth of Australia, Letters Patent, 8 July 2021, paragraph (za) (i).
- 2 Productivity Commission *A Better Way to Support Veterans*, No. 93, June 2019, Overview and Recommendations, p 45 (Exhibit 01-01.009, Hearing Block 1, INQ.0000.0001.2216); Interim National Commissioner for Defence and Veteran Suicide Prevention, *Preliminary Interim Report*, September 2021, p 24 [58], 106 [3.29], 143 [4.94] (Exhibit 01-01.013, Hearing Block 1, INQ.0000.0001.1584).
- 3 K Hawton and J Pirkis, 'Suicide is a complex problem that requires a range of prevention initiatives and methods of evaluation', *British Journal of Psychiatry*, June 2017, vol 210, 6, pp 381–83 (Exhibit B-01.031, STU.0006.0001.3593).
- 4 Transcript, Jane Pirkis, Hearing Block 4, Canberra, 6 April 2022, pp 26-2375 [47]–26-2377 [21].
- 5 Department of Defence, *Royal Commission into Defence and Veteran Suicide: Introductory Defence Briefing*, August 2021, p 3 (Exhibit 30-03.009, Hearing Block 4, STU.0001.0001.5446).
- 6 Commonwealth of Australia, Letters Patent, paragraphs (b), (a).
- 7 World Health Organization, *Preventing Suicide: A Global Imperative*, 2014, p 60 (Exhibit B-01.024, STU.0006.0001.3675).
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- 524 See, for example: Tom Burton, 'Why royal commissions don't always solve the problem', *Australian Financial Review*, 5 March 2021, viewed 12 July 2022 (Exhibit D-01.029, STU.0006.0001.6176).
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# Part 2

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**Urgent issues**



# 4

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**Veteran compensation and  
rehabilitation legislation**



# 4 Veteran compensation and rehabilitation legislation

## 4.1 Introduction

1. Australia's veteran compensation and rehabilitation legislative system is so complicated that it adversely affects the mental health of some veterans – serving and ex-serving Australian Defence Force (ADF) members – and can be a contributing factor to suicidality. The Australian Government has known for years that the system requires fundamental reform. Yet it has not acted with speed. There is no justification for further delay. The Australian Government should urgently implement legislative reforms to simplify and harmonise the veteran entitlement system.
2. The veteran compensation and rehabilitation legislative system supports veterans by providing for rehabilitation, compensation, pensions and other entitlements. The system, which also includes 'claims processing' to determine which benefits are due to veterans, is mostly administered by the Department of Veterans' Affairs (DVA). The system provides compensation and rehabilitation for injury and disease that are linked to service in the ADF. It also provides supports to veterans' dependants, including when a veteran dies.
3. The system is governed by three main Acts of Parliament – the *Veterans' Entitlements Act 1986* (Cth) (VEA), the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) (DRCA), and the *Military Rehabilitation and Compensation Act 2004* (Cth) (MRCA) – and their various subordinate legislative instruments provide different types of entitlements and support to eligible veterans and their dependants.
4. The current compensation and rehabilitation system is the product of continuous historical legislative reform involving numerous Acts. Reform to the various veteran entitlement Acts over the last century has often been piecemeal. This has resulted in the continuation of various older entitlements alongside new entitlements, thereby building a multi-layered system. Increasing complexity was the by-product but never the purpose of such reform. The resulting complexity is unnecessary. There is no case for maintaining it.
5. We have heard evidence and received submissions that suggest that the system is too complex. Some veterans need to engage an advocate to help lodge their claims and assist and support them while their claims are assessed. It is burdensome and difficult for veterans to navigate and for DVA staff to administer.

6. The three main Acts operate in different ways and the entitlements available to a veteran will depend on many circumstances and factors, including when an injury occurred and the type of service being undertaken at the time of injury. The Acts provide different types of compensation, including pensions, lump sums and periodic compensation payments, health care and rehabilitation. Entitlements are offset when a veteran has entitlements under more than one Act or receives a pension or lump sum under a superannuation scheme. There are also different procedures available when a veteran wants to challenge an adverse decision, depending on what the decision is and under which Act it was made. For example, the Veterans' Review Board can review decisions made under the VEA and MRCA but not under the DRCA.
7. The complexity of the legislation leads to a complicated administrative system and has the potential to result in perceived or actual inconsistency. As discussed in Chapter 5, complexities also contribute to delays in DVA's processing of claims for compensation, rehabilitation and other entitlements. In turn, this adds to the burden placed on veterans engaging with the system. The complexity also contributes to erroneous decisions, which contributes to more delay and more distress for some veterans. It is an urgent matter that needs to be addressed to reduce mental health impacts and suicide risk.
8. Difficulties with the rehabilitation and compensation system have been the subject of numerous previous reviews, many of which have recommended changes to the system.
9. In June 2019, the Productivity Commission delivered to the Australian Government its comprehensive report *A Better Way to Support Veterans* (the Productivity Commission report), which, among other matters, recommended legislative simplification and harmonisation.<sup>1</sup>
10. The Australian Government publicly provided an interim response to the Productivity Commission report in October 2020 and an updated response in May 2021.<sup>2</sup> The Hon Darren Chester MP, Minister for Veterans' Affairs from 5 March 2018 to 2 July 2021, gave evidence that this report was the 'most significant report during my time as Minister'.<sup>3</sup> The Government accepted the need for legislative reform.<sup>4</sup> But it failed to act expeditiously and effectively.
11. On 15 September 2021, the Interim National Commissioner for Defence and Veteran Suicide Prevention, Dr Bernadette Boss CSC, provided to the Government her *Preliminary Interim Report* (Boss report). This report also called for simplification and harmonisation of the system.<sup>5</sup>
12. We acknowledge that simplification and harmonisation of the veteran compensation and rehabilitation system will not be easy. However, the difficulties of reform provide no justification for government inaction or delay.
13. As at mid-May 2022, the Australian Government had not identified any reason to reject the recommendations made by the Productivity Commission in 2019 for simplification and harmonisation of the legislation, and had not identified any better alternatives to achieve those ends. As detailed below, too little has been done, and too slowly.

14. We consider that the failure of the Government of the day to respond meaningfully to the Productivity Commission's recommendations and to simplify and harmonise the legislation amounted to a dereliction of its duty to Australian veterans.
15. There is no perfect or easy solution to the complexity of the veteran's compensation and rehabilitation system, but there is an urgent need to fix it. The Australian Government should urgently make the policy decisions needed to simplify and harmonise the framework for veterans' compensation, rehabilitation and other entitlements.
16. Having made the policy decisions, the Government must urgently prepare the necessary legislation to present to Parliament and, if it is passed, proceed expeditiously to its implementation. This is necessary to prevent further harmful impacts on veterans from unnecessarily complex and inconsistent legislation. The Government must adequately resource DVA and other relevant agencies to design, implement and administer the improved system.
17. To date, we have focused on, and received evidence about, some of the more prominent of the Productivity Commission's recommendations related to simplification and harmonisation of the veteran compensation and rehabilitation system. As discussed below, in general we endorse these recommendations. However, the Productivity Commission report recommendations related to legislative change must be considered in full. In this chapter, we recommend that the Government simplify and harmonise the current legislative framework. We recommend that the Government accept or reject key legislative reform recommendations made by the Productivity Commission. If the Government rejects some or all of these recommendations, it should, without delay, adopt alternatives that will achieve similar or better levels of harmonisation and simplification of the veteran compensation and rehabilitation legislative system.

## 4.2 The legislative framework

### 4.2.1 Overview

18. The most significant statutes for veteran compensation, rehabilitation and other entitlements are the VEA, DRCA and MRCA. Together, their official reprints contain over 2,000 pages of legislation. Sitting under these Acts are more than 850 legislative instruments that provide additional rules. In some cases, because of legislative provisions that provide continuity when legislation is repealed and replaced, other Acts and provisions may apply even though they have been repealed.<sup>6</sup>
19. In research commissioned by us, legal academic Mr Peter Sutherland said that the VEA and DRCA are the culmination of 'two distinct paths' of legislative development, although some intertwining of them occurred from 1972 until 1994. The MRCA was the result of an attempt 'to create a single military compensation scheme'.<sup>7</sup> The VEA is 'conceptually different' from the MRCA and DRCA.<sup>8</sup>

20. The VEA is the culmination of long series of military compensation Acts known as Repatriation Acts. These had been passed since 1920 and provided ‘veterans’ entitlements for ADF members who had active service overseas’.<sup>9</sup> The VEA consolidated and replaced them ‘on a no policy change basis’.<sup>10</sup> It provides benefits specifically to veterans and their partners, widows, widowers and children. It also conferred and established new entitlements.<sup>11</sup> It applies with respect to veterans who served after the end of World War I and before 1 July 2004.<sup>12</sup>
21. The DRCA provides a civilian-style scheme that provides ‘Defence Force members with access to “military specific” compensation and rehabilitation’ for ‘injury, disease, death, loss or damage that relates to certain employment in the Defence Force’.<sup>13</sup> It is a Defence-specific version of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (SRCA), which is a workers’ compensation scheme for Commonwealth public servants and some others. The DRCA applies to service before 1 July 2004.<sup>14</sup> The DRCA commenced in October 2017 but has retrospective application to those employed by the ADF between 1 December 1988 and 30 June 2004.<sup>15</sup> (Before October 2017, the SRCA operated where the DRCA now operates.) As a result of transitional provisions in the DRCA, the DRCA also covers veterans with certain service types for service between 3 January 1949 and 30 June 2004.<sup>16</sup>
22. The MRCA ‘was intended to create a single military compensation scheme for injuries sustained in both active service and peacetime service on and after 1 July 2004’.<sup>17</sup> When the Military Compensation and Rehabilitation Bill was introduced into Parliament in 2003, its purpose was said to be to ‘create a new military specific compensation scheme to meet the special circumstances of service in today’s Australian Defence Force’.<sup>18</sup> It was modelled on the SRCA, and provides compensation through economic and non-economic loss payments.<sup>19</sup> However, it is more reflective of the VEA in terms of eligibility criteria and operation.
23. For most entitlements established by the three Acts, a veteran’s first formal step towards obtaining the relevant entitlement is to lodge a claim with DVA. The veteran must satisfy the delegate that they are eligible to receive compensation under the particular scheme according to the heads of liability and eligibility criteria.<sup>20</sup> This is commonly called an ‘initial liability’ determination and there are differences between the Acts.
24. In some matters, commonly called ‘non-liability’ matters, DVA will pay for a veteran’s treatment without the veteran having to prove that the relevant injury or disease was caused by their service. For example:
  - an eligible veteran may receive free treatment for any mental health condition without having to prove that the condition is linked to their service.<sup>21</sup>
  - a payment may be available to veterans who make a claim for mental injury or disease under the DRCA or MRCA and who are unable to work for more than eight hours per week.<sup>22</sup>

25. For claims under the VEA, initial liability determinations are made by the Repatriation Commission or a delegate.<sup>23</sup> Initial liability decisions under the DRCA and MRCA are made by the Military Rehabilitation and Compensation Commission or a delegate.<sup>24</sup> In practice, decisions under the VEA, DRCA and MRCA are delegated to DVA staff.<sup>25</sup> These delegates are typically either public servants employed under the *Public Service Act 1999* (Cth) or contractors.<sup>26</sup>
26. A significant part of the system established by the VEA and MRCA is the 'Statements of Principles' (SoPs), which are legislative instruments. All claims under the VEA and MRCA must be assessed by reference to an applicable SoP.<sup>27</sup> The SoPs do not apply to the system established by the DRCA.
27. SoPs are made under the VEA by the Repatriation Medical Authority, an independent statutory authority, and apply to claims made under the MRCA and VEA.<sup>28</sup> Hundreds of SoPs are registered in the Federal Register of Legislation and recorded on the Repatriation Medical Authority's website.<sup>29</sup>
28. Each SoP applies to a particular type of injury, type of disease, or cause of death, and contains a list of factors that the Repatriation Medical Authority has determined to be causative of the condition in question. Some factors are multi-faceted. The SoPs contain rules that reflect these recognised factors and must be satisfied before DVA can accept that an injury was caused by military service and can therefore accept initial liability under the VEA or MRCA.<sup>30</sup> If a veteran can establish that one of a condition's causative factors applied to their ADF service, and that they have the condition, the delegate will accept that their ADF service caused the condition.
29. For each injury or disease, there are two SoPs that contain different criteria. This is because there are two different standards of proof that a veteran may need to satisfy, depending on the circumstances of their service when the injury or disease was caused. These are:
  - the reasonable hypothesis standard – DVA must accept a claim (or part thereof) unless satisfied beyond reasonable doubt that it should be rejected, and DVA is required to be satisfied beyond reasonable doubt unless there is a reasonable hypothesis in support of the claim (which in turn usually is to be decided by applying the relevant SoP)<sup>31</sup>
  - the balance of probabilities standard – DVA must have 'reasonable satisfaction' of the claim (or part thereof), which is to be based on whether or not the claim (or part thereof) is established on the balance of probabilities.<sup>32</sup>
30. We set out below a summary of the different service types that will result in the application of either the reasonable hypothesis standard or the balance of probabilities standard.

31. If a veteran cannot establish that one of the factors in a SoP applied to their ADF service, then the delegate will not accept that the veteran's service caused their condition – apart from some limited exceptions.<sup>33</sup> Where a veteran cannot align themselves with at least one of the factors listed in an existing SoP, they can seek to have the SoP amended or a new SoP determined.<sup>34</sup>
32. For injuries, disease or death claims determined under the VEA there is an extensive list of service types that are relevant to determining whether or not a claim will be accepted and, if accepted, the level of compensation, including:
- 'eligible war service' – continuous full-time service during WWI or WWII and any 'operational service'<sup>35</sup>
  - 'operational service' – service outside Australia during World War I or World War II, certain service within Australia in World War II and various post-World War II operational areas or any 'warlike' or 'non-warlike' service<sup>36</sup>
    - 'warlike service' – service specified by the Defence Minister in writing as being warlike service and including, for example, service in Operation Slipper in particular locations and times<sup>37</sup>
    - 'non-warlike service' – service specified by the Defence Minister in writing as being non-warlike service and including, for example, Operation Vigilance<sup>38</sup>
  - 'peacekeeping service' – service with a Peacekeeping Force outside of Australia as defined in Schedule 3 of the VEA<sup>39</sup>
  - 'defence service' – for the most part referring to continuous full-time service for three or more years between 7 April 1972 and 7 April 1994 during peacetime<sup>40</sup>
  - 'hazardous service' – service specified by the Defence Minister in writing as being 'hazardous service'<sup>41</sup>
  - 'British nuclear test defence service' – service by members in particular areas during specific dates throughout the 1950s and 1960s<sup>42</sup>
  - 'qualifying service' – service in which the veteran must have incurred danger from the enemy during a 'period of hostilities' or has had warlike service or has met the criteria of one of a few other categories.<sup>43</sup> Different service types under the VEA may also be 'qualifying service', and although this type of service may not determine the outcome of any injury claim, if a person has 'qualifying service' this provides access to certain entitlements such as a service pension and a Veteran Gold Card at 70 years of age in most circumstances.<sup>44</sup>

33. For injuries, disease or death claims determined under the MRCA, the list of service types relevant to assessing claims and determining levels of compensation include:
- ‘warlike service’ – service with the Defence Force in particular operations during particular periods and in particular areas, as determined by the Defence Minister.<sup>45</sup> This includes, but is not limited to, Operation Enduring Freedom in Afghanistan between 7 October 2001 and 31 December 2014, Operation Slipper in particular areas between 11 October 2001 and 31 December 2014, and Operation Palate II in Afghanistan between 27 June 2005 and 10 March 2017<sup>46</sup>
  - ‘non-warlike service’ – service with the Defence Force in particular operations during particular periods and in particular areas, as determined by the Defence Minister.<sup>47</sup> This includes, but is not limited to, Operation Vigilance from 1 July 2006, Operation Joint Guardian in Albania, Serbia, Montenegro and the Former Yugoslav Republic of Macedonia between 11 June 1999 and 12 December 2011, and Operation Citadel in East Timor and the territorial sea of East Timor between 18 August 2003 and 26 June 2008<sup>48</sup>
  - ‘peacetime service’ – any service in the ADF, including in Reserves, other than warlike or non-warlike service.<sup>49</sup>
34. For the purposes of this chapter, we have grouped the service types into two categories. We note that the service types are complex, and that the two categories below capture most, but not all, kinds of service:
- operational service – meaning warlike and non-warlike service under the MRCA and operational service (including warlike and non-warlike) service types under the VEA
  - peacetime service – meaning peacetime service under the MRCA and most defence service under the VEA.
35. For operational service, the reasonable hypothesis standard and accompanying SoPs are used to determine whether a claim is accepted. For peacetime service, the reasonable satisfaction/balance of probabilities standard and accompanying SoPs are used.
36. Table 4.1 provides a high-level summary of veteran access to compensation and rehabilitation entitlements under each of the three main Acts. The table is as prescribed in the legislation and does not consider the practical administration of the Acts.

**Table 4.1 A summary of veteran compensation and rehabilitation eligibility and liability under the three main Acts**

VEA	DRCA	MRCA
<b>Purpose</b>		
<p>The VEA was implemented to simplify and unify the previous varying veterans and repatriation laws.<sup>50</sup></p>	<p>The DRCA was implemented to provide for a complete separation of the legislative framework for defence-related claims from the Comcare Scheme under the SRCA and to provide the Minister for Veterans' Affairs with the responsibility for all three of the separate compensation Acts that cover ADF members.<sup>51</sup></p>	<p>The MRCA was implemented to meet the needs of the 'special circumstances' of contemporary service, including an increased focus on rehabilitation for veterans who have had their capacity to work impacted.<sup>52</sup></p>
<b>Coverage</b>		
<p>Covers veteran injury, disease or death linked to operational or other qualifying service, including warlike or non-warlike service, undertaken between World War I and 30 June 2004.<sup>53</sup></p> <p>Covers certain peacetime service between 7 December 1972 and 30 June 2004.<sup>54</sup></p>	<p>Covers veteran injury, disease or death linked to operational service, including warlike and non-warlike service, generally between 7 April 1994 and 30 June 2004. It also covers veteran peacetime service between 3 January 1949 and 30 June 2004.<sup>55</sup></p> <p>Covers veteran injury, ailment, or loss or damage to property linked to ADF service between 1 December 1988 and 1 July 2004.<sup>56</sup></p> <p>Covers injuries suffered by an ADF member as an unintended consequence of medical treatment paid for by the Australian Government and provided on or after 1 December 1998 if the injury is not covered by the MRCA.<sup>57</sup></p>	<p>Covers veteran injury, disease or death on or after 1 July 2004.<sup>58</sup></p>
<b>Authority</b>		
<p>Repatriation Commission<sup>59</sup></p>	<p>Military Rehabilitation and Compensation Commission<sup>60</sup></p>	<p>Military Rehabilitation and Compensation Commission<sup>61</sup></p>

VEA	DRCA	MRCA
<b>Available benefits and entitlements</b>		
<p>Compensation for veterans in the form of pensions.<sup>62</sup> Most pensions and compensation payments under the VEA are paid for life.<sup>63</sup></p> <p>Other benefits and entitlements that may be available to veterans and their dependants include service pensions, income support supplements, clean energy payments, medical treatments and travel to access those payments, and education entry payments.<sup>64</sup></p> <p>Veterans may also be entitled to health care cards, such as a seniors' health care card or a Veteran White Card or Gold Card.<sup>65</sup></p>	<p>Benefits and entitlements to veterans and their dependants including incapacity payments, permanent impairment (lump sum), compensation payments, rehabilitation and help to return to work, and household and attendant care services.<sup>66</sup></p> <p>Veterans may also be entitled to health care cards, such as a Veteran White Card, or otherwise may be entitled to have medical and treatment expenses paid for, including travel to access treatment.<sup>67</sup></p>	<p>Financial compensation for veterans and their dependants.<sup>68</sup></p> <p>Non-financial benefits and entitlements that may be available include rehabilitation programs for veterans, employment support for ex-serving members, child care assistance, counselling and household services for veterans, their dependants or the dependants of a deceased member.<sup>69</sup></p> <p>Veterans may also be entitled to health care cards, such as a Veteran White Card or Gold Card and treatment, including travel to access treatment, may be covered for injuries and diseases.<sup>70</sup></p> <p>The Military Rehabilitation and Compensation Commission is also empowered to provide other forms of assistance or benefits.<sup>71</sup></p>
<b>Veteran Payment</b>		
<p>The Repatriation Commission may make provision for a payment for a person who has made a claim under particular sections of the MRCA or DRCA where a determination about the claim has not yet been reached by Military Rehabilitation and Compensation Commission.<sup>72</sup></p>	<p>Yes – for those who have made a claim under section 54 of the DRCA for mental injury, mental ailment, mental disorder, mental defect or mental morbid condition and are unable to work for more than eight hours per week. The entitlement is provided under the VEA.<sup>73</sup></p>	<p>Yes – for those who have made a claim under section 319 of the MRCA for mental injury, mental ailment, mental disorder, mental defect or mental morbid and are unable to work for more than eight hours per week. The entitlement is provided under the VEA.<sup>74</sup></p>
<b>Initial liability applicable?</b>		
<p>Yes – in most cases, noting that non-liability health care is available in some circumstances.<sup>75</sup></p>	<p>Yes – in most cases, noting that non-liability health care is available in some circumstances.</p>	<p>Yes – in most cases, noting that non-liability health care is available in some circumstances.</p>

VEA	DRCA	MRCA
<b>Standard of proof for determining liability for warlike or non-warlike service</b>		
<p>If a claim relates to operational service (including warlike or non-warlike service), the Repatriation Commission must determine the injury, disease or death was caused by service unless it is satisfied 'beyond reasonable doubt' that there is no sufficient ground for making that determination.<sup>76</sup></p> <p>For a claim to be linked to operational service, the Repatriation Commission must be satisfied that there is a 'reasonable hypothesis' connecting the injury, disease or death to the veteran's service.<sup>77</sup></p>	<p>Liability under the DRCA follows the same evidentiary and legal standards of civilian workers' compensation and common law.</p> <p>All claims are assessed on the 'balance of probabilities' (the civil law standard of proof), which requires the decision-maker to be satisfied that is more likely than not that the condition is related to the veteran's service.<sup>78</sup></p> <p>Claims are assessed on a condition-by-condition basis, rather than following the SoPs.<sup>79</sup></p>	<p>If a claim relates to warlike or non-warlike service, the Military Rehabilitation and Compensation Commission must determine that the injury, disease or death is service related unless it is satisfied 'beyond reasonable doubt' that there is no sufficient ground for making that determination.<sup>80</sup></p> <p>For a claim to be linked to warlike or non-warlike service, the Military Rehabilitation and Compensation Commission must be satisfied that there is a 'reasonable hypothesis' connecting the injury, disease or death to the veteran's service.<sup>81</sup></p> <p>A hypothesis will only be reasonable if it complies with a SoP or if a determination is made by the Military Rehabilitation and Compensation Commission pursuant to section 340(2) of the MRCA.<sup>82</sup></p>
<b>Standard of proof for determining liability – other eligible service</b>		
<p>For a claim to be linked to eligible service other than operational service, the Repatriation Commission must be reasonably satisfied of the link to service and there must be a SoP or determination that upholds the link on the 'balance of probabilities'.<sup>83</sup></p>	<p>Liability under the DRCA follows the same evidentiary and legal standards of civilian workers' compensation and common law.</p> <p>All claims are assessed on the 'balance of probabilities' (the civil law standard of proof), which requires the decision-maker to be satisfied that is more likely than not that the condition is related to the veteran's service.<sup>84</sup></p> <p>Claims are assessed on a condition-by-condition basis, rather than following the SoPs.<sup>85</sup></p>	<p>For a claim to be linked to service that has not been declared warlike or non-warlike the Military Rehabilitation and Compensation Commission must be reasonably satisfied of the link to service and, if there is a SoP in place for the injury, disease or death, then a factor of the SoP must be satisfied or a determination made that upholds the link on the 'balance of probabilities'.<sup>86</sup></p>

VEA	DRCA	MRCA
<b>Exclusions</b>		
<p>There are some exclusions that may apply. For example, if an injury, disease or death is caused by a veteran's serious default or wilful act, or arose from a serious breach of discipline, then the veteran or their dependants may not be entitled to compensation or other entitlements.<sup>87</sup></p> <p>Further specific exclusions are set out in sections 8 and 9 of the VEA.</p>	<p>Some exclusions may apply based on the conduct of the employee. For example, an employee will be excluded if an injury was sustained because the employee voluntarily and unreasonably submitted to an abnormal risk of injury.<sup>88</sup></p> <p>Some further exclusions include diseases, injuries or aggravations suffered as a result of 'reasonable administrative action' taken in a reasonable manner.<sup>89</sup> In relation to coverage for aggregation of a disease, an exclusion includes where an employee has made wilful and false representations about suffering from that disease.<sup>90</sup></p>	<p>If an injury, disease or death is determined to be service-related, the Military Rehabilitation and Compensation Commission must accept liability unless it determines to its 'reasonable satisfaction' that an exclusion applies. The categories of exclusion are:</p> <ul style="list-style-type: none"> <li>(a) serious defaults or wilful acts etc.;</li> <li>(b) reasonable counselling about a person's performance as a member;</li> <li>(c) false representations;</li> <li>(d) travel during peacetime service; and</li> <li>(e) the use of tobacco products.<sup>91</sup></li> </ul>
<b>SOPs applicable?</b>		
<p>Yes – in most cases.<sup>92</sup> For claims made on or after 1 June 1994, there cannot be a 'reasonable hypothesis' of connection to service unless the injury, disease or death satisfies a SoP in force or unless a determination is made by the Repatriation Commission.<sup>93</sup></p> <p>The exception to this rule is if there is no SoP in place for the kind of injury, disease or death, and the Repatriation Commission has declared that it does not propose to make a SoP.<sup>94</sup></p>	<p>No.<sup>95</sup> The DRCA does not provide for the making of instruments such as the SoPs made for the purposes of the VEA and MRCA.</p>	<p>Yes.<sup>96</sup></p>

## 4.2.2 Legislative issues

37. It is clear to us that the current veterans' compensation and rehabilitation legislative framework is too complex and difficult to navigate. Rightfully, the system addresses a myriad of individual veteran circumstances and diverse support needs. But it is underpinned by an unnecessarily complicated legislative framework that includes multi-Act eligibility and overlapping entitlements. It is clear from our consideration of the evidence and information that the Australian Government must harmonise and simplify the legislation to improve its accessibility and effectiveness. This is also clear from previous reports and inquiries.

### Complexity

#### *Piecemeal legislative reform*

38. The veteran compensation and rehabilitation legislative framework has increased in complexity over time. As piecemeal legislative changes have been made over the last century, existing entitlements have been retained and enhanced even as new ones have been added. In research commissioned by us, Mr Sutherland said:
- The complexity arises from the manner in which compensation schemes emerged from, and were affected by, the various deployments of the ADF overseas, and from the overall legislative approach that this is beneficial legislation in which no veteran should be worse off because of amendment to the legislation or reform of any element of the various schemes. Many reviews have commented on the legislative complexity over the years, but each of the developments discussed in this paper has compounded the problem.<sup>97</sup>
39. In *Smith v Repatriation Commission*, the Full Court of the Federal Court dealt with an appeal concerning the VEA.<sup>98</sup> In his Honour's judgment, Rares J said:
- The conditions specified in each of ss 23 and 24 are bedevilled with bewildering complexity. Regrettably the fog of the drafting style of this, like many Commonwealth Acts, has created a nearly impenetrable shroud over the meaning that the Court is expected to attribute to the intention of the Parliament. The cost to the community of this obscurity must be enormous. Two days of hearing by this Court were largely devoted to an attempt to make sense of key entitlements provided in the Act to persons who have been injured in war conditions in service of this nation.<sup>99</sup>
40. Ms Natasha Cole, First Assistant Secretary for the Client Benefits Division of DVA, gave evidence during Hearing Block 3 as part of a panel of departmental officials who were questioned about matters arising under the legislative system. Ms Cole agreed with Counsel Assisting's suggestion that the legislative system was complicated and that there is a complicated process to determine claims.<sup>100</sup> No one on the panel disagreed.<sup>101</sup>

### ***Interaction between the three main Acts***

41. DVA suggested that much of the complexity comes from interactions between the three main Acts:

While the MRCA itself has elements within it which could be further simplified and refined, DVA considers that it is not, by itself, overly complex. Complexities within the system arise more from the interaction between the Acts rather than their operation individually. This is an issue which is amplified for veterans with service and injuries that spans multiple periods of eligibility and with varying rules governing the provision of compensation between the different Acts.<sup>102</sup>

42. The Boss report found, based on discussions with people with lived experience and experts, that processes that are designed to support the veteran often cause further harm and exacerbate mental illness.<sup>103</sup> During Hearing Block 4, Ms Teresa Pyne gave lived experience evidence that:

The multiple pieces of legislation for individuals to work through when making a claim, the VEA, the MRCA, the SRCA and Comcare, this makes the claims process complicated and frustrating for claimants and advocates ...<sup>104</sup>

43. The complex legislative wording and framework also contribute to administrative service delivery issues, some of which we address in Chapter 5. During Hearing Block 5, in Townsville in June 2022, the Hon Andrew Gee MP, Minister for Veterans' Affairs from 2 July 2021 to 23 May 2022, agreed that legislative issues related to complexity of the three-Act process is a driver of claims delays and error, and can contribute to adverse outcomes for veterans, including suicidality.<sup>105</sup>

44. Due to the complexity of the system, advocates are often used to assist veterans to lodge applications and support veterans while their claims are assessed. During Hearing Block 5, Mr Chester – who, as noted, was Minister for Veterans' Affairs from 5 March 2018 to 2 July 2021 – told us:

The fact that we needed a system of advocates to help a veteran make a legitimate claim was something that always concerned me as a minister ... there are advocates ... helping them to navigate a system which I think there is general agreement is too complex.<sup>106</sup>

45. We have no doubt that legislative reform is needed to address the significant complexities within, and caused by, the various Acts and instruments that provide veteran compensation and rehabilitation in Australia.

### ***Different compensation for similar conditions***

46. Further complications arise in the application of the veterans' compensation legislation due to the overlap between the three main Acts, coupled with certain varying thresholds and standards to be applied under the Acts. In its submission to the Productivity Commission in 2018, Legal Aid NSW stated that 'there are significant inconsistencies between the three statutes and eligibility for compensation is governed by different rules under each of the three statutes'.<sup>107</sup> Legal Aid NSW's submission to us in 2022 said:

It is our strong view that the legislative regime for determining veterans' entitlements should be simplified to assist veterans to understand their entitlements, to enable a consistent approach to assessing cases and to foster fairness. Each person's individual position should be assessed on its own merits rather than treated differently because of random factors beyond the person's control, such as the year(s) in which the person served.<sup>108</sup>

47. Similar conditions can be treated differently due to different eligibility criteria and different onuses and standards of proof within the three Acts. By way of example, under both the MRCA and VEA for claims for injury, disease or death incurred during operational service, the Military Rehabilitation and Compensation Commission or Repatriation Commission respectively must make a determination that an injury is in fact a service injury (or service disease or service death, as the case may be) unless satisfied 'beyond reasonable doubt' that there are not sufficient grounds for making that determination.<sup>109</sup> The relevant Commission must be satisfied beyond a reasonable doubt that the material does not raise a reasonable hypothesis connecting the injury, disease or death to the service before it can reject a claim related to Operational service.<sup>110</sup> Conversely, the standard of proof required for injuries or diseases arising from peacetime service is reasonable satisfaction – that is, on the balance of probabilities.<sup>111</sup> The result is that veterans with the same injury, but with different service types, are treated differently.
48. In contrast to this, the onus and standard of proof provided by the DRCA is the same for all injuries. The onus is on the claimant to meet the statutory criteria and to do so to the 'reasonable satisfaction' of the decision-maker – that is, to be determined on the 'balance of probabilities'.<sup>112</sup>

### ***Multi-Act eligibility***

49. A veteran can have eligibility under more than one Act. The application of different onuses and standards of proof, and the way that the various Acts have been amended over time, results in complexity and a lack of standardisation.
50. For example, if a veteran enlisted after 22 May 1986 but before 7 April 1994, and that veteran has completed three years continuous fulltime service, they will be eligible to receive compensation for their peacetime service under the VEA as well as the SRCA (now DRCA).<sup>113</sup>
51. However, if a veteran in the same situation did not complete three years continuous fulltime service before 7 April 1994, they would be covered for their peacetime service only under the DRCA.<sup>114</sup>

52. Conversely, if the same veteran was medically discharged before the completion of three years continuous fulltime service, then they may be eligible to receive compensation for their peacetime service as if they had completed the three years – that is, receive compensation under the DRCA or VEA.<sup>115</sup>
53. Similarly, if a person enlisted on 7 April 1994, and was injured during operational service on 8 April 2002, then they may be eligible to receive compensation for that injury under the DRCA or VEA.<sup>116</sup> However, injuries from peacetime service would be covered by DRCA only.<sup>117</sup>
54. Further complexity arises if the operational service injury referred to in the example above is aggravated as a result of service after 1 July 2004 (when the MRCA commenced). Depending on the circumstances, the veteran may be eligible to receive treatments or compensation for the aggravation under the MRCA.<sup>118</sup>
55. This is not straightforward, particularly if the veteran has had the original injury accepted under the VEA in, for example, 2003. In such a case, if the aggravation of the accepted injury was claimed for before 1 July 2013, then the individual may have a choice about whether to continue to receive compensation under the VEA or to claim for the aggravation under the MRCA.<sup>119</sup> However, the legislation was amended in 2013, so that if the aggravation claim for a VEA accepted injury was made after 1 July 2013, the aggravation would need to be considered solely under the VEA.<sup>120</sup>
56. Ms Nikki Noakes, Chief Executive Officer of Veterans Centre Australia, told us that:
- one individual can have a condition that is covered under the three different Acts. So for some veterans, they may receive a decision for the same condition up to three times. That means three sets of documents, three different outcomes, three different forms back and forth between the GPs or the specialists, and that in itself becomes confusing.<sup>121</sup>
57. Over the years the Acts have each undergone various reforms, some of which have mitigated the circumstances of multi-Act entitlement and some of which have continued to complicate the overlapping entitlements. For example, the DRCA contains provisions that generally exclude an individual from receiving compensation under the DRCA where that person will otherwise receive compensation under the VEA.<sup>122</sup> However, the DRCA, as partly illustrated above, still allows for multi-Act entitlement in certain circumstances, including if:
- a veteran rendered operational service after 7 April 1994 and receives a pension under Part II for the VEA (which includes pensions for a disease or injury that was war-caused),<sup>123</sup> or
  - a veteran receives a pension under Part IV of the VEA (which may apply to members of Peacekeeping Forces, or members who served for particular periods such as a member who served on continuous full-time service after 6 December 1972 for at least three years).<sup>124</sup>

58. The commencement of the MRCA and subsequent transitional legislation has partially mitigated instances of multi-Act entitlement for similar benefits under the Acts. For example, if a person is eligible for an attendant allowance under the VEA and MRCA, then the person will only be entitled under the MRCA provision and this is the case for other specific entitlements including travel expenses.<sup>125</sup> However, there are circumstances that are not covered by such exclusions, and for which all three Acts may potentially apply to a veteran.

