

**Schedule 9—Defence and Veterans' Services  
Commission**

**Part 1—Main amendments**

***Defence Act 1903***

**1 After Part VIID**

Insert:

**Part VIIE—Defence and Veterans' Services  
Commission**

**Division 1—Preliminary**

**110ZEA Objects of this Part**

The object of this Part is to improve suicide prevention and wellbeing outcomes for serving and ex-serving Australian Defence Force members through the provision of independent, evidence-based advice on system reform to the Australian Government.

**110ZEB Simplified outline of this Part**

The Defence and Veterans' Services Commissioner conducts inquiries and reports (including with evidence-based findings and recommendations) on matters relating to systemic reform to:

- (a) improve suicide prevention for serving and ex-serving Australian Defence Force members; or
- (b) improve wellbeing outcomes for serving and ex-serving Australian Defence Force members.

The Commissioner may determine that an inquiry is a special inquiry if certain requirements are met, including that to do so is in the public interest. A range of additional powers are available to

the Commissioner for the purposes of conducting special inquiries (see Division 3).

The Defence and Veterans' Services Commission assists the Commissioner in the performance of the Commissioner's functions under this Part. The Commission consists of the Commissioner and the staff of the Commission.

### **110ZEC This Part binds the Crown**

- (1) This Part binds the Crown in each of its capacities.
- (2) However, this Part does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

### **110ZED This Part extends to things outside Australia**

This Part extends to acts, omissions, matters and things outside Australia.

### **110ZEE Definitions**

In this Part:

***accountable authority***, of a Commonwealth entity, has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

***Australian intelligence entity*** means:

- (a) the Australian Security Intelligence Organisation; or
- (b) the Australian Secret Intelligence Service; or
- (c) the Australian Signals Directorate; or
- (d) the Office of National Intelligence; or
- (e) the part of the Department known as the Australian Geospatial-Intelligence Organisation; or
- (f) the part of the Department known as the Defence Intelligence Organisation.

***authorised member***: see subsection 110ZGJ(2).

- 1                   **Commonwealth body** means a Commonwealth entity or a  
2                   Commonwealth company.
- 3                   **Commonwealth company** has the same meaning as in the *Public*  
4                   *Governance, Performance and Accountability Act 2013*.
- 5                   **Commonwealth entity** has the same meaning as in the *Public*  
6                   *Governance, Performance and Accountability Act 2013*.
- 7                   **Defence and Veteran Suicide Royal Commission** means the Royal  
8                   Commission into Defence and Veteran Suicide, issued by the  
9                   Governor-General by Letters Patent on 8 July 2021 (and including  
10                  any later variations of those Letters Patent).
- 11                  **defence member** means a member of the Defence Force.
- 12                  **eligible Judge**: see subsection 110ZLB(1).
- 13                  **engage in conduct** means:  
14                  (a) do an act; or  
15                  (b) omit to perform an act.
- 16                  **entrusted person** means:  
17                  (a) the Defence and Veterans' Services Commissioner; or  
18                  (b) a member of staff assisting the Commissioner as mentioned  
19                  in section 110ZKD; or  
20                  (c) persons assisting referred to in section 110ZKE; or  
21                  (d) consultants engaged under section 110ZKF.
- 22                  **head**, of an Australian intelligence entity, means:  
23                  (a) in relation to the Australian Security Intelligence  
24                  Organisation—the Director-General of Security; or  
25                  (b) in relation to the Australian Secret Intelligence Service—the  
26                  Director-General of the Australian Secret Intelligence  
27                  Service; or  
28                  (c) in relation to the Australian Signals Directorate—the  
29                  Director-General of the Australian Signals Directorate; or  
30                  (d) in relation to the part of the Department known as the  
31                  Australian Geospatial-Intelligence Organisation—the  
32                  Director of that part of the Department; or

1 (e) in relation to the part of the Department known as the  
2 Defence Intelligence Organisation—the Director of that part  
3 of the Department; or

4 (f) in relation to the Office of National Intelligence—the  
5 Director-General of National Intelligence.

6 **Home Affairs Department** means the Department administered by  
7 the Minister administering the *Australian Border Force Act 2015*.

8 **IGIS official** means:

9 (a) the Inspector-General of Intelligence and Security; or

10 (b) any other person covered by subsection 32(1) of the  
11 *Inspector-General of Intelligence and Security Act 1986*.

12 **intelligence information** means information:

13 (a) that was acquired or prepared by or on behalf of an  
14 Australian intelligence entity in connection with its  
15 functions; or

16 (b) that relates to the performance by an Australian intelligence  
17 entity of its functions; or

18 (c) that identifies a person as being, or having been, a staff  
19 member (within the meaning of the *Intelligence Services Act*  
20 *2001*) or agent of the Australian Secret Intelligence Service  
21 or the Australian Security Intelligence Organisation.

22 Example: For paragraph (a)—information provided to an Australian intelligence  
23 entity by a foreign government or an agency of a foreign government.

24 **Judge**: see subsection 110ZLB(1).

25 **law enforcement or security agency** means any of the following  
26 agencies:

27 (a) the Australian Defence Force;

28 (b) the Australian Federal Police;

29 (c) the Australian Crime Commission;

30 (d) the Home Affairs Department;

31 (e) the police force of a State or Territory;

32 (f) any other agency prescribed by the rules for the purposes of  
33 this definition.

1           **official**, of a Commonwealth entity, has the same meaning as in the  
2           *Public Governance, Performance and Accountability Act 2013*.

3           **operationally sensitive information** means:

- 4           (a) information about information sources or operational  
5           activities or methods available to a law enforcement or  
6           security agency; or  
7           (b) information about particular operations that have been, are  
8           being or are proposed to be undertaken by a law enforcement  
9           or security agency, or about proceedings relating to those  
10          operations; or  
11          (c) information provided by a foreign government, or by an  
12          agency of a foreign government, where that government does  
13          not consent to the public disclosure of the information.

14          **paid work** means work for financial gain or reward (whether as an  
15          employee, a self-employed person or otherwise).

16          **personal information** has the same meaning as in the *Privacy Act*  
17          1988.

18          **protected information** means information (including personal  
19          information) made or obtained by an entrusted person for the  
20          purposes of this Part.

21          **reasonable excuse** means:

- 22          (a) in relation to any act or omission by a witness before the  
23          Defence and Veterans' Services Commissioner—an excuse  
24          which would excuse an act or omission of a similar nature by  
25          a witness before a court of law; or  
26          (b) in relation to any act or omission by a person summoned as a  
27          witness before the Commissioner—an excuse which would  
28          excuse an act or omission of a similar nature by a person  
29          summoned as a witness before a court of law; or  
30          (c) in relation to any act or omission by a person given a notice  
31          under section 110ZGE or subsection 110ZHD(3)—an excuse  
32          which would excuse an act or omission of a similar nature by  
33          a person served with a subpoena in connection with a  
34          proceeding before a court of law.

35          **rules** means rules made under section 110ZLD.

- 1                    ***secrecy provision*** means:
- 2                    (a) a provision of a law of the Commonwealth that purports to
- 3                    prohibit; or
- 4                    (b) anything done, under a provision of a law of the
- 5                    Commonwealth, to prohibit;
- 6                    the communication, divulging or publication of information, the
- 7                    production of, or the publication of the contents of, a document, or
- 8                    the production of a thing.
- 9                    ***State body*** means a department or authority of a State.
- 10                  ***Territory body*** means a department or authority of a Territory.
- 11                  ***use***, in relation to information, includes make a record of.
- 12                  ***veteran*** has the same meaning as in the *Australian Veterans'*
- 13                  *Recognition (Putting Veterans and Their Families First) Act 2019*.

