

# Submission to the Inspector-General of the Australian Defence Force (IGADF) Twenty Year Review

## **The Submission**

‘A Conflict Resilient Workplace: Transformative best practice in the Australian Defence Force workplace.’

In this submission, the primary focus will be on the arbitration processes available to Australian Defence Force (ADF) members. The goal is to argue that these processes largely fail to address the concerns of ADF members due to the lack of effective corrective action and reparation policies. Without proper mechanisms in place to triage and address the various forms of detriment experienced by ADF members and Veterans [and their families), the current arbitration processes fall short of providing satisfactory outcomes. Furthermore, the author seeks to offer recommendations to the Inspector-General of the Australian Defence Force (IGADF) in order to improve the arbitration process for ADF members. These recommendations aim to safeguard the professional status and reputation, as well as the mental health, of ADF members and Veterans [and their families]. By implementing these recommendations, it is hoped that the arbitration process can be strengthened and better equipped to address the unique challenges faced by ADF members in the ADF workplace (and those impacted post-service).

The author has extensively drawn on a wealth of academic research, spanning various disciplines, and has provided two comprehensive case studies. These case studies not only support but also strengthen the arguments presented, serving as a robust and well-founded foundation.

Case Study 1—represents the initial detriment, whereby, the complainant's Redress of Grievance failed due to the non-compliance with Defence policy. The Inquiry Officer, who was responsible for investigating the complaint as a public official, failed to adhere to their duty of impartially exercising their powers and not misusing information. This lack of procedural fairness had a negative impact on the outcome of the Inquiry. Adding to this harm, the IGADF declined to investigate the issues or conduct a review prior to reaching an erroneous conclusion that it had been "satisfied that the Inquiry Officer Inquiry was comprehensive, legally reviewed and validated." This failure to protect and support those who sacrifice so much for our nation is not only disheartening, but also raises serious concerns about the integrity of our military leadership and the Defence arbitration process.

Case Study 2—represents a deeply troubling injustice, highlighting the failure of the then Minister of Defence to uphold the rights of an ADF spouse. What makes this situation even more distressing is the fact that the then Minister of Defence not only failed to address the issue, but also actively defended Defence's position, despite the presence of compelling evidence that directly contradicted the findings of the inquiry. This blatant disregard for the truth and the wellbeing of those affected is deeply unsettling and calls into question the commitment of our leaders to justice and accountability.

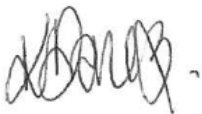
Given the gravity of these circumstances, it is recommended the IGADF conducts a thorough desktop review of these matters to rectify the injustices and restore the complainant's faith in our military institution and to ensure that such failures are not repeated in the future.

## **About the author**

Dr Kay Danes OAM is a Former President of Army Families (WA) Inc, a Member of SASR Ladies Auxiliary, and a past President of the 1st Commando Regiment Auxiliary. It has been her privilege to serve the international community as an advocate for the US Centre for Public Policy Analysis, as an international human rights advisor for GAP Veteran and Legal Services, and as an International Ambassador for Resolute Ready, an organisation that empowers people through education, to advance social and public welfare and to improve and support Global Mental Health and Educational Initiatives.

Dr Danes graduated with a PhD from the School of Law & Justice (Southern Cross University), has a Masters in Human Rights (Curtin University) and holds various professional qualifications in Business, Security Operations, and Training development.

Dr Danes has contributed extensive academic research to Defence Inquiry Reviews, Royal and Interim Commissions, and Senate inquiries with a view to creating a more robust and fairer workplace for serving defence personnel, as well as advocating for the well-being of veterans and first responders worldwide.



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## ‘A Conflict Resilient Workplace: Transformative best practice in the Australian Defence Force workplace.’

### Background

Inspector-General of the Australian Defence Force (IGADF) marks its twentieth year of operation in 2023. Over the past twenty years of operation, other bodies have reviewed some aspects of the IGADF’s functions. To date there has been no holistic review of the IGADF, its functions, or other arrangements to support the office. It is appropriate for a complete review of the IGADF, and its office occur.

Former Justice, Hon Duncan Kerr Chev LH SC is appointed by the Australian Government to conduct a review into the arrangements and composition of the IGADF and the office established to support the appointment holder. Mr Dennis Richardson AC will also assist the review.

### Terms of Reference:

Mr Kerr will undertake a review under the Terms of Reference to:

- a. review the basis by which the statutory office is established,
- b. consider and make findings and recommendations as appropriate about the functions, operation and composition of the office established to support the IGADF.