### ***Compensation and offsetting***

59. Where dual eligibility exists (meaning that an individual is eligible under two Acts to claim for an incapacity arising from a single injury or disease or death) and claims are successfully made under both the VEA and the DRCA, the legislation requires offsetting of compensation to ensure veterans are not compensated twice for the same matter.<sup>126</sup> The veteran is entitled to the compensation due under the more generous scheme, but not more. Under the VEA, if a veteran has received compensation under section 24, 25 or 27 of the DRCA for an injury or disease in respect of which section 23, 24 or 25 of the VEA applies, the amount of compensation is converted and the rate at which the pension or the loss of earning allowance is payable is reduced.<sup>127</sup> This can lead to administrative errors in compensation estimates and payments to veterans and their dependants, which can have significant financial impact.<sup>128</sup> We discuss this further in 'Overpayment risk'.
60. As submitted by Legal Aid NSW in 2022, offsets 'affect what type of monetary support a veteran may receive, between a pension or lump sum compensation or a mix of both. The offset process is complex and not well understood, and it is very often difficult to have DVA explain the calculations used to derive those offsets'.<sup>129</sup> The above explanation illustrates the complexity that currently exists within the framework, and the challenges that can arise when attempting to determine which Act applies.
61. Superannuation invalidity pensions also operate alongside the system, creating additional complexity.<sup>130</sup> If an individual receives Australian Government-funded superannuation as a result of their retirement as well as incapacity payments, the incapacity payments will be reduced by the amount of superannuation received.<sup>131</sup> The MRCA and DRCA both contain provisions regarding the recovery of overpayment to individuals receiving a superannuation benefit.<sup>132</sup> This offsetting only applies for Australian Government-funded superannuation, and does not apply to private contributions to superannuation.<sup>133</sup>
62. Mr Richard Spencer and Mr Robert Fitzgerald AM, the Commissioners of the Productivity Commission who conducted the inquiry that led to, and then prepared, the Productivity Commission report, gave evidence during Hearing Block 1. Mr Spencer said:

The level of compensation and the various payments are quite generous compared to – and beneficial, compared to comparable jurisdictions. And that was said to us by many of the ESOs, that that is not the issue for them, it's more about the complexity of how you get there. It is also about some of the inequities of how the system operates for different veterans.<sup>134</sup>

63. While it is not possible to standardise all legislative provisions within an Act, it is clear to us that reform that harmonises and simplifies the legislative system will have the benefit of reducing or removing the complexities of multi-Act eligibility and offsetting, and allow veterans quicker and easier access to the benefits and support to which they are entitled.

### **Overpayment risk**

64. The complexities canvassed above increase the risk that veterans will be overpaid or underpaid. If a veteran is overpaid, the Acts provide mechanisms for recovery of such overpayment. For example, both the MRCA and DRCA allow for compensation to be recovered from a veteran, including by way of a court proceeding, where:
- compensation has been paid as a result of a false and misleading statement, or as a result of a failure or omission to comply with a provision of the MRCA or DRCA, as the case may be
  - the veteran has received compensation they were not entitled to receive, and/or
  - the veteran is liable to pay an amount under another provision of the MRCA or DRCA.<sup>135</sup>
65. There are similar powers granted under the VEA, and overpayments can be recovered by way of a court proceeding or deductions from a veteran's pension.<sup>136</sup>

### **Suicide risk**

66. The complex legislative framework also leads to complex administrative claims processing and contributes to claim processing delays. Complexity and delays contribute to some veterans' stress, mental ill-health and suicidality.
67. During Hearing Block 1, Mr Fitzgerald said:
- The purpose we were looking for is, does it enhance the lifetime wellbeing of serving and non-serving veterans and their families, having regard to a minimisation of risk of harm and injury, and it is a focus that should be about the overall wellbeing.<sup>137</sup>
68. According to Mr Fitzgerald, a 'good quality' workers' compensation scheme and systems:
- is about the early return to work where that is appropriate, it is about early intervention in providing support services, it is about adequacy in terms of compensation payments and long-term financial arrangements, but ultimately it is about ensuring that the person's wellbeing is enhanced as a consequence of the scheme ...<sup>138</sup>
69. In our view, the veteran compensation and rehabilitation system should aim to do no harm to veterans, and instead provide medical and rehabilitation services that reduce injury and disease, compensate for harm incurred and encourage a full life, including a return to work whenever possible.

70. During Hearing Block 3, we heard from Ms Kate Pope PSM who is the head of DVA's Veteran and Family Policy Group, the Deputy President of the Repatriation Commission and a member of the Military Rehabilitation and Compensation Commission. Ms Pope agreed that an effect of these complexities can be that some veterans feel overwhelmed by the task of seeking entitlements.<sup>139</sup> Ms Pope's evidence on this point is relevant both to the issue of legislative complexity and to the issue of claims processing complexity (see Chapter 5). She said that 'it's probably true that DVA would have the view that for some people it is an overwhelming process'.<sup>140</sup> Ms Pope agreed with Counsel Assisting's proposition that another direct or indirect effect that can arise from that overwhelming process is stress for some veterans, including, for some, feelings of depression or deteriorating mental health.<sup>141</sup> Ms Pope also agreed with Counsel Assisting's proposition that in some cases, these issues can extend so far as to be contributing factors to suicidality.<sup>142</sup>
71. During Hearing Block 4, we heard from Ms Elizabeth Cosson AM CSC who is the Secretary of DVA, the President of the Repatriation Commission and the Chair of the Military Rehabilitation and Compensation Commission. Ms Cosson acknowledged:
- There are a range of ideas around reducing complexity and that could be through harmonisation of legislation or reducing the complexity around our administration. All of those activities could go to reducing risks of suicide.<sup>143</sup>
72. The Australian Government should simplify and harmonise the veteran compensation and entitlement legislative system to minimise the risk of mental harm caused to veterans when accessing the system. The development of a framework that focuses on the lifetime wellbeing of veterans and encourages wellness, recovery and rehabilitation rather than sickness and invalidity is necessary and will be discussed in further detail in our final report.

### 4.3 Recent inquiries

73. A number of recent reviews have considered the compensation and rehabilitation system for veterans.
74. Between 2009 and 2011, DVA conducted a *Review of Military Compensation Arrangements*. Among other things, this review concluded that:
- the system for reviewing decisions made under MRCA should be reformed by replacing the 'two review pathways' system with 'a single review pathway that includes internal reconsideration, the Veterans' Review Board and the Administrative Appeals Tribunal, with active case management at all stages'<sup>144</sup>
  - use of the SoPs should be continued because their application does not involve decision-makers' exercising discretionary powers when deciding whether to accept or decline claims<sup>145</sup>

- the Military Rehabilitation and Compensation Commission should frequently review the MRCA to ensure it remains appropriate<sup>146</sup>
- a shortened claim form should be considered for those who have service only after 1 July 2004<sup>147</sup>
- key performance indicators should be used to drive reductions in the times taken to determine claims.<sup>148</sup>

75. On 15 August 2017, a report of the Senate's Foreign Affairs, Defence and Trade References Committee, titled *The Constant Battle: Suicide by Veterans*, was tabled in Parliament. For reasons of parliamentary privilege (see Chapter 6), we make no comment about this report's content, nor seek to draw any inference from it. According to the Productivity Commission report, the Committee 'found the legislative framework for the veterans' compensation system to be complex and difficult to navigate' and 'was concerned that inconsistent treatment of claims for compensation and lengthy delays in the processing of claims were key stressors for veterans and their families'.<sup>149</sup>
76. In October 2017, the Australian Government published a document titled 'Australian Government Response to the Foreign Affairs, Defence and Trade Committee Report: *The Constant Battle: Suicide by Veterans*' (Government Response to *The Constant Battle*). According to the Government Response to *The Constant Battle*, the Senate Committee made recommendations that:
- 'the Australian Government commission an independent study into the mental health impacts of compensation claim assessment processes on veterans engaging with the Department of Veterans' Affairs and the Commonwealth Superannuation Corporation' and use '[t]he results of this research ... to improve compensation claim processes' (Recommendation 2)<sup>150</sup>
  - 'the Australian Government make a reference to the Productivity Commission to simplify the legislative framework of compensation and rehabilitation for service members and veterans ... this review [to] examine the utilisation of Statements of Principle in the determination of compensation claims' (Recommendation 6).<sup>151</sup>
77. The Government response to each of these points was 'Agreed'.<sup>152</sup> In response to what the Government said was Recommendation 2, in May 2018 DVA commissioned Phoenix Australia to 'conduct a literature review and desktop study on a range of public and DVA material regarding the mental health impacts of compensation claims assessment processes on claimants and their families'.<sup>153</sup> This review provided an evidentiary base for the subsequent 'Independent study into the mental health impacts of compensation claim assessment processes on veterans' (the Collie Report), which reported on a study that was undertaken by Professor Alex Collie in 2019.<sup>154</sup> In response to what the Government said was Recommendation 6 of *The Constant Battle*, a reference was made to the Productivity Commission which, as discussed below, in June 2019 issued the Productivity Commission report.<sup>155</sup>

78. The Government's document stated that '[s]uicide prevention is a very high priority for the Australian Government' and that '[w]ork will continue on reducing the backlog of claims and simplifying the claims process'.<sup>156</sup>
79. In 2017, following the death of Australian veteran, Mr Jesse Bird, who died by suicide on 27 June 2017, the then Minister for Veterans' Affairs, the Hon Dan Tehan MP, asked DVA, the Department of Defence and the Veterans and Veterans Families Counselling Service (now Open Arms) to undertake a 'Joint Inquiry' into the circumstances of Mr Bird's death. The Joint Inquiry made 19 recommendations, which the Government accepted.<sup>157</sup>
80. In 2018, Mr Chester, the then Minister for Veterans' Affairs, commissioned Emeritus Professor Robyn Creyke AO 'to undertake an independent review of the implementation of the nineteen recommendations of the *Joint Inquiry*' and, in particular, to:
- Ensure each of the recommendations has been, or is being, actioned in a timely manner;
  - Ensure that the actions being undertaken for each recommendation are appropriate;
  - Evaluate the progress of the implementation of the recommendations; and
  - Prepare a report to Government on the findings of the Review.<sup>158</sup>
81. In her March 2019 report, *Independent Review of the Implementation of the Recommendations of the Joint Inquiry into the Management of Jesse Bird's Case*, Professor Creyke noted that one of the 'hurdles' DVA faces is 'its complex claims legislation ... and the consequential impact of this complexity on DVA's claims processes, staff capability, and client experience'.<sup>159</sup> She noted '[a] suggestion ... that there needs to be continued focus on legislative change to the VEA, alongside that for the MRCA/ DRCA, pending more wholesale legislative changes following the final report of the Productivity Commission'.<sup>160</sup>
82. In April 2019, the Parliament's Joint Standing Committee on Foreign Affairs, Defence and Trade's report titled *Inquiry into Transition from the Australian Defence Force (ADF)* was published. Again, for reasons of parliamentary privilege, the Royal Commission declines to comment on, or draw inferences from, the content of the Report.
83. On 27 March 2018, the Productivity Commission received from the then Treasurer, the Hon Scott Morrison MP, a request that it 'undertake an inquiry into the system of compensation and rehabilitation for veterans (Serving and Ex-serving Australian Defence Force members)'.<sup>161</sup> The inquiry was 'to examine whether the current system for compensating and rehabilitating veterans is fit for purpose now and into the future'.<sup>162</sup>
84. The Productivity Commission report was provided to the Australian Government on 27 June 2019. The Productivity Commission commenced its list of 'Key points' with:
- Despite some recent improvements to the veterans' compensation and rehabilitation system, it is not fit-for-purpose – it requires fundamental reform. It is out-of-date and is not working in the best interest of veterans and their families, or the Australian community.<sup>163</sup>

85. Although the Productivity Commission’s recommendations can be considered individually, and it would be possible to accept some and reject others, they are a package of interrelated recommendations. Without detracting from the significance of other recommendations, or of the significance of the package as a whole, we note five key recommendations relevant to reform of the legislation for veterans’ compensation and rehabilitation. Those five, and the short titles given to them, are:
- Recommendation 8.1: Harmonise the initial liability process<sup>164</sup>
  - Recommendation 8.4: Move MRCA to a single standard of proof <sup>165</sup>
  - Recommendation 13.1: Harmonise the DRCA with the MRCA<sup>166</sup>
  - Recommendation 14.1: A single rate of permanent impairment compensation<sup>167</sup>
  - Recommendation 19.1: Two schemes for veteran support.<sup>168</sup>
86. Recommendation 19.1 proposed that from 2025 onwards there should be two schemes for veteran support.<sup>169</sup> According to the Recommendation:
- Scheme 1 is based on the *Veterans’ Entitlements Act 1986 (VEA)*, and will continue to provide benefits to older veterans (and their families) who are currently receiving benefits under the VEA. Younger veterans covered by the VEA will be offered a one-off choice to switch their benefits to scheme 2.
  - Scheme 2 is based on a modified *Military Rehabilitation and Compensation Act 2004 (MRCA)*. It will provide benefits for veterans (and their families) who are not covered by scheme 1, including:
    - those with current MRCA or Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (DRCA) benefits
    - those without a current or accepted claim (including under the VEA) at the commencement of the two-scheme approach.<sup>170</sup>
87. In accordance with the model recommended in the Productivity Commission report, a veteran would be eligible under only one scheme, thereby removing dual Act eligibility and the need to offset entitlements. Scheme 1 would eventually cease, but not for some time, and Scheme 2 would be the primary scheme moving forward.<sup>171</sup>
88. The Productivity Commission also concluded in Finding 4.1 that ‘for compensation and support, the distinction between different types of military service should be removed where it is both practicable and cost-effective to do so’.<sup>172</sup> The Productivity Commission acknowledged that ‘distinctions between different types of military service for the purpose of compensation are inequitable’ and that the ‘basis for providing support should be need, not how or when an injury or illness was acquired’.<sup>173</sup>
89. The Productivity Commission considered a broad range of ways to support veterans better. At this stage of preparing an interim report that addresses urgent issues, we have not examined matters beyond veteran compensation and rehabilitation legislative reform. For example, our examination has not included consideration of the governance and culture of DVA or the review and appeals of decisions on claims for entitlements.

90. On 15 September 2021, the Boss report was provided to the Australian Government and on 29 September it was tabled in Parliament. The report made a number of recommendations for legislative reform, including:

Recommendation 3.3

The Australian Government should prioritise the implementation of the outstanding recommendations from past reviews and inquiries ... including ...

- simplifying and harmonising the legislative regime, including simplifying the types of entitlements veterans can receive as specified by different legislation ...

Recommendation 4.1

The Australian Government should fundamentally reconsider the purpose of the Department of Veterans' Affairs (DVA) rehabilitation and compensation legislative framework. The current framework, which is premised on a compensation model, should be replaced with a wellbeing model, which incorporates concepts of social insurance more aligned with the National Disability Insurance Scheme. This model should include safety net access to payments.<sup>174</sup>

91. The Boss report endorsed a shift from an illness-focused approach to a fully funded wellness-focused approach and emphasised the following:

To uphold the social contract for our veterans, we owe it to them to provide a fully funded, wide-ranging system that supports their lifetime wellbeing, gives them agency over their support needs, and does not require them to focus on their illness in order to get adequate compensation or support. The system should empower veterans to prosper, rather than limit their opportunities to re-engage with and contribute to society ...<sup>175</sup>

92. We agree with the sentiment that the veteran compensation and rehabilitation system should focus on veteran wellbeing, rather than illness, in accessing compensation or support. We will further consider veteran wellbeing in our final report.

## 4.4 Legislative reform

93. Between the Productivity Commission's report being handed to the Australian Government in June 2019 and mid-May 2022, the Government of the day made little genuine progress toward reform of the veteran compensation and rehabilitation legislative system. We acknowledge that there are several barriers that make reform difficult. However, that is no reason to delay. The Australian Government should urgently simplify and harmonise the veteran compensation and rehabilitation legislative system.

## 4.4.1 Government inaction and action: June 2019 to mid-May 2022

### Government inaction

94. In our view, the Australian Government failed to respond with appropriate effort or speed between June 2019 and mid-May 2022, as it did not:
- publish its ‘Interim Response to the Report of the Productivity Commission *A Better Way to Support Veterans*’ until October 2020, more than 15 months after it received the Productivity Commission report
  - publish its ‘Update to Government Response to the Productivity Commission report, *A Better Way to Support Veterans*’ until May 2021, nearly two years after it had received the Productivity Commission report
  - conduct the ‘first of a series of internal policy workshops to discuss key issues with ex-service and Defence groups in relation to legislative simplification and harmonisation’ until December 2021.<sup>176</sup>
95. By mid-May 2022, almost three years after the Government received the Productivity Commission report, the Government still had not:
- decided whether or not to accept the Productivity Commission’s recommendations for the simplification and harmonisation of the veterans’ compensation and rehabilitation legislative system
  - completed the ‘legislation reform roadmap’ that DVA considers will ‘represent a set of options for the Government to draw on when determining how best to simplify the current complex framework of legislation’<sup>177</sup>
  - published its final response to the Productivity Commission report.
96. In our view, the lack of response and progress from June 2019 to mid-May 2022 amounted to a dereliction of the Australian Government’s duty to veterans.

### Government action

97. Below, we further outline some of the reported Australian Government action from 2020 to mid-May 2022, which has informed our opinion that the Government did not prioritise action on this necessary legislative reform.
98. In October 2020, the Government’s ‘Interim Government Response’ noted that the Productivity Commission report recommended simplifying and harmonising the veterans’ compensation and rehabilitation legislation. It did not state a position on whether or not the Productivity Commission’s recommendations would be accepted, but it did state that ‘implementation of legislative reform will involve a series of considered, incremental steps over time’.<sup>178</sup> We agree with the Boss report that ‘any incremental changes to a broken system will be insufficient’.<sup>179</sup>

99. The Government's 'Update to the Government Response to the Productivity Commission Report' again recognised the need for legislative reform. It stated that '[t]hrough engagement with defence force personnel, veterans, their families and ex-service organisations, it is clear that there are still considerable differences on the best approach to this legislative reform'.<sup>180</sup> The response also stated that a legislative reform roadmap would be developed and that Government:

recognises that the most recent legislation, the *Military Rehabilitation and Compensation Act 2004*, will be the primary veterans' legislation going forward and there will be a "long tail" of the two earlier Acts, the *Veterans' Entitlements Act 1986* and the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

The Government will finalise any outstanding matters from the Productivity Commission report at the completion of the Royal Commission into Defence and Veteran Suicide.<sup>181</sup>

100. We consider that this timeframe for finalisation of outstanding matters is unacceptable.

101. In August 2021, DVA released its *Corporate Plan 2021–2022*, which included a statement that:

DVA will progress a legislative reform roadmap to make incremental and targeted changes to harmonise and simplify veteran legislation. Care will be taken not to disrupt the veteran support system and to move in a carefully calibrated way toward bringing the *Safety, Rehabilitation and Compensation (Defence related Claims) Act 1988* (DRCA) and the MRCA closer together as the VEA gradually comes to the end of its applicability.<sup>182</sup>

102. Despite the above statement in the Corporate Plan, a legislative reform roadmap has not been produced to date.

103. In December 2021, DVA held the first 'of a series of internal policy workshops to discuss key issues with ex-service and Defence groups in relation to legislative simplification and harmonisation'.<sup>183</sup>

104. In February 2022, DVA provided information to us. This included a discussion about the Productivity Commission's Recommendation 19.1:

...the recommendation is subject to a legislative reform roadmap which is in the early stages of development. ...

In developing the legislative reform roadmap, DVA is examining past recommendations related to legislative simplification and harmonisation. This will include options and a timeline for implementing those recommendations, for consideration of Government.<sup>184</sup>

105. We consider that reaching only the 'early stages' of development of a legislative reform roadmap more than two and a half years since the release of the Productivity Commission report is unacceptable.

106. In April 2022, in her written statement of evidence to us, Ms Cosson said:

Legislative simplification and/or harmonisation is not easy to achieve in the current complex veteran support system. The Acts provide for a multitude of payments and services, overlapping eligibility requirements and complex offsetting arrangements. Harmonising the Acts is difficult without affecting the existing entitlements of some veterans.<sup>185</sup>

107. We agree that legislative reform is a difficult task. However, we consider that ongoing postponement of reform will do greater harm than affecting some existing entitlements.
108. In considering legislative issues in April 2022, Ms Cosson provided information to us about the legislative reform roadmap. Ms Cosson advised that ‘the roadmap remains in its early stages as any legislative reform needs to be carefully considered, particularly given the significant complexity of benefits and entitlements, accrued rights of veterans, and the potential to overlay additional complexities’.<sup>186</sup> According to Ms Cosson:
- DVA has developed a number of options that have been considered as part of its internal and external consultation. Once the Government makes a decision about whether we should move to ‘two schemes’, a ‘wellbeing act’ or to ‘one Act’, further decisions will also be required regarding the pathway to achieve the intended goal. These decisions will then inform an implementation plan for DVA to develop.<sup>187</sup>
109. Ms Cosson also advised that ‘DVA supports the intent of the [Productivity Commission] Recommendations’ 8.1, 13.1 and 19.1 and that ‘there is broad support for simplifying the legislation (and/or moving to a single Act as the future of DVA claims processing). However, this support is somewhat conditional upon the retention of entitlements currently available to veterans and an understanding of what, if any, impacts there may be on individuals’.<sup>188</sup>
110. In May 2022, DVA provided us with an indicative legislative reform timeline that included a proposed commencement date for a new legislative framework of 1 July 2026.<sup>189</sup> DVA also outlined four potential options for reform of the legislative framework. We consider these in Section 4.4.3.
111. In a written statement to the Royal Commission, Mr Gee, who, as previously noted, was Minister for Veterans’ Affairs from 2 July 2021 to 23 May 2022, said:
- I believe that models of legislative reform should be drafted before external consulting takes place or that this project be referred to the Australian Law Reform Commission<sup>190</sup>
112. We do not support Mr Gee’s suggestion of a referral to the Australian Law Reform Commission. We consider that a referral to the Australian Law Reform Commission would very likely delay legislative reform more than is warranted. The nature of the policy issues involved – which focus on what benefits veterans should receive and the mechanics of delivering them, not on questions of fundamental legal and constitutional principle – are ones that are outside the usual work of the Australian Law Reform Commission and need to be decided by the Australian Government.
113. When he testified in Hearing Block 5, Mr Gee said:
- the clear directives that were coming up to our office was that they didn’t want anything major happening while the Royal Commission was sitting and that was made very clear to us through my Chief of Staff.<sup>191</sup>
114. When Commissioner Brown sought clarification of the source of the directive, Mr Gee replied: ‘[The] Prime Minister’s Office’.<sup>192</sup>
115. We are disappointed that the Australian Government of the day may have used this Royal Commission as a reason not to progress reform urgently.

## 4.4.2 Barriers to reform

116. Achieving simplification and harmonisation of veteran compensation and rehabilitation legislation will be difficult. However, we believe that the overall benefits for veterans warrants overcoming the potential barriers to reform. Barriers may include lack of political will, lack of consensus on a preferred legislative reform model, lack of resources, and risk of additional complexity. But they do not justify inaction.

### Lack of political will

117. We recognise that there are difficulties associated with the policy decisions required to reform the legislative system, including how to harmonise the multitude of payments and services and how to remove overlapping eligibility and offsetting arrangements. However, difficult policy decisions should not be a barrier to reform.
118. As stated above, Mr Gee told us that his office received directives from the Prime Minister's Office to withhold major reform while this Royal Commission is sitting. We are required to produce our final report by 17 June 2024. This Royal Commission is not an acceptable reason to continue to delay legislative reform until after that date.
119. The Australian Government should urgently make key policy decisions about how to simplify and harmonise veteran compensation and rehabilitation legislation. It should then expeditiously implement the changes needed.

### Lack of consensus

120. In research commissioned by us, Mr Sutherland said that the process of reforming the legislation 'will be highly contested and painful for all involved'.<sup>193</sup> Mr Gee, giving evidence during Hearing Block 5, agreed that the lack of a single voice for veteran service organisations created a challenge for the consultation phase of legislative reform.<sup>194</sup>
121. In April 2022, in her written statement of evidence to us, Ms Cosson said that there is 'a lack of a shared view or consensus among the veteran community about what a reformed veteran support system should look like'.<sup>195</sup> According to Ms Cosson, '[h]armonising the Acts is difficult without affecting the existing entitlements of some veterans'.<sup>196</sup>
122. While we acknowledge that harmonisation and simplification of the legislative system is difficult to achieve without consensus, we do not consider this an adequate reason to continue to delay legislative reform. Difficult policy decisions are required to reform the legislative system for the overall benefit of veterans and their families. Ongoing failure to do so will continue to contribute to veteran suicidality.

## Lack of resources

123. Further barriers include the time and cost associated with legislative reform, as well as the requirement to anticipate adequately, and appropriately make provision for, the needs of current and future veterans, as well as their families. In her written statement, Ms Cosson said there was ‘a lack of resources to enable DVA to prepare and execute reform in a timely way’.<sup>197</sup>
124. The Australian Government should provide adequate resources to the relevant government agencies, including DVA, to prepare, implement and administer a new simplified legislative model, and to deliver the compensation payments and rehabilitation services provided under that model.

## Risks of additional complexity

125. As addressed above, Mr Sutherland considers that piecemeal legislative developments have contributed to compounding legislative complexities. Ms Cosson also told us that there is also a ‘risk of adding further complexity to claims processing’ through legislative reform.<sup>198</sup>
126. To this end, we are not recommending incremental piecemeal change to the legislative system. Rather, we are recommending change which reduces overall complexity by simplifying and harmonising the system. Fundamental reform of the legislation will require political will, decisions on highly contestable policy positions, legislative change, administrative reform, and funding for the preparation, implementation and administration of a new, simplified legislative model. We consider that the barriers to implementation can, and must, be overcome urgently, to ensure complexities and harmful delays to veterans and their families do not continue.

### 4.4.3 DVA’s legislative reform options

127. In May 2022, DVA advised us that it was ‘considering options for simplifying the current “tri-Act” model of veterans’ support legislation.’<sup>199</sup> It outlined four options for reform, which we briefly discuss below.

#### One consolidated Act

128. One option being considered by DVA was the development of a consolidated Act with the MRCA ‘subsuming’ the VEA and DRCA.<sup>200</sup> This ‘One Act’ reform model would include preservation of all previous entitlements and earlier Act provisions.<sup>201</sup> In our view, this means it would fail to reform the system. A single Act would be achieved in form, but not substance. As DVA put it, the option would produce ‘a “single”, albeit very long, Act’.<sup>202</sup>

129. When Mr Sutherland testified, he accepted that all the schemes could formally be put into the one Act, but suggested that it would be ‘an amalgamation in name only’.<sup>203</sup> In research commissioned by us, Mr Sutherland noted that consolidation of the Acts into a single Act would be ‘unlikely to succeed’ because:
- the VEA is conceptually different to the MRCA/DRCA;
  - there are a very large number of elderly veterans who are embedded in the VEA system, and are unlikely to cope well with significant change; and
  - an entirely new legislative framework could not disassociate itself from accrued rights, entitlements and expectations within twenty years (or more).<sup>204</sup>
130. DVA does not prefer the ‘One Act’ option, considering that ‘it does little to resolve the current complex arrangements and interactions’.<sup>205</sup> We agree.

### **DRCA and VEA remain operational but MRCA is the predominant Act**

131. Another option being considered by DVA includes that the ‘DRCA and the VEA remain operational, but only for existing claims; all other compensation coverage will be provided under the MRCA’.<sup>206</sup> Under this option, ‘the VEA and DRCA would continue to operate to cover existing claims’, while ‘[a]ll new claims for new conditions’ would be assessed under the MRCA.<sup>207</sup>
132. As advised by DVA, this option would not remove complex offsetting arrangements, and multi-Act eligibility would continue for existing claims.<sup>208</sup> We consider this option inferior to the two scheme approach recommended by the Productivity Commission because eligibility and offsetting complexities would remain.

### **MRCA as the only Act**

133. The option of making the MRCA the only Act includes ‘[c]losing off the VEA and DRCA for all veterans, with all compensation coverage going forward being provided under the MRCA’.<sup>209</sup> According to DVA, ‘[t]his option would result in one Act (the MRCA) covering all claims, including existing claims under the VEA and DRCA and all claims from all veterans from a future commencement date’.<sup>210</sup> This means that the VEA and DRCA would be repealed, and the MRCA would apply to all claims from the date of commencement. Existing VEA and DRCA entitlements ‘would continue to be paid as “notional” amounts under the MRCA’.<sup>211</sup>
134. Further information would be required before the viability of this option could be assessed. It is not clear how this model would overcome the conceptual differences between the VEA and MRCA, how it would affect current or new entitlements, or how it would provide best outcomes for veterans.

## The Productivity Commission's two scheme approach

135. The final option is the two scheme approach recommended in the Productivity Commission report (Recommendation 19.1).<sup>212</sup> DVA suggest this option would simplify compensation arrangements, remove complexities associated with offsetting for those with multi-Act eligibility, and reduce inequities through consistency of outcomes for MRCA and DRCA claims.<sup>213</sup> According to DVA, this option would achieve positive overall support from the veteran community, noting sensitivities about the service differential which we will explore later; would have a positive impact on veterans; would cause a low-medium additional cost to the Australian Government; and would remove some legislative complexities.<sup>214</sup>
136. In written submissions, DVA said that it 'does not support the "two scheme approach" recommended by the' Productivity Commission.<sup>215</sup> Rather, while acknowledging that 'any decisions are a matter for Government and its decision on resources', DVA supported in principle the proposition of 'maintaining MRCA (subject to any modifications) as the predominant Act'.<sup>216</sup> This proposition, DVA submitted, 'will achieve the intent [of the two scheme approach] without removing the service differential'.<sup>217</sup>

### 4.4.4 Some major issues for decision

137. Even after a general model is chosen for the framework of the legislative system to apply in future, major and difficult policy issues will remain for the Australian Government to decide. Two of the more prominent issues are how to reconcile the differing approaches of the DRCA and MRCA to impairment and whether or not different types of service should attract different levels of rehabilitation and compensation.

### DRCA, MRCA and compensation for permanent impairment

138. Were the Australian Government to adopt the Productivity Commission's proposal that the DRCA scheme be merged into the MRCA scheme, or were it to adopt another model involving merging the DRCA and MRCA, careful design and drafting will be required to address anomalies between the two Acts. For example, the Productivity Commission's Recommendation 14.1 calls for a single rate of permanent impairment compensation, whereas, currently, the DRCA and MRCA take different approaches to determining the level of permanent impairment. The DRCA calls for separate assessments of the impairment entailed by each eligible injury.<sup>218</sup> The MRCA requires an assessment of the effect of all such injuries together (the 'whole person' approach).<sup>219</sup> Scenarios can be imagined, involving multiple eligible injuries, that could yield a higher aggregated level of impairment under the DRCA. In drafting the harmonising legislation, policymakers should have latitude to design fair and effective solutions to such anomalies by making appropriate modifications to the MRCA.

139. We acknowledge that there are arguments for and against each approach to calculating the compensation due for multiple impairments, as well as issues of cost and preservation of existing expectations and entitlements that the Australian Government would have to consider. However, we have firmly concluded that the most important need is for the issue to be addressed and resolved so that a simplified compensation and rehabilitation system can be achieved without further delay.

### **The service differential**

140. As discussed above, the current veteran compensation and rehabilitation legislative system distinguishes between different types of military service to determine acceptance of a claim and level of compensation.<sup>220</sup> We recognise that this is a contentious issue affecting legislative reform policy decisions and that there are arguments for and against the distinction. We also recognise that ADF members join to serve their country in a dangerous role, and on the understanding that if they are harmed in service, their country will look after them according to their need for care, support and compensation.
141. During Hearing Block 4, Mr Sutherland gave evidence in support of recognition of the service differential: 'I think there needs to be a recognition of the overseas service and a recognition of the difficulty those people faced in war or in operational environments'.<sup>221</sup>
142. Also during Hearing Block 4, Mr Douglas Humphreys OAM, judge of the Federal Circuit and Family Court of Australia, gave evidence that included his reflections on the distinction made between warlike and non-warlike service:

I've never been able to actually get the distinction. If you serve, you are serving. If you are injured, you are injured. How you're injured, to my point of mind, is irrelevant. You suffer the same injury, the same disability. Therefore, the fact that you may do it on training, where you are jumping out of an aircraft, is no different than if you turned around and you suffer the same injury if you turn your ankle when you're on deployment. We compensate those that go on deployment by giving them tax-free status for their income. We also provide them with significant allowances for being in combat or in war-like situations.<sup>222</sup>

143. The Productivity Commission report stated:
- 'that 'veterans' compensation arrangements ideally should treat injuries and illnesses of a particular type and severity equally'<sup>223</sup>
  - '[t]o the extent that one ADF member incurs more extreme physical and mental impairments than another, the former should receive a higher level of compensation'<sup>224</sup>
  - 'distinctions between different types of military service for the purpose of compensation are inequitable, and should be removed or reduced where practicable and cost effective'.<sup>225</sup>

144. On 7 June 2022, Chief of the Defence Force in the Australian Defence Force, General Angus Campbell AO DSC, told us that in his view the type of service being performed at the time of injury or disease should not be relevant to the Australian Government's obligation to provide support to veterans:

The arguments for differentiation are that members should be treated differently depending on the types of service, the circumstances in which an injury, illness or disability occurs.

The arguments against differentiation are that members should not be treated differently regardless of their type of service, or how the injury, illness or disability occurred because their commitment to service is sufficient to enliven the nation's responsibility.

