



Royal Commission
into Defence and Veteran Suicide

22/44878

26 July 2022

Senator the Hon. Slade Brockman
President of the Senate
PO Box 6100
Senate
Parliament House
CANBERRA ACT 2600

Dear President

Parliamentary privilege and Royal Commissions

The Royal Commission into Defence and Veteran Suicide was established by the Governor-General on 8 July 2021. My fellow Commissioners (the Hon James Douglas QC and Dr Peggy Brown AO) and I are required to produce an interim report by 11 August 2022 and a final report by 17 June 2024.

The Letters Patent for the Royal Commission require us, *inter alia*, to inquire into '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 behaviours or risk factors', having regard to 'the findings and recommendations of previous relevant reports and inquiries.'

The prevalence of suicide among serving and ex-serving ADF members, and factors contributing to it, have been the subject of prior investigation by several Parliamentary committees and a number of reports prepared for Parliament, including by the Auditor-General. Many of these reports, and the findings and recommendations set out in those reports, are relevant to our Letters Patent and provide information fundamental to our work. These reports are also available publicly.

By operation of paragraph 16 (2) (c) of the *Parliamentary Privileges Act 1987*, the publication of such reports is a proceeding in Parliament.

Subsection 16 (3) of the *Parliamentary Privileges Act* provides:

In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:

...

(c) *drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.*

Subsection 3 (1) of the Act provides that '*tribunal ... include[es] a Royal Commission*'.

We therefore cannot for the purpose of drawing any inference receive into evidence any of the findings, recommendations or other content of reports published by Parliament or one of its

Houses or committees. The inferences that cannot be drawn include the fact that a recommendation was made and the fact that certain information was in the public domain. Perhaps most importantly, we are precluded from drawing any inferences about whether or not the executive government has acted in response to a parliamentary recommendation made to it.

We understand the importance of the principles underlying Parliamentary privilege, and section 16 in particular. Nonetheless, it is unfortunate that one consequence of the privilege is that we cannot have useful regard to valuable previous work relevant to our terms of reference, even where our inquiry will not impinge upon or curtail the work of Parliament and/or its members. It is unfortunate that Parliamentary privilege is operating to undermine the effectiveness of Parliament's work by precluding full examination of what has been done in response to its recommendations.

In its 2009 report *Making Inquiries*, the Australian Law Reform Commission considered the effect of Parliamentary privilege on the operations of Royal Commissions and other inquiries. The ALRC noted that '[s]ince the privilege is that of the Parliament, it may not be waived by individual members of the Parliament'. However, the ALRC continued, it may be waived by Parliament as a whole.

I am aware that prior Royal Commissions have also been impacted in the same manner. Commissioners raised these concerns with the Parliamentary presiding officers during the Royal Commission into Aged Care Quality and Safety, and Commissioner Hayne raised concerns during the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Without change, certain aspects of Parliamentary privilege will continue to impede this, and future, Royal Commissions.

We suggest that the *Parliamentary Privileges Act* be amended to provide a limited exemption from the operation of paragraph 16 (3) (c) of the Act for Royal Commissions in the following circumstances:

- the evidence is relevant to the Royal Commission's satisfying its terms of reference; and
- the evidence would not be used to draw an adverse inference about the Parliament, either of its Houses, any of its committees or any its members, or any of the work or proceedings thereof; and
- the evidence would not be used to impugn any person's testimony or submission to Parliament or one of its committees or any person in respect of providing such testimony or submission.

I write to seek your support to progress this matter.

I have written in similar terms to the Speaker of the House of Representatives. I have sent a copy of this letter to the Attorney-General, who is the Minister responsible for the *Parliamentary Privileges Act* and the *Royal Commissions Act 1902*.

Yours faithfully

Nick Kaldas APM

Commissioner and Chair



Royal Commission
into Defence and Veteran Suicide

22/44881

26 July 2022

The Hon. Andrew Wallace MP
Speaker of the House of Representatives
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

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Nick Kaldas APM
Commissioner and Chair