## **Division 2—Investigations by the Defence and Veterans' Services Commissioner**

### **110ZFA Investigation on own initiative**

- 17                  (1) The Defence and Veterans' Services Commissioner may conduct
- 18                  research and inquire into matters relating to systemic reform to:
- 19                  (a) improve suicide prevention for serving and ex-serving ADF
- 20                  members; or
- 21                  (b) improve wellbeing outcomes for serving and ex-serving ADF
- 22                  members.
- 23                  (2) The Commissioner may, after conducting research and inquiry
- 24                  under this section, report to the Minister on the outcomes of the
- 25                  research and inquiry (including any recommendations).
- 26                  (3) A report given under subsection (2) must be given to the Minister,
- 27                  published and tabled in each House of the Parliament in
- 28                  accordance with any requirements of the rules.

**110ZFB Inquiry into or advice on specific matter on request by Minister**

- (1) The Minister may request the Defence and Veterans' Services Commissioner:
- (a) to conduct research and inquire into, and report on, a specific matter relating to systemic reform to:
    - (i) improve suicide prevention for serving and ex-serving ADF members; or
    - (ii) improve wellbeing outcomes for serving and ex-serving ADF members; or
  - (b) to advise on a specific matter relating to systemic reform to:
    - (i) improve suicide prevention for serving and ex-serving ADF members; or
    - (ii) improve wellbeing outcomes for serving and ex-serving ADF members.
- (2) The Minister may include in such a request terms of reference (including time frames) for the report or advice.
- (3) The Commissioner must comply with such a request.
- (4) If such a request is made in writing, the request is not a legislative instrument.
- (5) The Minister may withdraw or amend such a request at any time before the Commissioner gives the report or advice to the Minister.

**110ZFC Inquiries into implementation of Defence and Veteran Suicide Royal Commission recommendations**

- (1) The Defence and Veterans' Services Commissioner must conduct at least 2 inquiries into the Commonwealth's implementation of the Government's response to the recommendations of the Defence and Veteran Suicide Royal Commission.
- (2) An inquiry under subsection (1) must evaluate the implementation of the Government's response including:
- (a) the measures and actions taken by the Commonwealth to implement the response; and

- 1 (b) the effectiveness of those measures and actions in  
2 implementing the Government's response.
- 3 (3) Reports on an inquiry under subsection (1) must:  
4 (a) be completed no later than the period prescribed by the rules  
5 for the inquiry; and  
6 (b) be given to the Minister, published and tabled in each House  
7 of the Parliament in accordance with any requirements of the  
8 rules.

9 **110ZFD Hearings**

- 10 (1) The Defence and Veterans' Services Commissioner may hold a  
11 hearing for the purposes of performing the Commissioner's  
12 functions.
- 13 (2) A hearing is to be held in public and the procedure for a hearing  
14 may be such as the Commissioner thinks fit.
- 15 Note: For circumstances where hearings may not be held in public, see  
16 subsections 110ZFE(1) and (2), and 110ZGQ(6).
- 17 (3) The Commissioner may issue written guidelines relating to the  
18 procedure for hearings.
- 19 Note: The rules may make provision in relation to the procedure for  
20 hearings: see section 110ZFG.
- 21 (4) Guidelines issued under subsection (3) are not a legislative  
22 instrument.
- 23 (5) The Commissioner is not bound by the rules of evidence.
- 24 (6) The Commissioner must ensure that a record of a hearing is made.

25 **110ZFE Private hearings**

- 26 *Disclosure of information that is personal*
- 27 (1) Despite subsection 110ZFD(2), a hearing, or part of a hearing, may  
28 be held in private if the Defence and Veterans' Services  
29 Commissioner is satisfied that:  
30 (a) information relating to:



- 1 (i) a deceased person or the family, friends or associates of  
2 a deceased person; or  
3 (ii) a defence member or veteran's lived experience with a  
4 suicide risk;  
5 may be disclosed at a hearing; and  
6 (b) the information is personal and private.

7 *Disclosure of operationally sensitive information*

- 8 (2) Despite subsection 110ZFD(2), a hearing, or part of a hearing, may  
9 be held in private if the Commissioner is satisfied that a person  
10 appearing at the hearing may give evidence that discloses  
11 operationally sensitive information.

12 Note: See also section 110ZGG, which requires a person to give notice of  
13 likely disclosure of operationally sensitive information to the  
14 Commissioner.

15 *Commissioner must have regard to certain matters when*  
16 *considering whether to hold private hearings*

- 17 (3) When considering whether to hold a hearing, or part of a hearing,  
18 in private because of subsections (1) and (2), the Commissioner  
19 must have regard to:  
20 (a) the potential risk of prejudice to national security (within the  
21 meaning of the *National Security Information (Criminal and*  
22 *Civil Proceedings) Act 2004), or to the operations of a law*  
23 *enforcement or security agency; and*  
24 (b) whether holding the hearing in private would have a  
25 substantial adverse effect on the exercise or performance of  
26 the Commissioner's functions or powers; and  
27 (c) if the Commissioner invites submissions—any submissions  
28 received in response; and  
29 (d) the safety and security of any person; and  
30 (e) whether legal professional privilege, or any other immunity,  
31 privilege or restriction may apply to the disclosure of the  
32 information; and  
33 (f) any other matters the Commissioner thinks relevant.

*Other circumstances*

- (4) Despite subsection 110ZFD(2), a hearing, or part of a hearing, may be held in private in any other circumstances prescribed by the rules.

**110ZFF Consultation in relation to certain private hearing evidence**

- (1) If a witness gives evidence at a private hearing because of subsection 110ZFE(2) (disclosure of operationally sensitive information), the Defence and Veterans' Services Commissioner must, before disclosing or using any evidence the witness has given at, or in relation to, the private hearing:
- (a) consult any law enforcement or security agency to which the evidence relates and consider any information received from the agency following the consultation; and
  - (b) consider any potential risk of prejudice to national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); and
  - (c) consider the safety and security of any person.
- (2) If a witness gives evidence at a private hearing because of subsection 110ZFE(1) or (2) (disclosure of personal or operationally sensitive information), the Commissioner must, before disclosing or using any evidence the witness has given at, or in relation to, the private hearing:
- (a) consider consulting the witness, and any other person whose interests are affected by the evidence; and
  - (b) consider any potential risk of prejudice to a person if the person is not consulted before using or disclosing information given at, or in relation to, a private hearing; and
  - (c) consider any preference the witness communicates (whether before, during or after a private hearing) to the Commissioner in relation to consultation.
- (3) The rules may make provision for or in relation to the disclosure or use of evidence given at a private hearing by a witness because of subsection 110ZFE(4).

1 **110ZFG Other powers relating to inquiries**

2 Subject this Part and any requirements prescribed by the rules, the  
3 Defence and Veterans' Services Commissioner may conduct  
4 research and inquire into matters under this Part as the  
5 Commissioner sees fit, including in relation to the following:

- 6 (a) giving notice of an inquiry;  
7 (b) inviting submissions;  
8 (c) making submissions publicly available;  
9 (d) procedures for hearings (public or private);  
10 (e) providing draft reports for comment.

11 **Division 3—Special inquiries**

12 **Subdivision A—Determining inquiry is a special inquiry**

13 **110ZGA Special inquiry**

- 14 (1) The Defence and Veterans' Services Commissioner may make a  
15 determination, in writing, that an inquiry being conducted under  
16 Division 2 is a special inquiry if:  
17 (a) public notice has been given of the inquiry; and  
18 (b) the Commissioner is satisfied that it is in the public interest  
19 that the powers in this Division may be exercised in relation  
20 to the inquiry; and  
21 (c) any other requirements prescribed by the rules are satisfied.
- 22 (2) The Commissioner may, at any time, revoke such a determination.
- 23 (3) A determination under subsection (1) is in force during the period:  
24 (a) beginning immediately after the determination is made; and  
25 (b) ending at the earliest of the following:  
26 (i) the end of the period of 2 years beginning immediately  
27 after the determination is made;  
28 (ii) the end of the day on which the determination is  
29 revoked under subsection (2).

1 (4) Paragraph (3)(b) does not prevent the making of another  
2 determination under subsection (1) in the same terms as the expired  
3 or revoked determination.