I think the nation's responsibility to support its service personnel to enable their wellbeing is an inherent and reciprocal duty of the State and arises irrespective of the nature or circumstance of the service they are directed to perform. If your need for assistance arises because of a period of service, you should be supported and/or, where relevant, compensated.<sup>226</sup>

145. General Campbell's evidence is particularly significant because it indicates that there is no institutional, operational or military need for the service differential.
146. We agree with the points made by the Productivity Commission and General Campbell. We consider that, in principle, the treatment provided for the same injury or illness should be the same, and based on the needs of the veteran, not the nature of the service that the veteran happened to be undertaking when the injury or illness was caused. In principle, the monetary compensation paid for pain and suffering should be based on the level of pain and suffering, not on how the condition causing it occurred. And we believe that the compensation paid for impairment or loss of income should be based on the impairment and loss of income rather than on the service being undertaken when the impairment was caused.
147. Although we accept that there may be particular issues or budgetary considerations requiring some departure from these principles, we conclude that the Australian Government should remove the distinction between the different types of military service when prescribing the level of care, support and compensation provided to veterans.
148. Above all, the question of whether or not there is any proper or necessary role for the service differential must now be resolved by the Australian Government so that a properly simplified and harmonised legislative system for veterans' rehabilitation and compensation can be achieved.

#### 4.4.5 The way forward

149. In our view, it is necessary that the legislative framework for veterans' compensation and rehabilitation be reformed to simplify the system and improve consistency and fairness in approach and outcomes for veterans. This would enable efficient and focused service delivery and encourage timely support for, and compensation of, veterans and their families. The outcome for veterans and their families should be the focus.

150. We accept that there may be more than one valid model of reform. We also accept that there are significant and difficult policy questions that need to be resolved. These will include not only policy issues that have already been identified (including the service differential and the differences between the MRCA and DRCA regarding permanent impairment discussed above) but other issues that will be identified as policy development work and legislative drafting are undertaken. There may also be important budgetary considerations. We accept that the Australian Government must have some latitude to make the needed policy decisions on the best analysis available at the time. The Government should explain its decisions to veterans and the community, and act with transparency.
151. The urgency that we are recommending will require considerable effort. The Government should make the necessary resources available to DVA and the other agencies that will be involved in preparing and implementing the necessary legislative reform.
152. There is no justification for further inaction or further delays, which would result in greater harm to veterans and their families. Indeed, the difficulties in achieving legislative reform are a reason for more urgent action to ensure that reform will be achieved as soon as possible.
153. There is no perfect solution and an endless search for one would not only be fruitless but would unjustifiably prolong the harm that is being done by the complexity of the current system. After many years of examination and consideration, and after many inquiries and reports, the urgent need now is for the Australian Government to *make a decision*. It should choose what it considers to be the best available model already identified and work towards turning it into legislation.
154. One way to achieve this would be for the Australian Government to adopt the Productivity Commission's legislative reform recommendations. The Productivity Commission's inquiry and the Productivity Commission report have been, respectively, the most thorough public examination and discussion of the issues.
155. In the three years since the Productivity Commission report, DVA and the former Ministers for Veterans' Affairs, Mr Chester and Mr Gee, have not identified any reasons sufficient to reject the Productivity Commission's recommendations 8.1, 13.1 and 19.1.<sup>227</sup>
156. Adopting the Productivity Commission's recommendations would include, but need not be limited to, adopting a 'two scheme approach' and harmonising and simplifying the legislation to make consistent the processes for assessing permanent impairment, incapacity and benefits for dependants, as well as the range of allowances and supplements.<sup>228</sup> Mr Sutherland, along with Professor Robin Creyke, supported the Productivity Commission's recommendation for a two scheme approach, in which the MRCA would be the predominant piece of veterans' compensation and rehabilitation legislation.<sup>229</sup> In research commissioned by us, Mr Sutherland said that although reform will be challenging:

I consider that the Two Scheme Approach proposed by the Productivity Commission offers a reasonable chance of achieving substantial legislative reform.<sup>230</sup>

157. During Hearing Block 4, Professor Creyke said:

I think that we are bound to have two schemes and I think two schemes is workable, politically and practically, for some time.<sup>231</sup>

158. The Productivity Commission also recommended harmonising across the Acts.<sup>232</sup> Mr Sutherland outlined his support for this harmonisation when giving evidence to us:

What I think we have got is the possibility of moving the DRCA into the MRCA in an intelligent way. We have broken the link between DRCA and the Comcare system, the Commonwealth employees compensation, it has now moved, it is now DRCA; it is under the policy control of the Defence portfolio. It gives us the opportunity over time to move those DRCA people into MRCA. Essentially, you could probably even do it on a no loss, no disadvantage basis over time. So, I think we could actually get to two schemes.<sup>233</sup>

159. The following recommendation calls on the Australian Government to implement urgently a simplified and harmonised long-term legislative model for veterans' entitlements.

## **Recommendation 1: Simplify and harmonise veteran compensation and rehabilitation legislation**

The Australian Government should develop and implement legislation to simplify and harmonise the framework for veterans' compensation, rehabilitation and other entitlements. To this end:

- (1) By no later than 23 December 2022, the Australian Government should:
  - (a) accept or reject recommendations made by the Productivity Commission in its report, *A Better Way to Support Veterans*, that relate to reforming the legislative framework
  - (b) if it rejects Productivity Commission recommendations 8.1, 8.4, 13.1, 14.1 and 19.1, adopt alternatives that will achieve similar or better levels of harmonisation and simplification of the legislative framework, and
  - (c) identify and decide all other policy questions relevant to designing a harmonised and simplified legislative framework.
- (2) By no later than 22 December 2023, the Australian Government should complete drafting of the legislation.
- (3) By no later than early 2024, the Australian Government should present to the Parliament, and seek passage of, its Bill for the proposed framework.
- (4) If the legislation is passed, the Australian Government should, by no later than 1 July 2024, begin the process of implementing and transitioning to the new legislative framework.
- (5) If the legislation is passed, the Australian Government should ensure that, by no later than 1 July 2025, the new legislation has fully commenced and is fully operational. (This does not preclude setting later deadlines for any choices that might need to be made by veterans.)
- (6) The Australian Government should allocate to the Department of Veterans' Affairs (DVA), the Office of Parliamentary Counsel and other relevant agencies adequate resources to design, prepare, draft and implement the proposed legislation within the timeframes above, and to administer the new legislation once it has commenced. The allocation of these resources to DVA should not be offset by reductions in other resourcing of DVA.

## Endnotes

- 1 Productivity Commission, *A Better Way to Support Veterans*, No. 93, June 2019, vol 1 (Exhibit 001-01.010, Hearing Block 1, INQ.0000.0001.2299): see, for example: Recommendation 8.1 (p 372), Recommendation 8.4 (p 389); Productivity Commission, *A Better Way to Support Veterans*, No 93, June 2019, vol 2 (Exhibit 001-01.011, Hearing Block 1, INQ.0000.0001.2780): see, for example: Recommendation 13.1 (p 611), Recommendation 14.1 (p 637), Recommendation 19.1 (p 834).
- 2 Department of Veterans' Affairs, *Interim Government Response to the Report of the Productivity Commission: A Better Way to Support Veterans*, October 2020 (Exhibit 07-01.006, Hearing Block 1, PCO.0000.0001.1019).
- 3 Transcript, Darren Chester, Hearing Block 5, 22 June 2022, p 34-3198 [1].
- 4 Department of Veterans' Affairs, *Interim Government Response to the Report of the Productivity Commission: A Better Way to Support Veterans*, October 2020, p 4 (Exhibit 07-01.006, Hearing Block 1, PCO.0000.0001.1019); *Update to Government Response to the Productivity Commission Report, A Better Way to Support Veterans*, May 2021, pp 4–10 (Exhibit 007-01.007, Hearing Block 1 PCO.0000.0001.1030).
- 5 Interim National Commissioner for Defence and Veteran Suicide Prevention, *Preliminary Interim Report*, September 2021 (Exhibit 01-01.013, Hearing Block 1, INQ.0000.0001.1584): see, for example, Recommendation 3.3 (p 296), Recommendation 4.2 (p 297).
- 6 P Sutherland, *Military Compensation Law in Australia: 2004–2021, 2022*, commissioned by the Royal Commission into Defence and Veteran Suicide, p 4 (Exhibit 25-05.001, Hearing Block 4, DLR.0000.0001.0021), citing the *Defence Act 1903* (Cth), *Commonwealth Employees' Compensation Act 1930* (Cth), *Compensation (Commonwealth Government Employees) Act 1971* (Cth) and *Military Compensation Act 1994* (Cth).
- 7 P Sutherland, *Military Compensation Law in Australia: 2004–2021, 2022*, commissioned by the Royal Commission into Defence and Veteran Suicide, p 4 (Exhibit 25-05.001, Hearing Block 4, DLR.0000.0001.0021).
- 8 P Sutherland, *Military Compensation Law in Australia: 2004–2021, 2022*, commissioned by the Royal Commission into Defence and Veteran Suicide, p 58 (Exhibit 25-05.001, Hearing Block 4, DLR.0000.0001.0021).
- 9 P Sutherland, *Military Compensation Law in Australia: 2004–2021, 2022*, commissioned by the Royal Commission into Defence and Veteran Suicide, p 4 (Exhibit 25-05.001, Hearing Block 4, DLR.0000.0001.0021).
- 10 P Sutherland, *Military Compensation Law in Australia: 2004–2021, 2022*, commissioned by the Royal Commission into Defence and Veteran Suicide, p 4 (Exhibit 25-05.001, Hearing Block 4, DLR.0000.0001.0021).
- 11 Column 1 of Part VI of Schedule 1 of the VEA contains Acts that are amended as set out in schedules 2 and 3 of that Schedule.
- 12 *Veterans' Entitlements Act 1986* (Cth) ss 6–6F, 7, 8, 9, 13, pt III, div 2.
- 13 Explanatory Memorandum, Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2017 (Cth) ii.
- 14 *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) s 4AA.
- 15 *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) s 4AA(1)(b).
- 16 *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth), pt X; *Commonwealth Employees' Compensation Act 1948* (Cth) s 2.
- 17 P Sutherland, *Military Compensation Law in Australia: 2004–2021, 2022*, commissioned by the Royal Commission into Defence and Veteran Suicide, p 4 (Exhibit 25-05.001, Hearing Block 4, DLR.0000.0001.0021).
- 18 Explanatory Memorandum, Military Rehabilitation and Compensation Bill 2003 (Cth) iv.
- 19 Explanatory Memorandum, Military Rehabilitation and Compensation Bill 2003 (Cth) iv.
- 20 See generally, *Veterans' Entitlements Act 1986* (Cth) s 13; *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) s 4AA; *Military Rehabilitation and Compensation Act 2004* (Cth) s 319.
- 21 *Veterans' Entitlements Act 1986* (Cth) s 85(2).
- 22 *Veterans' Entitlements Act 1986* (Cth) s 45SB.
- 23 *Veterans' Entitlement Act 1986* (Cth) ss 180A, 184, 214.
- 24 *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) s 11, and pt XI, specifically s 142; *Military Rehabilitation and Compensation Act 2004* (Cth) pt II; *Military Rehabilitation and Compensation Act 2004* (Cth) s 384; *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) s 152.

- 25 Transcript, Natasha Cole, Hearing Block 3, 16 March 2022, p 22-2002 [28–31].
- 26 In the case of the Military Rehabilitation and Compensation Commission, the delegation must be to ‘a consultant to, or an employee of a consultant to, the Commission’: *Military Rehabilitation and Compensation Act 2004* (Cth) s 384(c); *Safety Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) s 152(1). In the case of the Repatriation Commission, the delegation must be to contractor, or an employee of a contractor, of the Commonwealth or the Commission: *Veterans’ Entitlements Act 1986* (Cth) s 213.
- 27 *Military Rehabilitation and Compensation Act 2004* (Cth) ss 338, 339; *Veterans’ Entitlements Act 1986* (Cth) ss 120–120B.
- 28 *Military Rehabilitation and Compensation Act 2004* (Cth) s 332; *Veterans’ Entitlements Act 1986* (Cth) s 196B.
- 29 Repatriation Medical Authority, SOPs, web page, last updated 2022, [www.rma.gov.au/sops/](http://www.rma.gov.au/sops/), viewed 5 July 2022.
- 30 *Military and Rehabilitation Compensation Act 2004* (Cth) s 338–339; *Veterans’ Entitlements Act 1986* (Cth) ss 120A, 120B.
- 31 *Military Rehabilitation and Compensation Act 2004* (Cth) ss 335, 338; *Veterans’ Entitlements Act 1986* (Cth) s 120A.
- 32 *Military Rehabilitation and Compensation Act 2004* (Cth) s 339(3)(c); *Veterans’ Entitlements Act 1986* (Cth) s 120B.
- 33 For example, pursuant to s 340 of the MRCA, the Military Rehabilitation and Compensation Commission may choose to issue a determination that a veteran is eligible, even where they do not meet the relevant SoP criteria. Further examples include circumstances set out in sections 29 and 30 of the MRCA.
- 34 *Military Rehabilitation and Compensation Act 2004* (Cth) s 332; *Veterans’ Entitlements Act 1986* (Cth) Part XI.A.
- 35 *Veterans’ Entitlements Act 1986* (Cth) s 7.
- 36 *Veterans’ Entitlements Act 1986* (Cth) s 6A-F.
- 37 *Veterans’ Entitlements Act 1986* (Cth) s 5C(1). As set out in *Veterans’ Entitlements (Warlike Service) Determination 2019*.
- 38 VEA s 5C(1); for example, *Veterans’ Entitlements Act 1986 – Determination of Non-warlike Service – Operation Vigilance 2007*.
- 39 *Veterans’ Entitlements Act 1986* (Cth) s 68(1).
- 40 *Veterans’ Entitlements Act 1986* (Cth) ss 68, 69.
- 41 *Veterans’ Entitlements Act 1986* (Cth) s 120(7).
- 42 *Veterans’ Entitlements Act 1986* (Cth) s 69B(2)–(5).
- 43 *Veterans’ Entitlements Act 1986* (Cth) s 7A.
- 44 *Veterans’ Entitlements Act 1986* (Cth) ss 7A, 36, 85.
- 45 *Military Rehabilitation and Compensation Act 2004* (Cth) s 6(1)(a).
- 46 *Military Rehabilitation and Compensation (Warlike Service) Determination 2019*, s 6, sch 1.
- 47 *Military Rehabilitation and Compensation Act 2004* (Cth) s 6(1)(b).
- 48 *Military Rehabilitation and Compensation (Non-warlike Service) Determination 2007/1* s 4, sch 1; *Military Rehabilitation and Compensation (Non-warlike Service) Determination 2019* s 6, sch 1.
- 49 *Military Rehabilitation and Compensation Act 2004* (Cth) s 6(1)(c).
- 50 Explanatory Memorandum, *Veterans’ Entitlements Bill 1985* (Cth) ss 2–3.
- 51 Explanatory Memorandum, *Safety, Rehabilitation and Compensation Amendment (Defence Force) Bill 2017* (Cth) ss 2–3.
- 52 Explanatory Memorandum, *Military Rehabilitation and Compensation Bill 2003* (Cth) iv.
- 53 *Veterans’ Entitlements Act 1986* (Cth) ss 6–6F, 7, 8, 9, 13, pt III div 2.
- 54 *Veterans’ Entitlements Act 1986* (Cth) s 69.
- 55 *Safety, Rehabilitation, Compensation (Defence-related Claims) Act 1988* (Cth) s 123A.
- 56 The *Commonwealth Employees’ Rehabilitation and Compensation Act 1988* (Cth) commenced on 1 December 1988 pursuant to Gazette 1988, No. S196; 1 July 2004 marked the commencement of the *Military Rehabilitation and Compensation Act 2004* (Cth); *Safety, Rehabilitation, Compensation (Defence-related Claims) Act 1988* (Cth) ss 4AA(1)(b), 4AA(2)(b), 4AA(3)(b).
- 57 The *Commonwealth Employees’ Rehabilitation and Compensation Act 1988* (Cth) commenced on 1 December 1988 pursuant to Gazette 1988, No. S196; *Safety, Rehabilitation, Compensation (Defence-related Claims) Act 1988* (Cth) s 6A.
- 58 *Military Rehabilitation and Compensation Act 2004* (Cth) ss 2, 3, ch 2.
- 59 *Veterans’ Entitlements Act 1986* (Cth) pt XI.

- 60 *Safety, Rehabilitation, Compensation (Defence-related Claims) Act 1988* (Cth) pt XI div 1.
- 61 *Military Rehabilitation and Compensation Act 2004* (Cth), ch 7 pt 2.
- 62 *Veterans' Entitlements Act 1986* (Cth) pt II.
- 63 *Veterans' Entitlements Act 1986* (Cth) pt IV div 4.
- 64 *Veterans' Entitlements Act 1986* (Cth) pts III, IIIA, IIIE, V, VIIAA.
- 65 *Veterans' Entitlements Act 1986* (Cth) pt IIIH div 3.
- 66 *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) pt II, div 1, 3–5, pt III; Interim National Commissioner for Defence and Veteran Suicide Prevention, *Preliminary Interim Report*, September 2021, p 127 (Exhibit 01-01.013, Hearing Block 1, INQ.0000.0001.1584).
- 67 *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) s 16.
- 68 *Military Rehabilitation and Compensation Act 2004* (Cth) ch 4.
- 69 *Military Rehabilitation and Compensation Act 2004* (Cth) ch 5A pt I.
- 70 *Military Rehabilitation and Compensation Act 2004* (Cth) div 2, ch 6 pts II, IV.
- 71 *Military Rehabilitation and Compensation Act 2004* (Cth) ch 5A pt I s 268B.
- 72 *Military Rehabilitation and Compensation Act 2004* (Cth), s 319 for a mental injury, mental ailment, disorder, defect or morbid condition; *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth), s 54 for a mental injury, mental ailment, disorder, defect or morbid condition; *Veterans' Entitlements Act 1986* (Cth) pt IIIAA.
- 73 *Veterans' Entitlements Act 1986* (Cth) pt IIIAA.
- 74 *Veterans' Entitlements Act 1986* (Cth) pt IIIAA.
- 75 There are some benefits administered under the *Veterans' Entitlements Act 1986* (Cth), such as the veteran payment, that do not require an initial liability assessment.
- 76 *Veterans' Entitlements Act 1986* (Cth) s 120(1).
- 77 *Veterans' Entitlements Act 1986* (Cth) s 120(3).
- 78 See *Comcare v Canute* [2005] FCAFC 262 [68]; see further Explanatory Memorandum for the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth).
- 79 Productivity Commission, *A Better Way to Support Veterans*, No. 93, 27 June 2019, vol 1, p 141 (Exhibit-01-01.010, Hearing Block 1, INQ.0000.0001.2299).
- 80 *Military Rehabilitation and Compensation Act 2004* (Cth) s 335(1).
- 81 *Military Rehabilitation and Compensation Act 2004* (Cth) s 335.
- 82 *Military Rehabilitation and Compensation Act 2004* (Cth) ss 338, 340.
- 83 *Veterans' Entitlements Act 1986* (Cth) ss 120, 120B.
- 84 See *Comcare v Canute* [2005] FCAFC 262 [68]; see further Explanatory Memorandum for the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth).
- 85 Productivity Commission, *A Better Way to Support Veterans*, No. 93, 27 June 2019, vol 1, p 141 (Exhibit-01-01.010, Hearing Block 1, INQ.0000.0001.2299).
- 86 *Military Rehabilitation and Compensation Act 2004* (Cth) s 339 (3).
- 87 *Veterans' Entitlement Act 1986* (Cth) ss 8(2)–(4), 9(4).
- 88 *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) s 6(3).
- 89 *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) s 5A(1).
- 90 *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) s 7(7).
- 91 *Military Rehabilitation and Compensation Act 2004* (Cth) ch 2 pt 4.
- 92 *Veterans' Entitlements Act 1986* (Cth) pt VIII.
- 93 *Veterans' Entitlements Act 1986* (Cth) s 120A(3).
- 94 *Veterans' Entitlements Act 1986* (Cth) s 120A(4).
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#### 4 Veteran compensation and rehabilitation compensation

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**Improving claims processing at the  
Department of Veterans' Affairs**



# 5 Improving claims processing at the Department of Veterans' Affairs

## 5.1 Introduction

1. To receive almost any compensation, treatment or rehabilitation from the Department of Veterans' Affairs (DVA), veterans – serving and ex-serving Australian Defence Force (ADF) members – must submit a claim to DVA and have that claim accepted. In some cases, family members can make a claim.
2. Making a claim that meets all the requirements of the relevant legislation can be daunting for veterans and their families. Assessing claims can also be a difficult task for DVA staff. The challenges of making and assessing claims are compounded by the complexity of the legislative framework (see Chapter 4).
3. Veterans' poor experiences of the claims processing system can have a serious impact on their mental health outcomes, and may be a contributing factor to suicidality.
4. The number of veterans making claims has increased substantially since 2016–17, without a commensurate increase in claims processing staff. This has led to a large backlog of unassessed claims and unacceptably long processing times. Inadequate funding from the Australian Government of the day and limits it placed on the number of Australian Public Service (APS) staff DVA could employ have contributed to claims processing delays.
5. The claims system needs a significant investment from the Australian Government to reduce the risk of mental health impacts caused by the system. In this section, we make recommendations designed to ensure that DVA can address the claims backlog, and to set it up to prevent these issues reoccurring in the future. This will require:
  - addressing the current backlog of claims
  - improving the administration of the claims system
  - gaining a better understanding of the resourcing DVA requires to process claims, and allocating the required resources to DVA
  - removing the limit on the number of APS staff DVA can employ.

## 5.2 The DVA claims system

### 5.2.1 Initial liability

6. In respect of most, but not all, entitlements established by military compensation legislation, a veteran's first formal step towards obtaining the relevant entitlement is to satisfy the relevant authority that they are eligible to receive compensation under one or more of the veterans' entitlements schemes. This is commonly called an 'initial liability' determination.
7. The way in which initial liability is assessed and determined varies depending on whether the claim is made under the *Veterans' Entitlements Act 1986* (Cth) (VEA), the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) (DRCA) or the *Military Rehabilitation and Compensation Act 2004* (Cth) (MRCA).
8. As outlined in Table 4.1 in Chapter 4, the VEA, DRCA and MRCA provide the legislative framework in relation to injury, illness and death arising from different types of service across different time periods. The MRCA covers injury, disease and death arising from service on or after 1 July 2004.<sup>1</sup> The VEA and the DRCA cover injury, disease and death as a result of service in earlier time periods.<sup>2</sup>
9. Under the MRCA and the VEA, a list of causal factors is used to link a claimed condition to service. These causal factors are set out in legislative instruments called Statements of Principles (SoPs).<sup>3</sup> The SoPs are determined by an independent statutory authority, the Repatriation Medical Authority.<sup>4</sup> Under the DRCA, claims do not have to satisfy the SoPs, and are instead assessed on a condition-by-condition basis.<sup>5</sup>
10. As the MRCA covers service on or after 1 July 2004, the passage of time means that the MRCA is becoming the primary Act under which claims are made. However, there will still be a long 'tail' of claims made under both the VEA and DRCA. During Hearing Block 4, Mr Peter Sutherland, a legal academic, estimated that claims could continue to be made for another 60 years under the VEA.<sup>6</sup>
11. Once initial liability has been accepted under the MRCA, DVA undertakes a needs assessment 'of the veteran's circumstances to identify any immediate needs and referral through for rehabilitation (treatment and supports) and/or compensation (lump sum or regular payments)'.<sup>7</sup> DVA also undertakes a needs assessment for veterans with accepted claims under DRCA.<sup>8</sup>
12. There are two main types of compensation under the MRCA and DRCA:
  - **Incapacity payments:** an incapacity payments claim is a claim for compensation in the form of replacement income. It is compensation for economic loss due to the inability to work or having a reduced ability to work because of an injury or disease related to service. The compensation is calculated based on the normal earnings and actual earnings at the time the veteran was incapacitated for service or work.<sup>9</sup>

- **Permanent impairment compensation:** a permanent impairment claim is for compensation payments for injuries sustained during service that are permanent in nature. Compensation can be paid as a lump sum (interim and final) under the DRCA and MRCA. Under the MRCA, compensation can also be paid periodically. The amount of compensation is calculated based on a veteran's level of impairment and the effect the impairment has on the veteran's lifestyle.<sup>10</sup>

13. Once an initial liability claim made under the VEA is accepted, the claims assessor will determine the rate of disability pension the veteran will be paid.<sup>11</sup> We note that on 1 January 2022 the disability pension was renamed to become the disability compensation payment.<sup>12</sup> However, to align with the majority of information provided to us by DVA, in this report we will continue to refer to it as the disability pension.

## 5.2.2 Making a claim

14. The DVA claims system is an opt-in model. To receive treatment or compensation for conditions arising from service, a veteran must make a claim and have the claim accepted. Each claim can include more than one condition.<sup>13</sup>
15. Unlike civilian workers' compensation schemes, the DVA claims model places no limit on the length of time between the event that led to the onset of symptoms and making a claim.<sup>14</sup> Veterans can submit a claim years after their service, and years after the onset of a condition.
16. Claims can be lodged either on paper or electronically through DVA's online lodgement system, MyService.<sup>15</sup> Between MyService's launch in 2017 and 15 May 2022, more than 348,000 claims were lodged through MyService.<sup>16</sup>
17. In general terms, lodging a claim involves submitting a completed form and accompanying documentation. When making a claim on paper, there are separate MRCA, DRCA and VEA forms.<sup>17</sup> The online claim form caters to each of the three main Acts.<sup>18</sup>
18. Some of the information required when submitting a claim must be provided by the veteran, while other information must be supplied by a medical practitioner. The medical practitioner is required to attest to the medical diagnosis, its basis, whether it is confirmed or provisional, and its date of onset, and to attach reports that confirm the diagnosis.<sup>19</sup>
19. Every claim must be accompanied by a 'statement/contention' in which the veteran describes how they think their condition is related to their ADF service.<sup>20</sup>
20. When a serving member of the ADF makes a claim, DVA asks that the claim be accompanied by relevant 'Supporting Documents' – such as ADF service history, ADF medical documents, incident reports, witness statements, and hazardous material exposure reports – should the member have access to them. The checklist included in the paper claim forms says that this is to 'help us assess your claim as quickly as possible'.<sup>21</sup> However, the checklist also says:

If you've left the service or you don't have access to your documents, we can get this information directly from the ADF, including any discharge information on your behalf.<sup>22</sup>

21. It seems that DVA may expect that seeking such material from the ADF, instead of receiving it from the veteran, will cause delays in the processing of a claim. This is a matter we will explore later in our work.

### 5.2.3 Processing a claim

#### Legal authority

22. The legal authority to determine claims under the VEA is conferred on the Repatriation Commission.<sup>23</sup> The legal authority to determine claims under the DRCA and MRCA is the Military Rehabilitation and Compensation Commission.<sup>24</sup>
23. Both Commissions have power to delegate this authority to DVA staff members employed under the *Public Service Act 1999* (Cth).<sup>25</sup> They can also delegate this authority to consultants and contractors.<sup>26</sup> In practice, almost all claims are assessed and determined by delegates.<sup>27</sup>
24. One claim can result in a DVA delegate (or delegates) making more than one decision. This is because each claim may involve more than one condition and may result in the veteran being eligible for more than one type of support.<sup>28</sup>

#### The four stages of claims processing

25. Mr Bruce Hunter of the consultancy firm McKinsey & Company told us that processing a claim involves 'four broad stages'. He labelled these stages 'registration', 'screening', 'unallocated queue' and 'investigation and determination'.<sup>29</sup>
26. Mr Luke Brown, Deputy Commissioner for Tasmania in DVA, provided more information about those stages. He told us that, generally, screening occurs within one to three days of registration.<sup>30</sup> DVA decides whether to prioritise the claim based on an assessment about the veteran's wellbeing.<sup>31</sup> Where DVA considers it appropriate, the screening team will refer the veteran to a social worker to discuss available services and supports.<sup>32</sup>
27. Mr Brown told us that if claims are not prioritised, they are put into DVA's 'unallocated queue'.<sup>33</sup> Claims in the unallocated queue, which is also known as the backlog, are waiting to be allocated to a delegate for processing.<sup>34</sup> We discuss the current state of the claims backlog further in Section 5.4.2.

## Claims assessment and decision-making

28. After a claim is allocated to a delegate, the delegate begins the process of investigation and assessment. The delegate must identify, interpret and apply the legislation to make a decision about the claim. At a high level, DVA states that the following needs to be satisfied:
- Proof of Identity (POI);
  - Service eligibility;
  - Medical diagnosis – must be confirmed or final diagnosis – not provisional and must conform to the diagnostic protocol;
  - Link to service of the diagnosed condition; and
  - Confirmation of the level of impairment arising from disability pension or permanent impairment, rehabilitation and work capacity.<sup>35</sup>
29. The delegate may need to obtain additional information from the claimant, medical practitioners or the ADF to assess the claim properly. In some cases, a delegate will seek an opinion from a medical advisor internal to DVA or from one of the independent medical examiners whom DVA engages when required.<sup>36</sup>
30. The complexity facing delegates is greater when a veteran has made claims for multiple conditions that need to be assessed under different Acts. On 15 May 2022, 24.1% of DVA clients with an accepted condition had accepted conditions under two or three Acts.<sup>37</sup>
31. Acceptance of a claim for initial liability triggers a further needs assessment for incapacity payments, permanent impairment compensation or other benefits, depending on the veteran's circumstances and the applicable Act.

### 5.3 Veterans' experience of the DVA claims system

32. We have heard from many veterans and families about the difficulties they experienced in navigating the claims system. While many unique experiences were shared with us, we have identified for discussion two key issues of concern with the DVA claims system:
- First, we heard that navigating the claims system is complex and difficult due to the underlying legislation (see Section 5.5.1, see also Chapter 4) and its administration. Many veterans need assistance and support to make a claim.
  - Second, we heard that veterans typically wait for long periods of time to receive a decision about their claims.
33. We consider that both of these issues require urgent action. We also acknowledge that issues relating to the claims system extend beyond administrative complexities and delays.

34. In light of the evidence we have seen, and the gravity of the potential consequences of the complexity of administrative practices and the current delays in claims processing, we have chosen to examine these issues now and defer review of other issues to a later stage.
35. While not an exhaustive list, other issues related to the claims system identified thus far include:
- communication between veterans and DVA
  - the culture of claims processing staff
  - error rates in claims processing
  - requirements for medical evidence and medical assessment processes
  - the skills and training of the staff who make decisions about claims.
36. In identifying these issues, we are not suggesting that delegates act without appropriate diligence and integrity. While we are deeply concerned that the effect of the claims processing system is adverse for some veterans, in large measure, at least, these effects are attributable to resourcing and systems issues. Nevertheless, later in our inquiry we will examine the culture of DVA, including the ways in which staff deal with veterans.

### 5.3.1 The complexity of the claims system is a source of stress for some veterans

37. Many veterans find it difficult to submit a claim and navigate DVA's claims system. The requirements placed on veterans to assemble and submit evidence are substantial, and the claims process is complex and unfamiliar to most veterans.
38. We heard about this difficulty and complexity repeatedly from advocates, veterans' organisations and veterans themselves. For example, one submission we received described the experience of struggling to navigate the claims process in these terms:

Like many veterans, my claim is complex. Primarily as a consequence of my period of service and deployment; resulting in my claim being covered under multiple legislations (VEA, DRCA and MRCA).

...

... the legislative and policy frameworks are complex and difficult to navigate, even for those with some familiarity with the system. The time and effort required for a veteran to submit a claim is daunting and likely to be cast aside; where the mental fortitude to tackle complex tasks is lacking.<sup>38</sup>

39. Mr Richard Kelloway, a claims advocate from the Veterans Wellbeing Network, described numerous requirements associated with submitting a claim:

The first one ... is the medical evidence and that requires the veteran – the wellbeing advocate to guide the veteran to accumulate, see the specialists, whatever is necessary, to get that medical evidence.

Once that's all done, effectively the next step is for the statement of attribution to be written and that's where the compensation advocate, within the wellbeing and compensation advocacy team, helps the veteran understand the legislation, and you will understand that I am talking about statements of principle there.<sup>39</sup>

40. Mr Gerard McAleese from the Veterans' Advocacy Service at Legal Aid NSW described how overwhelming the process of submitting claims can be for many veterans, particularly those experiencing post-traumatic stress syndrome (PTSD):

I liken it to a tax return – well, I don't liken it to a tax return. I think a claims process by DVA is far more complex than a tax return. For someone like me who is of reasonable mental health, a tax return is tedious, there is a lot of data entry, you have to look through receipts and we don't like to do it. In my view, a DVA claims process is far more complex, it's more legalistic, it's more bureaucratic, it involves collaboration with a range of stakeholders – DVA, Defence, doctors, with the allied health professionals – trying to obtain evidence in many cases from many years ago to support the case.

Then you have the veteran at the centre of it all, many of whom who have severe mental health conditions. And we know that veterans with PTSD have a hyperactive fear response because their amygdala, the fear sensor responsible for the fear response of fight, flight and freeze is more pronounced, it's hyperactive. And their pre-frontal cortex, which is responsible for executive decision making, high-order thinking and doing the harder thing like trudging through a claims process, is impaired, it is hypoactive.

So all these ingredients are such that it is a very difficult process and experience for veterans, particularly those with severe mental health conditions.<sup>40</sup>

41. Mr Ivan Slavich, the then CEO of Soldier On (a support service provider for Defence personnel, veterans and their families), told us that, for veterans, dealing with DVA is 'akin to a secondary trauma'.<sup>41</sup> He described the 'complexities and inefficiencies in the DVA claims process' as including:

difficulty in assessing accurate information, lack of clarity about the process, lengthy delays, stressful medical assessments, process focused rather than client focused.