The review is open to receiving submissions. Submissions close on Thursday, 30 November 2023. Mr Kerr will deliver his report to the IGADF, Secretary and CDF by 31 March 2024.

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### Introduction

A conflict resilient workplace is one that promotes positive relationships through effective communication and addresses risks at any early stage. For years, Australian Defence Force (ADF) members have sought to remedy workplace grievances through arbitration processes that have been made available to them, usually involving their chain of command. Many view these processes with cynicism, as they are often arbitrary in nature. Granted, there are many ADF members who succeed in resolving a workplace grievance where there is minor impact on their professional status and reputation, and who are able to continue their military service without detriment. Many, however, are dissatisfied and believe management outcomes fall far short of their reasonable expectations. Indeed, a broadly held view maintains that arbitration processes available to ADF members fail because there are no *corrective action* or *reparation policies* to effectively ‘*triage*’ a detriment to the point where:

- all mistakes are admitted and put right;
- a sincere and meaningful apology is offered, and
- the management outcomes restore the complainant to the position/status they would have been in if the defective administration had not occurred.

The current system of arbitration applied to ADF grievances notoriously leads to more grievances than are resolved. This inevitably further impacts an ADF member's mental health and wellbeing, and potentially that of their families. Current research indicates that those who separate from the ADF *involuntarily* (i.e., that is against someone's will; without someone's cooperation) are particularly at risk of suicide risk and self-harm. A connection exists between involuntary discharge from military service and defective administration (i.e., where there has been an unreasonable failure to comply with administrative procedures or institute appropriate administrative remedy). In addition, there is a correlation between *unacceptable behaviour* and suicidal ideation.<sup>1</sup>

Unacceptable behaviour in the ADF workplace is unreasonable conduct at work or in any situation that may be connected to Defence that is offensive, belittling, abusive or threatening to another person or adverse to moral, discipline or workplace cohesion.<sup>2</sup> According to academic research and numerous reviews of Defence administrative inquiries, Defence consistently fails to apply appropriate remedies for grievances. But also worth considering is the increased number of submissions received by the Office of the Inspector-General of the Australian Defence Force (IGADF), which in its 2021–22 report recorded a 32 per cent higher than the annual average increase, over the past eight financial years.<sup>3</sup> There was a significant number of grievances that were attributed to workplace failures within the Army. Reforming current arbitration processes are necessary if the ADF hopes to fulfill its commitment to protecting the mental health and wellbeing of its people.<sup>4</sup> Arguably, if such reforms are ignored, then it is likely the trend will continue to increase legal redress claims and put more ADF members and Veterans at risk of suicide and self-harm, especially if they carry unresolved grievances into life beyond service. Failure to reform current arbitration processes is also likely to contribute to other challenges like 'retention and recruitment.' Such, that cannot simply be fixed by promising new employment rewards [e.g., financial incentives].

Ensuring effective change requires going beyond current thinking. The Royal Commission into Defence and Suicide recently proposed the establishment of a new oversight body.<sup>5</sup> This body would focus on holding government agencies accountable for the wellbeing of Defence members and veterans, as well as supporting efforts to improve their wellbeing through research and other means. According to the commission's consultation paper, the proposed entity would function as an independent and powerful body responsible for inquiry, reporting, advice, and recommendations. However, it would not make decisions on policy or administration, nor would it have the authority to direct other agencies. Additionally, it would not address individual concerns and complaints. Instead, its main focus would be on the overall wellbeing of Defence members and veterans, as well

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<sup>1</sup> Morten Nielsen & Ståle Einarsen (2018), 'What we know, what we do not know, and what we should and could have known about workplace bullying: An overview of the literature and agenda for future research', *Aggression and Violent Behaviour* 42: 75.

<sup>2</sup> Department of Defence (2023), 'Unacceptable Behaviour,' Complaints and Incident Reporting. Retrieved from < <https://www.defence.gov.au/about/complaints-incident-reporting/unacceptable-behaviour>.

<sup>3</sup> Department of Defence (2022), 'Annual Report 2021-22,' (Transparency Portal, Chapter 5) Retrieved from <https://www.transparency.gov.au/publications/defence/department-of-defence/department-of-defence-annual-report-2021-22/chapter-5---management-and-accountability/inspector-general-of-the-australian-defence-force>.

<sup>4</sup> Department of Defence (2017), 'Defence Work Health and Safety Strategy 2017-2022,' Retrieved from <https://www.defence.gov.au/sites/default/files/2021-03/WHS-Strategy-Oct2017.pdf>.