4 (5) A determination made under subsection (1) is not a legislative  
5 instrument.

6 **Subdivision B—Powers that can be used in relation to a special**  
7 **inquiry**

8 **110ZGB Application of this Subdivision**

9 This Subdivision applies in relation to an inquiry if there is a  
10 determination in force under section 110ZGA that the inquiry is a  
11 special inquiry.

12 **110ZGC Summons**

13 (1) The Defence and Veterans' Services Commissioner may, by notice  
14 in writing, summon a person to attend a hearing at a time and place  
15 specified in the notice:

- 16 (a) to give evidence relevant to the special inquiry; or  
17 (b) to produce documents or things specified in the notice that  
18 are relevant to the special inquiry.

19 Note: Failure to comply with a notice is an offence: see section 110ZHA.

20 (2) The notice must:

- 21 (a) be in writing and be signed by the Commissioner; and  
22 (b) be served on the person required to attend the hearing.

23 (3) A time specified in a notice must be at least 14 days after the day  
24 on which the notice is given.

25 (4) However, subsection (3) does not apply if the Commissioner  
26 reasonably believes that the circumstances to which the notice  
27 relates are urgent or serious.

28 (5) For the purposes of sections 110ZHA (failure to produce),  
29 110ZHD and 110ZHE (legal professional privilege), the power of  
30 the Commissioner under this section to require a person to give  
31 evidence, or produce a document or thing, includes the power to

1 require the person to give evidence, or produce a document or  
2 thing, that is subject to legal professional privilege.

3 Note: Under section 110ZHD, legal professional privilege might still be a  
4 reasonable excuse for failing to produce the document etc.

5 (6) Before giving a notice under subsection (1) to a person, in the  
6 person's capacity as someone who is or has been a coroner or an  
7 officer or employee of a coroners' court, the Commissioner must  
8 consider requesting the coroner or the coroners' court to disclose  
9 information in accordance with section 110ZGP.

10 (7) If the Commissioner gives a notice under subsection (1) to an  
11 official of a Commonwealth entity, the Commissioner must give a  
12 copy of the notice to:

13 (a) if the official performs duties in, or services for, an  
14 Australian intelligence entity—the head of the Australian  
15 intelligence entity; or

16 (b) in any other case—the accountable authority of the  
17 Commonwealth entity.

18 (8) If the Commissioner gives a notice under subsection (1) to an  
19 officer or employee of a State body or a Territory body, the  
20 Commissioner must give a copy of the notice to the head (however  
21 described) of the body.

## 22 **110ZGD Evidence on oath or by affirmation**

23 (1) At a hearing for the inquiry, the Defence and Veterans' Services  
24 Commissioner may:

25 (a) require a witness to either take an oath or make an  
26 affirmation; and

27 (b) administer an oath or affirmation to the witness.

28 Note 1: Refusal to take an oath or make an affirmation is an offence: see  
29 section 110ZHB.

30 Note 2: This means that a hearing is a *judicial proceeding* for the purposes of  
31 Part III of the *Crimes Act 1914*, which creates various offences in  
32 relation to judicial proceedings.

33 (2) The oath or affirmation is an oath or affirmation that the evidence  
34 the person will give will be true.

- 1 (3) The Commissioner may allow a person attending a hearing who  
2 has been sworn, or who has made an affirmation, to give evidence  
3 by tendering a written statement and verifying it by oath or  
4 affirmation.

5 **110ZGE Defence and Veterans' Services Commissioner may require**  
6 **information etc.**

- 7 (1) For the purposes of performing the Defence and Veterans' Services  
8 Commissioner's functions, the Commissioner may, by written  
9 notice, require a person:  
10 (a) to give the Commissioner information relevant to the special  
11 inquiry, or a statement setting out information relevant to the  
12 special inquiry, in writing referred to in the notice; or  
13 (b) to produce to the Commissioner the documents or things  
14 relevant to the special inquiry that are referred to in the  
15 notice.

16 Note: Failure to give the information or statement, or to produce the  
17 documents or things, is an offence: see section 110ZHA.

- 18 (2) The notice must:  
19 (a) be in writing; and  
20 (b) specify the period within which the person must comply with  
21 the notice.

- 22 (3) A time specified in a notice must be at least 14 days after the day  
23 on which the notice is given.

- 24 (4) However, subsection (3) does not apply if the Commissioner  
25 reasonably believes that the circumstances to which the notice  
26 relates are urgent or serious.

- 27 (5) For the purposes of sections 110ZHA (failure to produce),  
28 110ZHD and 110ZHE (legal professional privilege), the power of  
29 the Commissioner under this section to require a person to give  
30 information or a statement, or produce a document or thing  
31 includes the power to require the person to give information or a  
32 statement, or produce a document or thing, that is subject to legal  
33 professional privilege.

34 Note: Under section 110ZHD, legal professional privilege might still be a  
35 reasonable excuse for failing to produce the document etc.

- 1 (6) Before giving a notice under subsection (1) to a person, in the  
2 person's capacity as someone who is or has been a coroner or an  
3 officer or employee of a coroners' court, the Commissioner must  
4 consider requesting the coroner or the coroners' court to disclose  
5 information in accordance with section 110ZGP.
- 6 (7) If the Commissioner gives a notice under subsection (1) to an  
7 official of a Commonwealth entity, the Commissioner must give a  
8 copy of the notice to:
- 9 (a) if the official performs duties in, or services for, an  
10 Australian intelligence entity—the head of the Australian  
11 intelligence entity; or
- 12 (b) in any other case—the accountable authority of the  
13 Commonwealth entity.
- 14 (8) If the Commissioner gives a notice under subsection (1) to an  
15 officer or employee of a State body or Territory body, the  
16 Commissioner must give a copy of the notice to the head (however  
17 described) of the body.

18 **110ZGF Notice of likely disclosure of operationally sensitive**  
19 **information**

20 *Notice requirement*

- 21 (1) If:
- 22 (a) a person either:
- 23 (i) intends to give evidence, or give or produce to the  
24 Defence and Veterans' Services Commissioner  
25 information or a statement, document or thing in  
26 relation to the special inquiry (including as authorised  
27 under section 110ZGN or 110ZGP); or
- 28 (ii) is required under section 110ZGC or 110ZGE to give  
29 evidence at a hearing, to give or produce to the  
30 Commissioner information or a statement, document or  
31 thing, in relation to the special inquiry; and
- 32 (b) the person considers that giving the evidence, or giving or  
33 producing the information or statement, document or thing,  
34 may involve the person disclosing operationally sensitive  
35 information;

1 the person must give written notice to the Commissioner before  
2 giving or producing the evidence, information or statement,  
3 document or thing.

4 Note: Failure to give written notice is an offence if the person holds or has  
5 held an Australian Government security clearance: see  
6 subsection 110ZHC(1).

7 (2) The notice must describe the evidence, information or statement,  
8 document or thing that the person considers to be operationally  
9 sensitive information.

10 *Call for submissions*

11 (3) If the Commissioner is given a notice under subsection (1), the  
12 Commissioner may invite submissions from persons or bodies  
13 (including law enforcement or security agencies) whose interests  
14 may be affected by disclosure of the information.

15 (4) If the Commissioner invites submissions, the Commissioner must  
16 ensure that the information is not disclosed inappropriately in the  
17 course of inviting submissions.

18 **110ZGG Notice of likely disclosure of intelligence information**

19 If:

20 (a) a person either:

21 (i) intends to give evidence, or give or produce to the  
22 Defence and Veterans' Services Commissioner  
23 information or a statement, document or thing in  
24 relation to the special inquiry (including as authorised  
25 under section 110ZGN or 110ZGP); or

26 (ii) is required under section 110ZGC or 110ZGE to give  
27 evidence at a hearing, to give or produce to the  
28 Commissioner information or a statement, document or  
29 thing, in relation to the special inquiry; and

30 (b) the person considers that giving the evidence, or giving or  
31 producing the information or statement, document or thing,  
32 may involve the person disclosing intelligence information;

33 the person must give written notice to the Commissioner before  
34 giving or producing the evidence, information, statement,  
35 document or thing.



