

Senate Legal and Constitutional Affairs Committee

***Parliamentary Privileges Amendment (Royal Commission Response) Bill
2022***

Submissions by Gregory Isolani, KCI Lawyers, 11 November 2022

1. Qualification and experience

- 1.1. I am a legal practitioner. Since 1992 I have practiced continuously in the Commonwealth, specifically in Veterans' compensation jurisdiction, and participated in numerous Government and Departmental Inquires¹.
- 1.2. I have advocated for and represented Veterans and their families regarding issues relating to the administration of and benefits payable by Department of Veterans' Affairs (**DVA**) and the transitional management of Australian Defence Force (**ADF**) personnel and their welfare.
- 1.3. My legal practice includes numerous coronial inquests on behalf of Veterans' families who have lost a former or current ADF member through suicide, including the Inquest into the death of the late Jesse Bird. I actively campaigned through various submissions in the Inquest into the late Jesse Bird for the Royal Commission into Defence and Veteran Suicide (**RCDVS**).
- 1.4. I have assisted many Veterans to draft submissions to the RCDVS. I have also appeared at Private Sessions before the Commissioners, and have acted on behalf of two witnesses at the RCDVS public hearings. I anticipate acting on behalf of the least another three who will be called as witnesses to appear before the RCDVS.
- 1.5. My unique background and history representing and advocating for Veterans, and the invaluable experience and insight I have gain throughout coronial inquiries and the RCDVS allows me to comment on the impact of Parliamentary Privilege (PP) with respect to denying Coroners, and importantly the RCDVS, from considering former Senate Inquiries and their findings, particularly inquires and findings with respect to Veterans' mental health and related issues causing or contributing to suicide and suicidal behaviour.

2. The Importance of the Royal Commission into Defence and Veteran Suicide

2.1. In May 2020, the former Government (reluctantly) determined the need for a Royal Commission into Defence and Veteran Suicide to consider, pursuant to Terms of Reference (ToR), the systemic failures and what may have been recommended or established via various Senate committees over a long period.

2.2. Importantly, what was anticipated when the Royal Commission was announced was to investigate Veteran suicide. This is included at ToR (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 relevant road conditions and conditions of inquiry) including any assessment of the adequacy an extent of implementation of those recommendations.

2.3. Furthermore, the ToR (i) includes:

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.

3. Relevant Senate Reviews Into Veterans' Mental Health, Suicide and the Royal Commission

3.1. The Interim report by the National Commissioner for Defence and Veteran Suicide Prevention, dated September 2021 (INCDVS)² helpfully lists at Chapter 3:

..former inquiries, reviews and recommendations (Appendix H) with the various reports and inquiries examined.

This, obviously includes the previous Senate Inquiries referred to below that are relevant to the Royal Commissions' consideration.

3.2. In March 2016, the Senate conducted a further Inquiry into the ***Mental health of Australian Defence Force Members and Veterans*** concerning the mental health of ADF personnel returning from combat, Peace Keeping or other deployments.

3.3. The 2016 Inquiry specifically considered the extent and significance of mental health and Past Traumatic Stress Disorder (**PTSD**), the identification of disclosure policies of

- the ADF in relation to mental health and PTSD, record keeping, adequacy of mental health support for not only the Veteran but also their partners and families.
- 3.4. The committee received 82 submissions, conducted public hearings and considered the June 2013, Joint Standing Committee report into the ***Care of ADF Personnel Wounded and Injured on Operations***.
 - 3.5. The 2013 report found that the mental health of ADF members (current and former), is *not well documented nor understood by the defence organisations and made three recommendations to approve this understanding*.
 - 3.6. The 2016 Senate review made 17 recommendations, noting in 2016 that the majority of those on operational service had since returned following what has been Australia's longest period of deployments in its defence history in the Middle East.
 - 3.7. The DVA commissioned a report in 2016 regarding ***Suicidal behaviour and ideation among military personnel: Australian and international trends***, which was prepared by the Australian Institute for Suicide Research and Prevention;
 - 3.8. On 15 August 2017, the Senate released a comprehensive 207-page report, ***The Constant Battle: Suicide by Veterans*** with over 458 witnesses and a further 24 recommendations.
 - 3.9. The Senate Inquiries inspired subsequent reviews into the policies and procedures within DVA and Defence that may be adversely impacting upon Veterans and their mental health leading contributing or causing suicidal behaviour and suicide. These reviews include but not limited to:
 1. The 4 July 2019 review by the Productivity Commission, into *A Better Way to Support Veterans*, whereby despite, "Veteran Centric reform" found that DVA veterans' compensation and rehabilitation system required "fundamental reform" and was not "'Fit for purpose".
 2. The review by the *Australian Institute of Health and Welfare (AIHW)* and the 29 November 2019 publication of the National Suicide Monitoring of Serving at Ex-serving Australian Defence Force Personnel³. The AIHW is an independent statutory agency established by the *Australian Institute of Health and Welfare Act 1987* (Cth) with the function to collect and produce health information and statistics and to make recommendations on the prevention and

treatment of diseases and the improvement and promotion of the health and health awareness of the people of Australia, published a National Suicide Monitoring of Serving at Ex-serving Australian Defence Force Personnel.

