

SUPPLEMENTARY COMMONWEALTH GOVERNMENT RESPONSE

INQUEST INTO THE DEATH OF JESSE STEPHEN BIRD

On 7 July 2020, the Commonwealth provided a written response to the recommendations Coroner Hawkins made on 7 April 2020 following the inquest into the death of Jesse Stephen Bird. In response to Recommendation Five the Commonwealth committed to provide a further update on the implementation of the proposed National Commissioner for Defence and Veteran Suicide Prevention (the National Commissioner) to the Coroners Court of Victoria by 7 October 2020 (see **Attachment A**).

Since the Commonwealth's response on 7 July 2020, significant progress has been made on the implementation of the National Commissioner, including the introduction of enabling legislation, the appointment of the interim National Commissioner, preparatory work on the Independent Review of Past Defence and Veteran Suicides, and work with states and territories on the co-design of a new National Coronial Centre for Defence and Veteran Suicides.

Establishing the National Commissioner is a key priority for Government in recognition of the need for concerted action to address the unacceptably high rates of suicide among the Australian Defence Force (ADF) and veteran communities across Australia. The primary role of the National Commissioner will be to inquire into the factors and systemic issues contributing to these suicides, and to recommend actions and strategies to support the prevention of future suicides.

Progress on enabling legislation

On 27 August 2020, the Attorney-General, the Hon Christian Porter MP, introduced the [National Commissioner for Defence and Veteran Suicide Prevention Bill 2020](#) (the bill) and the [National Commissioner for Defence and Veteran Suicide Prevention \(Consequential Amendments\) Bill 2020](#) (together the bills) into Parliament. The bills have been referred to the Senate Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 30 November 2020. In parallel, the Government undertook a four week period of public and stakeholder consultation on the bills, until 24 September 2020. As part of the consultation process, input on the bills was sought from Chief Coroners from all jurisdictions. The feedback provided during the consultation process will assist to inform any refinements the Government makes to the bills during their passage through the Parliament.

Subject to the passage of legislation, the National Commissioner will have powers broadly equivalent to a Royal Commission to:

- inquire into the circumstances of past and future ADF member and veteran deaths by suicide, including suspected deaths by suicide
- hear about the impact of ADF member and veteran deaths by suicide on families and others who are affected
- make findings and recommendations to the Australian Government; and
- promote the understanding of suicide risks for ADF members and veterans, and factors that can improve the wellbeing of ADF members and veterans.

The National Commissioner's role is intended to complement, and not duplicate or replace, the role of state and territory Coroners. This is reflected in the Bill as follows (clause 11 refers):

- working collaboratively with state and territory Coroners to understand issues contributing to ADF member and veteran deaths by suicide is an express function of the National Commissioner
- the National Commissioner is excluded from being able to make findings on the cause of death in relation to an ADF member or veteran death by suicide, recognising this is a core coronial function, and

- the National Commissioner is required to have regards to the need to avoid prejudicing current or future criminal or civil proceedings, or other contemporaneous inquiries, which will include avoiding prejudice to coronial processes.

The National Commissioner will also complement the existing role of Commonwealth bodies which may consider matters connected to an ADF member or veteran death by suicide, such as the Inspector-General of the Australian Defence Force, Comcare, and the Commonwealth Ombudsman.

The Bill enables state and territory bodies, including Coroners, to proactively provide information to the National Commissioner, despite potential limitations to information sharing in other legislation or under common law. This mechanism is intended to enable an informal and non-adversarial approach, and reduce the need for the National Commissioner to resort to compulsory information gathering. As a safeguard, the Bill includes a requirement that such disclosures are properly authorised by the entity offering the information.

The Bill also enables the National Commissioner to disclose information to a range of state and territory bodies and office holders, including Coroners, to assist their functions or powers. This is consistent with the intention that the National Commissioner would work collaboratively with Coroners and other bodies to better understand, and support the prevention of, future ADF member and veteran suicide deaths.

On 30 September 2020, the Government announced the appointment of Dr Bernadette Boss CSC as the interim National Commissioner for Defence and Veteran Suicide Prevention. Dr Boss is highly experienced and will be able to approach the Independent Review in a systemic and sensitive manner.