These problems have led to frustration, anger, distress and in some cases despair for the participant.<sup>42</sup>

### 5.3.2 Many veterans need assistance to make a claim

42. Because the process of submitting a claim is so complex, many veterans seek support, often from a veterans' advocate. Of initial liability claims lodged in 2020–21, as at 21 June 2022, 43.92% had a nominated representative for the veteran recorded in the DVA system.<sup>43</sup> The representative may be 'an advocate from an ex-service organisation, a legal representative, an advocate from a private organisation and/or a family member or friend to be their representative'.<sup>44</sup>
43. One submission said that '[t]he system to claim through DVA is extremely convoluted and quite difficult to navigate without having to resort to an advocate or someone who has extensive knowledge on the DVA system'.<sup>45</sup>
44. Another submission described a need for support to navigate the claims system:
- Regardless of the outcome of my claim, I am under no illusions that I will not have the capacity to independently deal with it. It remains vital that I engage persons experienced with DVA, and the claims process, to assist me in determining an appropriate pathway.<sup>46</sup>
45. During Hearing Block 4, a panel of advocates gave evidence about the many ways in which they assist and represent veterans when submitting claims and dealing with DVA.<sup>47</sup> Advocates can play a significant role assisting veterans during claim lodgement and processing, and in helping veterans to understand their entitlements, locate supporting documentation for their claims and access supports.
46. We will further explore the supports available to veterans to complete and lodge claims as our inquiry progresses.

### 5.3.3 Long, uncertain wait times cause some veterans distress

47. We repeatedly heard that once a claim is lodged in the system, veterans can wait many months for a decision on their claim, and that this delay can cause distress to some veterans.
48. Several submissions told us how frustrated veterans are by how long it takes DVA to process claims. For example, one submission said:
- Most veterans that have been engaged, share the view that they must fight to secure and hold what they deem to be valid entitlements for service injuries/illnesses. Many say that the time it takes to lodge and have determined these claims simply exhaust the veteran increasing frustration and despair.<sup>48</sup>
49. Other submissions told us that waiting times cause undue stress and anxiety. One said:
- Waiting times for initial liability claims to be processed is a stressful experience. Due to the time it takes for the claim to be allocated to a delegate, it more often than not drags out the process often over many months before you receive any feedback regarding the claim.<sup>49</sup>

50. Another said:

One of the fundamental issues, and major cause for frustration, is the timeframe taken to process and finalise claims. DVA claims processors are pressured to minimise time taken per claim, leading to the possible compromise in the quality of service. Although policies are in place to commence health and well-being services, financial assistance and rehabilitation; the underlying effect on the mental health of the veteran because of this extended process, remains significant. Without reducing the time-frames for claims processing, there will continue to be veterans that become frustrated and disillusioned, leading to the contemplation of suicide.<sup>50</sup>

51. Another submission contrasted the absence of communication from DVA about claims delays with the information he receives from a sporting club while waiting for membership of that club.

I am surprised that DVA are not able to provide some information relating to when claims will be allocated to a delegate. I am awaiting ... Melbourne Cricket Ground (MCG) membership which has a wait time of over ... 20 years and am provided more information.

DVA should be able to provide some information regarding wait times even if it includes factual information such as the date in which current claims are being allocated. This means that members will then be able to estimate the wait time.<sup>51</sup>

52. We have also heard that delays in claims processing cause veterans to lose trust in DVA. For example, we received a submission that said:

My issue is with the time it takes for DVA to process claims. I have two claims that were submitted back in Jan 2020 (one of which is PTSD) and all they keep telling me is that they process them in order of priority. Given so many veterans commit suicide due to PTSD and the feeling that Defence wash their hands of them when they leave the service I would expect DVA to be properly manned to deal with claims; especially for PTSD. Having no-one assigned to my claims for over 18 months is unacceptable. If they are doing this to me then how many others are being treated the same. I have had people email me from DVA Sydney and Brisbane telling me that they haven't assigned anyone yet. Why two different areas? This does not instil any confidence in the system.<sup>52</sup>

53. Other submissions echoed this lack of confidence in DVA. For example, one submission said:

Trying to get a claim accepted can take more than 12 or 18 months with Delegates, those tasked with accepting a claim, will often place hurdles in the way of each applicant to ensure that claims are rejected.<sup>53</sup>

54. We also heard from the family members of veterans about delays in claim processing. Mr Ryan Goodwin was a veteran who died by suicide in 2019.<sup>54</sup> Mr Phillip Goodwin, Mr Ryan Goodwin's father, gave us lived experience evidence of the delays in the processing of his son's claim for PTSD. The claim was lodged in October 2018.<sup>55</sup> But it was not until 16 June 2021 – 18 months after Mr Ryan Goodwin's death – that a letter of determination arrived from DVA accepting his medical and psychological conditions.<sup>56</sup>

55. Delays such as these are significant and have serious impacts for veterans seeking help. This has been documented in multiple research studies.
- In 2018, Phoenix Australia completed a literature review and desktop study commissioned by DVA on the *Mental health impacts of compensation claim assessment processes on claimants and their families*. Phoenix Australia found that much of the documentation it reviewed as part of the desktop study ‘either explicitly stated or strongly implied that complexity and lack of clarity surrounding the claims process, combined with lengthy delays and other frustrations, serves to increase the stress of the experience for veterans and contributes to the development and/or exacerbation of mental health issues’.<sup>57</sup>
  - In 2019, DVA commissioned Professor Alex Collie to ‘review the Phoenix report and to further explore potential for DVA actions that may mitigate potential mental health impacts of its compensation claims processes’.<sup>58</sup> Professor Collie found that ‘DVA claims processes appear to have multiple features that could, for some veterans, contribute to the onset or exacerbation of a mental health condition’.<sup>59</sup>
56. During Hearing Block 4, we heard from Ms Elizabeth Cosson AM CSC, who is the Secretary of DVA, the President of the Repatriation Commission and the Chair of the Military Rehabilitation and Compensation Commission. Ms Cosson agreed with the proposition that claim processing delays are capable of being a factor that contributes to raising the risk of a veteran dying by suicide.<sup>60</sup> During Hearing Block 3, we heard from Ms Kate Pope PSM, who is the head of DVA’s Veteran and Family Policy Group, the Deputy President of the Repatriation Commission and a member of the Military Rehabilitation and Compensation Commission. Ms Pope stated that, as the claims process can be overwhelming, ‘it’s not unreasonable to think ... [it] could be a contributing factor’ to suicidality.<sup>61</sup>

## 5.4 DVA claims processing times are exceeding targets

57. Long wait times to receive a decision about a DVA claim can have serious impacts on the wellbeing of some veterans making claims. We are concerned that claims processing times have been increasing, and the number of claims that have been submitted but not yet allocated to a delegate for processing – the claims backlog – is growing.

## 5.4.1 Claims processing times are increasing

### Claims processing targets

58. The timeframes against which DVA measures the timeliness of claims processing are from 50 to 100 days (Table 5.1), depending on the Act and the claim type involved.

**Table 5.1 Timeframes against which DVA measures the timeliness of claims processing**

Claim type	Timeframe used in performance reporting
MRCA initial liability	90 days
MRCA permanent impairment	90 days
MRCA incapacity	50 days
DRCA initial liability	100 days
DRCA permanent impairment	100 days
DRCA incapacity	50 days
VEA disability pension	100 days

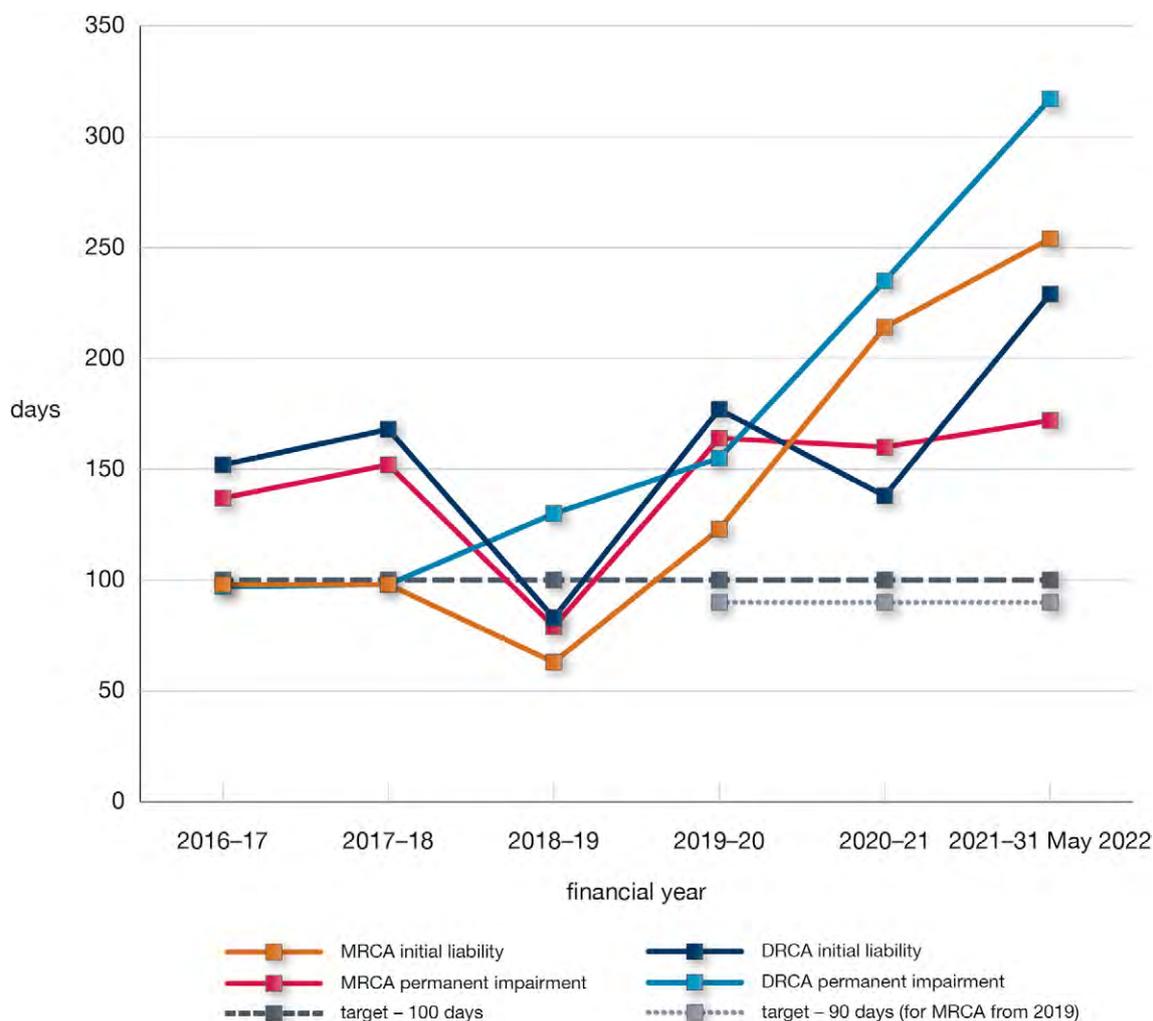
Source: The Department of Veterans' Affairs, *Corporate Plan 2021–22*, 2021, p 20, 22, 23 (Exhibit 022.05.020, Hearing Block 3, STU.0000.0002.7531).

59. According to the *Australian Veterans' Recognition (Putting Veterans and Their Families First) Act 2019* (Cth), the 'Commonwealth is committed to deciding a claim under the MRC Act within 90 days'.<sup>62</sup> However, this 'commitment' has some appearance of being disingenuous – if a claim made under the MRCA is not decided within 90 days, there is no consequence for DVA or the Australian Government.<sup>63</sup>
60. Unlike MRCA claims, there are no statutory timeframes within which DVA aims to process claims made under the DRCA and VEA. The timeframes published in DVA's Corporate Plan, however, provide guidance to veterans about how long they might expect to wait to receive a decision about their claim – although not guidance on how long they are *likely* to wait.<sup>64</sup>

### Claims processing times are exceeding targets

61. DVA provided us with data on the median processing times for a range of claim types. Since 2018–19, processing times for MRCA and DRCA initial liability and permanent impairment claims have consistently increased (Figure 5.1).<sup>65</sup> In May 2022, the median number of days taken to determine MRCA initial liability claims was 329 days, compared to the legislated ‘commitment’ of 90 days for all MRCA claims. On 5 June 2022, DVA was holding more than 10,000 MRCA initial liability claims that had been lodged more than 300 days earlier and that DVA had not yet processed and finalised.<sup>66</sup>

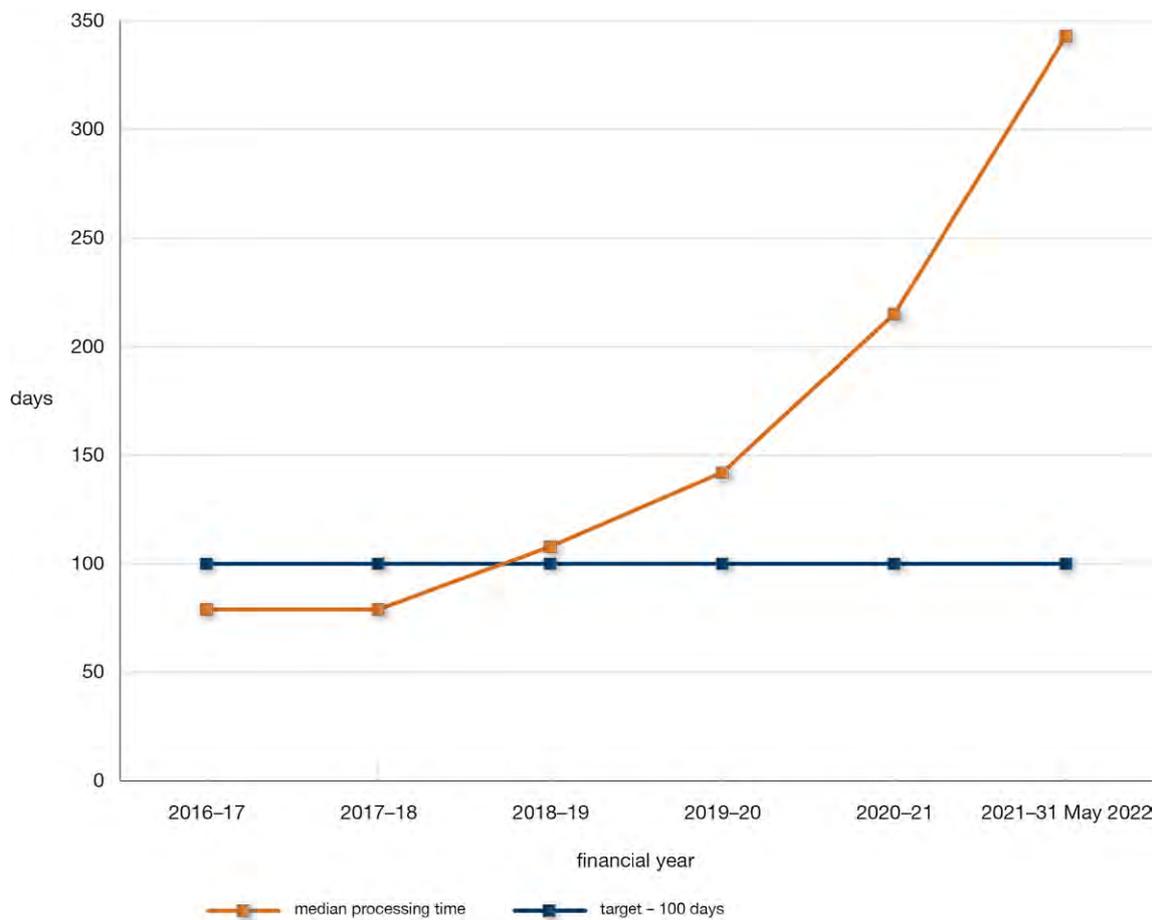
**Figure 5.1** Median time taken to process select MRCA and DRCA claims



Source: Exhibit 22-05.005, Hearing Block 3, DVA.9999.0001.0299 at 0311–0312, 0327–0328, 0343, 0361, 0376; Exhibit C-01.008, DVA.0015.0001.0001; Exhibit C-01.009, DVA.5018.0001.0030.

62. The processing times for VEA disability pension claims have also increased significantly since 2016–17. As at 31 May 2022, the median processing time for disability pension claims under the VEA was 391 days. This represents a nearly fivefold increase since 2016–17 (Figure 5.2).

**Figure 5.2 Median time taken to process VEA disability compensation payment claims**



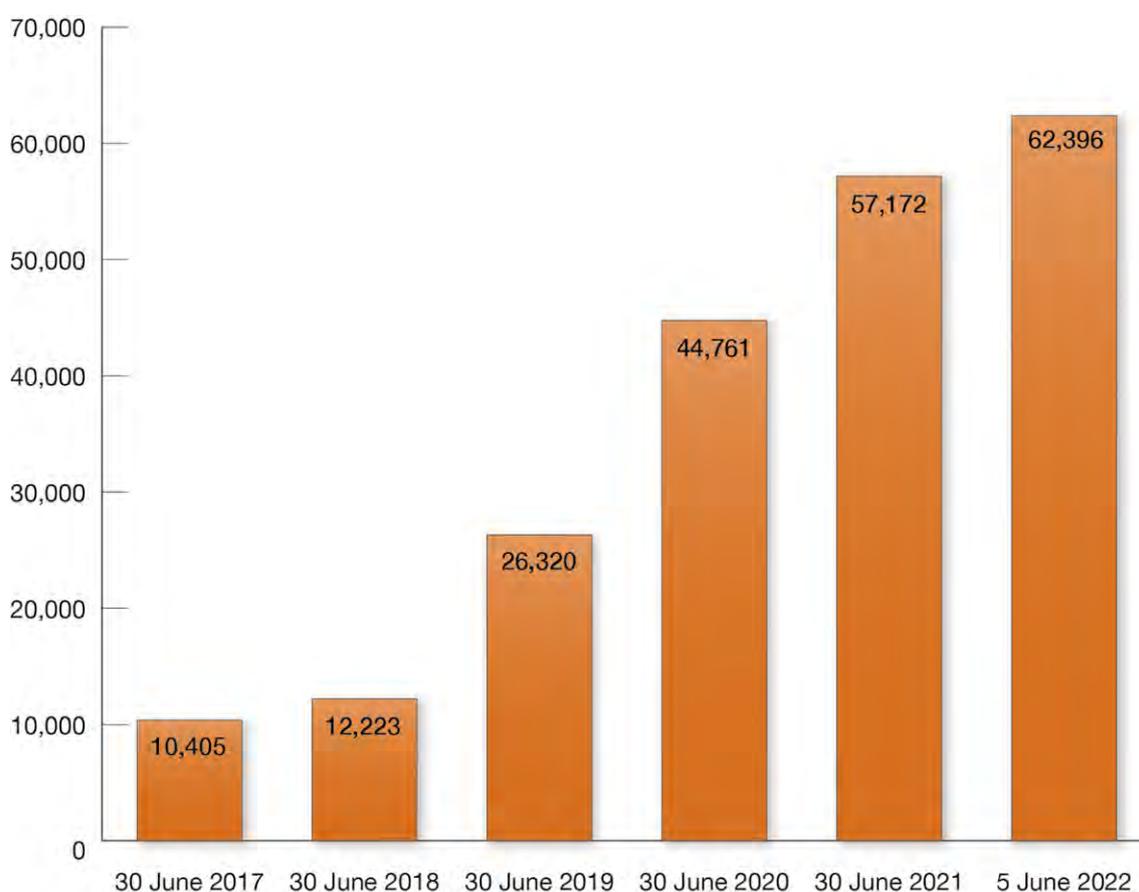
Source: Exhibit 22-05.005, Hearing Block 3, DVA.9999.0001.0299 at 0311, 0327, 0343, 0361, 0376; Exhibit C-01.008, DVA.0015.0001.0001; Exhibit C-01.009, DVA.5018.0001.0030.

## 5.4.2 The claims backlog is growing

### Claims on hand

63. 'Claims on hand' signifies the total number of claims that DVA is yet to determine. It includes claims in the backlog and claims that have been allocated to a delegate for processing. Figure 5.3 shows that since 2016–17 the number of claims on hand has increased every year. On 5 June 2022, DVA reported having 62,396 claims on hand.<sup>67</sup>

Figure 5.3 DVA claims on hand, 2017 to 2022

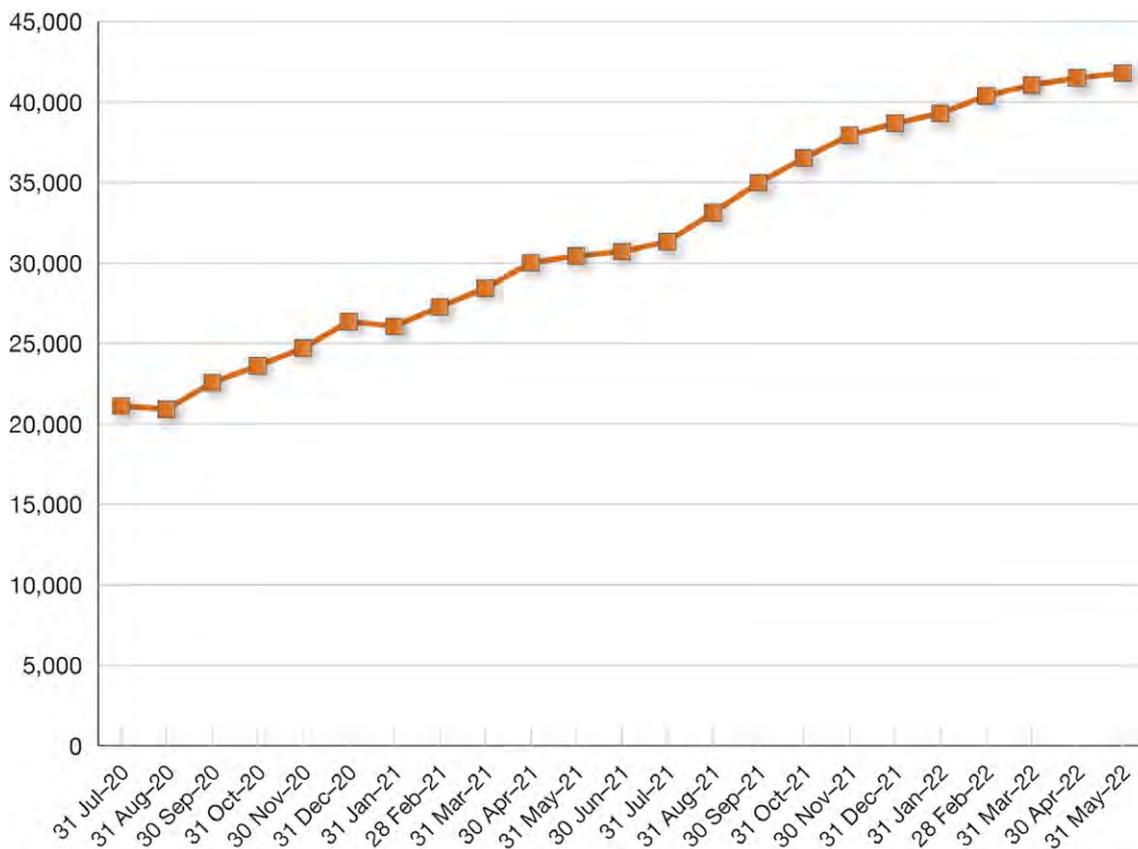


Source: Exhibit 22-05.005, Hearing Block 3, DVA.9999.0001.0299 at 0315, 0331, 0347, 0365, 0381 – figures calculated by the Royal Commission from source. Sum of the claims on hand as at date column; Exhibit 22-05.005, Hearing Block 3, DVA.0015.0001.0001.

## The backlog

64. As the number of claims on hand has grown, so too has the number of claims in the backlog (Figure 5.4).

Figure 5.4 The number of claims in the claims backlog, July 2020 to May 2022



Source: Exhibit 33-01.007, Hearing Block 5, DVA.9999.0012.0026 at 0030-0033.

65. As at 31 May 2022, there were 41,799 claims in the backlog, up 98% in less than two years.<sup>68</sup>

66. Box 5.1 outlines the experience of one veterans' advocate while assisting veterans with claims in the backlog.

### **Box 5.1 The claims backlog – a veterans' advocate's experience**

Mr John Williams, a veterans' advocate who works with the Veterans' Support Centre North Queensland, told us that '[i]t's anywhere from 12 to 18 months [after lodgement of a claim] before it hits a delegate's desk'.<sup>69</sup>

He provided us with an email that he had received from DVA in March 2021 that stated:

We are currently allocating claims lodged in November 2019 and, for those with post 1 July 2004 service only, April 2020.<sup>70</sup>

Mr Williams testified:

This [waiting time] is the damaging factor for a lot of veterans. They're sitting there, hanging on, waiting so they can go to the doctor and find out exactly what's wrong with them and get it paid for and get looked after. This is what they are waiting on.<sup>71</sup>

67. We are troubled in particular by the backlog. The time a claim spends unallocated serves no benefit to veterans and it contributes to overall claim delays which can be detrimental to the mental health of veterans.
68. In December 2021, a consultancy group, McKinsey & Company, provided a report to DVA examining DVA's claims processing and considering ways to eliminate the backlog (Box 5.2). At this time DVA had around 54,000 claims on hand, of which 37,000 were in the backlog.<sup>72</sup>

### **Box 5.2 McKinsey report on DVA's claim processing**

On 23 September 2021, DVA engaged a consultancy group, McKinsey & Company (McKinsey), to diagnose issues with the claims system and present solutions to eliminate the claims backlog by December 2023.<sup>73</sup>

McKinsey's review highlighted a shortage of staff processing claims.<sup>74</sup>

*(continued over)*

In December 2021, McKinsey provided DVA with a report outlining 11 priority initiatives that DVA could implement to bring the backlog down and make improvements to workflows. In summary, the McKinsey recommendations centre on initiatives to:

- improve the veteran experience through increased support and increased notification channels
- improve the productivity of the claims system through changes in staffing structure and refined interim business processes
- enhance automation and information technology processes in the claims system.<sup>75</sup>

DVA advised us in June 2022 that no decision had been made to reject any of the 11 priority initiatives.<sup>76</sup> DVA advised that for three of the initiatives a decision had been made to implement, for seven of the initiatives a decision had been made to implement in part and further decisions were pending, and for one initiative no decision had been made.<sup>77</sup>

### 5.4.3 DVA reporting does not give veterans a clear indication of waiting times

69. The length of time that veterans currently have to wait for their claim to be processed, and the absence of communication about expected wait times, can cause considerable distress to some veterans (Section 5.3.3).
70. Even when delays are long, clear communication to veterans about how long they are likely to wait for their claim to be processed – if accurate – would reduce uncertainty and could therefore improve veteran wellbeing. But we found DVA's reporting on waiting times hard to understand. And as processing times have increased, DVA's public reporting on waiting times has become more opaque.

#### Public reporting on claims processing times keeps changing

71. In 2016–17, DVA measured both mean and median claims processing times, and tracked actual processing times against the claims processing targets. Each of these measures was publicly reported in DVA's annual report.<sup>78</sup> At this time, DVA was generally meeting its timeliness targets for all claim types.<sup>79</sup>

72. Since then, DVA has progressively reduced the amount of information it publishes on claims processing times:
- in 2017–18, DVA ceased reporting mean claims processing times
  - in 2019–20, DVA ceased reporting median claims processing times.
73. Instead of reporting mean and median claims processing times, DVA has adopted a system of measuring performance by reference to how many claims are determined within the target key performance indicator time taken to process claims.<sup>80</sup> The target times are different for different types of claims (see Table 5.1). But DVA does not explicitly report how many claims it processes within the key performance indicator timeframes. Instead, DVA told us, it reports ‘based on whether there has been an improvement on the previous year’s performance’.<sup>81</sup>
74. By reporting only changes from the previous year, DVA is providing only very limited transparency about its claims processing times. Certainly, reporting year-on-year variances in this way provides no justification for not reporting actual mean and median processing times. Reporting these times would make it easier for veterans, and others, to know how well, or how poorly, DVA is performing.

### **Veterans are being let down by claims processing delays**

75. On 26 March 2022, the then Minister for Veterans’ Affairs, the Hon Andrew Gee MP, acknowledged the delays in claims processing experienced by veterans and their families.
- Some veterans have been waiting years to get their claims processed and finalised. This is simply not good enough. In fact, it is a national disgrace. Because behind those 60,000 claims are people, and they are not just any people, they’re people, Australians who put their lives on the line for our country. And many of them are hurting, and many of them are suffering.<sup>82</sup>
76. We could not agree more. We know that negative experiences with the claims process can worsen mental health for some veterans. We conclude that the current crisis in claims processing needs to be addressed immediately. We recommend that the Australian Government provide resourcing to DVA to eliminate the backlog and enable it to process claims effectively and in a timely manner.

## **5.5 Causes of DVA claims processing delays**

77. Various factors have contributed to the increases in claims processing delays at DVA. Key factors include:
- the complexity of the underlying legislation
  - an unexpected increase in the number of claims made
  - inadequate departmental funding
  - limits on the number of Australian Public Service (APS) staff that DVA can employ.

### 5.5.1 Complicated underlying legislation

78. The legislative regime that governs the system of claims adds to delays in claims processing. It is complex and difficult for veterans, advocates and DVA staff to navigate.
79. The complexity arises through overlapping entitlements, a multitude of payments and services, multi-Act eligibility coupled with complex offsetting arrangements, and variation between the Acts, including different eligibility criteria and standards of proof. This complexity increases the difficulty and complexity of claims processing.
80. Urgent reform is required to harmonise and simplify the veteran compensation and rehabilitation legislative system. We recommend this in Chapter 4.

### 5.5.2 An unexpected surge in claims

81. Claim processing delays have, in part, been caused by a significant surge in the number of claims DVA received since 2016–17, which DVA was not expecting.
82. In 2016, DVA was expecting the number of veteran clients to decline. On 30 June 2016, there were 167,304 veterans in receipt of pensions, allowances or health care from DVA.<sup>83</sup> At this time, DVA projected that by June 2021 that number would decrease to 152,100 veterans.<sup>84</sup>
83. However, in June 2021, the actual number of veterans in receipt of pensions, allowances or health care had grown to 240,231.<sup>85</sup> The actual number was 58% higher than the number projected five years earlier.
84. The Australian Government Actuary adjusted its estimate of outstanding claims liability to reflect the unexpected increase in claims. Between June 2019 and June 2020, the Australian Government Actuary increased its estimate of outstanding claims liability as at 30 June 2020 arising from the DRCA and MRCA by 24%.<sup>86</sup> This increase took outstanding claims liability from \$21.5 billion to \$26.6 billion.<sup>87</sup> The Australian Government Actuary explained that this substantial change in the estimate was driven by an increase in initial liability claims in 2019–20, a continued backlog of permanent impairment claims, and an increase in the number of recipients of medical treatment and incapacity payments.<sup>88</sup>

#### A significant increase in claims numbers since 2016–17

85. As Table 5.2 shows, between 2016–17 and 2020–21 the number of claims DVA received substantially increased each year. In 2016–17, 47,264 claims were received. In 2020–21, 136,297 claims were received. This was more than double the number received four years earlier.
86. The table also shows a drop in the volume of claims received in 2021–22 compared to the previous year. Only 77,741 claims had been received for 2021–22 financial year up to 15 May 2022. While the data for 2021–22 is incomplete, if the figures to 15 May 2022 indicate the annual total then there will have been a significant decrease in claims received compared to the previous financial year.

**Table 5.2 Gross claims received by DVA from 2016–17 to 15 May 2022<sup>89</sup>**

Financial year	2016–17	2017–18	2018–19	2019–20	2020–21	2021–22 (to 15 May 2022)
Number of claims	47,264	54,875	103,534	118,324	136,297	77,741
% change on previous financial year	Not applicable	16% increase	89% increase	14% increase	15% increase	Incomplete year

### Reasons for the increase in claims received

87. There are many factors which have contributed to the increase in claim volumes. We outline key factors below.
88. First, the ‘relatively high level of deployments on warlike operations’ since 1999 has increased the likelihood of veterans making claims.<sup>90</sup> The Australian Government Actuary noted:
- When ADF units were deployed in East Timor in 1999, it marked the start of a period of relatively intense activity for the ADF, which subsequently saw forces deployed in Iraq, Afghanistan and the Solomon Islands. Overall, more than 50,000 people have been deployed on warlike/non-warlike service over the period. This may have created a large pool of people who may have a higher probability of making a successful claim and, where they do make a claim, may be eligible for higher benefits.<sup>91</sup>
89. Second, access to online claiming has encouraged more veterans to claim. Ms Cosson told us that the Veteran Centric Reform program has made it easier for veterans to claim and access services online through MyService.<sup>92</sup> According to the Australian Government Actuary, the introduction of online claiming ‘almost certainly impacted on the volume of claims received’.<sup>93</sup> Ms Cosson agreed with Counsel Assisting’s suggestion that DVA should have forecast an increase in demand due to the reforms that introduced online claiming.<sup>94</sup> But, she said, DVA did not anticipate the extent of the increase.<sup>95</sup>
90. Third, various measures have increased veterans’ awareness of DVA and the benefits and entitlements it offers. Ms Cosson noted that the Veteran Recognition Program has ‘increased awareness and earlier connection’.<sup>96</sup> The Program enacted legislation to, as the relevant Act puts it, ‘acknowledge the unique nature of military service and the sacrifice demanded of those who commit to defend our nation’.<sup>97</sup> Ms Cosson also noted that the introduction of non-liability health care in 2017 for all mental health conditions has connected more veterans with DVA.<sup>98</sup> The Australian Government Actuary explains that this may have led to more veterans making claims:

The initiatives around non-liability healthcare, while not directly impacting on DRCA or MRCA expenditure are likely to have increased the level of contact between veterans and DVA and might, in due course, encourage more liability claims.<sup>99</sup>

91. Fourth, in 2016 DVA introduced its 'early engagement model' which links serving members with DVA early in their career.<sup>100</sup> Ms Cosson explained that this has meant that more veterans 'are lodging claims closer to the time of injury'.<sup>101</sup> The former Minister for Veterans' Affairs, the Hon Darren Chester MP, concurred. He said:

... DVA was a victim of its own success in getting to know its veterans more, and more people were coming forward. At the same time we were engaging with current serving members through the early engagement model to say to those people serving as they were serving, 'Get your claim in, because at some point in the future, while you are getting help now, and you will find now you might need some additional help in the future'.<sup>102</sup>

92. Finally, the Australian Government Actuary noted that legal decisions can impact the number of claims received. In particular, it noted three cases which 'appear to have generated a surge in DRCA permanent impairment payments'.<sup>103</sup> These decisions were the 2006 High Court decision in *Canute v Comcare*, the 2009 High Court decision in *Fellowes v Military Rehabilitation and Compensation Commission* and the 2013 full Federal Court decision in *Robson v Military Rehabilitation and Compensation Commission*.<sup>104</sup>

### 5.5.3 Inadequate departmental funding

93. As the volume of claims lodged by veterans increased since 2016–17, the Australian Government's funding of DVA to process these claims did not grow commensurately. This has left DVA with insufficient resources to process the volume of incoming claims in a timely manner.