Note: Failure to give written notice is an offence if the person holds or has held an Australian Government security clearance: see subsection 110ZHC(2).

**110ZGH Powers of Commissioner in relation to documents or other thing**

The Defence and Veterans' Services Commissioner may for the purposes of the special inquiry:

- (a) inspect any document or other thing:
  - (i) produced or given to the Commissioner; or
  - (ii) produced or given under a notice under section 110ZGC or 110ZGE; and
- (b) retain the documents or other thing for so long as is reasonably necessary for the purposes of performing the Commissioner's functions; and
- (c) in the case of documents:
  - (i) produced or given to the Commissioner; or
  - (ii) produced or given under a notice under section 110ZGC or 110ZGE;make copies of any documents that contain matter that is relevant to the Commissioner's functions or powers.

**110ZGJ Search warrants**

- (1) The Defence and Veterans' Services Commissioner or an authorised member may apply for a search warrant under subsection (4) in relation to the special inquiry.
- (2) The Commissioner may, in writing, authorise a person, or each person in a class of persons, to be an **authorised member** for the purposes of this Part, if the person, or each person in the class of persons, is a member of the Australian Federal Police, or of the police force of a State or Territory, or is a police member (within the meaning of the *Defence Force Discipline Act 1982*).
- (3) If:
  - (a) the Commissioner, or an authorised member, has reasonable grounds for suspecting that there may be, at that time or within the next following 24 hours, on any land or on or in

- 1                   any premises, vessel, aircraft or vehicle, a thing or things of a  
2                   particular kind connected with a matter into which the  
3                   Commissioner is inquiring (*things of the relevant kind*); and  
4                   (b) the Commissioner, or the authorised member, believes on  
5                   reasonable grounds that, if a summons were issued for the  
6                   production of the thing or things, the thing or things might be  
7                   concealed, lost, mutilated or destroyed;  
8                   the Commissioner, or the authorised member, may apply to an  
9                   eligible Judge for the issue of a search warrant under  
10                  subsection (4).
- 11                  (4) If an application is made under subsection (1) to an eligible Judge,  
12                  the eligible Judge may, if satisfied that there are reasonable  
13                  grounds for issuing the warrant, issue a search warrant authorising  
14                  a member of the Australian Federal Police or of the police force of  
15                  a State or Territory, or any other person named in the warrant (the  
16                  *authorised person*), with such assistance as the authorised person  
17                  thinks necessary, and if necessary by reasonable force:  
18                      (a) to enter onto the land or on or into the premises, vessel,  
19                      aircraft or vehicle; and  
20                      (b) to search the land, premises vessel aircraft or vehicle for  
21                      things of the relevant kind; and  
22                      (c) to seize any things of the relevant kind found on the land or  
23                      in the premises, vessel, aircraft or vehicle and deliver things  
24                      so seized to the Commissioner.
- 25                  (5) A warrant issued under this section must include the following  
26                  information:  
27                      (a) a statement of the purpose for which the warrant is issued,  
28                      which must include a reference to the matter into which the  
29                      Commissioner is inquiring and with which the things of the  
30                      relevant kind are connected;  
31                      (b) whether entry is authorised to be made at any time of the day  
32                      or night or during specified hours of the day or night;  
33                      (c) a description of the kind of things authorised to be seized;  
34                      (d) a date, not being later than 1 month after the date of issue of  
35                      the warrant, on which the warrant ceases to have effect.
- 36                  (6) If, in the course of searching, in accordance with a warrant issued  
37                  under this section, for things of a particular kind connected with a
-

1 matter into which the Commissioner is inquiring, the person  
2 executing the warrant finds:

- 3 (a) any thing of another kind that the person believes on  
4 reasonable grounds to be connected with that matter; or  
5 (b) any thing that the person believes on reasonable grounds to  
6 be connected with another matter into which the  
7 Commissioner is inquiring;

8 and the person believes on reasonable grounds that it is necessary  
9 to seize that thing in order to prevent its concealment, loss,  
10 mutilation or destruction, the warrant is taken to authorise the  
11 person to seize that thing.

12 **110ZGK Application by telephone for search warrants**

- 13 (1) An application for a search warrant under subsection 110ZGJ(1)  
14 may be made by telephone if the applicant for the warrant  
15 considers it necessary to do so because of circumstances of  
16 urgency.
- 17 (2) If an eligible Judge issues a search warrant on an application made  
18 by telephone, the eligible Judge must:  
19 (a) complete and sign that warrant; and  
20 (b) inform the applicant of the terms of the warrant and the date  
21 on which and the time at which it was signed; and  
22 (c) forward a copy of the warrant to the applicant.
- 23 (3) If a search warrant is issued on an application made by telephone,  
24 the Defence and Veterans' Services Commissioner or a member of  
25 the Australian Federal Police or of the police force of a State or  
26 Territory may complete a form of warrant in the terms indicated by  
27 an eligible Judge under subsection (2).
- 28 (4) A form of warrant completed in accordance with subsection (3) is  
29 taken to be a warrant issued under section 110ZGJ.

30 **110ZGL Witnesses subject to questioning**

- 31 (1) Any of the following may, so far as the Defence and Veterans'  
32 Services Commissioner thinks proper, examine or cross-examine a  
33 witness on a matter relevant to a hearing for the purposes of the  
34 special inquiry:

- 1 (a) a legal practitioner assisting the Commissioner;  
2 (b) any legal practitioner authorised by the Commissioner to  
3 appear before it for the purpose of representing any person;  
4 (c) any person authorised by the Commissioner to appear before  
5 the Commissioner.

- 6 (2) Subject to this Part, a witness who is examined or cross-examined  
7 has the same protection and is subject to the same liabilities as if  
8 examined by the Commissioner.

9 Note: For other witness protections, see section 110ZLC.

#### 10 **110ZGM Witness expenses and allowances**

- 11 (1) A person may, on behalf of the Commonwealth, be paid the  
12 following in respect of the giving of evidence as a witness at a  
13 hearing for the purposes of the special inquiry, in accordance with  
14 a scale prescribed by the rules:  
15 (a) a reasonable amount for the person's expenses of attending at  
16 a place to give evidence;  
17 (b) an allowance for the person's travelling expense and  
18 maintenance while absent from the person's usual place of  
19 residence.  
20 (2) In the absence of a prescribed scale, the amount or allowance the  
21 person may be paid is the amount or allowance the Commissioner  
22 considers reasonable.

#### 23 **110ZGN Disclosure of information to the Commissioner—** 24 **Commonwealth**

##### 25 *Authorisation to disclose*

- 26 (1) A Commonwealth body, or an individual who holds any office or  
27 appointment under a law of the Commonwealth, may, on their own  
28 initiative or at the request of the Commissioner, disclose  
29 information (including personal information) for the purpose of  
30 assisting in the performance or exercise of the Commissioner's  
31 functions or powers in for the purposes of the special inquiry.  
32 (2) A disclosure of information is taken not to have been made by a  
33 Commonwealth body for the purposes of subsection (1) if the

individual making the disclosure is acting beyond the individual's authority in relation to the body.

*Authorisation for Commissioner to use*

- (3) The Commissioner is authorised to use information disclosed under this section for the purposes of performing or exercising any of the Commissioner's functions or powers for the purposes of the special inquiry.

*Authorisation not affected by State or Territory law or the general law*

- (4) The authorisation in subsection (1) has effect despite anything in a law of a State or Territory, or the general law, that restricts or prohibits disclosure of information.

Note: Penalties also do not apply under secrecy provisions: see section 110ZHQ.