Dr Boss has served as a Magistrate and Coroner of the Australian Capital Territory Magistrates Court, she holds a PhD from the University of Sydney and has practiced as a barrister in Australia and the United Kingdom, primarily in the areas of family law, criminal law, administrative law and human rights law. Dr Boss also served in various command and staff roles in the ADF and was awarded a Conspicuous Service Cross. She also worked in the healthcare system as a nurse. Dr Boss' experience makes her well placed to engage with families, friends and communities affected by the loss of a loved one to suicide.

The interim National Commissioner's key priority will be to commence the Independent Review of Past Defence and Veteran Suicides (the Independent Review), which will be crucial to understanding the factors and systemic issues that have contributed to past suicides, and to inform recommendations for more effective strategies to prevent future suicides. The Independent Review will involve meaningful engagement with veterans and families. The Terms of Reference for the Independent Review, and further information about the National Commissioner, are publically available on the National Commissioner's website at <https://www.nationalcommissionerdvsp.gov.au/>.

In addition to the introduction of the National Commissioner Bills, the Council of Attorneys-General agreed on 27 July 2020 to work together, in consultation with the Council of Chief Coroners, to establish a new National Coronial Centre for Defence and Veteran Suicides to assist Coroners to develop a common understanding of the issues for consideration in individual Defence and veteran death by suicide cases, and to support the National Commissioner in identifying broader systemic issues for further inquiry. The National Coronial Centre for Defence and Veteran Suicides consultation and co-design with state and territory governments and coronial offices is underway.

Updates on progress and timeframes are available on the Attorney-General's website (<https://www.ag.gov.au/About/Pages/national-commissioner-defence-veteran-suicide-prevention.aspx>).

ATTACHMENT A

COMMONWEALTH GOVERNMENT RESPONSE
INQUEST INTO THE DEATH OF JESSE STEPHEN BIRD

RECOMMENDATION ONE

That the Secretary of the Department of Defence consider how the information in its PMKeyS system could be shared with the Coroners Court to:

- a) Enhance Victorian Coroners' ability to identify veteran suicides with a greater degree of accuracy;*
- b) Allow investigating Coroners to more effectively direct their investigation to build the evidence base for prevention; and*
- c) Inform the design and implementation of suicide prevention initiatives*

RESPONSE

The Coroner's recommendation will be implemented.

The Secretary of the Department of Defence, and the Chief of the Defence Force, are supportive of sharing information in the PMKeyS system where it would assist the Coroner and in accordance with legal requirements.

In accordance with a directive of the Chief of the Defence Force, the Provost Marshal – Australian Defence Force (PM-ADF) is the primary ADF Liaison Officer to the relevant State and Territory coronial jurisdictions. In the case of a death of an ADF member or veteran, and where the civilian police assigned to the Coroner's office determine that information from Defence is required, the Coroner's office may request information from the Joint Military Police Unit (JMPU). The JMPU will then source the data from the relevant areas within Defence using the Defence Single Access Mechanism.

In addition to this formal Defence liaison role with the Coroner's office, the independent Inspector-General of the Australian Defence Force (IGADF) is also to conduct "inquiries into or to investigate the death or serious injury of ADF members either in Australia or overseas, where the death or serious injury appears to have arisen out of, or in the course of, the member's Defence service".

State and Territory Coroners engage directly with the IGADF in relation to the death of Defence members. This interaction may be through the provision of information to assist a Coroner to determine a cause of death and the requirement for a Coronial Inquest, or in response to a Coroner's subpoena in relation to a Coronial inquest.

RECOMMENDATION TWO

That the Secretary of the Department of Veterans' Affairs consider implementing a public awareness campaign directed to informing ex-service personnel about the recent reforms undertaken by DVA and encourage veterans to come forward to assist both in reconnecting with them and in building trust and confidence in DVA.

Such a campaign ought to be multi-modal, utilising where possible, social media, television, print, and radio formats.

RESPONSE

The Coroner's recommendation will be implemented.

DVA has an extensive social media and direct media campaign in place engaging with veterans, families and ESO communities, and will continue to refine this over time.

RECOMMENDATION THREE

That the Minister for Veterans' Affairs and Defence Personnel take the necessary steps to harmonise the legislation governing the veterans' compensation and rehabilitation scheme to:

- a) Ensure that the system is 'fit for purpose', reflecting the needs of veterans now and into the future;*
- b) Reduce complexity in the compensation system by streamlining and simplifying the claims process;*
- c) Remove inconsistencies between the Acts to ensure fairness and equity in eligibility and benefits; and*
- d) Ensure the legislative framework reflects veteran centric practices.*

RESPONSE

The Coroner's recommendation is under consideration.