#### DVA funding

94. The funding of DVA and the programs it administers are appropriated by law. Consolidated information about the funding provided to DVA, including estimates of future funding, is in DVA's annual budget papers.<sup>105</sup> The funding is divided into two types: administered funding and departmental funding.<sup>106</sup>
95. Administered funding covers the money granted to meet the established entitlements of veterans and others – for example, by section 199 of the VEA, section 160 of the DRCA and section 423 of the MRCA. Administered funding is not capped, but paid according to the rights of the claimants.
96. Departmental funding is the money allocated, generally by annual Appropriation Acts, to DVA to enable it to discharge its functions – for example, by employing staff, maintaining accommodation and buying equipment. Departmental funding is capped at the level set by the Appropriation Act.

97. For the 2022–23 financial year, DVA’s administered funding is expected to be approximately \$11.5 billion.<sup>107</sup> DVA’s departmental funding, excluding supplementary funding, is expected to be approximately \$427.5 million (Table 5.3) – just 3.6% of its administered funding.<sup>108</sup>
98. DVA told us that budget funding levels are ‘generally based on prior year funding, adjusted for new or terminating measures, changes in key economic parameters, or changes in demand (where Government has agreed to demand driven funding arrangements)’.<sup>109</sup>

**Table 5.3 DVA Departmental funding since 2017–18**

Budget	Departmental funding
2017–18 Budget	\$388.3m <sup>110</sup>
2018–19 Budget	\$387.3m <sup>111</sup>
2019–20 Budget	\$383.5m <sup>112</sup>
2020–21 Budget	\$404.7m <sup>113</sup>
2021–22 Budget	\$422.1m <sup>114</sup>
2022–23 Budget (estimated)	\$427.5m <sup>115</sup>

Source: Portfolio Budget Statements. Figures calculated by the Royal Commission from source. Departmental funding is the sum of ‘Departmental appropriation’, ‘Departmental capital budget’ and ‘s74 External Revenue’ or ‘s74 Retained Revenue Receipts’ for each year.

99. When DVA considers that it needs resources beyond its departmental allocation, it can request that the Australian Government provide additional funding, known as ‘supplementary funding’.<sup>116</sup> It can do so through the Budget and budget update processes.<sup>117</sup>
100. According to Ms Cosson, ‘DVA has sought departmental supplementation over the years’.<sup>118</sup> We are not aware of the amount of funding DVA has sought because the Australian Government has claimed public interest immunity over this information. However, DVA has received supplementary funding for claims processing each year since 2017–18 (Table 5.4).

**Table 5.4 Supplementary funding provided to DVA for claims processing since 2017–18<sup>119</sup>**

Budget round	Supplementary funding	Measure title – description
2017–18 Budget	\$13.5m	DVA – improving claims processing
2018–19 Budget	\$12.1m	Delivering Australia's Digital Future – Veteran Centric Reform – continuation – Financial supplementation
2019–20 Mid-Year Economic and Fiscal Outlook	\$20.0m	(Estimates Variation) Program Specific – other variations
July 2020 Economic and Fiscal Update	\$11.6m	COVID-19 Response Package – Maintaining support for Veterans
2020–21 Budget	\$23.2m	DVA – additional resourcing
2021–22 Budget	\$226.6m over two years and \$28.1m over the following two years	DVA – additional resourcing
2022–23 Budget	\$22.8m over two years	DVA – additional resources for claims processing
2022 Pre-election Economic and Fiscal Outlook	\$73.3m over 4 years	DVA – additional resources for claims processing

### Funding to eliminate the backlog

101. The current claims backlog is well above reasonable levels and should not be allowed to continue. As at 31 May 2022, there were 41,799 claims sitting in the unallocated backlog.<sup>120</sup>
102. In the 2021–22 and 2022–23 budgets, DVA received increased funding to address the claims backlog. However, this may not be enough to eliminate the backlog within a reasonable timeframe. In May 2022, DVA told us that:
- more funding is currently needed to efficiently and effectively deal with the existing and growing claims backlog. Supplementary funding for additional processing staff to address the claims backlog is currently due to expire at 30 June 2024. At present, in DVA's view, further supplementary funding will be required to continue to address the claims backlog.<sup>121</sup>
103. We note that our Recommendation 1 to harmonise and simplify veteran compensation and rehabilitation legislation (see Chapter 4) may lead to a temporary increase in claims received. It may require DVA to have more resources, for a time, in order to establish new arrangements.
104. The Australian Government must ensure that DVA is funded sufficiently to enable it to eliminate the backlog by 31 March 2024.

## Recommendation 2: Eliminate the claims backlog

The Department of Veterans' Affairs (DVA) should eliminate the backlog of claims under the *Veterans' Entitlements Act 1986* (Cth), the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) and the *Military Rehabilitation and Compensation Act 2004* (Cth) by 31 March 2024. To this end:

- (1) DVA should accurately advise the Australian Government on the resourcing that it needs to eliminate the claims backlog by 31 March 2024.
- (2) The Australian Government should provide DVA with the resources it needs to eliminate the claims backlog by 31 March 2024. The allocation of these resources to DVA should not be offset by reductions in other resourcing of DVA.
- (3) Leading up to 31 March 2024, DVA should undertake regular monitoring of claims and other data, to check whether the elimination of the backlog is on track.
- (4) Leading up to 31 March 2024, the Australian Government and DVA should implement corrective action(s) if the elimination of the backlog is not on track. DVA should monitor the effectiveness of corrective actions taken.
- (5) DVA should routinely, publicly and meaningfully report on its progress in reducing the claims backlog and claim processing times.
- (6) DVA should ensure that efforts to reduce the backlog do not reduce the quality of decisions made about claims, and do not adversely affect veterans' experiences of the claims process.

## Funding to improve claims processing

105. While eliminating the claims backlog is essential, it is only one element of improving veterans' experience of navigating the claims system, removing complexity from the system and enhancing efficiency in claims processing.
106. The report on DVA claims processing prepared by McKinsey (Box 5.2) highlighted that there are numerous ways in which the quality and efficiency of the administration of claims processing could be improved.

107. DVA may also have its own ideas for other reforms which would improve the administration of claims processing, and veterans' experience of the claims system.
108. We are cognisant that DVA's ability to implement any improvement is dependent on some combination of Australian Government approval, financial resources, skilled staffing, and/or legislative change.
109. DVA's ability to implement some reform ideas successfully may also depend on other relevant agencies, such as Defence, the Commonwealth Superannuation Corporation or Services Australia.
110. Some work appears to be underway to improve aspects of the claims system. A 'Joint Media Release' issued on 29 March 2022 by the then Prime Minister, Minister for Defence and Minister for Veterans' Affairs recorded Mr Gee as noting that the 2022–23 Budget was allocating '[a]n initial \$22.8 million [to] fund 90 extra [DVA] staff to cut the backlog of unprocessed claims'.<sup>122</sup> He also said that 'this will be followed by a further \$73.2 million for additional staff and other measures to further improve the veteran claims processing system and reduce waiting times'.<sup>123</sup> The extra funding was to include money to implement some of the initiatives proposed by McKinsey (see Box 5.2).<sup>124</sup> The 2022 Pre-election Economic and Fiscal Outlook reported a measure called 'DVA – additional resources for claims processing', which 'was included in the contingency reserve in the 2022–23 Budget' and entailed 'additional funding of \$73.3 million over 4 years'.<sup>125</sup>
111. The current Minister for Veterans' Affairs, the Hon Matt Keogh MP, indicated in a media statement on 24 June 2022 that DVA had 'commenced planning and implementation' based on the McKinsey initiatives.<sup>126</sup>
112. In principle, we support reforms designed to reduce the administrative burden on all involved, and create a quicker, more efficient claims process. There is clearly an urgent need for additional reforms that would improve the veteran experience by removing complexity and reducing claim processing times.
113. We note that further improvements in the claims system will need to be implemented at the same time as DVA receives increased funding to eliminate the claims backlog. We hope that by combining increased funding and staffing with additional improvements, such as a stronger focus on veteran experience and on its administrative processes, DVA will be placed in the best possible position to manage incoming claims better in the future.
114. We also note that we are recommending legislative reform to harmonise and simplify the veteran compensation and rehabilitation system (see Recommendation 1 in Chapter 4). Any investments in improved administrative systems and processes should consider the proposed legislative changes.

### **Recommendation 3: Improve the administration of the claims system**

The Australian Government should improve the administration of the Department of Veterans' Affairs (DVA) claims system by 1 July 2024. The changes pursued should aim to improve veterans' experience of the claims system, remove complexity from the system and enhance efficiency in claims processing. To this end:

- (1) DVA, having taken account of the advice received from McKinsey & Company and other relevant sources, should advise the Australian Government about potential measures it could include within a program of work aimed at improving the administration of the claims system.
- (2) The Australian Government and DVA should decide upon the improvement measures to be undertaken within the program of work.
- (3) The Australian Government should provide DVA, and any other relevant agencies, with the resources needed to implement the agreed program of work. The allocation of these resources to DVA should not be offset by reductions in other resourcing of DVA.
- (4) The Australian Government should seek passage of any legislative amendments required to implement the agreed program of work.
- (5) DVA, and any other relevant agencies, should implement the program of work by 1 July 2024.
- (6) DVA should publicly report on progress towards implementing the program of work on a quarterly basis.
- (7) DVA should publicly report on the expected benefit of each measure included within the program of work, and, once implemented, report on the degree to which each benefit has been realised.

### **Inadequate link between demand and departmental funding**

115. A significant factor affecting the funding DVA needs to do its work is the level of demand for its services, including the demand arising from claims for entitlements. If DVA is to manage increased demand successfully, then its funding should take account of demand. This requires, in part, accurate projections about future demand, whether through using a demand forecasting model or another method.

116. DVA uses a tool, called the demand-driven funding model, to 'estimate the administered and departmental impact of claims processing activities under the MRCA and DRCA' as well as 'certain claims processing activities under the VEA'.<sup>127</sup> The demand-driven funding model aims to determine what resources are needed for claims processing based on claims volumes input into the model.
117. The demand-driven funding model has a number of inputs, including staffing costs, staffing levels, productivity levels, time taken to process claims, the administered cost per claim, and a claims forecast figure based on historical claims trends.<sup>128</sup>
118. The demand-driven funding model does not, however, have the capability to predict expected demand. DVA told us that the model 'is not designed to forecast the number of claims'.<sup>129</sup>
119. Ms Cosson told us that '[t]here is currently no model to forecast demand'.<sup>130</sup> She also explained that departmental funding:
- does not keep up with changes in DVA's work volume. Departmental funding is capped and the current funding model does not provide for changes in demand or volumes.<sup>131</sup>
120. DVA also noted that finalised and accepted claims generate additional work for DVA because veterans with accepted claims are entitled to services and support. DVA noted that:
- As demand for services and support rises, [administered] funding to provide those services to veterans and their families is made available, but there is no concomitant flow-on of increased resources to DVA to enable it to support the delivery of these services.<sup>132</sup>
- According to Ms Cosson, the way in which DVA is funded 'is not sufficiently responsive to changes in DVA's workload'.<sup>133</sup> We agree.

### **The future of DVA funding**

121. To make reasonable decisions regarding DVA's departmental funding, the Australian Government must be informed about the demands being made on the department and the demands likely to be made in future. This includes consideration of claim volumes, flow-on impacts from assessed claims, and other resourcing needs.
122. As of May 2022, DVA advised us that it does not know its future funding requirements. DVA told us that after the current backlog has been addressed:
- DVA has not concluded that there is a need for an indefinite increase in funding for claims processing (nor has DVA concluded there isn't) because DVA cannot currently forecast future claims intakes with sufficient precision.<sup>134</sup>
123. We find this astounding. It is unacceptable that DVA does not have a view on its future funding needs.

124. One way for DVA to be capable of better understanding its funding needs is through the creation of a demand forecasting model. DVA has outlined that there would be significant costs and specialist skills and knowledge would be required to maintain a predictive claims model.<sup>135</sup> Ms Cosson told us that:

Forecasting demand is extremely complex and has many drivers, including operational tempo, the size and composition of the ADF, the nature of service and injury, as well as policy settings and client experience when engaging with DVA.<sup>136</sup>

125. DVA told us that, on balance, it supports the development of a demand forecasting model.<sup>137</sup> DVA stated that such a model would assist it in:

- responding more flexibly to demand trends up or down to enable a more efficient use of resources;
- being able to plan ahead to anticipate and avoid large and sustained backlogs;
- providing more security of tenure for staff and therefore increased retention of capability and expertise in claims management;
- maintaining the quality and standards of service delivery as demand changes
- supporting the evaluation of programs and understanding long-term fiscal liabilities; and
- supporting policy development and early interventions.<sup>138</sup>

126. Noting the complexities involved, we believe that a demand forecasting model would assist the Australian Government to manage more appropriately DVA's departmental resourcing. Whether a model is developed or not, DVA should be resourced to provide advice to Government about DVA's future funding needs.

#### **Recommendation 4: The Department of Veterans' Affairs to provide advice on its funding needs**

The Department of Veterans' Affairs (DVA) should provide advice to the Australian Government about its funding needs. To this end:

- (1) By 31 March 2023, and at least twice per year thereafter, DVA should provide advice to the Australian Government about:
  - (a) its future departmental funding needs, and
  - (b) factors leading to uncertainty about DVA's future departmental funding needs.
- (2) The Australian Government should use this advice to inform the departmental funding it provides to DVA.
- (3) The Australian Government should provide any resources to DVA, and any other relevant agencies, to enable DVA to provide adequate advice regarding its future funding needs as specified above. The allocation of these resources to DVA should not be offset by reductions in other resourcing of DVA.

### **5.5.4 Limits on the number of APS staff at DVA**

#### **The Average Staffing Level cap**

##### ***The policy***

127. In 2015, the Australian Government adopted a policy of maintaining an average staffing level (ASL) at or around the staffing level of 2006–07.<sup>139</sup> That is, it committed to maintaining ASL at or around 167,596.<sup>140</sup>
128. ASL is 'defined as the average number of employees receiving wages or salaries over the financial year, with adjustments for casual and part-time staff to show full-time equivalent'.<sup>141</sup>
129. The ASL policy applies to the general government sector. That is, it applies to government departments and entities, but not to military personnel or to national security entities whose ASL is not disclosed in budget papers.<sup>142</sup> In this context, an employee is a person employed through a contract of employment (generally, under the *Public Service Act 1999* (Cth)), as distinct from someone retained through a contract for services (such as a consultant, contractor or person retained through a labour hire arrangement).

130. The Department of Finance explained to us that:

The original purpose for the ASL cap was to maintain the size of the General Government Sector at or around the 2006–07 level and ensure that the size of the public service was affordable and sustainable.<sup>143</sup>

131. In the 2021–22 and 2022–23 Budgets, the Australian Government pursued what it described as a ‘moderate uplift’ of the ASL cap.<sup>144</sup> In explaining the increase in the whole-of-government ASL cap to 173,558 in the 2022–23 Budget, the Government noted that:

in some instances a temporary continuance of peak ASL resources is necessary to support measures which sustain Australia’s strong recovery from the COVID-19 pandemic, bolster Australia’s national security, support job creation and improve essential services.<sup>145</sup>

132. Given the increase in the cap above 2006–07 levels, the Department of Finance told us that as at 1 April 2022 the policy’s purpose:

was to continue managing the size of the public service to ensure that it was affordable and sustainable.<sup>146</sup>

### *The ASL cap applied to DVA*

133. In Budgets since 2015, the Australian Government prescribed an ASL cap estimate for each portfolio.<sup>147</sup>

134. A Minister and/or Secretary had discretion to move ASL between entities within their portfolio.<sup>148</sup> For example, the Defence portfolio (excluding military and reserve personnel and national security entities) had a prescribed ASL cap, while DVA, which sits within that portfolio, did not have a prescribed cap.<sup>149</sup> Despite this, each year, Budget Paper No. 4 set out an ASL cap for portfolio entities such as DVA (see Table 5.5).<sup>150</sup>

**Table 5.5 DVA-related ASL cap estimates as published in Budget Paper No. 4<sup>151</sup>**

	General Government Sector ASL cap excluding military and reserve	Defence portfolio ASL cap excluding military and reserve	DVA ASL cap
2014–15	166,261	22,260	1,935
2015–16	165,648	21,228	1,894
2016–17	166,181	20,716	1,838
2017–18	165,491	20,749	1,853
2018–19	165,491	19,095	1,796
2019–20	166,762	18,833	1,615
2020–21	168,912	18,877	1,615
2021–22	173,142	19,416	2,062
2022–23	173,558	20,087	2,154

### ***DVA's changing ASL cap***

135. As the table above indicates, the ASL cap for DVA progressively decreased over the years to reach its lowest point during the 2019–20 and 2020–21 financial years.
136. The Department of Finance outlined that the ASL cap decreases leading to the low point of DVA's ASL cap in the 2019–20 and 2020–21 financial years were due to previous measures ending, 2018–19 and 2019–20 Veteran Centre Reform Budget measures that entailed ASL reductions, and a 2019–20 transfer of shared services with the Department of Human Services.<sup>152</sup>
137. DVA's ASL cap increased significantly in the 2021–22 and 2022–23 financial years. This change was reflective of the whole-of-government ASL cap increase during this period.
138. For the 2021–22 financial year, the Australian Government increased DVA's ASL cap by 447 on top of the 1,615 provided in the previous year. The Government noted that this was to 'help improve the efficiency of veterans' service delivery'.<sup>153</sup>
139. For the 2022–23 financial year, the Australian Government provided a further additional 92 ASL. This means that the total ASL cap in 2022–23 was 2,154. We note that the Australian Government elected in May 2022 has indicated that it intends to remove the ASL cap policy.<sup>154</sup> As such, the impact of the 2022–23 cap is not yet clear.

### ***DVA's staffing profile***

140. If DVA has funding available for staffing but no APS positions available under the ASL cap, it has the discretion to engage additional staff through labour hire arrangements.<sup>155</sup>
141. As at 28 February 2022, DVA's workforce consisted of 3,259 staff.<sup>156</sup> Of these, 2,182 were members of the APS and so are counted towards the ASL cap.<sup>157</sup> The remaining 1,077 staff were engaged through labour hire arrangements.<sup>158</sup> This means that as at 28 February 2022, 33% of people working for DVA were labour hire staff.<sup>159</sup>

### ***Claims processing staffing profile***

142. Similar to the whole department, in February 2022, 33% of claims processing staff at DVA were employed through labour hire arrangements, and the remainder were APS staff (see Table 5.6).

**Table 5.6 Employment status of DVA claims processing staff<sup>160</sup>**

	30 June 2019	30 June 2020	30 June 2021	28 February 2022
APS staff	219	239	224	410
Labour hire staff	203	268	281	203
Total staff	422	507	505	613
The proportion of staff engaged through labour hire	48%	53%	56%	33%

143. The lower proportion of labour hire staff as at 28 February 2022 compared to the preceding years is a result of Budget measures that increased DVA's funding and DVA's ASL cap in the 2021–22 financial year (Table 5.3).

### Higher staff turnover rates

144. As noted above, in order to stay within its ASL cap, DVA has engaged a significant proportion of its staff, including claims processing staff, through labour hire arrangements.
145. Where DVA has received short-term funding, it is also only able to engage people through short-term arrangements. This means engaging staff as labour hire, or, if the ASL cap has not been reached, employing staff as non-ongoing APS employees.
146. During the almost four years from 1 July 2018 to 31 March 2022, DVA engaged 1,132 new staff into claims processing roles.<sup>161</sup> Of these, 769 were engaged as labour hire, 264 were engaged as ongoing APS employees, 17 were engaged as non-ongoing APS employees and 82 were engaged through different arrangements.<sup>162</sup> Thus, the vast majority of newly engaged claims processing staff were labour hire.
147. Ms Natasha Cole, the First Assistant Secretary of DVA's Client Benefits Division, told us that 'there tends to be a higher turnover rate with our contracted staff'.<sup>163</sup> However, Ms Cosson explained that DVA does not monitor the turnover rates of people engaged through labour hire arrangements:

we don't actually monitor the attrition for our labour hire because they have been employed on 12-month contracts and given 12-month funding, there is that uncertainty so we do see them leave, but we don't measure it.<sup>164</sup>

148. Despite DVA not monitoring the turnover rates of people engaged through labour hire arrangements, DVA was able to provide us with some relevant figures. We asked DVA how many of the 769 labour hire staff who began working in claims processing roles at DVA between 1 July 2018 and 31 March 2022 ceased working in claims processing within 6 months. DVA told us that 218 staff, or 28% of the total number of new labour hire claims processing staff, ceased working in claims processing within 6 months of beginning in the role.<sup>165</sup>

149. In considering the attrition of APS employees, Mr Mark Harrigan, the Chief Operating Officer of DVA, explained that the annual APS employee turnover rate as at 16 March 2022 was approximately 11%.<sup>166</sup> Within DVA's compensation claims processing, the APS employee turnover rate was approximately 9%.<sup>167</sup>
150. While it is difficult to determine the turnover rate for labour hire staff, the evidence put before us indicates that labour hire staff have a higher turnover rate compared to APS employees.

### Lower staff proficiency

151. The ASL cap has led to more labour hire staff, higher staff turnover rates and, consequently, lower proficiency among the cohort of claims processing staff.
152. Our comments in this section are not intended to reflect on the performance of individual people working at DVA. Instead, we conclude that the nature of short-term labour hire contracts is that they necessarily involve greater turnover and greater turnover leads to lower proficiency overall.
153. The complexity of DVA's claims processing system means that it takes new claims processing staff at least six months to become fully proficient at their role. Ms Cosson told us:
- The training timeframe will depend on the claim type and the nature of the role the trainee is undertaking. Noting the complexity of the legislation, a trainee delegate can achieve accreditation after a six month training program which includes formal classroom and on-the-job training. This period is extended to nine months if a trainee is learning more complex skills, for example, multi-Act liability claims where eligibility under two Acts need to be considered. Naturally, time in the role post training and accreditation consolidates a delegate's knowledge and builds expertise.<sup>168</sup>
154. Ms Cosson further explained that new claims processing staff build their proficiency during the six-month training period:
- once they have finished 3 months training they are 50 per cent productive. ... But also, importantly, team leaders are supervising a bit more. They [the new staff] are making decisions during their training, but it depends on the complexity of the decision until they become fully competent at six months and productive.<sup>169</sup>
155. This means that when DVA engages a labour hire staff member on a 12-month contract, the staff member is not fully productive for half of their contract.<sup>170</sup> The more time a person spends in training compared to being fully proficient means less overall productivity for DVA from the staff it is employing. If, as occurred between 1 July 2018 and 31 March 2022, 28% of new labour hire claims processing staff leave that role within six months then, on average, about a quarter of labour hire staff never reach full proficiency.
156. When staff leave DVA, Ms Cosson noted, this 'results in the loss of the training investment in those staff and impacts negatively on workforce productivity'.<sup>171</sup>

157. While Ms Cosson outlined that a trained labour hire staff member could have their contract extended, this is dependent on DVA having sufficient funding to support the extension, as well as the staff member choosing to accept any extension offered.<sup>172</sup>

158. In his statement, the former Minister for Veterans' Affairs, the Hon Andrew Gee MP, told us:

In my view, with respect to claims processing, it is more preferable to employ APS staff rather than labour hire staff because it provides continuity for veterans, lower turnover of staff allocated to veterans' claims and deeper institutional knowledge (among other things). There is also a significant investment to train staff which is lost too quickly where there is a high turnover of claims staff.<sup>173</sup>

159. We also heard from three representatives of the NSW Legal Aid Commission, which has a Veterans' Advocacy Service. Mr Geoff Lazar, a solicitor with the NSW Legal Aid Commission, said that one issue:

is with the turnover of staff. What I am seeing quite often, as much as earlier today, even ... is that matters have to be referred to senior people for approval before the delegate sends out the appropriate determination, or letter, or form, or whatever. In today's case, a decision had been made but the delegate basically went from A to C without bothering to pass B, and it created confusion which I had to get sorted out. But that happens more and more lately. I think it's that turnover of staff, that loss of knowledge.<sup>174</sup>

160. Ms Cosson agreed that inadequate staffing levels and the high ratio of labour hire to APS staff have materially contributed to the accrual of the claims backlog.<sup>175</sup>

161. The ASL cap has led to use of more labour hire staff, which has in turn contributed to increased turnover and lower proficiency. Ultimately, veterans are negatively affected by lower overall levels of staff proficiency through lower levels of corporate knowledge, greater chance of mistakes, and less efficient claims processing impacting on claim processing delays.

### **Less efficient expenditure**

162. Engaging staff through labour hire is more expensive than engaging staff as members of APS.

### ***Cost differences between APS and labour hire staff at DVA***

163. DVA told us that the average cost of a labour hire staff member is 14.1% more expensive than an APS staff member.<sup>176</sup>

164. The average cost difference between labour hire and APS staff is greater for higher levels of seniority.<sup>177</sup> For example, at the APS4 equivalent level, a labour hire staff member is 12.1% more expensive than an APS employee, while at the Executive Level 2 equivalent level a labour hire staff member is 21.6% more expensive.<sup>178</sup>

165. The cost difference between labour hire and APS staff takes into account fees, commissions, margins and other payments to labour hire firms, staff members' hourly rates of pay, superannuation, leave loadings and taxes.<sup>179</sup>

166. DVA also told us that for staff employed in claims processing roles, labour hire staff are 13.8% more expensive than APS staff.<sup>180</sup> The majority of staff in these roles are employed at an APS5 equivalent level.<sup>181</sup>

### ***Department of Finance staff cost models***

167. For the purpose of costing measures, the Department of Finance also considers the cost difference between APS and labour hire staff. The Department of Finance told us that they use standardised salary rates for all APS employees across all entities.<sup>182</sup> The Department of Finance explained that these 'rates are based on the Australian Public Service Commission's benchmark salary rates which are adjusted for indexation'.<sup>183</sup>
168. For labour hire costs, an entity and the Department of Finance can either agree on 'an agency specific costing approach that applies across all their funding proposals, or agree the costing for the engagement of contractors on a proposal by proposal basis'.<sup>184</sup>
169. The Department of Finance indicated that for costing proposals by DVA, it considers labour hire staff to be from 16% to 34% more expensive than APS employees. The cost difference increases as the seniority of the staff increases (Table 5.7).

**Table 5.7 The cost difference between APS staff and labour hire staff used by the Department of Finance for costing proposals by DVA as at 1 May 2022<sup>185</sup>**

	APS total cost \$	DVA contractor total cost \$	Cost difference between APS staff and contractors	
			\$	%
EL2	209,582	281,549	71,976	34
EL1	173,920	232,126	58,206	33
APS6	143,827	190,356	46,529	32
APS5	127,270	162,996	35,727	28
APS4	117,497	144,756	27,260	23
APS3	108,751	126,516	17,766	16

170. There is a marked difference between the cost differences outlined by the Department of Finance compared to those provided by DVA. It is not clear to us how to reconcile these differences. However, the evidence from both departments is clear – engaging staff through labour hire is more expensive than engaging staff as APS employees.

### **The future of the ASL cap**

171. In our view, the ASL cap has contributed to claim processing inefficiencies and delays. In doing so, it has contributed to the difficulties and stress some veterans experience while navigating the claims process. We believe the ASL cap policy should not apply to DVA.

### ***Staffing profile flexibility***

172. As outlined above, labour hire staff tend to have higher rates of turnover, are less proficient during the span of their employment, and cost more than APS employees.

173. When asked about the role of labour hire staff, Ms Cosson stated:

I want less labour hire and more public servants.<sup>186</sup>

174. She went on to state that:

For a whole Department's workforce, I believe it should be maybe no more than 20 per cent labour hire, and the rest of the workforce should be based on ongoing and non-ongoing [APS employees].<sup>187</sup>

175. Ms Cosson explained that she thought 20% labour hire staff would enable DVA to manage changing departmental workload demands:

For any workforce giving that flexibility, if there is a surge or demand goes down, it gives you that flexibility with the workforce. That's why I said 20 per cent.<sup>188</sup>

176. As mentioned above, with recent temporary funding and ASL cap increases for DVA, the proportion of labour hire staff claims processing staff compared to APS employees has been decreasing. Currently, labour hire staff make up 33% of DVA as a whole and similarly 33% of claims processing staff. This is still well above the 20% Ms Cosson suggested was a preferred proportion of labour hire staff.

177. The former Minister for Veterans' Affairs, the Hon Andrew Gee MP, told us that he believes:

Generally speaking ... it's better not to use labour hire if you can avoid it.<sup>189</sup>

178. We acknowledge that for DVA to manage its workload demand some short-term employment may be required. This can be done through the use of non-ongoing APS employment, as well as labour hire arrangements.

179. In our view, the current level of labour hire staffing at DVA is too high. The Secretary of DVA should be empowered to determine the most appropriate staffing profile for the department based on current and expected workload demands and funding available.

### ***Affordable and sustainable?***

180. The Department of Finance described the rationale of the ASL cap policy as aiming to manage 'the size of the public service to ensure that it is affordable and sustainable'.<sup>190</sup>

181. In the case of DVA, we have seen that funding and staffing for the department needs to match its workload demand better. Both Ms Cosson and Mr Gee believe that the proportion of labour hire DVA was compelled to engage was too high. Coupled with the additional cost to the Australian Government of labour hire compared to employing people as APS employees, we see no way in which the ASL cap policy has been 'affordable and sustainable' for the Government with respect to DVA.

182. In the 2021–22 Budget papers, the Government stated:

The Government is committed to efficiently resourcing its policies. This includes through the provision of ASL, and partnerships with external providers of specialist services where that is more effective to meet contemporary challenges, as well as the Government's guarantee of quality programs. This has helped to ensure that its public sector workforce remains structured for maximum efficiency and productivity.<sup>191</sup>

183. In the case of DVA, we believe the Australian Government of the day failed to resource its policies efficiently. It failed to ensure that its public sector workforce, inclusive of labour hire staff, was 'structured for maximum efficiency and productivity'. And it failed veterans by pursuing a policy that substantially contributed to claims processing delays.

### **The ASL cap should be removed permanently**

184. The ASL cap policy compelled DVA to engage more labour hire staff and fewer APS employees. DVA's overuse of labour hire staff has led to greater turnover of staff, lower overall proficiency of staff and less efficient expenditure of public money.

185. When the former Minister for Veterans' Affairs, the Hon Darren Chester MP, was asked whether he saw any benefit for veterans from DVA being subject to an ASL cap, he answered:

No, I don't believe I can.<sup>192</sup>

186. The subsequent former Minister for Veterans' Affairs, the Hon Andrew Gee MP, told us that labour hire should be avoided.<sup>193</sup> He said:

I believe the ASL Cap has had an adverse impact on the claims processing system and therefore ADF personnel, veterans and their families.<sup>194</sup>

187. We agree that there are no benefits for veterans from the ASL cap policy and that the policy has had negative impacts on veterans. We believe that the ASL cap should no longer be applied to DVA.

188. The Department of Finance told us that the Australian Government elected in May 2022 has committed to removing the ASL cap.<sup>195</sup> We support this decision.

### **Recommendation 5: Remove the Department of Veterans' Affairs Average Staffing Level Cap**

The Australian Government should remove, on a permanent basis, the application of the Average Staffing Level (ASL) cap policy on the Department of Veterans' Affairs.

## Endnotes

- 1 *Military Rehabilitation and Compensation Act 2004* (Cth) ss 2, 3.
- 2 *Veterans' Entitlements Act 1986* (Cth) ss 6-6F, 7-9A, 13, 37, pt III div 2; *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) ss 4AA, 123A.
- 3 *Military Rehabilitation and Compensation Act 2004* (Cth) ss 338, 339; *Veterans' Entitlements Act 1986* (Cth) ss 120-120B.
- 4 *Military Rehabilitation and Compensation Act 2004* (Cth) s 332; *Veterans' Entitlements Act 1986* (Cth) s 196B.
- 5 See, for example: *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) ss 6, 6A.
- 6 Transcript, Peter Sutherland, Hearing Block 4, 5 April 2022, p 25-2292 [39-40].
- 7 Exhibit 15-01.014, Hearing Block 3, DVA.0008.0002.0013 at 0016; *Military Rehabilitation and Compensation Act 2004* (Cth) ss 325, 326.
- 8 Department of Veterans' Affairs, 'Needs assessment', last updated 9 August 2021, [www.dva.gov.au/needs-assessment](http://www.dva.gov.au/needs-assessment), viewed 14 July 2022 (Exhibit D-01.032, STU.0006.0001.6153); Exhibit D-01.028, ONC.0000.0003.7758 at 7760.
- 9 *Military Rehabilitation and Compensation Act 2004* (Cth) ch 4; *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) pt II div 3. See also: Department of Veterans' Affairs, 'What are incapacity payments and how to get them', last updated 1 February 2022, [www.dva.gov.au/financial-support/income-support/support-when-you-cannot-work/what-are-incapacity-payments-and-how](http://www.dva.gov.au/financial-support/income-support/support-when-you-cannot-work/what-are-incapacity-payments-and-how), viewed 14 July 2022 (Exhibit C-01.013, STU.0006.0001.6083).
- 10 *Military Rehabilitation and Compensation Act 2004* (Cth) ch 4, pt II; *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) pt II, div 4. See also: Department of Veterans' Affairs, 'Benefits if you were permanently injured', last updated 22 September 2021, [www.dva.gov.au/financial-support/compensation-claims/claims-if-you-were-injured-after-30-june-2004/benefits-if-you-what-is-a-pi-payment](http://www.dva.gov.au/financial-support/compensation-claims/claims-if-you-were-injured-after-30-june-2004/benefits-if-you-what-is-a-pi-payment), viewed 14 July 2022 (Exhibit C-01.014, STU.0006.0001.4964).
- 11 *Veterans' Entitlements Act 1986* (Cth) pt II, div 4.
- 12 *Veterans' Affairs Legislation Amendment (Exempting Disability Payments from Income Testing and Other Measures) Act 2021* (Cth) sch 3; Explanatory Memorandum, *Veterans' Affairs Legislation Amendment (Exempting Disability Payments from Income Testing and Other Measures) Bill 2021*, pp 15-16.
- 13 Department of Veterans' Affairs, *D2582 Claim for Disability Compensation Payment and/or Application for Increase in Disability Compensation Payment*, VEA claims checklist (Exhibit C-01.015, STU.0006.0001.5206); Department of Veterans' Affairs, *D2051 Claim for Liability and/or Reassessment of Compensation*, MRCA claims checklist (Exhibit C-01.016, STU.0006.0001.5188); Department of Veterans' Affairs, *D2020 SRCA Claim for Rehabilitation and Compensation*, DRCA claims checklist (Exhibit C-01.017, STU.0006.0001.5173).
- 14 A Collie, *The Mental Health Impacts of Compensation Claim Assessment Processes*, Monash University, March 2019, p 37 (Exhibit 11-01.001, Hearing Block 2, STU.0002.0001.0001); Department of Veterans' Affairs, *Military Compensation MRCA Manuals and Resources Library, Policy Manual*, Chapter 2 – Claims, 2.1.5. – No Time Limit on Claims, [www.clik.dva.gov.au/military-compensation-mrca-manuals-and-resources-library/policy-manual/ch-2-claims/21-making-claim/215-no-time-limit-claims](http://www.clik.dva.gov.au/military-compensation-mrca-manuals-and-resources-library/policy-manual/ch-2-claims/21-making-claim/215-no-time-limit-claims), accessed 14 July 2022 (Exhibit A-01.018, STU.0006.0001.1484).
- 15 Exhibit 11-001.003, Hearing Block 5, DVA.0002.0001.0245 at 0247.
- 16 Transcript, Traci-Ann Byrnes, Hearing Block 2, 18 February 2022, p 15-1342 [45]; Exhibit 33-01.007, Hearing Block 5, DVA.9999.0012.0026 at 0034.
- 17 Exhibit 33-02.002, Hearing Block 5, EXP.0005.0018.0113\_R at 0105 [7].
- 18 Exhibit 33-02.002, Hearing Block 5, EXP.0005.0018.0113\_R at 0105 [9].
- 19 Department of Veterans' Affairs, *D2582 Claim for Disability Compensation Payment and/or Application for Increase in Disability Compensation Payment*, VEA claims checklist (Exhibit C-01.015, STU.0006.0001.5206); Department of Veterans' Affairs, *D2051 Claim for Liability and/or Reassessment of Compensation*, MRCA claims checklist (Exhibit C-01.016, STU.0006.0001.5188); Department of Veterans' Affairs, *D2020 SRCA Claim for Rehabilitation and Compensation*, DRCA claims checklist (Exhibit C-01.017, STU.0006.0001.5173). See also: *Military Rehabilitation and Compensation Act 2004* (Cth) s 319(2); *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) s 54(2); *Veterans' Entitlements Act 1986* (Cth) s 14(3).