**110ZGP Disclosure of information to the Commissioner—States and Territories**

*Authorisation to disclose*

- (1) Any of the following may, on their own initiative or at the request of the Commissioner, disclose information (including personal information) for the purpose of assisting in the performance or exercise of the Commissioner's functions or powers for the purposes of the special inquiry:
- (a) a State body or Territory body;
  - (b) an individual who holds any office or appointment under a law of a State or Territory;
  - (c) a coroner or a coroners' court.
- (2) A disclosure of information is taken not to have been made by a State body or Territory body for the purposes of subsection (1) if the individual making the disclosure is acting beyond the individual's authority in relation to the body.

*Authorisation for Commissioner to use*

- (3) The Commissioner is authorised to use information disclosed under this section for the purposes of performing or exercising any of the Commissioner's functions or powers.

*Authorisation not affected by State or Territory law or the general law*

- (4) The authorisation in subsection (1) has effect despite anything in a law of a State or Territory, or the general law, that restricts or prohibits disclosure of information.

Note: Penalties also do not apply under secrecy provisions: see section 110ZHQ.

**110ZGQ Arrangements for obtaining and protecting intelligence information**

*Arrangements*

- (1) The Commissioner must take all reasonable steps to ensure that entrusted persons obtain, store, access, use and disclose intelligence information relating to an Australian intelligence entity for the purposes of a special inquiry only in accordance with an arrangement, between the Commissioner and the head of the entity, that deals with:
- (a) the manner in which entrusted persons obtain intelligence information relating to the entity; and
  - (b) the protection of intelligence information relating to the entity while in the possession of entrusted persons; and
  - (c) the disclosure by entrusted persons of intelligence information relating to the entity.
- (2) The Commissioner must take all reasonable steps to ensure that an arrangement is in force for the purposes of subsection (1) with the head of an Australian intelligence entity before obtaining intelligence information relating to the entity for the purposes of a special inquiry.
- (3) Subsections (1) and (2) apply despite any other provision of this Part.

- 1 (4) Without limiting subsection (1), an arrangement may:  
2 (a) limit the circumstances in which intelligence information  
3 may be disclosed in a report under this Division; and  
4 (b) set out matters to which the Commissioner must have regard  
5 in disclosing intelligence information under section 110ZHP.
- 6 (5) However, except as mentioned in paragraph (4)(a), an arrangement  
7 cannot prevent the exercise of the Commissioner's powers or the  
8 performance of the Commissioner's functions under any provision  
9 of this Part (including section 110ZHP).

10 *Conduct of hearings*

- 11 (6) Despite subsection 110ZFD(2), if the Commissioner is satisfied  
12 that a person appearing at a hearing might disclose intelligence  
13 information:  
14 (a) the Commissioner may, subject to paragraph (b) of this  
15 subsection, conduct the hearing in public or private; and  
16 (b) the conduct of the hearing must be consistent with an  
17 arrangement entered into for the purposes of subsection (1)  
18 of this section with the Australian intelligence entity to which  
19 the information relates.

20 *Arrangement is not a legislative instrument*

- 21 (7) If an arrangement is entered into for the purposes of subsection (1)  
22 in writing, the arrangement is not a legislative instrument.

23 **110ZGR Application of this Part in relation to current and former**  
24 **IGIS officials**

25 Despite anything else in this Part:

- 26 (a) an entrusted person may obtain information from another  
27 person that the other person acquired as an IGIS official; and  
28 (b) a person may disclose information, that the person acquired  
29 as an IGIS official, to an entrusted person;  
30 only in accordance with sections 34 and 34A of the  
31 *Inspector-General of Intelligence and Security Act 1986*.

**Division 4—Offences**

**Subdivision A—Failure to attend hearing, give information or produce documents etc.**

**110ZHA Failure to attend hearing, give information or produce documents etc.**

*Failure to attend hearing*

- (1) A person commits an offence if:
- (a) the person is served with a notice under section 110ZGC to attend a hearing; and
  - (b) the person fails to comply with the notice.

Penalty: Imprisonment for 2 years.

*Failure to give information, or produce a document or thing*

- (2) A person commits an offence if:
- (a) the person is given a notice under section 110ZGC or 110ZGE to give information or a statement, or produce a document or thing, specified in the notice; and
  - (b) the person fails to comply with the notice.

Penalty: Imprisonment for 2 years.

*Reasonable excuse*

- (3) Subsections (1) and (2) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3); see subsection 13.3(3) of the *Criminal Code*.

*Defence of relevance*

- (4) Subsection (2) does not apply if the information, statement, document or thing is not relevant to the matters into which the Commissioner was inquiring.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4); see subsection 13.3(3) of the *Criminal Code*.



*Subsections (1) and (2) not affected by State or Territory law or the general law*

- (5) Subsections (1) and (2) have effect despite anything in a law of a State or Territory, or the general law.

Note: Penalties also do not apply under secrecy provisions: see section 110ZHQ.

**110ZHB Refusal to take an oath, make an affirmation or answer a question**

A person commits an offence if:

- (a) the person is served with a notice under section 110ZGC to attend a hearing; and
- (b) either:
  - (i) the person refuses to be sworn or to make an affirmation at the hearing; or
  - (ii) the person refuses to answer a question at the hearing that the Defence and Veterans' Services Commissioner requires the person to answer.

Penalty: Imprisonment for 2 years.

**110ZHC Failure to give written notice to the Defence and Veterans' Services Commissioner**

*Operationally sensitive information*

(1) A person commits an offence if:

- (a) the person is required to give a written notice to the Commissioner under section 110ZGF; and
- (b) the person holds or has held an Australian Government security clearance (within the meaning of the *Criminal Code*) that allows, or had allowed, access to operationally sensitive information; and
- (c) the person fails to give the notice in accordance with section 110ZGF.

Penalty: Imprisonment for 3 years.

*Intelligence information*

- (2) A person commits an offence if:
- (a) the person is required to give a written notice to the Defence and Veterans' Services Commissioner under section 110ZGG; and
  - (b) the person holds or has held an Australian Government security clearance (within the meaning of the *Criminal Code*) that allows, or had allowed, access to intelligence information; and
  - (c) the person fails to give the notice in accordance with section 110ZGG.

Penalty: Imprisonment for 3 years.

**110ZHD Legal professional privilege**

- (1) It is not a reasonable excuse for the purposes of subsection 110ZHA(3) for a person to fail to give information or a statement, or produce a document or thing, that the information, statement, document or thing is subject to legal professional privilege, unless:
- (a) a court has found the information, statement, document or thing (or the relevant part of it) to be subject to legal professional privilege; or
  - (b) a claim that the information, statement, document or thing (or the relevant part of it) is subject to legal professional privilege has been made to the Defence and Veterans' Services Commissioner:
    - (i) within the time that the Commissioner, in requiring the information or statement to be given, or the document or thing to be produced, allowed for the giving of the information or statement, or the production of the document or thing; or
    - (ii) within such further time as the Commissioner allows for the giving of the information or statement, or the production of the document or thing.
- (2) If such a claim is made, the Commissioner may decide whether to accept or reject the claim.

- 1 (3) The Commissioner may, by written notice served on a person,  
2 require the person to produce the information, statement, document  
3 or thing for inspection for the purpose of deciding whether to  
4 accept or reject the claim.
- 5 (4) If the information, statement, document or thing has been produced  
6 for inspection and the Commissioner decides to accept the claim,  
7 the Commissioner must:
- 8 (a) return the information, statement, document or thing to the  
9 person; and
- 10 (b) disregard, for the purposes of any report, recommendation or  
11 finding that the Commissioner makes:
- 12 (i) if the claim is accepted in relation to the whole of the  
13 information, statement, document or thing—the whole  
14 of the information, statement, document or thing; or
- 15 (ii) if the claim is accepted in relation to a part of the  
16 information, statement, document or thing—that part of  
17 the information, statement, document or thing.
- 18 (5) If the information, statement, document or thing has been produced  
19 for inspection and the Commissioner decides to reject the claim,  
20 the Commissioner may use the information, statement, document  
21 or thing for the purposes of performing the Commissioner's  
22 function in relation to a special inquiry.