This matter was previously put to Government by the Productivity Commission (PC), in their final report into Compensation and Rehabilitation for Veterans – A Better Way to Support Veterans.

This is a significant review looking at a complex system and it requires careful consideration by the Government as well as the veteran community and other stakeholders.

The Government response to the PC review is under active consideration and will be released in due course.

RECOMMENDATION FOUR

That the Secretary of Department of Prime Minister and Cabinet extend the remit of the proposed National Commissioner to include powers to proactively review and audit DVA processes and to investigate veteran complaints.

RESPONSE

An alternative to the Coroner's recommendation will be implemented.

The intended role of the National Commissioner for Defence and Veteran Suicide Prevention is to support the prevention of future ADF member and veteran deaths by suicide, through examining the factors and circumstances relevant to these deaths.

Legislation establishing the National Commissioner will be introduced to the Australian Parliament by the Attorney-General later this year.

The form of that legislation is a matter for the Australian Government. The Government, through the Attorney-General and the Attorney-General's Department, as the relevant portfolio leading implementation work, will consult widely on the legislation before it is introduced.

The focus of the National Commissioner will be to support the prevention of future ADF member and veteran deaths by suicide. As such, the Commonwealth's position is that the National Commissioner not replace or duplicate the review, audit and complaints investigation functions of existing mechanisms and bodies (such as the Commonwealth Ombudsman, Veterans' Review Board, Australian National Audit Office and relevant parliamentary committees).

Subject to the passage of legislation, the National Commissioner will be empowered to inquire into administrative processes and complaints where they are relevant to ADF member or veteran suicides.

RECOMMENDATION FIVE

That the Secretary of the Department of Prime Minister and Cabinet provide an update to the Coroners Court on the status of the implementation of the proposed National Commissioner within six months, including where relevant, pending or current legislation, specifics as to the scope, remit and functions of the National Commissioner, and information detailing how the National Commissioner's investigation of veteran suicide deaths will sit alongside the coronial functions.

RESPONSE

The Coroner's recommendation will be implemented.

The Attorney-General's Department will provide an update on the implementation of the proposed National Commissioner to the Coroners Court of Victoria by 7 October 2020.

Establishing a National Commissioner is a priority for the Australian Government. A dedicated taskforce has been established within the Attorney-General's Department to progress the establishment of the National Commissioner, their office, and supporting legislation, as quickly as possible. The National Commissioner will be part of the Attorney- General's portfolio.

The National Commissioner will work to identify and understand the factors and systemic issues that may contribute to suicide risk among serving and former ADF members, and make recommendations to government about actions and strategies to prevent future suicides.

The National Commissioner will have appropriate statutory independence from government. They will be able to gather information and evidence, including by consulting experts and families and summoning witnesses, and obtaining relevant information and reports from government departments such as Defence and Veterans' Affairs.

The powers of the National Commissioner will be set out in legislation, which is currently being developed.

Subject to the passage of legislation, the National Commissioner will have relevant powers, like a Royal Commission, to enable them to:

- undertake broad ranging inquiries relevant to their role and hear from any relevant party (including veterans and their families)
- conduct public and private hearings
- compel the production of evidence and summons witnesses.

The National Commissioner will provide a public report on their findings and recommendations to the Parliament each year. The Government will be required to report annually to the Parliament on implementation of the National Commissioner's recommendations.

There will be opportunities for consultation throughout the legislation process.

Ahead of the legislation being finalised, the Australian Government is working to appoint an interim National Commissioner to begin an independent review of past defence and veteran suicides. Terms of reference for the review will be announced publicly.

Affected families will be invited to participate in the work of the National Commissioner, including by making submissions. Families who wish to participate will receive support to do so. This will enable families to make an important contribution, so that we can learn from the past and support suicide prevention.

Updates on progress and timeframes are available on the Attorney-General's website (<https://www.ag.gov.au/About/Pages/national-commissioner-defence-veteran-suicide-prevention.aspx>) with the Office of the National Commissioner to have its own website once established.

Dated: 7 July 2020