- 20 Department of Veterans' Affairs, *D2582 Claim for Disability Compensation Payment and/or Application for Increase in Disability Compensation Payment*, VEA claims checklist (Exhibit C-01.015, STU.0006.0001.5206); Department of Veterans' Affairs, *D2051 Claim for Liability and/or Reassessment of Compensation*, MRCA claims checklist (Exhibit C-01.016, STU.0006.0001.5188); Department of Veterans' Affairs, *D2020 SRCA Claim for Rehabilitation and Compensation*, DRCA claims checklist (Exhibit C-01.017, STU.0006.0001.5173). See also: *Military Rehabilitation and Compensation Act 2004* (Cth) s 319(2); *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) s 54(2); *Veterans' Entitlements Act 1986* (Cth) s 14(3).
- 21 Department of Veterans' Affairs, *D2582 Claim for Disability Compensation Payment and/or Application for Increase in Disability Compensation Payment*, VEA claims checklist, p 1 (Exhibit C-01.015, STU.0006.0001.5206); Department of Veterans' Affairs, *D2051 Claim for Liability and/or Reassessment of Compensation*, MRCA claims checklist, p 1 (Exhibit C-01.016, STU.0006.0001.5188); Department of Veterans' Affairs, *D2020 SRCA Claim for Rehabilitation and Compensation*, DRCA claims checklist, p 1 (Exhibit C-01.017, STU.0006.0001.5173).
- 22 Department of Veterans' Affairs, *D2582 Claim for Disability Compensation Payment and/or Application for Increase in Disability Compensation Payment*, VEA claims checklist (Exhibit C-01.015, STU.0006.0001.5206); Department of Veterans' Affairs, *D2051 Claim for Liability and/or Reassessment of Compensation*, MRCA claims checklist (Exhibit C-01.016, STU.0006.0001.5188); Department of Veterans' Affairs, *D2020 SRCA Claim for Rehabilitation and Compensation*, DRCA claims checklist (Exhibit C-01.017, STU.0006.0001.5173).
- 23 *Veterans' Entitlement Act 1986* (Cth) s 180.
- 24 *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) s 142; *Military Rehabilitation and Compensation Act 2004* (Cth) s 362.
- 25 *Military Rehabilitation and Compensation Act 2004* (Cth) s 384(d); *Safety Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) s 152; *Veterans' Entitlements Act 1986* (Cth) s 213(4).
- 26 In the case of the Military Rehabilitation and Compensation Commission, the delegation must be to 'a consultant to, or an employee of a consultant to, the Commission': *Military Rehabilitation and Compensation Act 2004* (Cth) s 384(c); *Safety Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth) s 152(1). In the case of the Repatriation Commission, the delegation must be to contractor, or an employee of a contractor, of the Commonwealth or the Commission: *Veterans' Entitlements Act 1986* (Cth) s 213.
- 27 Productivity Commission, *A Better Way to Support Veterans*, No. 93, June 2019, vol 1, p 350 (Exhibit 01-01.010, Hearing Block 1, INQ.0000.0001.2299).
- 28 Productivity Commission, *A Better Way to Support Veterans*, No. 93, June 2019, vol 1, p 394 (Exhibit 01-01.010, Hearing Block 1, INQ.0000.0001.2299).
- 29 Exhibit 14-04.017, Hearing Block 3, EXP.0002.0018.0001 at 0005-0006 [26].
- 30 Transcript, Luke Brown, Hearing Block 2, 18 February 2022, p 15-1328 [35-36].
- 31 Transcript, Luke Brown, Hearing Block 2, 18 February 2022, p 15-1329 [3-7].
- 32 Transcript, Luke Brown, Hearing Block 2, 18 February 2022, p 15-1329 [11-14].
- 33 Transcript, Luke Brown, Hearing Block 2, 18 February 2022, p 15-1329 [37-41].
- 34 Transcript, Luke Brown, Hearing Block 2, 18 February 2022, p 15-1328 [35-40], 15-1329 [3-41], p 15-1332 [2].
- 35 Exhibit 15-01.014, Hearing Block 3, DVA.0008.0002.0013 at 0016.
- 36 Exhibit 14-04.017, Hearing Block 3, EXP.0002.0018.0001 at 0006.
- 37 Exhibit 33-01.008, Hearing Block 5, DVA.9999.0013.0001 at 0001. Figure calculated by the Royal Commission from source. The sum of DVA clients with an accepted condition divided by the sum of DVA clients with an accepted condition, expressed as a percentage.
- 38 Name withheld, Submission, ANON-Z1E7-Q1W5-N, pp [43-44] of supplementary material.
- 39 Transcript, Richard Kelloway, Hearing Block 4, 7 April 2022, pp 27-2454 [46]-27-2455 [6].
- 40 Transcript, Gerard McAleese, Hearing Block 4, 7 April 2022. pp 27-2496 [40]-27-2497 [11].
- 41 Transcript, Ivan Slavich, Hearing Block 1, 6 December 2021, p 6-578 [14].
- 42 Transcript, Ivan Slavich, Hearing Block 1, 6 December 2021, p 6-578 [23-30].
- 43 Exhibit D-01.017, DVA.9999.0016.0001 at 0003.
- 44 Exhibit D-01.017, DVA.9999.0016.0001 at 0003.
- 45 Name withheld, Submission, ANON-Z1E7-Q18U-P, p [2].
- 46 Name withheld, Submission, ANON-Z1E7-Q1W5-N, pp [43-44] of supplementary material.
- 47 Transcript, Ian Lindgren, Richard Kelloway, Nikki Noakes, Hearing Block 4, 7 April 2022, p 27-2446 [20]-2481 [10].
- 48 Submission, Alan Sparks, ANON-Z1E7-Q1C2-X, p [6].

- 49 Submission, Name withheld, ANON-Z1E7-Q8ZJ-M, p [3].
- 50 Name withheld, Submission, ANON-Z1E7-Q1W5-N, p [13] of supplementary material.
- 51 John Gregory, Submission, ANON-Z1E7-Q1JX-B, p [2].
- 52 Name withheld, Submission, ANON-Z1E7-Q155-K, p [2].
- 53 Arthur Ventham, Submission, ANON-Z1E7-Q1EQ-Y, p [2].
- 54 Exhibit 06-03, Hearing Block 1, PGO.0000.0001.0001\_R at 0008 [70].
- 55 Transcript, Phillip Goodwin, Hearing Block 1, 6 December 2021, p 6-520 [33–37].
- 56 Transcript, Phillip Goodwin, Hearing Block 1, 6 December 2021, p 6-521 [32–38].
- 57 T Varker and others, *Mental health impacts of compensation claims assessment processes on claimants and their families: Final report*, Phoenix Australia – Centre for Posttraumatic Mental Health. 2018 p 34 (Exhibit 11-01.002, Hearing Block 3, STU.0002.0001.0074).
- 58 A Collie, *The Mental Health Impacts of Compensation Claim Assessment Processes*, Monash University, 2018, p 5, 20 (Exhibit 11-01.001, Hearing Block 3, STU.0002.0001.0001).
- 59 A Collie, *The Mental Health Impacts of Compensation Claim Assessment Processes*, Monash University, 2018, p 44 (Exhibit 11-01.001, Hearing Block 3, STU.0002.0001.0001).
- 60 Transcript, Elizabeth Cosson, Hearing Block 4, 14 April 2022, p 31-2925 [39].
- 61 Transcript, Kate Pope, Hearing Block 3, 16 March 2022, p 22-1997 [12–14].
- 62 *Australian Veterans’ Recognition (Putting Veterans and Their Families First) Act 2019* (Cth) s 7(3).
- 63 *Australian Veterans’ Recognition (Putting Veterans and Their Families First) Act 2019* (Cth) pt IV.
- 64 Department of Veterans’ Affairs, *Corporate Plan 2021–22, 2021*, p 20, 23 (Exhibit 22.05.020, Hearing Block 3, STU.0000.0002.7531).
- 65 May 2022 figure is taken from Exhibit C-01.008, DVA.0015.0001.0001.
- 66 Exhibit C-01.008, DVA.0015.0001.0001.
- 67 Exhibit C-01.008, DVA.0015.0001.0001.
- 68 Exhibit 33-01.007, Hearing Block 5, DVA.9999.0012.0026 at 0030–0033. Figure calculated by the Royal Commission from source. Percentage increase from total unallocated claims on hand as at 31 July 2021 to total unallocated claims on hand as at 31 May 2022.
- 69 Transcript, John Williams, Hearing Block 1, 29 November 2021, p 1-102 [24–25].
- 70 Exhibit 01-03.013, Hearing Block 1, VSN.0000.0001.0001\_R at 0006–0007
- 71 Transcript, John Williams, Hearing Block 1, 29 November 2021, p 1-102 [30–32].
- 72 McKinsey Projects, *DVA’s claims process diagnostic*, 14 December 2021, p 3 (Exhibit 14-04.016, Hearing Block 3, DVA.0006.0001.0022).
- 73 Exhibit C-01.011, DVA.9999.0015.0001 at 0001); Exhibit 14-04.018, Hearing Block 2, EXP.0002.0018.0001\_R at 0007 [33].
- 74 Exhibit 14-04.018, Hearing Block 2, EXP.0002.0018.0001\_R at 0010 [48(b)(ii)].
- 75 McKinsey Projects, *DVA’s claims process diagnostic*, December 2021 (Exhibit 14-04.16, Hearing Block 3, DVA.0006.0001.0022).
- 76 Exhibit C-01.011, DVA.9999.0015.0001 at 0012–0013 [38].
- 77 Exhibit D-01.042, DVA.9999.0014.0021 at Annexure C.
- 78 Department of Veterans’ Affairs, *2016–17 Annual Report*, p 59 (Exhibit 22-05.015, Hearing Block 3, DVS.0000.0001.5389).
- 79 Department of Veterans’ Affairs, *2016–17 Annual Report*, p 44 (the VEA), p 59 (the SRCA), p 61 (the MRCA) (Exhibit 22-05.015, Hearing Block 3, DVS.0000.0001.5389).
- 80 Transcript, Luke Brown, Hearing Block 2, 18 February 2022, p15-1350 [3–5].
- 81 Transcript, Luke Brown, Hearing Block 2, 18 February 2022, p15-1349 [41–42].
- 82 Exhibit 33-02.005, Hearing Block 5, AGE.0003.0001.1916 at 1916.
- 83 Department of Veterans’ Affairs, *DVA Projected Beneficiary Numbers with Actuals to 30 June 2016*, August 2016, p 1 (Exhibit D-01.035, STU.0006.0001.6126).
- 84 Department of Veterans’ Affairs, *DVA Projected Beneficiary Numbers with Actuals to 30 June 2016*, August 2016, p 1 (Exhibit D-01.035, STU.0006.0001.6126).
- 85 Department of Veterans’ Affairs, *DVA Projected Beneficiary Numbers with Actuals to 30 June 2021*, 2021, p 1 (Exhibit D-01.035, STU.0006.0001.6126).
- 86 Australian Government Actuary, *Actuarial Investigation into the Costs of Military Compensation*, 30 June 2020, p 15 [Table 1.2] (Exhibit 40-05.013, Hearing Block 5, STU.0000.0002.8362). Figure calculated by the Royal Commission from source. Percentage increase from outstanding claims liability expected as at 30 June 2022 to outstanding claims liability expected as at 30 June 2020.
- 87 Australian Government Actuary, *Actuarial Investigation into the Costs of Military Compensation*, 30 June 2020, p 15 [Table 1.2] (Exhibit 40-05.013, Hearing Block 5, STU.0000.0002.8362). Figures rounded by the Royal Commission from source.

- 88 Australian Government Actuary, *Actuarial Investigation into the Costs of Military Compensation*, 30 June 2020, p 17 [1.4.5] (Exhibit 40-05.013, Hearing Block 5, STU.0000.0002.8362).
- 89 Table figures from financial year 2016–2017 through to financial year 2020–21 extracted from Exhibit 22-05.005, DVA.9999.0001.0299 at 308, 324, 339, 357, 373; Table figure for 2022 extracted from Exhibit 33-01.008, DVA.9999.0013.0001 at 0003 (the 'TOTAL' row in the table titled '*Table 7: Gross claims received as at each month (July to 15 May 2022)*' was added).
- 90 Australian Government Actuary, *Actuarial Investigation into the Costs of Military Compensation*, 30 June 2020, p 26 [3.1.4] (Exhibit 40-05.013, Hearing Block 5, STU.0000.0002.8362).
- 91 Australian Government Actuary, *Actuarial Investigation into the Costs of Military Compensation*, 30 June 2020, p 26 [3.1.4] (Exhibit 40-05.013, Hearing Block 5, STU.0000.0002.8362).
- 92 Exhibit 31-01.001, Hearing Block 4, DVA.9999.0008.0001 at 0018 [96.1], 0021 [110.10].
- 93 Australian Government Actuary, *Actuarial Investigation into the Costs of Military Compensation*, 30 June 2020, p 28 [3.2.3] (Exhibit 40-05.013, Hearing Block 5, STU.0000.0002.8362).
- 94 Transcript, Elizabeth Cosson, Hearing Block 4, 14 April 2022, p 31-2926 [46]–31-2927 [1].
- 95 Transcript, Elizabeth Cosson, Hearing Block 4, 14 April 2022, p 31-2927 [6–12].
- 96 Exhibit 31-01.001, Hearing Block 4, DVA.9999.0008.0001 at 0018 [96.3].
- 97 *Australian Veterans' Recognition (Putting Veterans and Their Families First) Act 2019* (Cth) s 3.
- 98 Exhibit 31-01.01, Hearing Block 4, DVA.9999.0008.0001 at 0018 [96.2]; *Veterans' Entitlements (Expanded Access to Non-Liability Health Care for Mental Health Treatment) Determination 2017*.
- 99 Australian Government Actuary, *Actuarial Investigation into the Costs of Military Compensation*, 30 June 2020, p 28, [3.2.3] (Exhibit 40-05.013, Hearing Block 5, STU.0000.0002.8362).
- 100 Department of Veterans' Affairs, *Initial background paper to the Royal Commission into Defence and Veteran Suicide*, 1 September 2021, p 21 [84a] (Exhibit 31-01.002, EXP.0004.0020.0233).
- 101 Exhibit 31-01.01, Hearing Block 4, DVA.9999.0008.0001 at 0018 [96.4].
- 102 Transcript, Darren Chester, Hearing Block 5, 22 June 2022, pp 34-3239 [47]–34-3240 [5].
- 103 Australian Government Actuary, *Actuarial Investigation into the Costs of Military Compensation*, 30 June 2020, p 28 [3.2.4] (Exhibit 40-05.013, Hearing Block 5, STU.0000.0002.8362).
- 104 *Canute v Comcare* (2006) 226 CLR 535; *Fellowes v Military Rehabilitation and Compensation Commission* (2009) 240 CLR 28; *Robson v Military Rehabilitation and Compensation Commission* (2013) 214 FCR 1.
- 105 Department of Veterans' Affairs, *Portfolio Budget Statements 2022–23 – Budget Related Paper No. 1.3B, Defence Portfolio (Department of Veterans' Affairs)*, March 2022, p 19 [Table 1.1] (Exhibit 31-01.032, Hearing Block 4, EXP.0004.0020.0288).
- 106 Parliament of Australia, 'Budget Guide', web page, last updated 27 August 2001, [www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/Publications\\_Archive/archive/BudgetGuide#Administered%20and%20Departmental%20Items](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/BudgetGuide#Administered%20and%20Departmental%20Items), viewed 12 July 2022.
- 107 Department of Veterans' Affairs, *Portfolio Budget Statements 2022–23 – Budget Related Paper No. 1.3B, Defence Portfolio (Department of Veterans' Affairs)*, March 2022, p 19 [Table 1.1] (Exhibit 31-01.032, Hearing Block 4, EXP.0004.0020.0288).
- 108 Department of Veterans' Affairs, *Portfolio Budget Statements 2022–23 – Budget Related Paper No. 1.3B, Defence Portfolio (Department of Veterans' Affairs)*, March 2022, pp 18–19 (Exhibit 31-01.032, Hearing Block 4, EXP.0004.0020.0288). Figures calculated by the Royal Commission from source. Departmental funding is the sum of 'Departmental appropriation', 's74 External Revenue' and 'Departmental capital budget'. Departmental funding divided by the sum of departmental funding and total administered resourcing, expressed as a percentage.
- 109 Exhibit C-01.010, DVA.9999.0014.0001 at 0005–0006 [15.2].
- 110 Department of Veterans' Affairs, *Portfolio Budget Statements 2018–19 – Budget Related Paper No. 1.4B, Defence Portfolio (Department of Veterans' Affairs)*, 2018, p 18 [Table 1.1] (Exhibit 34-01.005, DCH.0001.0001.0031).
- 111 Department of Veterans' Affairs, *Portfolio Budget Statements 2019–20 – Budget Related Paper No. 1.4B, Defence Portfolio (Department of Veterans' Affairs)*, 2019, p 18 [Table 1.1] (Exhibit 34-01.006, DCH.0001.0001.0162).
- 112 Department of Veterans' Affairs, *Portfolio Budget Statements 2020–21 – Budget Related Paper No. 1.3B, Defence Portfolio (Department of Veterans' Affairs)*, 2020, p 18 [Table 1.1] (Exhibit 40-05.004, DVA.0010.0001.1620).
- 113 Department of Veterans' Affairs, *Portfolio Budget Statements 2021–22 – Budget Related Paper No. 1.3B, Defence Portfolio (Department of Veterans' Affairs)*, 2021, p 19 [Table 1.1] (Exhibit D-01.016, DVA.0010.0001.1349).

- 114 Department of Veterans' Affairs, *Portfolio Budget Statements 2022–23 – Budget Related Paper No. 1.3B, Defence Portfolio (Department of Veterans' Affairs), 2022*, p 18 [Table 1.1] (Exhibit 31-01.032, Hearing Block 4, EXP.0004.0020.0288).
- 115 Department of Veterans' Affairs, *Portfolio Budget Statements 2022–23 – Budget Related Paper No. 1.3B, Defence Portfolio (Department of Veterans' Affairs), 2022*, p 18 [Table 1.1] (Exhibit 31-01.032, Hearing Block 4, EXP.0004.0020.0288).
- 116 Exhibit 22-05.005, DVA.9999.0001.0299 at 0336, 0353, 0370 and 0386.
- 117 Exhibit 22-05.005, Hearing Block 4, DVA.9999.0001.0299 at 0336, 0353, 0370 and 0386.
- 118 Exhibit 31-01.001, Hearing Block 4, DVA.9999.0008.0001 at 0014 [76].
- 119 Exhibit 22-05.005, Hearing Block 4, DVA.9999.0001.0299 at 0336, 0353, 0370 and 0386; Department of Veterans' Affairs, *Portfolio Budget Statements 2021–22 – Budget Related Paper No. 1.3B, Defence Portfolio (Department of Veterans' Affairs), 2021*, p 22 [Table 1.2], 25 [Table 1.2], 26 [Table 1.2] (Exhibit D-01.016, DVA.0010.0001.1349). Note that \$2.6 million allocated in 2021–22 was administered funding, with the rest departmental funding. Department of Veterans' Affairs, *Portfolio Budget Statements 2022–23 – Budget Related Paper No. 1.3B, Defence Portfolio (Department of Veterans' Affairs), March 2022*, p 22 [Table 1.2, DVA – Additional resources for claims processing] (Exhibit 31-01.32, Hearing Block 4, EXP.0004.0020.0288 at 0319). The Secretary to the Treasury and The Secretary to the Department of Finance, *Pre-election Economic and Fiscal Outlook 2022, 2022*, p 29 (Exhibit C-01.024, STU.0006.0001.5831).
- 120 Exhibit 33-01.007, Hearing Block 5, DVA.9999.0012.0026 at 0033.
- 121 Exhibit 33-01.006, DVA.9999.0011.0026 at 0030 [5.12].
- 122 Exhibit 33-02.002, Hearing Block 5, EXP.0005.0018.0113\_R at 0183 [162].
- 123 Exhibit 33-02.002, Hearing Block 5, EXP.0005.0018.0113\_R at 0183 [162].
- 124 Exhibit 33-02.002, Hearing Block 5, EXP.0005.0018.0113\_R at 0180 [158].
- 125 The Secretary to the Treasury and The Secretary to the Department of Finance, *Pre-election Economic and Fiscal Outlook 2022, 2022*, pp 28–29 (Exhibit C-01.024, STU.0006.0001.5831).
- 126 The Hon Matt Keogh MP, Minister for Veteran's Affairs, *Report into veterans' claims now public*, media release, 24 June 2022 (Exhibit C-01.020, STU.0006.0001.5877).
- 127 Exhibit 31-01.001, Hearing Block 4, DVA.9999.0008.0001 at 0014 [69]; Exhibit D-01.017, DVA.9999.0016.0001 at 0002.
- 128 Exhibit D-01.017, DVA.9999.0016.0001 at 0001.
- 129 Exhibit D-01.017, DVA.9999.0016.0001 at 0002.
- 130 Exhibit 31-01.001, Hearing Block 4, DVA.9999.0008.0001 at 0014 [72].
- 131 Exhibit 31-01.001, Hearing Block 4, DVA.9999.0008.0001 at 0014 [71].
- 132 Exhibit C-01.010, DVA.9999.0014.0001 at 0008 [17.2].
- 133 Exhibit 31-01.001, Hearing Block 4, DVA.9999.0008.0001 at 0014 [73]; see also: Exhibit C-01.010, DVA.9999.0014.0001 at 0008 [17.2].
- 134 Exhibit 33-01.006, DVA.9999.0011.0026 at 0029 [5.11].
- 135 Exhibit D-01.017, DVA.9999.0016.0001 at 0002).
- 136 Exhibit 31-01.001, Hearing Block 4, DVA.9999.0008.0001 at 0014 [72].
- 137 Exhibit D-01.017, DVA.9999.0016.0001 at 0003.
- 138 Exhibit D-01.017, DVA.9999.0016.0001 at 0002.
- 139 Exhibit 40-05.008, Hearing Block 5, DFI.9999.0001.0001 at 0001.
- 140 Exhibit 40-05.008, Hearing Block 5, DFI.9999.0001.0001 at 0001.
- 141 Exhibit 40-05.008, Hearing Block 5, DFI.9999.0001.0001 at 0001.
- 142 Exhibit 40-05.008, Hearing Block 5, DFI.9999.0001.0001 at 0001.
- 143 Exhibit 40-05.008, Hearing Block 5, DFI.9999.0001.0001 at 0011.
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- 155 Transcript, Elizabeth Cosson, Hearing Block 4, 14 April 2022, p 31-2914 [2–6].
- 156 Exhibit 31-01.001, Hearing Block 4, DVA.9999.0008.0001 at 0015 [78].
- 157 Exhibit 31-01.001, Hearing Block 4, DVA.9999.0008.0001 at 0015 [78].
- 158 Exhibit 31-01.001, Hearing Block 4, DVA.9999.0008.0001 at 0015 [78].
- 159 Exhibit 31-01.001, Hearing Block 4, DVA.9999.0008.0001 at 0015 [78]. Figure calculated by the Royal Commission from source. Labour hire staff divided by total workforce, expressed as a percentage.
- 160 Exhibit 31-01.001, Hearing Block 4, DVA.9999.0008.0001 at 0015 [79–80].
- 161 Exhibit 33-01.005, Hearing Block 5, DVA.9999.0012.0001 at 0001 [Table 1]. Figure calculated by the Royal Commission from source. The sum of new claims processing ongoing, non-ongoing, labour hire, different arrangement staff for all years.
- 162 Exhibit 33-01.005, Hearing Block 5, DVA.9999.0012.0001 at 0001 [Table 1]. Figures calculated by the Royal Commission from source. The sum of new claims processing labour hire staff for all years. The sum of new claims processing ongoing staff for all years. The sum of new claims processing non-ongoing staff for all years. The sum of new claims processing different arrangement staff for all years.
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**Procedural matters**



## 6 Procedural matters

### 6.1 Introduction

1. Since the Royal Commission commenced in July 2021, three separate procedural matters have concerned us deeply. We have been working with the Australian Government to address these matters, but they remain unresolved.
2. In this chapter we outline our concerns about each of these three matters:
  - lack of protections for serving and ex-serving Australian Defence Force (ADF) members and others, including public servants who wish to engage with us
  - constraints placed on our work by parliamentary privilege and public interest immunity claims made by the Australian Government
  - access to information held by Defence and Department of Veterans' Affairs (DVA) by serving and ex-serving ADF members and their families.
3. These three matters are not new. The Australian Government has known about and had the opportunity to address each of these matters:
  - inadequate or not fit-for-purpose protections for those engaging with Royal Commissions arose, and required legislative change, in two previous Royal Commissions
  - parliamentary privilege has constrained previous Royal Commissions and these concerns were raised directly with Parliament
  - issues with accessing information have been known to Defence through its own internal inquiries since at least 2016.
4. We are troubled that there has not been conclusive action to resolve these matters.
5. In this chapter, we make recommendations for legislative, policy and process changes by the Australian Government. We stress that these changes are urgent.

6. With some of our conclusions in this chapter the Australian Government Solicitor on behalf of the Australian Government has indicated agreement in principle, and regarding some the Australian Government Solicitor has noted that the matter is one for the Australian Government and/or the Parliament of Australia. To the extent that the Australian Government Solicitor has made points in opposition, we have dealt with their substance below.<sup>1</sup>

## 6.2 Protections to engage with us

### 6.2.1 Concerns about protections

7. We acknowledge and thank serving and ex-serving ADF members and their families for their courage in coming forward to engage with this Royal Commission. We appreciate the emotional toll this can take, and are committed to honouring with the utmost care the information, ideas and insights that people share with us.
8. The effectiveness of this Royal Commission depends upon the ability of serving and ex-serving ADF members to share their experiences with us. The Royal Commission can receive information from people in a range of ways, including submissions, roundtables and private sessions.<sup>2</sup> We can receive evidence by individuals appearing as witnesses in hearings and making statements that are tendered. However, we are aware that some people are concerned that there are legal restrictions which prevent them from disclosing information, especially information that they learned in the course of their duties. It is important that it be made clear – by legislation and executive action – that all persons can provide relevant information to the Royal Commission. There are some existing protections, but they are not adequate in all circumstances.
9. During Hearing Block 5, Commissioner Kaldas made our concerns clear:

before our hearing program began, we were concerned to do everything we could to encourage serving and former members of the Defence Force to come forward with any information they considered relevant to our Terms of Reference, and to ensure that there would be appropriate arrangements in place for sensitive information so that they would face no risk of legal liability for sharing information with us. This is a very important issue for the Royal Commission ... and we want to ensure every protection is given to those who come forward with information.<sup>3</sup>
10. Feedback from individuals and the Defence and Veterans Legal Service has confirmed that members and ex-serving members do not feel that there are adequate protections for them to engage with us.<sup>4</sup> We agree that the lack of protection is unacceptable. We know that some have requested private sessions to access confidentiality protections under part 4 of the Royal Commissions Act. Even so, as at 30 June 2022, only 15% of those who have made submissions to us are serving ADF members.
11. Among the cohorts of individuals seeking to engage with the Royal Commission who consider the existing protections to be inadequate, two can be mentioned.
12. The first cohort is serving members who intend to remain in the ADF and are concerned about the impact their disclosure of sensitive information may have on their career or their subsequent experience in service.

13. The second cohort is serving and ex-serving members whose lived experience is intrinsically linked to classified or operationally sensitive information. If they disclose this information to us without the appropriate approvals, whether voluntarily or where compelled by coercive powers, they may be exposed to criminal liability for a secrecy offence. Secrecy offences might include those contained in:
- Part 6 of the *Intelligence Services Act 2001* (Cth)
  - *Australian Secret Intelligence Organisation Act 1979* (Cth)
  - *Office of National Intelligence Act 2018* (Cth)
  - *Defence Act 1903* (Cth)
  - *Defence Force Discipline Act 1982* (Cth)
  - Part 5.6 of the *Criminal Code Act 1995* (Cth)
  - APS Code of Conduct, Public Service Regulations 1999 (Cth).
14. The Australian Government has the authority to provide greater protections to these and other cohorts. In October 2021 we proposed to the Australian Government the development of an arrangement so that those who wish to talk to us about suicide and suicidality, and other matters within our terms of reference, could do so without fear of repercussions for revealing information. We understand there were complications and delays on the part of the Australian Government in responding to our proposal.
15. However, we are disappointed that it took the Australian Government more than six months to develop a counterproposal, only provided to us in May 2022. And still, after 10 months, we do not have an arrangement with the Australian Government to provide adequate protection for serving and ex-serving ADF members and others who want to assist the Royal Commission.
16. The Australian Government's position appears to be that it cannot find a workable solution under existing legislation. If that is the case, it is essential, if the Australian Government wants us to do our work effectively, that there be legislative change. This change should deal with our immediate concerns about this Royal Commission's ability to do its work. But we also urge the Australian Government to find a long-term solution, so that future commissions of inquiry do not have to waste valuable time dealing with these same problems.
17. In the following three sections, we discuss aspects of our concerns about protections. These are private sessions, extending confidentiality, and our engagement with the Australian Government. We make recommendations for change about each of these matters.

## 6.2.2 Private sessions

18. Private sessions are an existing legislated mechanism which allow individuals to have a closed conversation with up to two Commissioners.<sup>5</sup> Part 4 of the Royal Commissions Act affords special protections to information disclosed during these sessions:
- information, records and documents revealed in private sessions are afforded protections for '99 years after the calendar year that the record came into existence'<sup>6</sup>
  - any unauthorised use or disclosure of information from a private session can be penalised with up to 12 months imprisonment or subject to a fine<sup>7</sup>
  - any information disclosed is 'not admissible in evidence against a natural person in any civil or criminal proceedings in any court of the Commonwealth, of a State or of a Territory'.<sup>8</sup>
19. We are committed to offering private sessions as a way for people to share their experiences when it involves information that is sensitive or they do not wish to disclose publicly. Where that relates to operationally sensitive information, we have processes in place to protect and store this information in accordance with the Protective Security Policy Framework, without risking further disclosure.
20. However, we do not wish private sessions to be a substitute for individuals who would engage with us differently if they had adequate protections to do so. There are also limitations on how we can use the information we hear during private sessions. While this information informs our understanding of suicidality in the ADF and helps with identifying issues to inquire into, we cannot use it as evidence or expressly mention it in our reports.<sup>9</sup>

## 6.2.3 Extending confidentiality

21. Recent Royal Commissions faced with confidentiality concerns advocated for amendments to the Royal Commissions Act. This led to the introduction and extension of protections to individuals wishing to provide sensitive personal information. This generally related to information an individual may not wish to disclose publicly, as opposed to information which may be classified or confidential within the meaning of the Protective Security Policy Framework.
22. The advocacy of the Royal Commission into Institutional Responses to Child Sexual Abuse saw the introduction of private sessions for all future Royal Commissions under the Act. The Chair of that Royal Commission also advocated for the insertion of what became s 6ON of the Royal Commissions Act, providing specific confidentiality protection for accounts given by or on behalf of an individual that relates to:
- a 'person's experiences of child sexual abuse in an institutional context'; or
  - 'what happened to other people regarding child sexual abuse in an institutional context'.<sup>10</sup>

23. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability advocated for a further amendment of the Act so confidentiality could be afforded to information pertaining to the sensitive nature of the lived experiences of violence, abuse, neglect or exploitation.
24. Section 6OP of the Royal Commissions Act applies confidentiality protections to certain information disclosed to the Disability Royal Commission outside of private sessions, including through submissions, interviews and records.<sup>11</sup> Confidentiality is applied for 99 years to information provided to that Royal Commission by an individual who has experienced or witnessed violence, abuse, neglect or exploitation.<sup>12</sup> Protection is provided where the Disability Royal Commission has treated the information disclosed as confidential at all times.<sup>13</sup>
25. The Royal Commission into Defence and Veteran Suicide faces unique circumstances due to our terms of reference and the nature of ADF service. Information provided to us by witnesses may be about their current employer or may relate to events which are operationally sensitive or attract some form of security classification. We remain concerned about the potential ramifications for the individual making such a disclosure. However, our concerns are not limited to such matters.
26. We urge the Australian Government to work closely with us to design an amendment or series of legislative amendments that appropriately address the challenges faced by serving and ex-serving ADF members. Such amendments would encourage submissions from serving ADF members who are underrepresented in submissions received to date. We understand the Disability Royal Commission saw an increase in submissions after amendments passed on 30 August 2021.