23 **110ZHE Offences relating to claims for legal professional privilege**

24 *Offences*

- 25 (1) A person commits an offence if:
- 26 (a) the person has failed to give information or a statement, or  
27 produce a document or thing as required by the  
28 Commissioner under section 110ZGC; and
- 29 (b) the Commissioner has decided under subsection 110ZHD(2)  
30 to reject a claim that the information or statement, document  
31 or thing (or the relevant part of the information, statement,  
32 document or thing) is subject to legal professional privilege;  
33 and

1 (c) the person fails to give the information or statement, or  
2 produce the document or thing as the Commissioner requires,  
3 after that decision, under section 110ZGC.

4 Penalty: Imprisonment for 2 years.

5 (2) A person commits an offence if:

6 (a) the person is required under subsection 110ZHD(3) to give  
7 information or a statement, or produce a document or thing  
8 for inspection; and

9 (b) the person fails to comply with the notice.

10 Penalty: Imprisonment for 2 years.

11 *Reasonable excuse*

12 (3) Subsections (1) and (2) do not apply if the person has a reasonable  
13 excuse.

14 *Legal professional privilege*

15 (4) It is not a reasonable excuse for the purposes of subsection (3) for a  
16 person to fail to give information or a statement, or produce a  
17 document or thing, that the information, statement, document or  
18 thing is subject to legal professional privilege, unless a court has  
19 found the information, statement, document or thing to be subject  
20 to legal professional privilege.

21 Note: A defendant bears an evidential burden in relation to the matters in  
22 this subsection: see subsection 13.3(3) of the *Criminal Code*.

23 *Defence of relevance*

24 (5) It is a defence to a prosecution for an offence against this section  
25 constituted by a failure to give information or a statement, or  
26 produce a document or thing, if the information, statement,  
27 document or thing is not relevant to the matters into which the  
28 Commissioner is inquiring.

29 Note: A defendant bears an evidential burden in relation to the matters in  
30 subsection (5), see subsection 13.3(3) of the *Criminal Code*.

**110ZHF Self-incrimination**

- (1) An individual is not excused from giving information, evidence or a statement, or producing a document or thing, under section 110ZGC on the ground that giving the information, evidence or statement, or producing the document or thing, might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

- (2) Subsection (1) does not apply if:

- (a) giving the information, evidence or statement, or producing the document or thing, might tend to incriminate the individual in relation to an offence; and
- (b) the individual has been charged with that offence; and
- (c) the charge has not been finally dealt with by a court or otherwise disposed of.

- (3) However:

- (a) the information, evidence or statement given or document or thing produced; and
- (b) the giving of the information, evidence or a statement, or the production of the document or thing;

are not admissible in evidence against the individual in any criminal proceedings, other than:

- (c) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part; or
- (d) proceedings for an offence against Part III of the *Crimes Act 1914* that relates to this Part; or
- (e) proceedings for an offence against this Part.

- (4) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to giving information, evidence or a statement, or producing a document or thing under section 110ZGC or 110ZGE, the individual is not excused from giving the information, evidence or statement or producing the document or thing under those provisions on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

**Subdivision B—Witness protections etc.**

**110ZHG Dismissal etc. of witness**

- (1) A person commits an offence if the person:
- (a) dismisses an employee from employment or a defence member from the Defence Force; or
  - (b) prejudices an employee in the employee's employment by the person or disciplines a defence member in their capacity as a defence member;
- for or on account of the employee or the defence member having:
- (c) appeared as a witness before the Commissioner; or
  - (d) given evidence before the Commissioner; or
  - (e) given information or a statement, or produced a document or thing, in accordance with section 110ZGC.

Penalty: 10 penalty units or imprisonment for 1 year.

- (2) Subsection (1) does not apply if the employee or defence member was dismissed, prejudiced or disciplined for some reason other than the reasons mentioned in subsection (1).

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

**110ZHJ Contempt of Commissioner**

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct obstructs or hinders the Defence and Veterans' Services Commissioner in the performance or exercise of the Commissioner's functions or powers.

Penalty: 2 penalty units or imprisonment for 3 months.

- (2) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct would, if the Defence and Veterans' Services Commissioner were a court of record, constitute a contempt of that court.

Penalty: 2 penalty units or imprisonment for 3 months.

**Subdivision C—Unauthorised publication, use or disclosure of information etc.**

## 110ZHK Non-publication direction

- (1) The Defence and Veterans' Services Commissioner may, in writing, direct that any of the following material must not be published, produced or disclosed or must not be published, produced or disclosed except in the manner or to the persons that the Commissioner specifies:
- (a) evidence given before the Commissioner;
  - (b) the contents of a document, or a description of a thing, produced or given to the Commissioner;
  - (c) information that might enable a person who has given evidence before the Commissioner to be identified.

**Note:** Publication in contravention of a direction under this subsection is an offence: see section 110ZHL.

- (2) The Commissioner may, in writing, vary or revoke a direction under subsection (1).
- (3) Without limiting subsection (1), the Commissioner may direct that the material must not be published, produced, or disclosed to:
  - (a) a court; or
  - (b) a tribunal, authority or person having power to require the production of documents or the answering of questions.

**110ZHL Publication in contravention of non-publication direction**

A person commits an offence if:

- (a) the person publishes information; and
- (b) the publication contravenes a direction under subsection 110ZHK(1).

Penalty: Imprisonment for 3 years.

**110ZHM Unauthorised use or disclosure of protected information**

A person commits an offence if:

- (a) the person is, or has been an entrusted person; and
- (b) the person uses or discloses information; and
- (c) the information is protected information; and
- (d) neither of the following apply:
  - (i) the use or disclosure is for the purposes of performing or exercising the Commissioner's functions or powers;
  - (ii) the information is disclosed by the Commissioner in accordance with section 110ZHN.

Note: See Part 5.6 of the *Criminal Code* for offences relating to secrecy of information.

Penalty: Imprisonment for 2 years.

**110ZHN Authorisation to disclose information (other than intelligence information)**

*Authorisation to disclose*

- (1) The Defence and Veterans' Services Commissioner may disclose information (including personal information) to an entity specified in subsection (2) if:
  - (a) the information was given to the Commissioner in accordance with a notice under section 110ZGC or 110ZGE, or in accordance with section 110ZGN or 110ZGP; and
  - (b) the Commissioner is satisfied that the information will assist the entity to perform any of its functions or exercise any of its powers; and
  - (c) in the case of an entity specified in any of paragraphs (2)(k) to (m) of this subsection—the Commissioner is satisfied that the function or power mentioned in paragraph (b) of this subsection is connected with defence member or veteran deaths by suicide; and
  - (d) in any case—the information is not intelligence information.
- (2) The entities are the following:



- 1 (a) the Attorney-General of the Commonwealth, a State or a
- 2 Territory;
- 3 (b) the Australian Federal Police;
- 4 (c) the police force of a State or Territory;
- 5 (d) the Director of Public Prosecutions;
- 6 (e) a Special Prosecutor appointed under the *Special Prosecutors*
- 7 *Act 1982*;
- 8 (f) a Royal Commission or a body with functions equivalent to a
- 9 Royal Commission;
- 10 (g) if the information relates, or may relate, to the contravention,
- 11 or evidence of a contravention, of a law of the
- 12 Commonwealth, a State or a Territory—an entity responsible
- 13 for the administration or enforcement of the law;
- 14 (h) the Australian Crime Commission;
- 15 (i) the National Anti-Corruption Commissioner (within the
- 16 meaning of the *National Anti-Corruption Commission Act*
- 17 *2022*);
- 18 (j) a coroner or a coroners' court;
- 19 (k) any other Commonwealth body;
- 20 (l) any other State body or Territory body;
- 21 (m) any other individual who holds any office or appointment
- 22 under a law of the Commonwealth, a State or a Territory.