4. The Need for Reform of Parliamentary Privilege for the RCDVS

4.1. The RC highlighted the need for the *Parliamentary Privilege Amendment (Royal Commission Response) Bill 2022* (**Bill**) in order to implement Recommendation 7 of the ***RCDVS Interim Report*** dated 11 August 2022.

4.2. In particular, with respect to Parliamentary privilege, which is discussed at Part 6.1 and Parts 6.3.1 6.3.3 of the *RCDVS Interim Report*, the Executive Summary provides at paragraph 21:

*... 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.* (bolding added)

4.3. The Bill seeks to exempt 16(3)(c) of the *Parliamentary Privileges Act 1987* (Cth)(**PPA**). The exemption is required in order to overcome the unintended consequence created to deny the RCDVS the unique opportunity to not only consider “lived experience” evidence but to cross-reference evidence before it with the various Senate Inquiries and Recommendations that they are unable to refer to because of the operation of the PPA.

5. The Need for Reform of Parliamentary Privilege for Coronial Inquiries and Reviews into Veteran Suicide

5.1. Currently the Bill provides an exemption from paragraph 16(3)(c) of the PPA which would allow exempted Royal Commissions to draw, or invite the drawing of, inferences or conclusions wholly or partly from anything forming part of proceedings in Parliament.

5.2. It is submitted that the exemption be extended to include Coronial Inquests in so far as they relate to investigating a Veteran’s suicide where the Coroner may wish to refer to various Senate Inquiries that they are unable to due to PP.

5.3. If the exemption from paragraph 16(3)(c) of the PPA included coronial inquests into the death of a Veteran, it would allow the Coroner to consider the Senate Inquiry

reports and not allow PP to deny the Coroner the ability to consider, for example, what previous Senate Inquiries have recommended and if the failure to implement recommendations may be an indication of systemic failures. The alternative is the improbable use of costly and slow legal challenges in the Inquest while the issue of PP is determined or to seek the Parliament to essentially waive privilege via a complex political process.

- 5.4. For example, I acted for family of the late *Jesse Bird*, before the Victorian Coroner's Court (COR 2017/003044) that, together with the campaign for the RCDVS, was the inspiration for the former Government's announcement for the *National Commissioner for Defence Veteran Suicide Prevention*.
- 5.5. During the course the Jesse Bird Inquest, the question was raised as to whether the Coroner may have regard to the Senate Inquiry, *The Constant Battle*. The Commonwealth highlighted that the Coroner could not due to PP and there was no time available to make an application via the complex procedure to ask the Parliament to essentially waive privilege.
- 5.6. As a result, the Coroner was not able to consider the previous Senate review(s) and, ironically, in response to the submission raised for a Royal Commission, the Commonwealth argued
- ..there have already been a number of reviews and inquiries relevant to the issue of veteran suicide mental health.....These have in turn generated a large number of recommendations and actions for DVA to take forward. DVA is in the process of implementing many of these recommendations and the recommendations of the recent inquiry report of the Productivity Commission.* (para. 203 Jesse Bird inquest⁴, emphasis added).
- 5.7. Whilst the Commonwealth could refer to "previous recommendations and Inquiries" the Coroner was unable to perform its function to address recommendations contained in, for example, the Senate Inquiry, *Constant Battle* and what recommendations the Coroner could make having regard to not only the Inquest findings but what had been said previously.
- 5.8. I am currently representing the family of the late Special Forces soldier, *Ian Turner* before the NSW Coroners Court (2017 /216789) into the suicide of the late Veteran and while the Senate report, *Constant Battle*, is in the Coroner's Brief of Evidence,

the parties will not be able to refer to it and the recommendations that would otherwise be useful for the Coroner to draw upon.

- 5.9. I am also currently acting on behalf of the families of a further three (3) Veterans who perished by suicide that are the subject of a Coronial investigation in Tasmania, NSW and Victoria.
- 5.10. It is highly regrettable that at any inquest into a Veteran's suicide that it is almost pointless referring to previous senate Inquiry reports and recommendations given the operation of PP. Adopting what the Commissioners have stated in the Interim Report (referred to paragraph 4.2 above), parliamentary privilege has seriously, adversely constrained the Coroner's ability to inquire into and receive the necessary evidence from prior inquiries conducted by parliament and government's decisions regarding the issue of Veteran suicide.

¹ Greg Isolani, Curriculum Vitae.

² Interim Report | Royal Commission into Defence and Veteran Suicide

³ National suicide monitoring of serving & ex-serving ADF personnel, Summary - Australian Institute of Health and Welfare (aihw.gov.au)

⁴ COR 2017 3044 Finding with inquest into the death of Jesse Stephen Bird.pdf (coronerscourt.vic.gov.au)