#### 6.2.4 Engagement with the Australian Government

27. In December 2021, we told the Australian Government that we had concerns about the issue of protections for prospective participants with this Royal Commission. Since then, we have advocated for the Government to provide immunity, approval or a defence for the confidential disclosure of classified or operationally sensitive information provided to us. While the discussions are ongoing, the Government has not yet taken definitive action on this issue.
28. The Attorney-General's Department undertook two consultations on related issues, but neither explicitly addressed our concerns or sought to understand the concerns of serving and ex-serving ADF members wishing to engage with a Royal Commission.

29. A review of confidentiality protections in the Royal Commissions Act was open for consultation from November 2021 to January 2022. This consultation sought to review the effectiveness of protections introduced by the Disability Royal Commission and provided recommendations for improvements to the Act.<sup>14</sup> We note that the Attorney-General's Department wrote to our Chair and the Chair of the Disability Royal Commission on the matter. The Department invited 20 peak disability representatives to provide submissions, but did not extend this invitation to Defence or ex-service organisations.<sup>15</sup> We are discouraged by the lack of communication from the Attorney-General's Department to the veteran community. Serving and ex-serving ADF members and their support services could have provided unique and insightful recommendations to the review.
30. We are also aware that work is underway to review existing non-disclosure and secrecy offences across Commonwealth legislation. This also presents an opportunity to explore options to better support current and former Commonwealth employees and ADF members seeking to engage with this Royal Commission.
31. The need to protect people engaging with Royal Commissions and other inquiries is not a new issue. The Australian Law Reform Commission has considered it twice through the 2008 *Secrecy Laws and Open Government* inquiry and the 2010 *Royal Commissions and official inquiries* inquiry. Both reports considered how targeted and tailored protections might be offered for individuals to provide the necessary information for an inquiry despite being subject to secrecy provisions.<sup>16</sup>

### **Recommendation 6: Increase protections for persons engaging with this Royal Commission**

The Australian Government should work closely with this Royal Commission to design urgently an amendment or series of legislative amendments that provide protections for persons who wish to provide relevant information to this Royal Commission, including the two following cohorts:

- (1) For serving ADF members disclosing sensitive personal information who are currently, and intend to remain, in service, similar protections to section 6OP of the *Royal Commissions Act 1902* (Cth) should be introduced.
- (2) For serving and ex-serving ADF members whose lived experience is intrinsically linked to security classified or operationally sensitive information, the defence available under the Criminal Code section 122.5(5) should be extended to cover information communicated to a Royal Commission. A defence to other secrecy offences will also be needed.

32. We acknowledge that the Australian Government Solicitor on behalf of the Australian Government has submitted to this Royal Commission that legislative change is a matter for the Australian Government and that an agreement between the Australian Government Solicitor and the Royal Commission could achieve a more targeted and timely outcome. Discussions relating to this agreement are still ongoing. We do not consider that an agreement should delay or be to the exclusion of legislative reform.

## 6.3 Parliamentary privilege and public interest immunity

### 6.3.1 Concerns about parliamentary privilege and public interest immunity

33. Our terms of reference require us to conduct a broad-ranging inquiry, including to analyse the contribution of pre-service life, service life (including training and deployments), transition, culture in the Department of Veterans' Affairs (DVA) and the Department of Defence, separation and postservice issues to risk of suicide.<sup>17</sup> To do this, we must undertake an in-depth consideration of the policies, processes, actions and inactions of the Australian Government and some of its departments, particularly Defence and DVA.
34. Our terms of reference also require us to consider a wide variety of material, including products developed for previous related inquiries and matters which may be confidential. We have the ability to receive and handle classified information appropriately, and a process in place to work with the national intelligence community when required.
35. Despite our clear mandate, parliamentary privilege and public interest immunity claims have seriously, adversely constrained our ability to inquire into and receive the necessary evidence from prior inquiries conducted by and for parliament and to examine government decision-making.
36. We are concerned about the impact the constraints may have on serving and ex-serving members and their families. Those who advocated for years to establish this Royal Commission expect us to ask hard questions of the Australian Government, Defence and DVA. We are not afraid to ask the hard questions. But we are constrained – unreasonably so, in our view.

### 6.3.2 Parliamentary privilege – legal framework

37. Parliamentary privilege provides parliamentarians in both houses of parliament with 'freedom of speech and debates or proceedings in parliament'.<sup>18</sup> It does so by preventing courts and tribunals from intervening in these matters. As such, it upholds the separation of powers doctrine within the Australian Constitution.<sup>19</sup> Parliamentary privilege extends to Royal Commissions because they are included in the definition of tribunals.<sup>20</sup>

38. The construct of parliamentary privilege in Australia originates from article 9 of the *Bill of Rights 1688* (Eng), which was incorporated into the Australian Constitution and the *Parliamentary Privileges Act 1987* (Cth).<sup>21</sup>
39. The Parliamentary Privileges Act describes the ‘proceedings in parliament’ to which privilege will apply as ‘all words spoken and acts done in the course of, or for the purposes of or incidental to, the transacting of the business of a House or of a committee’.<sup>22</sup> It includes (but is not limited to):
- (a) the giving of evidence before a House or a committee, and evidence so given;
  - (b) the presentation or submission of a document to a House or a committee;
  - (c) the preparation of a document for purposes of or incidental to the transacting of any such business; and
  - (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.<sup>23</sup>
40. The Act prevents this Royal Commission from receiving or tendering evidence of the nature that is described above, for the purpose of:
- (a) ‘questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament’<sup>24</sup>
  - (b) ‘questioning or establishing the credibility, motive, intention or good faith of any person’<sup>25</sup>
  - (c) ‘drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament’,<sup>26</sup> or
  - (d) going beyond proving an occurrence of events in parliament, including what was said in the course of parliamentary proceedings.<sup>27</sup>

### 6.3.3 Implications of parliamentary privilege on our work

41. We acknowledge the customary importance of parliamentary privilege to ensure that the parliament can debate and investigate matters of public importance effectively and without interference. But for a Royal Commission tasked with investigating systemic issues contributing to suicide – the origins of which may be the action or inaction of government and departments which have been subject to numerous prior reviews – privilege has hindered our work.
42. Our terms of reference require us to consider ‘the findings and recommendations of previous relevant reports and inquiries ... including any assessment of the adequacy and extent of implementation of those recommendations’.<sup>28</sup> In this Royal Commission, parliamentary privilege extends to a number of reports prepared for, or by, parliamentary committees which consider the same matters or matters directly relevant to our terms of reference.

43. We are concerned that parliamentary privilege is not limited to tendering documents or asking questions that might make or imply a conclusion about a decision of parliament. Privilege extends to inviting the drawing of any inferences or conclusions from part of a report or inquiry, even if that inference would not impinge on parliament or any of its members.
44. This leaves us unable to inquire into the work and outcomes of prior critical reports – it hampers our ability to learn from that which came before. This risks an unnecessary duplication of effort. It impedes transparency surrounding government decisions and acts as a shield for the executive from accountability for their commitments and actions taken to implement matters subject to privilege. It slows our work, which is to recommend what action the Australian Government should take to address systemic contributing factors to suicide and suicidality among serving and ex-serving ADF members.
45. The issue of privilege arose during our hearings regarding the tender of an Auditor-General’s report published in 2021. First tendered in Hearing Block 1, we later agreed with the Australian Government that the report was conducted on the direction of parliament and attracted privilege.<sup>29</sup> The report is significant to us. It measures the effectiveness of the implementation of cultural changes that impact the health, wellbeing and safety of serving ADF members.<sup>30</sup> We note that this report is available to the public on the Auditor-General’s website, and has probably been viewed by thousands of people. And yet parliamentary privilege prevents us from asking Defence representatives questions about this report for the purpose of drawing a conclusion or inference.
46. In contrast, we made an evidentiary ruling during Hearing Block 4 to overrule a claim of privilege on a document prepared by the executive Government, the *Senate Inquiry into Suicide by Veterans and Ex-service Personnel (2017) Recommendations – Progress of Implementation as at 30 January 2020*. The document reproduced what it said were the recommendations of the Senate inquiry as well as detailing the government actions, proposed actions or intentions on matters related to suicide prevention. Counsel Assisting the Royal Commission was able to ask questions about the Australian Government response to the reported recommendations. But this way forward is largely unhelpful in practice. We remain concerned that we cannot achieve clear visibility of which recommendations from prior critical reports have been actioned, who key decision-makers are and where implementation has deviated from the recommendations and why.
47. Our ruling drew upon Federal Court precedent that ‘neither Art 9 of the Bill of Rights nor s 16(3) of the *Parliamentary Privileges Act* prohibit a party from adducing evidence to establish, as a matter of fact, that something was said in Parliament’.<sup>31</sup> In observing privilege, we ruled that the document be tendered on a limited basis ‘that no inferences or conclusions will be drawn or invited to be drawn from the recommendations themselves’.<sup>32</sup> While we allowed this limited consideration, the issue demonstrates that parliamentary privilege is having an extremely adverse effect on our ability to examine the actions, and inactions, of the executive in response to directions from Parliament.

48. A number of other reports prepared by the Auditor-General as well as the Senate Standing Committee on Foreign Affairs, Defence and Trade are directly relevant to our work. These reports are subject to privilege, meaning we cannot draw inferences or conclusions from them.
49. Parliamentary privilege can only be waived by Parliament as the holder of the privilege, through legislation.<sup>33</sup> Commissioners Tracey and Briggs raised this issue during the Royal Commission into Aged Care Quality and Safety with parliamentary officers.<sup>34</sup> It was also mentioned by Commissioner Hayne during the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.<sup>35</sup>
50. Without change, certain applications of parliamentary privilege will continue to impede this and future Royal Commissions.

### **Recommendation 7: Provide exemption from parliamentary privilege**

Where their terms of reference require an examination of government, Royal Commissions should be made exempt from section 16(3)(c) of the *Parliamentary Privileges Act 1987* (Cth).

#### **6.3.4 Public interest immunity – legal framework**

51. Public interest immunity is different from parliamentary privilege. It prevents a government from producing documents or answering questions on the ground that the disclosure of information would damage the public interest.<sup>36</sup> Public interest immunity operates as a balancing test, and courts limit the disclosure of information or documents on the basis that the public interest against disclosure outweighs the need for disclosure to ensure justice in a particular case.<sup>37</sup>
52. While the Royal Commissions Act does not expressly mention public interest immunity, the Australian Law Reform Commission says there is widespread agreement that it is likely to constitute a reasonable excuse for refusing to produce a document or give information.<sup>38</sup> This follows an established legal principle that ‘statutory provisions are not to be construed as abrogating important common law rights, privileges and immunities in the absence of clear words or a necessary implication to that effect’.<sup>39</sup>

53. A 2015 set of guidelines produced by the Department of Prime Minister and Cabinet named what it called ‘several generally accepted grounds’ for raising public interest immunity:
- (a) damage Australia’s national security, defence or international relations
  - (b) damage relations between the Commonwealth and the States
  - (c) disclose the deliberations of Cabinet (other than a decision that has been officially published)
  - (d) prejudice the investigation of a possible breach of the law or the enforcement of the law in a particular instance
  - (e) disclose, or enable a person to ascertain, the existence or identity of a confidential source or information, in relation to the enforcement or administration of the law
  - (f) endanger the life or physical safety of any person
  - (g) prejudice the fair trial of a person or the impartial adjudication of a particular case
  - (h) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures
  - (i) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.<sup>40</sup>
54. Ultimately, the court, rather than the executive, is responsible for deciding on claims for public interest immunity.<sup>41</sup> A court is required to consider ‘whether harm would be done by the production of the documents, and whether the administration of justice would be frustrated or impaired if the documents were withheld, and to decide which of those aspects predominates’.<sup>42</sup> In some circumstances a court may determine that limited – rather than public – disclosure may be appropriate.<sup>43</sup> Analogous procedures and reasoning for immunity apply outside court proceedings, including to a Royal Commission.<sup>44</sup>

### 6.3.5 Implications of public interest immunity on our work

55. Claims of public interest immunity often relate to the protections of the proper functioning of the executive government, particularly in matters of cabinet decisions, high-level advice, and national security.
56. Claims of public interest immunity therefore need to balance these concerns with the importance of this Royal Commission having full and frank disclosure of information and documents relevant to serving and ex-serving ADF member suicidality and deaths by suicide. For our work to be effective and efficient, and deliver on our terms of reference, we need disclosure of information and documents to happen promptly. The Australian Government has made claims of public interest immunity which have delayed and withheld disclosure of documents and information requested by us through the responsible use of our coercive powers.

57. In our view, the Australian Government has made these claims from an abundance of caution. At times, claims have been made without identifying a specific harm to the public interest that could result from disclosure of the document – as previous guidance has said should be the case.<sup>45</sup> We have allowed some minor claims to stand without ruling on them during hearings so as not to distract from the evidence being heard or delay progress of our work. However, we expect claims of public interest immunity to be specific to specific material – such as documents or records – and made in good faith.
58. An additional challenge is that the Royal Commissions Act is silent on the operation of public interest immunity. As such, the Act does not authorise us as Commissioners to act as a court and make a ruling or decision on a claim of public interest immunity. This limits our capacity to resolve claims and progress our inquiries efficiently. For claims of legal professional privilege we can make such a ruling, including using our coercive powers to view a document to make a ruling.<sup>46</sup>

### **Government decision-making processes**

59. We are particularly concerned by the restricted access to documents related to government decision-making processes. The Australian Government has made claims of public interest immunity in areas critical to our work, including in relation to core government decision-making and funding to secure outcomes. This include matters related to Defence's establishment of the Joint Transition Authority.<sup>47</sup> In these instances, we have sought to understand the actions and inactions of the executive government, including what part of the government was responsible for particular decisions. We have not sought the content of advice provided to Cabinet or discussions within Cabinet.
60. Restricted access to information about extremely relevant decisions of government hinders our ability to understand comprehensively the reasons for a decision or how an issue might be resolved. There are other mechanisms available to manage the risks of harm of disclosure of information subject to public interest immunity. We have practices in place to store official information compliant with the Australian Government's Protective Security Policy Framework and to issue a non-publication order where information it accesses should not be reported publicly. We consider these safeguards appropriate, and are disappointed that the Australian Government has thus far seen it differently.
61. We also note that state-based Royal Commissions in New South Wales and Western Australia do not allow claims of public interest immunity to prevent information being disclosed to a Royal Commission. In those jurisdictions, such matters are managed through other mechanisms such as non-publication orders to limit the dissemination of the information.<sup>48</sup> This approach ensures that public interest immunity claims cannot prevent the state-based Royal Commissions from receiving and considering the necessary information. We urge the Australian Government to adopt this same approach and work with us to manage the risks of disclosing information that could be subject to public interest immunity. We believe this can be achieved without legislative change.

### Recommendation 8: Limit public interest immunity claims

The Australian Government should reform immediately policies and practices related to public interest immunity to limit claims to where there is a specific harm contemplated from disclosure to Royal Commissions. Where there is uncertainty about potential harm, mechanisms within the *Royal Commissions Act 1902* (Cth) should be used to support the production of the document or information.

## 6.4 Access to information

### 6.4.1 Concerns about access to information

62. During this Royal Commission, we have heard numerous concerns about accessing information held by Defence and DVA by serving and ex-serving members of the ADF and their families. These concerns are not limited to the difficulties encountered by serving or ex-serving members seeking access to their own information. They extend to difficulties encountered by family members of deceased members who are seeking to access information about that member from Defence and/or DVA.
63. Our terms of reference require us to inquire into systemic issues, common themes and risk factors which may contribute to suicide and suicidality of serving and ex-serving ADF members. This requires in-depth consideration of the legislation, policies and practices of Defence and DVA which can affect the mental health of serving and ex-serving members and their families.<sup>49</sup>
64. For that reason, we have actively engaged with the concerns we have heard about access to information held by Defence and DVA. We have heard numerous accounts, through private sessions and submissions made to us, which identify, on the part of persons seeking to access information, a sense of confusion and lack of transparency about how Defence and DVA share, store, and release information. During Hearing Block 4, we heard from a joint Defence and DVA panel. During that panel, the complexity and lack of clarity surrounding information access to and from Defence and DVA was evident to us.<sup>50</sup>
65. We are concerned by this lack of transparency and the resulting impact this may have on serving and ex-serving ADF members when trying to access information about themselves. We are also concerned for families seeking to access information from Defence and DVA, particularly in the case of family members seeking information about a member who has or may have died by suicide.

66. Shortly after this Royal Commission began, we met with the Secretary of the Department of Defence and the Secretary of DVA to outline our concerns. As a first step, the focus of that engagement concerned quick and transparent access to information by those individuals seeking to participate in this Royal Commission. As a result of that meeting:
- the Attorney-General's Department established an interdepartmental working group (information taskforce) to identify and implement ways to expedite the release of information to applicants seeking to participate in the work of this Royal Commission<sup>51</sup>
  - a centralised single point of contact within each of Defence and DVA was established for individuals seeking records so they could engage with us, to ensure quicker release of information<sup>52</sup>
  - the information taskforce committed to ensuring a trauma-informed approach in its work.<sup>53</sup>
67. We are pleased this has occurred. However, we see no reason why this could not have occurred earlier and why this system was not in place at the commencement of this Royal Commission.
68. We do not consider that this process for accessing information should be limited to those seeking information from Defence and DVA to participate in this Royal Commission. Broader change is needed to support individuals to access information from Defence and DVA.
69. The benefits of a single point of contact for ex-serving ADF members and families are obvious. That point of contact can advise the applicant on the correct processes to follow to obtain access to the information sought and do so in a trauma-informed way.
70. We are encouraged by the fact that the Chief of the Defence Force, General Angus Campbell AO DSC, agrees that the work of the information taskforce has been effective in providing assistance to individuals seeking information from Defence and 'that a centralised coordination point [for information access] could assist beyond the life of the Royal Commission'.<sup>54</sup> It is clear to us that this process is beneficial and should be standard practice across all engagement with serving and ex-serving members and their families.
71. We emphasise that our requests to Defence and DVA, and the ongoing dialogue, is not simply about helping those individuals who wish to engage with us. We are looking for a solution beyond that forevermore.

72. We are conscious that the time taken to address these matters has, at times, meant that this Royal Commission has been in receipt of information about individuals who have died by suicide, which some immediate family members have either been unable to access, or have been unable to access in a timely or complete manner. We can receive this information by using our coercive powers through the Royal Commissions Act. However, we do not have the powers to simply hand this information to family members. We must use information received as a result of our coercive powers for the Royal Commission's purposes – for example, to examine a witness during a hearing. We remain concerned about this issue and will continue working to advance the interests of serving and ex-serving ADF members and their families seeking to engage with the Royal Commission and thereafter.
73. Because of the frequency and variety of concerns expressed to us, we consider it necessary to make initial recommendations now, before we conduct a broader and more detailed examination of the topic in our final report. The recommendations made below represent urgent, non-controversial steps which the Australian Government should take immediately to improve access to information.
74. We will continue to explore how Defence and DVA share information, along with third parties such as Open Arms and medical practitioners in the public and private health systems.

#### 6.4.2 Avenues to access to information

75. There are three primary avenues through which serving and ex-serving ADF members and their families may access information held by Commonwealth agencies. These avenues involve requesting access:
- to a document or documents under the *Freedom of Information Act 1982 (Cth)*<sup>55</sup>
  - to personal information held about a serving or ex-serving member through clause 12 of the Australian Privacy Principles (APP), contained in schedule 1 to the *Privacy Act 1988 (Cth)*,<sup>56</sup> or
  - by requesting access directly from the agency (administrative access).
76. Below, we set out a high-level description of each of these avenues. These descriptions are in summary form only. We note that the Office of the Australian Information Commissioner publishes material online to support entities to comply with the Privacy Act and the Freedom of Information Act.<sup>57</sup>
77. We recognise that individuals who seek access to information held by the Australian Government may have different levels of experience, confidence and clarity in identifying the information they are seeking. They may also have different levels of experience in engaging with the administrative steps required by the Australian Government to request access to that information. We also acknowledge that many individuals who seek information from DVA and Defence may have experienced no issues when accessing relevant information, and we are grateful when this occurs.

### 6.4.3 Freedom of information request

78. Any person may access information from Commonwealth agencies by requesting access to a document (or documents) through the Freedom of Information Act. The request for access must satisfy various formal requirements set out in the Act.<sup>58</sup>
79. The general rule is that if a person makes a valid request for access to a document of an agency, the agency must give the person access to the document unless an exemption or conditional exemption under the Freedom of Information Act applies.<sup>59</sup>
80. The following examples of exemption categories may be relevant to requests for information by veterans or family members of veterans:
- documents which, if disclosed under the Freedom of Information Act, 'would, or could reasonably be expected to' cause damage to Australia's security, defence or international relations<sup>60</sup>
  - documents which, if disclosed under the Freedom of Information Act, 'would, or could reasonably be expected to ... prejudice the conduct of an investigation of possible breach of the law, or endanger the life or physical safety of any person'<sup>61</sup>
  - documents or information which must not be disclosed under secrecy provisions of enactments<sup>62</sup>
  - material obtained in confidence such that 'the disclosure of the document would constitute a breach of confidence'<sup>63</sup>
  - documents which, if disclosed under the Freedom of Information Act, 'would involve the unreasonable disclosure of personal information about any person (including a deceased person)'.<sup>64</sup>

### 6.4.4 Access under the Privacy Act

81. According to the Australian Information Commissioner, the Privacy Act 'contains 13 Australian Privacy Principles (APPs) which set out standards, rights and obligations in relation to collecting, using, disclosing, holding, accessing and correcting personal information'.<sup>65</sup> These principles are the subject of non-binding guidelines, issued by the Australian Information Commissioner, that should inform handling of personal information by relevant entities.<sup>66</sup> These entities include Defence and DVA. The Information Commission summarised critical elements of the Privacy Act and APPs for us, as outlined below:
- Under the Privacy Act, APP 12, 'access to personal information', requires an 'APP entity', including a Commonwealth agency, that holds personal information about an individual to give the individual access to that information on request. APP 12 also includes grounds on which an entity may refuse to give access.<sup>67</sup>

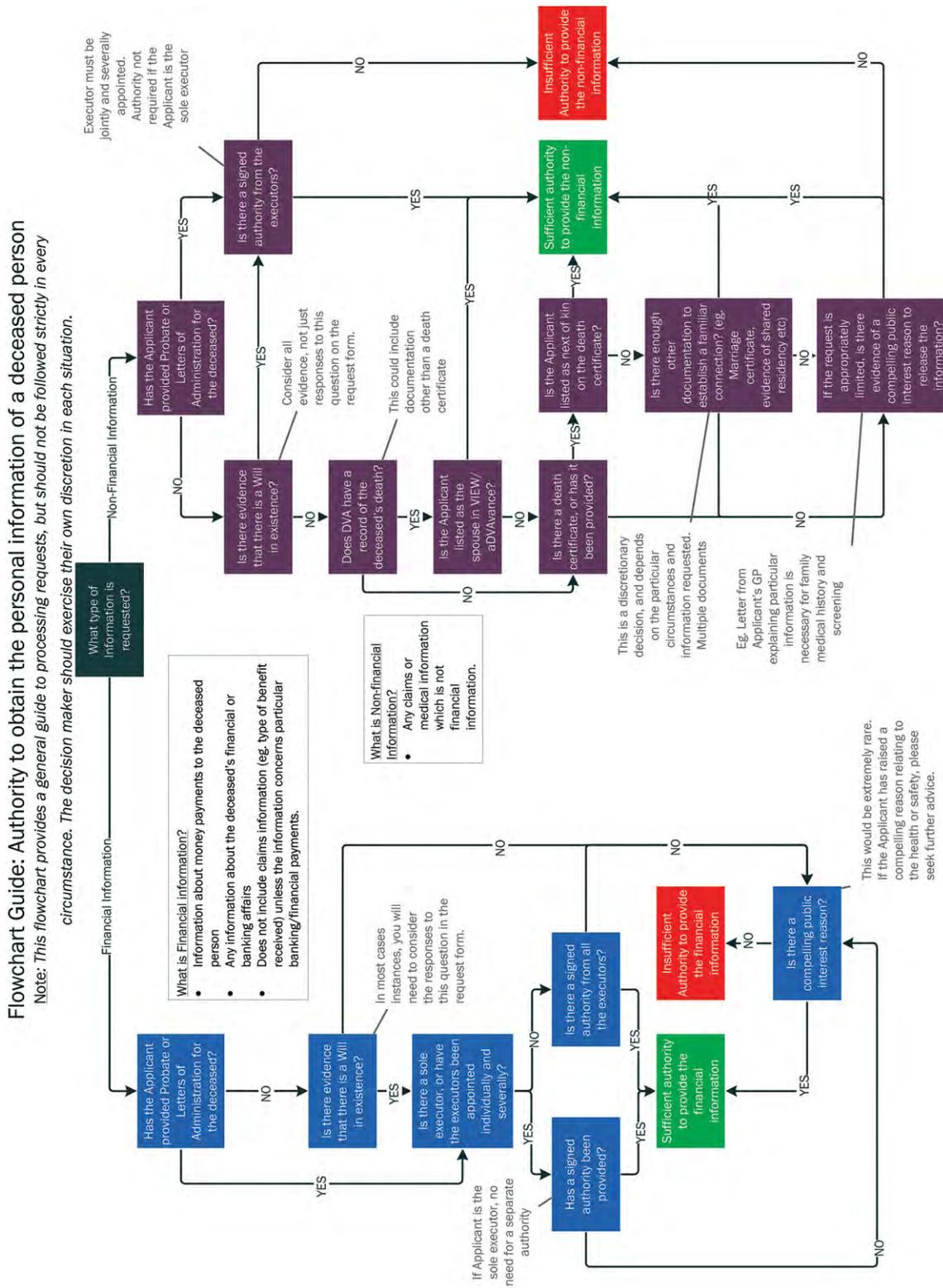
- APP 12 requires APP entities to give access to ‘personal information’ and does not provide a right of access to other kinds of information. In this way, it is more limited in scope than the right of access under the Freedom of Information Act.<sup>68</sup> APP 12 engages a process that is only available to living people who seek to access their own information.
- APP 6 applies to the use or disclosure of personal information. APP 6 is structured around the central principle that personal information collected for one purpose (known as the ‘primary purpose’) should generally not be used or disclosed for a secondary purpose unless the individual has consented or another exception applies. APP 6 contains a range of public interest exceptions that authorise the secondary use and disclosure of personal information in certain circumstances.<sup>69</sup>
- There is an exception to APP 6 where personal information needs to be used or disclosed to lessen or prevent a serious threat to life, health or safety. The ‘serious threat’ exception is known as a ‘permitted general situation’ under the Privacy Act.<sup>70</sup> In this context, a serious threat is a threat to life, or to physical or mental health or safety. It could include a potentially life-threatening situation or one that might reasonably result in other serious injury or illness.<sup>71</sup>
- For this exception to apply, an organisation or agency must reasonably believe that the collection, use or disclosure of information is necessary to prevent a serious threat to the life, health or safety of any individual, or to public health or safety. It must also be unreasonable or impracticable to obtain the individual’s consent to the collection, use or disclosure of their information.<sup>72</sup>

#### 6.4.5 Administrative release

82. Administrative release provides an avenue for information to be directly released to an eligible applicant by a Commonwealth agency, including Defence and DVA.
83. Administrative release of information offers potential advantages for both the agency and the applicant. This may include faster provision of information and a wider range of material that is able to be administratively released.
84. Defence has told us that information provided via administrative release remains ‘Official information’ and ‘cannot be provided to a third party by the recipient without Defence’s consent’.<sup>73</sup> We are continuing to explore this issue and would appreciate confirmation from Defence.
85. In our final report, we will address whether conditions are, or could be, imposed which would restrict an individual providing information received via administrative release with third parties – including, for example, medical practitioners.

86. Defence has told us that current serving members seeking information or documents about themselves can do so through a variety of mechanisms, including through their chain of command.<sup>74</sup> If the applicant is unsatisfied with the outcome, or the process takes longer than 30 days, the applicant may also seek access to that same information under the Freedom of Information Act.<sup>75</sup>
87. The Australian Information Commissioner and Privacy Commissioner, Ms Angelene Falk, leads the national regulator for privacy and freedom of information.<sup>76</sup> Ms Falk told us that it is better practice ‘to have clear written policies so that individuals are easily able to see the mechanisms by which they can access their own personal information’.<sup>77</sup> Ms Falk’s office advises that ‘to manage client expectations, agencies should publish their administrative access arrangements on their website’.<sup>78</sup> We agree.
88. Our current understanding is that neither Defence nor DVA has a published written policy for administrative release of information. A representative of the Client Access and Rehabilitation Branch at DVA, confirmed in April 2022 that DVA has no ‘standalone written policy’ for administrative release.<sup>79</sup> Ms Campbell said that DVA is ‘looking to review existing documents and develop new procedures certainly during this calendar year’.<sup>80</sup> She gave no more specific timeframe.
89. Defence processes clearly allow for information requested to be provided through administrative release. But it also does not appear to have published, on its website or elsewhere, a standalone written policy which outlines the process for administrative release of information and when it applies.<sup>81</sup>
90. In our view, clear and publicly available policies for administrative release of information are essential. Such policies serve to assist not only the general public but also those making decisions under that information access mechanism. This is particularly so in circumstances where, as in the case of Defence and DVA, accessing information is a large and complex task.
91. The importance of clear and publicly available information on processes is acknowledged by General Campbell, who told us that there are a variety of opportunities for Defence to improve and streamline access to information through its public-facing websites:
- I believe that there are opportunities to streamline the information, ensure that the online forms are more user friendly, trauma informed and to link the individual websites.<sup>82</sup>
92. Figure 6.1, a flowchart provided to us by DVA, illustrates this complexity.<sup>83</sup> It sets out the steps that DVA information access officers should follow to process a request for information from an applicant seeking the personal information of someone who is deceased.<sup>84</sup> This includes identifying the many different questions that the information access officer needs to answer to determine whether or not an applicant should be provided with the information they seek.

Figure 6.1 DVA flowchart on processing requests for information



93. It is unclear how this flowchart operates. Ms Campbell confirmed that the decision-maker exercises their own discretion when applying the policy. As the header to the flowchart suggests, 'the flowchart need not be followed strictly in every circumstance'. There is no further guidance about using the flowchart. The discretion appears to us to be broad and general.<sup>85</sup> It can be used inconsistently.
94. DVA also accepted that there was a gap in the flowchart for those family members seeking to access information in circumstances where the deceased member left no will and no letters of administration have been granted. In those circumstances, the applicant appears to be left at the discretion of the decision-maker.<sup>86</sup>
95. DVA could not identify the circumstances in which information might be released for, as the flowchart puts it, 'a compelling public interest reason'.<sup>87</sup> Neither could DVA point to specific incidents where release had occurred for this reason.<sup>88</sup>
96. A representative of DVA told us that despite the flowchart's indication that a spouse may access non-financial information, when not named as such in DVA's system or on the relevant death certificate, 'it is my understanding that generally the release of non-financial information that is considered sensitive would still be subject to the applicant requiring to have that legal right to access'.<sup>89</sup>
97. The DVA representative also said that redactions (discussed further below) may be applied to information released under the flowchart.<sup>90</sup> We observe that the flowchart itself is silent about this.
98. Defence, when responding to a notice issued by this Royal Commission, outlined a complex system by which serving and ex-serving ADF members and their families may approach various areas within Defence to seek information. It identified more than 15 different avenues to access information, with the path influenced by the information being sought and whether the applicant is still serving.<sup>91</sup>
99. Defence continues to have a substantial volume of records in hard copy only. A representative from Defence told us in April 2022 that work to complete the digitisation of that material would likely take another 'five years'.<sup>92</sup>
100. Each service arm also retains a range of information and different access processes for a serving, ex-serving or family member to access records, including service records and career management and health records.<sup>93</sup> The access to health records may also be managed and considered separately by the Joint Health Command Health Information Office.<sup>94</sup>
101. General Campbell has acknowledged that '[t]he system is complicated' and that there 'are a range of ways records can be sought'.<sup>95</sup> There is no doubt that this system is difficult to navigate. Given the advantages of administrative access, including faster release of information, we favour proactively using administrative release wherever possible. In our view, a clear policy framework would support information request officers to act consistently. As noted above, the use of administrative release processes does not restrict a member of the public using Freedom of Information Act or Privacy Act processes at any stage.

### Recommendation 9: Improve administrative release of information

The Australian Government should:

- (1) by March 2023, produce and publish administrative release guidelines to better support applicants to access information held by the Department of Veterans' Affairs and Defence, and
- (2) immediately prioritise use of administrative release and proactively work with applicants to facilitate access via this process, including following a request for information under the *Freedom of Information Act 1982* (Cth) and the *Privacy Act 1988* (Cth) – but without delaying or restricting processes under either of these Acts.

#### 6.4.6 Redactions and completeness of information

102. To redact information is to prevent a particular viewer or recipient from viewing material. Redacted text usually appears in the form of a thick black line that obscures the text. In the context of information held by the Australian Government, redactions are generally applied to information relating to third parties or information that is outside of the scope of the request.<sup>96</sup> The decision-maker must have a valid reason for redacting material. Redactions can occur under all three information access mechanisms: the Freedom of Information Act, Privacy Act and via administrative release.<sup>97</sup>

103. We have heard concerns about the reliance on, or overuse of redactions and the ways in which that can cause distress to the recipient of the information. For example, Dr Nikki Jamieson, mother of Private Daniel Garforth, who died by suicide in 2014, told us that:

The biggest lack of transparency I'm finding is being through the Freedom of Information process and the redacted information. 90 per cent of it was blacked out.<sup>98</sup>

104. Ms Alexandra Bailey, whose sister Ms Teri Bailey died by suicide in 2020, said:

we applied for access to Teri's medical and service records. They [the ADF] came back announcing that a lot of it was missing and some of it was redacted. We still don't have really enough information to help us with our memory of what time she was in hospital and what places she was in hospital and things like that.<sup>99</sup>

105. We express no view about the appropriateness of the redactions applied in those specific instances. However, we are concerned about the impact a lack of clarity and transparency about the redactions that may be applied to information may have on individuals. If substantial material is redacted, the applicant should be given reasons, including the framework applied. The applicant should be informed about possible actions they may take to either challenge the redactions or to obtain the information via different means. The process should support the maximum possible release of information.
106. We understand that the Australian Government gives some explanation for redactions through different avenues, including information provided on department websites and in response to certain information requests.<sup>100</sup> However, we do not think it satisfactory that the person who is seeking access to information – and who may be a bereaved family member of an ADF member who has died by suicide – is left to research and identify how, when and why redactions occur. The reasons for redacting material and the processes followed by Defence and DVA to make redactions should be transparent and communicated to the applicant at the earliest possible time.
107. We urge the Australian Government to better promote and explain the reasons redactions are applied, whether under the Freedom of Information Act process, the Privacy Act or administrative release, and to discuss these redactions with applicants throughout the process.