23 *Coronial inquiries*

- 24 (3) If the Commissioner believes that the disclosure of information
- 25 under subsection (1) to an entity specified in any of
- 26 paragraphs (2)(k) to (m) may prejudice a current or future coronial
- 27 inquiry, the Commissioner must consider consulting:
- 28 (a) for a current coronial inquiry—the coroner conducting the
- 29 inquiry; or
- 30 (b) for a future coronial inquiry—the head of the relevant
- 31 coronial jurisdiction before disclosing the information.

32 *State or Territory police investigations*

- 33 (4) If the Commissioner believes that the disclosure of information
- 34 under subsection (1) to an entity specified in any of
- 35 paragraphs (2)(k) to (m) may prejudice current or future

1 investigations by a police force of a State or Territory, the  
2 Commissioner must consider consulting the head (however  
3 described) of the police force of the State or Territory before  
4 disclosing the information.

5 *Authorisation for agencies and bodies to use and disclose*  
6 *information*

- 7 (5) An entity to which information is disclosed under subsection (1)  
8 may use and disclose the information for the purposes for which  
9 the information was disclosed under that subsection.

10 *Contravention of a law*

- 11 (6) A reference in paragraph (2)(g) to a contravention of a law is a  
12 reference to a contravention for which a person may be liable to:  
13 (a) a criminal penalty; or  
14 (b) a civil or administrative penalty.

15 **110ZHP Authorisation to disclose intelligence information**

16 *Authorisation to disclose*

- 17 (1) The Defence and Veterans' Services Commissioner may disclose  
18 intelligence information (including personal information) to an  
19 entity specified in subsection (2) if:  
20 (a) the information was given to the Commissioner in  
21 accordance with a notice under section 110ZGC or 110ZGE,  
22 or in accordance with section 110ZGN or 110ZGP; and  
23 (b) except in the case of a disclosure to the Inspector-General of  
24 Intelligence and Security—the information relates, or may  
25 relate, to the commission, or evidence of the commission, of  
26 an offence against a law of the Commonwealth, a State or a  
27 Territory; and  
28 (c) in any case—the Commissioner is satisfied that the  
29 information will assist the entity to perform any of its  
30 functions or exercise any of its powers.
- 31 (2) The entities are the following:  
32 (a) the Australian Federal Police;

- 1 (b) the police force of a State or Territory;  
2 (c) the Australian Crime Commission;  
3 (d) the National Anti-Corruption Commissioner (within the  
4 meaning of the *National Anti-Corruption Commission Act*  
5 *2022*);  
6 (e) the Inspector-General of Intelligence and Security;  
7 (f) an agency or body, or the holder of an office that is  
8 prescribed by the rules for the purposes of this paragraph.

9 *Consultation requirement*

- 10 (3) Before disclosing intelligence information under subsection (1) to  
11 an entity other than the Inspector-General of Intelligence and  
12 Security, the Commissioner must consult the following:  
13 (a) the person mentioned in subsection (4) for the entity;  
14 (b) the head of the Australian intelligence entity to which the  
15 information relates.
- 16 (4) For the purposes of paragraph (3)(a), the person for the entity is as  
17 follows:  
18 (a) for the Australian Federal Police—the Commissioner of  
19 Police;  
20 (b) for the police force of a State or Territory—the head  
21 (however described) of the police force of the State or  
22 Territory;  
23 (c) for the Australian Crime Commission—the Chief Executive  
24 Officer of the Australian Crime Commission;  
25 (d) for the National Anti-Corruption Commissioner (within the  
26 meaning of the *National Anti-Corruption Commission Act*  
27 *2022*)—the National Anti-Corruption Commissioner;  
28 (e) for an agency or body, or the holder of an office, that is  
29 prescribed by the rules for the purposes of paragraph (2)(f)—  
30 the person holding, or performing the duties of, the principal  
31 office in respect of the body or agency that is prescribed by  
32 the rules for the purposes of this paragraph.
- 33 (5) For the purposes of paragraph (3)(a), the consultation must cover  
34 the protection of the intelligence information while it remains in  
35 the entity's possession.

*Matters to which Commissioner must have regard in disclosing information*

- (6) In disclosing intelligence information under subsection (1), the Commissioner:
- (a) must have regard to any matter set out in an arrangement entered into with the head of the Australian intelligence entity to which the information relates; and
  - (b) may have regard to any other matter the Commissioner considers relevant.

**110ZHQ No criminal or civil liability under secrecy provisions**

*Information provided in accordance with notices*

- (1) A person who is served with a notice under section 110ZGC (summons) or 110ZGE (Commissioner may require information etc.) does not commit an offence, and is not liable to any penalty, under a secrecy provision because the person:
  - (a) answers a question at a hearing that the Commissioner requires the person to answer; or
  - (b) gives information or a statement that the person is required to give in accordance with the notice; or
  - (c) produces a document or thing that the person is required to produce in accordance with the notice.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

*Information disclosed under section 110ZGN or 110ZGP*

- (2) A person who discloses information under section 110ZGN or 110ZGP does not commit an offence, and is not liable to any penalty, under a secrecy provision because the person disclosed information in accordance with section 110ZGN or 110ZGP.

**Note:** A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

**Division 5—Defence and Veterans' Services Commissioner**

**110ZJA The Defence and Veterans' Services Commissioner**

There is to be a Defence and Veterans' Services Commissioner.

**110ZJB Functions of the Defence and Veterans' Services Commissioner**

- (1) The Defence and Veterans' Services Commissioner has the following functions:
- (a) to monitor, inquire and report on (including with evidence-based findings and recommendations) on the following:
    - (i) data and trends regarding suicide and suicidality among serving and ex-serving ADF members;
    - (ii) systemic factors relating to the Commonwealth's administration of policies, programs, systems and practices that contribute to suicide and suicidality among serving and ex-serving ADF members;
    - (iii) the state of the defence and veteran ecosystem, as it relates to the prevention of suicide and suicidality;
    - (iv) the Commonwealth's implementation of the recommendations of the Defence and Veteran Suicide Royal Commission, including progress, impact and outcomes;
  - (b) to conduct research and inquire into, and report and advise on, specific matters as requested by the Minister under section 110ZFB;
  - (c) to conduct inquiries into the Commonwealth's implementation of the Government's response to the recommendations of the Defence and Veteran Suicide Royal Commission under section 110ZFC;
  - (d) to improve supports for serving and ex-serving Australian Defence Force members;
  - (e) to collaborate with coroners to understand issues contributing to defence and veteran deaths by suicide;
  - (f) to promote understanding of suicide risks for defence members and veterans and factors that can improve the

- 1 wellbeing of defence members and veterans, including  
2 through engaging with people with lived experiences and  
3 promoting that lived experience;  
4 (g) any other function conferred on the Commissioner by this  
5 Act or any other law of the Commonwealth.
- 6 (2) To avoid doubt, the following are not functions of the  
7 Commissioner:  
8 (a) to make findings of civil or criminal wrongdoing;  
9 (b) to make findings on the manner or cause of death in relation  
10 to a death of a defence member or suspected suicide;  
11 (c) to monitor or inquire into a single exercise of a power, or a  
12 single performance of a function or duty.
- 13 (3) In performing the Commissioner's functions, the Commissioner  
14 must have regard to the need to avoid prejudicing current or future  
15 criminal or civil proceedings or other contemporaneous inquiries.
- 16 Note: An example of a contemporaneous inquiry is a contemporaneous  
17 inquiry conducted by the Inspector-General ADF under section 110C  
18 of this Act.
- 19 (4) The Commissioner has power to do all things necessary or  
20 convenient to be done for or in connection with the performance of  
21 the Commissioner's functions.

22 **110ZJC Powers of the Defence and Veterans' Services**  
23 **Commissioner**

24 The Defence and Veterans' Services Commissioner has power to  
25 do all things necessary or convenient to be done for or in  
26 connection with the performance of the Commissioner's functions  
27 under this Act or any other law of the Commonwealth.

28 **110ZJD Independence**

29 Subject to this Act and to other laws of the Commonwealth, the  
30 Defence and Veterans' Services Commissioner:  
31 (a) has complete discretion in the performance of the  
32 Commissioner's functions and the exercise of the  
33 Commissioner's powers; and

(b) is not subject to direction by any person in relation to the performance of those functions or the exercise of those powers.

Note: The Commissioner must comply with a request by the Minister under section 110ZFB to inquire into or advise on specific matters.

**110ZJE Appointment of Defence and Veterans' Services Commissioner**

(1) The Defence and Veterans' Services Commissioner is to be appointed by the Minister by written instrument.

Note: The Commissioner may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

(2) The Commissioner is to be appointed on a full-time basis.

(3) The Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(4) Before appointing a person as the Commissioner, the Minister must be satisfied that the person has suitable qualifications, training or experience.

**110ZJF Remuneration of Defence and Veterans' Services Commissioner**

(1) The Defence and Veterans' Services Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Commissioner is to be paid the remuneration that is prescribed by the rules.

(2) The Commissioner is to be paid the allowances that are prescribed by the rules.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**110ZJK Rules in relation to the Defence and Veterans' Services Commissioner**

The rules may make provision for, or in relation to the following:

- 1 (a) acting appointments;
- 2 (b) leave of absence;
- 3 (c) engaging in paid work outside the duties of the
- 4 Commissioner's office without the Minister's approval;
- 5 (d) disclosure of interests;
- 6 (e) resignation;
- 7 (f) termination of appointment.

8 **110ZJL Other terms and conditions**

9 The Defence and Veterans' Services Commissioner holds office on  
10 the terms and conditions (if any) that are determined by the  
11 Minister in relation to matters not covered by this Act or the rules.

12 **Division 6—Defence and Veterans' Services Commission**

13 **110ZKA Defence and Veterans' Services Commission**

- 14 (1) The Defence and Veterans' Services Commission is established by
- 15 this section.
- 16 (2) The Commission consists of:
- 17 (a) the Defence and Veterans' Services Commissioner;
- 18 (b) the staff of the Commission referred to in section 110ZKD.

19 *Application of the Finance Law*

- 20 (3) For the purposes of the finance law (within the meaning of the
- 21 *Public Governance, Performance and Accountability Act 2013*):
- 22 (a) the Defence and Veterans' Services Commission is a listed
- 23 entity; and
- 24 (b) the Defence and Veterans' Services Commissioner is the
- 25 accountable authority of the Commission; and
- 26 (c) the following persons are officials of the Commission:
- 27 (i) the Defence and Veterans' Services Commissioner;
- 28 (ii) the staff of the Commission referred to in
- 29 section 110ZKD;
- 30 (iii) the persons assisting referred to in section 110ZKE; and
- 31 (iv) consultants engaged under section 110ZKF; and



(d) the purposes of the Defence and Veterans' Services Commission include:

- (i) the functions of the Commission referred to in section 110ZKB; and
- (ii) the functions of the Defence and Veterans' Services Commissioner referred to in section 110ZJB.

**110ZKB Functions of the Defence and Veterans' Services Commission**

The Defence and Veterans' Services Commission's function is to assist the Defence and Veterans' Services Commissioner in the performance of the Commissioner's functions under this Act or any other law of the Commonwealth.

**110ZKC Powers of the Defence and Veterans' Services Commission**

The Defence and Veterans' Services Commissioner has power to do all things necessary or convenient to be done for or in connection with the performance of the Defence and Veterans' Services Commissioner's functions under this Act or any other law of the Commonwealth.

**110ZKD Staff**

- (1) The staff of the Defence and Veterans' Services Commission are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the Defence and Veterans' Services Commissioner and the staff of the Defence and Veterans' Services Commission together constitute a Statutory Agency; and
  - (b) the Defence and Veterans' Services Commissioner is the Head of that Statutory Agency.

**110ZKE Persons assisting**

- (1) The Commissioner may be assisted by:
  - (a) officers and employees of Agencies (within the meaning of the *Public Service Act 1999*), and of authorities of the

- 1 Commonwealth, whose services are made available to the  
2 Commissioner in connection with the performance of any of  
3 the Commissioner's functions; and  
4 (b) persons whose services are made available under  
5 arrangements made under subsection (2).
- 6 (2) The Commissioner may, on behalf of the Commonwealth, make an  
7 arrangement with the appropriate authority or officer of:  
8 (a) a State or Territory government; or  
9 (b) a State or Territory government authority;  
10 under which the government or authority makes officers or  
11 employees available to the Commissioner to perform services in  
12 connection with the performance of any of the Commissioner's  
13 functions.
- 14 (3) An arrangement under subsection (2) may provide for the  
15 Commonwealth to reimburse a State or Territory with respect to  
16 the services of a person to whom the arrangement relates.
- 17 (4) When performing services for the Commissioner under this  
18 section, a person is subject to the directions of the Commissioner.

#### **110ZKF Consultants**

- 19  
20 (1) The Defence and Veterans' Services Commissioner may, on behalf  
21 of the Commonwealth, engage consultants to assist in the  
22 performance of the Defence and Veterans' Services Commission's  
23 functions.
- 24 (2) The consultants are to be engaged on the terms and conditions that  
25 the Commissioner determines in writing.

### **Division 7—Other provisions**

#### **110ZLA Other matters**

- 26  
27  
28 The rules may make provision for, or in relation, to the following:  
29 (a) delegation by the Defence and Veterans' Services  
30 Commissioner of powers and functions under this Part;  
31 (b) reporting by the Defence and Veterans' Services  
32 Commissioner or the Defence and Veterans' Services
-

Commission in relation to performance of functions and  
exercise of powers under this Part.

**110ZLB Eligible judges**

(1) In this Part:

*eligible Judge* means a Judge in relation to whom a consent under  
subsection (2) and a declaration under subsection (3) are in force.

*Judge* means a person who is a Judge of a court created by the  
Parliament.

(2) A Judge may by writing consent to be nominated by the  
Attorney-General under subsection (3).

(3) The Attorney-General may by writing declare Judges in relation to  
whom consents are in force under subsection (2) to be eligible  
Judges for the purposes of this Part.

**110ZLC Protection of Commissioner, legal practitioners, eligible  
Judges and witnesses**

(1) The Commissioner has, in the performance or exercise of functions  
or powers under this Part, the same protection and immunity as a  
Justice of the High Court.

(2) A legal practitioner assisting the Commissioner or appearing on  
behalf of a person at a hearing before the Commissioner has the  
same protection and immunity as a barrister has in appearing for a  
party in proceedings in the High Court.

(3) An eligible Judge has, in relation to the performance or exercise of  
a function or power conferred on an eligible Judge by this Part, the  
same protection and immunity as a Justice of the High Court has in  
relation to proceedings in the High Court.

(4) Subject to this Part, a person appearing as a witness at a hearing, or  
giving or producing information, evidence, a statement, a  
document or thing under section 110ZGC or 110ZGE, has the  
same protection as a witness in proceedings in the High Court.

**110ZLD Rules**

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
- (a) required or permitted by this Part to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Part;
  - (e) directly amend the text of this Part.

**110ZLE Review of the operation of this Part**

- (1) The Minister must cause an independent review of the operation of this Part to be undertaken as soon as practicable after the end of the period of 36 months after the commencement of this Part.
- (2) Without limiting subsection (1), the review must consider:
- (a) the effectiveness of the functions and powers of the Defence and Veterans' Services Commissioner and the Defence and Veterans' Services Commission to achieve the objects of this Part; and
  - (b) whether it would be appropriate to provide for the future operation of the Defence and Veterans' Services Commissioner and the Defence and Veterans' Services Commission in standalone legislation.
- (3) The persons who undertake the review must give the Minister a written report of the review within 6 months of the commencement of the review.

- 1 (4) The Minister must cause a copy of the report of the review to be  
2 tabled in each House of the Parliament within 15 sitting days of  
3 that House after the report is given to the Minister.  
4

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