### **Recommendation 10: Co-design information to increase awareness of redactions for access requests**

The Australian Government should engage with serving and ex-serving Australian Defence Force (ADF) members and their families to complete by March 2023 co-design information to raise the awareness of redaction and how it might apply to information provided to applicants seeking information from Defence or the Department of Veterans' Affairs under all information access request mechanisms.

#### **6.4.7 A trauma-informed approach**

108. As is apparent from the above discussion, serving and ex-serving ADF members and their families may approach Defence and/or DVA to seek information at times of extreme vulnerability or distress. This includes when a member has died, during transition, after transition while reflecting on service life, or when managing a physical or mental injury or illness.

109. It is clear to us that the Australian Government needs to engage with individuals in effective, efficient and supportive ways, noting the applicants may have varied experience engaging with government. Adopting a trauma-informed approach to information access is critical to establish an applicant-centric information access system.
110. The *Preliminary Interim Report* (Boss report), delivered by the interim National Commissioner for Defence and Veteran Suicide Prevention, Dr Bernadette Boss CSC, described trauma-informed care as:
- having systems, policies and practices in place that have regard for the nature of the trauma that individual family members and those with a lived experience of suicidality have, or are facing.<sup>101</sup>
111. A 2019 report, *The Mental Health Impacts of Compensation Claims Assessment Processes* (the Collie report), considered how engagement with government may contribute to detrimental mental health outcomes for some individuals:
- Multiple recent inquiries and reviews of the DVA support system have identified that the compensation claims assessment process may contribute to the psychological distress and mental health conditions experienced by some veterans, including self-harm and suicide.<sup>102</sup>
112. While the above passage relates to the claims processing system within DVA, it appears to us to have direct relevance to instances where serving and ex-serving ADF members or their families seek information from Defence or DVA.
113. Irrespective of why an individual seeks information, in our view adopting a trauma-informed approach offers an opportunity for government to better support those in the ADF and their families. The Boss report recommended that:
- DVA should ensure that staff are skilled in trauma-informed practice to make sure interactions are productive and safe for all parties, and lead to positive outcomes for clients.<sup>103</sup>
114. The interim National Commissioner for Defence and Veteran Suicide Prevention said she took a trauma-informed approach to her work. The Boss report noted that a trauma-informed approach enables staff to identify signs of trauma and understand its unique impact on individuals.<sup>104</sup> As a result, it said, staff are more able to provide support to ensure that applicants feel recognised and are not re-traumatised throughout the process.<sup>105</sup>
115. More recently, the Australian Information Commissioner told us that both the Freedom of Information Act and the Privacy Act enable a trauma-informed care approach to be taken to information access:
- to the extent that my legislation intersects with the notion of being trauma-informed, both of the pieces of legislation would anticipate that agencies can put in place systems and processes to support individuals to access information.<sup>106</sup>

116. The Australian Information Commissioner said that both the Freedom of Information Act and the Privacy Act allow applications to be made on behalf of another individual.<sup>107</sup> There is even a specific obligation under the Freedom of Information Act to take reasonable steps to assist applicants make their requests.<sup>108</sup> This could include incorporating references to the Freedom of Information Act process in an agency's Privacy Policy.<sup>109</sup> Both Acts clearly create opportunities for a trauma-informed approach to support individuals to access information.
117. Phoenix Australia also discussed the importance of adopting a trauma-informed approach 'to reduce distress and barriers to access and engagement' as a 'primary strategy' to reduce the risk of suicide.<sup>110</sup>
118. In our view, the manner in which information will be received and how to access it should feature in early discussions with individuals seeking access to information. Individuals seeking information should know how long it will take them to receive information. They should also understand the manner in which DVA or Defence will support them to prepare and digest the material. We have not been able to determine how Defence or DVA ensures they proactively support individuals seeking information in a trauma informed manner.
119. The Secretary of DVA, Ms Elizabeth Cosson AM CSC, told us that DVA has taken steps to embed trauma-informed practice into service delivery.<sup>111</sup> This appears to be a product of the Veteran Centric Reform program, which we will continue to examine.<sup>112</sup> It is unclear to us how far those steps have gone, or how effective they are.
120. We are also concerned that General Campbell acknowledged to us that a 'trauma-informed approach has been inconsistently applied or the tensions between legal constraint and the wishes of the family are unable to be reconciled. We need to improve'.<sup>113</sup> It is unacceptable to us that within Defence there are 'differences in the level of support provided to those requesting records' depending on the 'release pathways' used.<sup>114</sup>
121. An important element of a trauma-informed approach is the maintenance of a single point of contact, to provide continuity and consistency, to applicants seeking information from within each of Defence and DVA.
122. Defence presently has no such single point of contact.
123. DVA has submitted to us that it 'has in place a single point of contact for people seeking access to information, being the Information Access Unit, which was established in the second half of 2021'.<sup>115</sup> However, in separate response to us, DVA stated that the Information Access Unit 'is a new unit that was established in February 2022' which 'processes all statutory information access requests and some of the more complex requests for administrative release'.<sup>116</sup> DVA also referred to its Veterans' Access Unit, which is a 'central client contact access point within DVA' in which departmental officers 'provide advice and support for enquiries received over the phone, through general enquiry email, and in person'.<sup>117</sup> This may extend to the 'immediate release of information under administrative access ... and advice or support on where to access and how to submit requests for information under more formal processes, including the FOI Act'.<sup>118</sup>

124. Accordingly, while we acknowledge that DVA has taken steps to introduce a single point of contact for persons seeking to access information, it does not presently have in place such a single point of contact for all requests for information.
125. Defence and DVA should adopt processes and policies to ensure a trauma-informed approach to releasing information where that is yet to occur.

### **Recommendation 11: Embed trauma-informed practices for information access**

Trauma-informed practices should be embedded in Defence and the Department of Veterans' Affairs (DVA) interactions with individuals seeking information from either department. These trauma-informed practices should form part of ongoing training for relevant personnel in each department.

Where possible, there should be a single point of contact within each of Defence and DVA to provide continuity and consistency to applicants seeking information from within each agency.

## **6.4.8 Providing consent to release information**

126. Prior informed consent is a means for family members of a serving, ex-serving or deceased ADF member to obtain quick and easy access to information held by Defence and DVA.
127. An individual's informed consent to release and share their personal information is central to Australia's information access and sharing framework. This is apparent in guidelines published by the Australian Information Commissioner.<sup>119</sup> Government departments are required to use these guidelines when considering information access requests.<sup>120</sup>
128. Generally speaking, under the Privacy Act, an entity that holds personal information about an individual that was collected for a particular purpose cannot use or disclose that information for another purpose unless the individual has consented to the use or disclosure of the information.<sup>121</sup> With limited exceptions, a third party cannot access an individual's personal information under the Privacy Act unless that individual has consented to the provision of that information to the third party.

129. It does not appear that Defence seeks regular consent from its members about those with whom they would like their information shared in the event that certain circumstances arise – for example, death or incapacity. During Hearing Block 4, two representatives of Defence were unable to confirm whether it seeks consent from its members in circumstances where a request for information has been made or even if Defence asks its members upon joining, or at any other time while in Defence, whether they wish to provide consent to share their personal information with another person.<sup>122</sup>
130. Separately, DVA told us that ‘a veteran can choose to nominate a representative to act on their behalf in various capacities and one of those may include the release of information’.<sup>123</sup> We were told that DVA undertakes consultation with serving and ex-serving ADF members to ensure consent remains up to date:
- if we receive a written request for documents we will still go back and undertake that thirdparty consultation with the veteran to ensure that that consent remains current because relationships can change over time.<sup>124</sup>
131. While this is laudable, the process of third-party consultation referred to during Hearing Block 4 does not appear to be specific to facilitating access to information on a general basis about an individual. Rather, it appears to be a process which is largely limited to enquiring or acting in a specific way on someone’s behalf.<sup>125</sup> We are concerned that the ability to access information from DVA is generally not provided to loved ones who are:
- not the stated next of kin
  - not named as the executor of a will or appointed as administrator of the estate.<sup>126</sup>
132. In similar cases, Defence told us it will only provide information ‘in light of the particular circumstances and the applicable law’.<sup>127</sup> It notes that a third party seeking access to a deceased member’s health records ‘must have evidence that they have been appointed as an Executor or Administrator of the deceased member’s estate by a competent court’.<sup>128</sup> Defence further said that families ‘are only able to access health information where they are able to satisfy exceptions under both the *Privacy Act 1988* and duties of confidence’.<sup>129</sup>
133. Given the complex nature of family dynamics and relationships over time, both Defence and DVA should consider how they might better facilitate information sharing with loved ones seeking information following the death of a serving or ex-serving member.
134. Presently, it appears to us that neither Defence nor DVA provides an easy or regular means by which serving or ex-serving members may provide or change their consent to share information with other persons, including loved ones, at any time. It is disappointing that Defence has been aware of issues relating to consent since at least 2016, if not earlier.<sup>130</sup> By now, it should have implemented a full response.<sup>131</sup>
135. To remove difficulties and ambiguity, we urge the Australian Government to consider additional opportunities to seek, or clarify, which of those parties may be nominated as the primary and secondary recipients of information.

136. We understand this may be a complex task, especially due to the importance of informed consent. That is why the Australian Government should begin this work. Our inquiry is no reason for the Australian Government to delay action on this matter.

**Recommendation 12: Encourage up-to-date consent for information access**

By March 2023, the Australian Government should increase the number of opportunities for serving or ex-serving ADF members to provide or amend their consent to disclose, information to family members or nominated representatives.

137. In light of the complexities identified above, we also make the following recommendation.

**Recommendation 13: Co-design education on information access mechanisms**

The Australian Government should engage with serving and ex-serving ADF members and their families in order to complete, by March 2023, co-designed education material on information access mechanisms used by Defence and the Department of Veterans' Affairs (DVA). Educational material should be targeted to serving and ex-serving ADF members and their families.

## Endnotes

- 1 Exhibit E-01.004, DVS.0004.0001.0069.
- 2 *Royal Commissions Act 1902* (Cth) pts 2, 4.
- 3 Transcript, Nick Kaldas, Hearing Block 5, 24 June 2022, p 36-3408 [6–13].
- 4 Denis Goldsworthy, Submission, ANON-Z1E7-QMFH-K, p [2]; Exhibit C-01.002, STU.0006.0001.3584.
- 5 *Royal Commissions Act 1902* (Cth) s 6OB.
- 6 *Royal Commissions Act 1902* (Cth) s 6OM.
- 7 *Royal Commissions Act 1902* (Cth) s 6OH.
- 8 *Royal Commissions Act 1902* (Cth) s 6OE.
- 9 *Royal Commissions Act 1902* (Cth) s 6OC(1)(b).
- 10 *Royal Commissions Act 1902* (Cth) s 6ON 1 (b).
- 11 *Royal Commissions Act 1902* (Cth) s 6OP (1) (a)–(b).
- 12 Royal Commissions Amendment (Protection of Information) Bill 2021 Explanatory Memorandum at [30].
- 13 Royal Commissions Amendment (Protection of Information) Bill 2021 Explanatory Memorandum at [22].
- 14 Attorney-General's Department, 'Review of confidentiality protections in the Royal Commissions Act', web page, [www.ag.gov.au/rights-and-protections/review-confidentiality-protections-royal-commissions-act](http://www.ag.gov.au/rights-and-protections/review-confidentiality-protections-royal-commissions-act), viewed 20 July 2022 (Exhibit B-01.019, STU.0006.0001.3767).
- 15 Attorney-General's Department, *Review of confidentiality protections in the Royal Commissions Act 1902*, March 2022. Attorney-General's Department, p 5 [1.2] (Exhibit B-01.020, STU.0006.0001.3769).
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# Appendix 1

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**Letters Patent**



ENTERED ON RECORD by me in Register of Patents No. 56, page 37, on 8 July 2021

  
Secretary to the Federal Executive Council

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth

TO

Mr Naguib Kaldas APM,

The Honourable James Sholto Douglas QC, and

Dr Peggy Brown AO

GREETING

RECOGNISING the unique nature of military service, and the ongoing impact such service may have on the physical and mental health of defence members and veterans.

AND that as a community Australians value the contribution and sacrifice made by defence members and veterans in their service, and the sacrifice of their families.

AND that every death by suicide is a tragic event, and that there is an overrepresentation of defence and veteran deaths by suicide in Australia, and that this overrepresentation should be acknowledged and understood to ensure that learnings are made and to prevent future deaths by suicide.

AND the critical role played by, and broad concept of, families, carers, friends and others as the support network for defence members and veterans.

AND that government and non-government organisations including the Australian Defence Force (the ADF), the Department of Veterans' Affairs, ex-service organisations and the health care system provide important services (including mental health support services) and support for defence members, veterans and their families that are beneficial to wellbeing and whole-of-life care.

AND that Australia as a nation must take action to examine and expose all systemic issues and risk factors related to suicide, and implement actions to address the systemic issues and risk factors exposed.

AND that hearing from defence members, veterans, their families and others about their individual experiences will be a central contribution to your inquiry and these experiences can inform best-practice, strategies and reforms and can assist in prevention and healing.

AND all Australian Governments have expressed their support for, and undertaken to cooperate with, your inquiry.

AND that your independent inquiry, including its findings and recommendations, will provide a foundation for the future work of the National Commissioner for Defence and Veteran Suicide Prevention.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you to inquire into the following matters:

- (a) systemic issues and any common themes among defence and veteran deaths by suicide, or defence members and veterans who have other lived experience of suicide behaviour or risk factors (including attempted or contemplated suicide, feelings of suicide or poor mental health outcomes);
- (b) a systemic analysis of the contributing risk factors relevant to defence and veteran death by suicide, including the possible contribution of pre-service, service (including training and deployments), transition, separation and post-service issues, such as the following:
  - (i) the manner or time in which the defence member or veteran was recruited to the ADF;
  - (ii) the relevance, if any, of the particular branch, service or posting history, or the rank of the defence member or veteran;
  - (iii) the manner or time in which the defence member or veteran transitioned from the ADF or transitioned between service categories;
  - (iv) the availability, accessibility, timeliness and quality of health, wellbeing and support services (including mental health support services) to the defence member or veteran, and the effectiveness of such services;
  - (v) the manner and extent to which information about the defence member or veteran is held by and shared within and between different government entities;
  - (vi) the reporting and recording of information, relevant to the mental and physical health of defence members and veterans, at enlistment and during and after service;

- (c) the impact of culture within the ADF, the Department of Defence and the Department of Veterans' Affairs on defence members' and veterans' physical and mental wellbeing;
- (d) the role of non-government organisations, including ex-service organisations, in providing relevant services and support for defence members, veterans, their families and others;
- (e) protective and rehabilitative factors for defence members and veterans who have lived experience of suicide behaviour or risk factors;
- (f) any systemic issues in the current availability and effectiveness of support services for, and in the engagement with, families and others:
  - (i) affected by a defence and veteran death by suicide; or
  - (ii) who have supported a defence member or veteran with lived experience of suicide behaviour or risk factors;
- (g) any systemic issues in the nature of defence members' and veterans' engagement with the Department of Defence, the Department of Veterans' Affairs or other Commonwealth, State or Territory government entities (including those acting on behalf of those entities) about support services, claims or entitlements relevant to defence and veteran deaths by suicide or relevant to defence members and veterans who have other lived experience of suicide behaviour or risk factors, including any systemic issues in engaging with multiple government entities;
- (h) the legislative and policy frameworks, administered by the Department of Defence, the Department of Veterans' Affairs and other Commonwealth, State or Territory government entities, relating to the support services, claims and entitlements referred to in paragraph (g);
- (i) any systemic risk factors contributing to defence and veteran death by suicide, including the following:
  - (i) defence members' and veterans' social or family contexts;
  - (ii) housing or employment issues for defence members and veterans;
  - (iii) defence members' and veterans' economic and financial circumstances;
- (j) any matter reasonably incidental to a matter referred to in paragraphs (a) to (i) or that you believe is reasonably relevant to your inquiry.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate, including recommendations about any policy, legislative, administrative or structural reforms.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

- (k) the findings and recommendations of previous relevant reports and inquiries (including relevant coronial inquiries, the Productivity Commission *A Better Way to Support Veterans* inquiry (2019), and other relevant Royal Commissions and commissions of inquiry), including any assessment of the adequacy and extent of implementation of those recommendations;
- (l) the work of, and any relevant information and data provided to you by, the interim National Commissioner for Defence and Veteran Suicide Prevention or the National Commissioner for Defence and Veteran Suicide Prevention;
- (m) the support available to members of the defence forces of other countries and veterans of such defence forces, particularly in Canada, New Zealand, the United Kingdom, and the United States of America;
- (n) ways in which government and non-government organisations and the community could:
  - (i) address systemic risk factors relevant to defence and veteran death by suicide; and
  - (ii) better protect and support vulnerable defence members and veterans;
- (o) desirable support services for, and engagement with, families and others affected by defence and veteran death by suicide or who have supported a defence member or veteran with lived experience of suicide behaviour or risk factors;
- (p) opportunities to promote understanding of suicide behaviour and risk factors, and protective factors, within the ADF and veteran communities, and the broader Australian community.

AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

AND We further declare that you are not required by these Our Letters Patent to make findings on the manner or cause of death in relation to a particular defence and veteran death by suicide.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to consider the following matters, and We authorise you, as you consider appropriate, having regard to the date by which you are required to submit your final report, to take (or refrain from taking) any action arising out of your consideration:

- (q) the need to establish accessible and appropriate trauma-informed arrangements for the following people to engage with your inquiry and to provide evidence to you, and share information with you, about their experiences, recognising that some people may not wish to share their experiences:
  - (i) defence members and veterans with lived experience of suicide behaviour or risk factors;
  - (ii) families and others affected by defence and veteran death by suicide, or who have supported a defence member or veteran with lived experience of suicide behaviour or risk factors;
- (r) the need to focus your inquiry and recommendations on systemic issues, recognising nevertheless that you will be informed by individual experiences and may need to make referrals to appropriate authorities;
- (s) the need to establish mechanisms to facilitate the timely communication of information, or the furnishing of evidence, documents or things, in accordance with section 6P of the *Royal Commissions Act 1902* or any other relevant law, including, for example, for the purpose of enabling the timely investigation and prosecution of offences;
- (t) the need to ensure that evidence that may be received by you that identifies particular individuals as having been subject to inappropriate treatment is dealt with in a way that does not prejudice current or future criminal or civil proceedings or coronial inquiries or other contemporaneous inquiries;
- (u) the need to establish appropriate arrangements in relation to current and previous inquiries, in Australia and elsewhere, for evidence and information to be shared with you in ways consistent with relevant obligations so that the work of those inquiries, including, with any necessary consents, the testimony of witnesses, can be taken into account by you in a way that avoids unnecessary duplication, improves efficiency and avoids unnecessary trauma to witnesses;

- (v) the need to recognise and appropriately protect any intelligence information or operationally sensitive information obtained by you;
- (w) the need to establish appropriate arrangements with the heads of the relevant Australian intelligence entities for obtaining, storing, accessing, using, disclosing and returning intelligence information relating to an Australian intelligence entity.

AND We appoint you, Mr Naguïb Kaldas APM, to be the Chair of the Commission.

AND We direct that the Chair be responsible for ensuring the effective, orderly and expeditious conduct of the inquiry in all its facets and, in discharging that responsibility, the Chair may give directions to other appointed Commissioners.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902*.

AND We declare that you are a Royal Commission to which item 5 of the table in subsection 355-70(1) in Schedule 1 to the *Taxation Administration Act 1953* applies.

AND We declare that you are authorised to conduct your inquiry into any matter under these Our Letters Patent in combination with any inquiry into the same matter, or a matter related to that matter, that you are directed or authorised to conduct by any Commission, or under any order or appointment, made by any of Our Governors of the States or by the Government of any of Our Territories.

AND We declare that in these Our Letters Patent:

*Australian Defence Force* or *ADF* has the same meaning as in the *Defence Act 1903*.

*Australian intelligence entity* means:

- (a) the Australian Secret Intelligence Service; or
- (b) the Australian Security Intelligence Organisation; or
- (c) the Australian Geospatial-Intelligence Organisation; or
- (d) the Defence Intelligence Organisation; or
- (e) the Australian Signals Directorate; or
- (f) the Office of National Intelligence.

*defence and veteran death by suicide* means the death of a defence member or veteran by suicide, or suspected suicide.

*defence member* means a member of the Defence Force (within the meaning of the *Defence Act 1903*).

Note: The Defence Force includes the Naval Reserve, the Army Reserve and the Air Force Reserve.

**Department of Defence** means the Department administered by the Minister administering the *Defence Force Discipline Act 1982*.

**Department of Veterans' Affairs** means the Department administered by the Minister administering the *Veterans' Entitlements Act 1986*.

**head**, of an Australian intelligence entity, means:

- (a) in relation to the Australian Security Intelligence Organisation—the Director-General of Security; or
- (b) in relation to the Australian Secret Intelligence Service—the Director-General of the Australian Secret Intelligence Service; or
- (c) in relation to the Australian Signals Directorate—the Director-General of the Australian Signals Directorate; or
- (d) in relation to the part of the Department of Defence known as the Australian Geospatial-Intelligence Organisation—the Director of that part of the Department; or
- (e) in relation to the part of the Department of Defence known as the Defence Intelligence Organisation—the Director of that part of the Department; or
- (f) in relation to the Office of National Intelligence—the Director-General of National Intelligence.

**intelligence information** means information:

- (a) that was acquired or prepared by or on behalf of an Australian intelligence entity in connection with its functions; or
- (b) that relates to the performance by an Australian intelligence entity of its functions; or
- (c) that identifies a person as being, or having been, a staff member (within the meaning of the *Intelligence Services Act 2001*) or agent of the Australian Secret Intelligence Service or the Australian Security Intelligence Organisation.

**law enforcement or security agency** means any of the following agencies:

- (a) the Australian Defence Force;
- (b) the Australian Federal Police;
- (c) the Australian Criminal Intelligence Commission;
- (d) the Department administered by the Minister administering the *Australian Border Force Act 2015*;
- (e) the Office of the Special Investigator;

(f) the police force of a State or Territory.

*operationally sensitive information* means:

- (a) information about information sources or operational activities or methods available to a law enforcement or security agency; or
- (b) information about particular operations that have been, are being or are proposed to be undertaken by a law enforcement or security agency, or about proceedings relating to those operations; or
- (c) information provided by a foreign government, or by an agency of a foreign government, where that government does not consent to the public disclosure of the information.

*veteran* means a person who has served, or is serving, as a member of the Permanent Forces (within the meaning of the *Defence Act 1903*) or as a member of the Reserves (within the meaning of the *Defence Act 1903*).

AND We:

- (x) require you to begin your inquiry as soon as practicable; and
- (y) require you to make your inquiry as expeditiously as possible; and
- (z) require you to ensure the inquiry is conducted in a professional, impartial, respectful and courteous manner, including appropriately managing any actual or perceived conflicts of interest; and
- (za) require you to submit to Our Governor-General an interim report that you consider appropriate not later than 11 August 2022, focusing on:
  - (i) issues requiring urgent or immediate action; and
  - (ii) any other matters you consider necessary or you consider should be referred to the interim National Commissioner for Defence and Veteran Suicide Prevention or the National Commissioner for Defence and Veteran Suicide Prevention; and
- (zb) require you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 15 June 2023.

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS General the Honourable David Hurley AC DSC  
(Retd), Governor-General of the Commonwealth of Australia.

Dated 8 July 2021



Governor-General



By His Excellency's Command



Attorney-General



ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth

TO

Mr Naguib Kaldas APM,  
The Honourable James Sholto Douglas QC, and  
Dr Peggy Brown AO

GREETING

WHEREAS, by Letters Patent issued in Our name and entered in the Register of Patents on 8 July 2021, We appointed you to be a Commission of inquiry, required and authorised you to inquire into certain matters, and required you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 15 June 2023.

AND WHEREAS it is desired to amend Our Letters Patent to require you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 17 June 2024.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, amend Our Letters Patent issued to you by omitting from paragraph (zb) "15 June 2023" and substituting "17 June 2024".

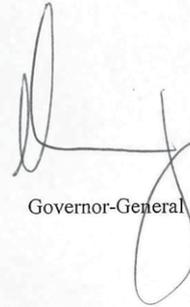
ENTERED ON RECORD by me in Register of Patents No. 57, page 18, on 10 April 2022

  
Secretary to the Federal Executive Council

IN WITNESS, We have caused these Our Letters to be made Patent.

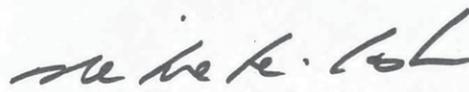
WITNESS General the Honourable David Hurley AC DSC  
(Retd), Governor-General of the Commonwealth of Australia.

Dated 10 April 2022



Governor-General

By His Excellency's Command



Attorney-General



## Appendix 2

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**List of relevant previous  
inquiries and reports, 2000–21**



## Appendix 2

### List of relevant previous inquiries and reports, 2000–21

This list includes the most relevant reports or inquiries which looked at factors which contribute to suicide by serving or ex-serving ADF members, as well as operational issues, such as a review of drug and alcohol use, incident reporting or social media use and defence. Some reports and inquiries focus on suicide rates and risks, and mental health. Others focus on aspects of military service, or on aspects related to the Department of Veterans' Affairs legislation. This Royal Commission has used, and will continue to use, these reports and inquiries, along with their findings, as we investigate the many issues related to our terms of reference.

We have limited the reports listed to those produced after 2000. This is partly because of the many changes in legislation, as well as the implementation of various initiatives in response to previous reports.

#### 2003

Report of the Review of Veterans' Entitlements (Clarke Report)

*Honourable John Clarke QC, Air Marshal Doug Riding AO DFC and Dr David Rosalky, Department of Veterans' Affairs*

#### 2009

Review of Mental Health Care in the Australian Defence Force and Transition Through Discharge

*Professor David Dunt*

Independent Study into Suicide in the Ex-Service Community

*Professor David Dunt*

## 2010

Review of Department of Veterans' Affairs funded Ex-Service Organisation Advocacy and Welfare Services

*Department of Veterans' Affairs*

Mental Health in the Australian Defence Force: 2010 ADF Mental Health Prevalence and Wellbeing Study

*Department of Defence*

## 2011

Beyond Compliance: Professionalism, Trust and Capability in the Australian Profession of Arms

*Major General Craig Orme AM CSC, Department of Defence*

Review into the Treatment of Women at the Australian Defence Force Academy

*Australian Human Rights Commission*

Review of Military Compensation Arrangements

*Steering Committee appointed by Department of Veterans' Affairs*

Analysis of the Possible Entitlement to Service Pension of Members of the British Commonwealth Occupation Force

*Peter Sutherland*

DLA Piper Review

*Professor Dennis Pearce AO, Ms Melanie McKean and Dr Gary Rumble*

Review on the Use of Alcohol in the Australian Defence Force

*Independent Advisory Panel on Alcohol*

Review of Social Media and Defence

*George Patterson Y&R*

Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction

*Geoff Earley AM, Inspector-General of the Australian Defence Force*

The Review of Employment Pathways for Australian Public Service (APS) Women in the Department of Defence

*Carmel McGregor, Department of Defence*

## 2012

Administration of Mental Health Initiatives to Support Younger Veterans

*Australian National Audit Office*

Review into the Treatment of Women in the Australian Defence Force (ADF)

*Australian Human Rights Commission*

*A Review of the Australian Defence Force Suicide Prevention Program (ADF SPP)*

*Karii Kólves and others*

**2013**

Inquiry into the Care of Australian Defence Force (ADF) Personnel Wounded and Injured on Operations

*Joint Standing Committee on Foreign Affairs, Defence and Trade*

**2014**

Vietnam Veterans' Family Study

*Department of Veterans' Affairs and Australian Institute of Family Studies*

Post-Traumatic Stress Disorder (PTSD) and Stigma in the Australian Army

*John Bale*

Review of Statutory Timeframes

*Military Rehabilitation and Compensation Commission*

Report on Abuse in Defence

*Defence Abuse Response Taskforce*

Report on Abuse at the Australian Defence Force Academy

*Defence Abuse Response Taskforce*

Report on Abuse at HMAS Leeuwin

*Defence Abuse Response Taskforce*

Evaluation of the Dunt Review Implementation Report

*Joint Health Command and the Vice-Chief of the Australian Defence Force (ADF)*

**2016**

Incidence of suicide among serving and ex-serving Australian Defence Force personnel 2001–2014

*Australian institute of Health and Welfare*

Mental Health of Australian Defence Force (ADF) Members and Veterans

*Senate Standing Committee on Foreign Affairs, Defence and Trade*

Suicide and Mental Health in the ADF – What Are We Missing

*Commodore Paul Kinghorne*

Defence Abuse Response Taskforce (DART) Final Report (Cornall Review)

*Robert Cornall AO, Defence Abuse Response Taskforce*

Special Operations Command (SOCOMD) Culture and Interactions: Perceptions, Reputation and Risk

*Dr Samantha Cromptvoets*

## 2017

Review into the Suicide and Self Harm Prevention Services Available to Current and Former Serving Australian Defence Force (ADF) Members and Their Families

*National Mental Health Commission*

Joint Inquiry into the Facts Surrounding the Management of Mr Jesse Bird's Case

*Department of Defence, Department of Veteran's Affairs and Veterans Families  
Counselling Service (VVCS – Open Arms)*

The Constant Battle: Suicide by Veterans

*Joint Standing Committee on Foreign Affairs, Defence and Trade*

Report of Case Study No. 40: The response of the Australian Defence Force to allegations of child sexual abuse

*Royal Commission into Institutional Responses to Child Sexual Abuse*

## 2018

Family Wellbeing Study (Transition and Wellbeing Research Programme)

*Australian Institute of Family Studies, Department of Defence and Department of  
Veterans' Affairs*

A Profile of Australia's Veterans

*Australian Institute of Health and Welfare*

Incidence of Suicide in Australian Defence Force (ADF) Personnel: Detailed Analysis 2001–2015

*Australian Institute of Health and Welfare*

Efficiency of Veterans Service Delivery by the Department of Veterans' Affairs

*Australian National Audit Office*

Investigation into the Actions and Decisions of the Department of Veterans' Affairs (DVA) in Relation to Mr A

*Commonwealth Ombudsman*

Veterans' Advocacy and Support Service Scoping Study

*Robert Cornall AO*

Transition Taskforce: Improving the Transition Experience

*Department of Veterans' Affairs and Department of Defence*

## 2019

Independent Study into the Mental Health Impacts of Compensation Claim Assessment Processes

*Professor Alex Collie*

National Suicide Monitoring of Australian Defence Force (ADF) Personnel: 2019 Update

*Australian Institute of Health and Welfare*

Actuarial Investigation into the Costs of Military Compensation as at 30 June 2019

*Australian Government Actuary*

Independent review into the Totally and Permanently Incapacitated (TPI) Payment

*David Tune AO PSM*

A Better Way to Support Veterans

*Productivity Commission*

Inquiry into Transition from the Australian Defence Force (ADF)

*Joint Senate Committee on Foreign Affairs, Defence, and Trade*

Independent Review of the Implementation of the Recommendations of the Joint Inquiry into the Management of Jesse Bird's case

*Emeritus Professor Robyn Creyke AO*

Mental Health and Wellbeing Transition Study (Transition and Wellbeing Research Programme)

*The Centre for Traumatic Stress Studies (University of Adelaide), Department of Defence and Department of Veterans' Affairs*

Impact of Combat Study (Transition and Wellbeing Research Programme)

*The Centre for Traumatic Stress Studies (University of Adelaide), Department of Defence and Department of Veterans' Affairs*

## **2020**

Findings of the Inquest into the Death of Jesse Bird

*Coroner Jacqui Hawkins*

National Suicide Monitoring of Australian Defence Force (ADF) Personnel: 2020 Update

*Australian Institute of Health and Welfare*

Actuarial Investigation into the Costs of Military Compensation as at 30 June 2020

*Australian Government Actuary*

Inspector-General of the Australian Defence Force Afghanistan Inquiry Report (Brereton Report)

*Major General Paul Brereton*

## **2021**

Serving and ex-serving Australian Defence Force members who have served since 1985: suicide monitoring 2001 to 2019

*Australian Institute of Health and Welfare*

Final Report to the Independent Review of Past Defence and Veteran Suicides

*Australian Institute of Health and Welfare*

Interim Report

Spouses and Partners of Vietnam Veterans – Findings from the Vietnam Veterans Family Study

*Department of Veterans' Affairs and Australian Institute of Family Studies*

Defence's Implementation of Cultural Reform

*Australian National Audit Office*

Effectiveness of the Planning and Management of Veteran Centric Reforms

*Australian National Audit Office*

Senate Inquiry into the Totally and Permanently Incapacitated (TPI) Payment (Special Rate of Disability Pension)

*Foreign Affairs, Defence and Trade References Committee*

Preliminary Interim Report: Interim National Commissioner for Defence and Veteran Suicide Prevention (Boss report)

*Dr Bernadette Boss CSC*

## **Annual reports**

### **2011–21**

Defence Annual Reports (various)

*Department of Defence*

### **2014–21**

Inspector-General Australian Defence Force (IGADF) Annual Reports (various)

*Inspector-General of the Australian Defence Force*

### **2018–21**

Sexual Misconduct Prevention and Response Office (SeMPRO) Annual Reports (various)

*Department of Defence*

### **2013–21**

Women in ADF Annual Reports (various)

*Department of Defence*





**Royal Commission**  
into Defence and Veteran Suicide

**Interim Report**

Commonwealth of Australia

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