<sup>5</sup> Royal Commission into Defence and Veteran Suicide (15 Nov 2023), 'Proposed new entity to promote the wellbeing of Defence members and Veterans.' Consultation Paper. Retrieved from <https://defenceveteransuicide.royalcommission.gov.au/publications/proposed-new-entity-support-wellbeing-defence-members-and-veterans>.

as the prevention of suicide and suicidality. It would examine how the ADF and DVA manage these matters and provide recommendations for improvements that benefit everyone.

While this model may be suitable for addressing the mental health and wellbeing needs of the Veteran community, it may not effectively serve ADF members who are equally at risk of suicide and self-harm due to failed administrative processes. Without a strong emphasis on internal review and investigation mechanisms, the proposed model may struggle to hold government agencies accountable. If an oversight body is not involved in reforming policies, safeguarding them, or challenging flawed administrative decisions, it becomes challenging for it to effectively fulfill its role.

An ‘oversight body’ is a safety net to ensure:

- Due diligence takes place before key decisions are made.
- Policies and strategies are being implemented as intended.
- Key risks are identified, monitored, and mitigated.
- Business processes and systems are working well.
- Expected results are being achieved.
- Value for money is obtained.
- Activities comply with policies, laws, regulations, and ethical standards.
- Developing areas of concern are being dealt with.
- Assets (ADF member) are being safeguarded.
- Continuous improvement is taking place.

Different oversight bodies fulfill different oversight functions, and some oversight bodies play a more active role in guiding management than others. The role that the proposed new entity would play has not been determined yet. It is important to consider whether it would add another layer of bureaucracy if it is unable to enact safety net processes and enforce accountability. It is worth noting that current external oversight bodies, such as the Defence Ombudsman and the IGADF, are already mandated to provide independent oversight of the ADF.

IGADF	<p>Claims to:</p> <ul style="list-style-type: none"> <li>• be independent of the ADF chain-of-command and reports straight to Government.</li> <li>• investigate or inquire into justice matters including the professional conduct of Service Police.</li> <li>• conduct performance reviews of the military justice system, including audits of Defence Force units, ships, and establishments.</li> <li>• advise on matters concerning the military justice system and make recommendations for improvement.</li> <li>• promote military justice values across the ADF.</li> <li>• independently consider complaints by ADF members.</li> <li>• conduct inquiries or investigate the death of ADF members, where the tragedy appears to have arisen out of, or in the course of, the member’s Defence service.</li> </ul>
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Defence Ombudsman	<p>Claims to:</p> <ul style="list-style-type: none"><li>• We offer an independent complaint-handling mechanism for serving and former Defence members.</li><li>• provide assurance that the agencies and entities we oversee act with integrity and treat people fairly.</li><li>• influence systemic improvement in government administration.</li><li>• independently and impartially reviewing complaints and disclosures about government administrative action.</li><li>• influencing government agencies to be accountable, lawful, fair, transparent, and responsive.</li><li>• providing a level of assurance that law enforcement, integrity and regulatory agencies are complying with legal requirements when using covert, intrusive and coercive powers.</li><li>• oversight body for ADF member complaints.</li><li>• can assist to resolve your complaint by investigating the process if the agency, provider, or organisation does not change their decision or offer a better explanation of the decision.</li></ul>
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This is a suitable place to consider how we can mitigate the harm caused by failed arbitration processes and improve safeguards in the workplace. These improvements should support the best Human Resource (HR) management, including mental health and wellbeing, of our ADF members both during and beyond their current service. It is important to go beyond simply triaging mental health and wellbeing.

According to past reports, most complainants are more concerned with the failure of Defence to protect them from abuse than seeking to hold abusers accountable. They primarily want an acknowledgment that the harm they endured was wrong and should not have happened. They also expect Defence to address the harm and its consequences directly for the complainants.<sup>6</sup> To achieve this, the system must evolve to reflect best practices and provide an effective and impartial defence administrative system that is committed to delivering fair and equitable outcomes for ADF members and veterans.<sup>7</sup>

If we don't consider these aspects when seeking a solutions-based approach in response to defence administrative inquiries, countless ADF members and veterans may remain trapped in a cycle of resentment and trauma. Their lives, careers, ambitions, and futures will continue to be affected by an incompetent leadership that shows no remorse.<sup>8</sup>

<sup>6</sup> The Hon Len Robert-Smith QC (Sep 2014), 'Restorative engagement—A new approach.' *The Arbitrator & Mediator*. Retrieved from <https://www.austlii.edu.au/au/journals/ANZRIArbMedr/2014/5.pdf>. [51].

<sup>7</sup> "Uniform Justice (2022), 'Telegraph campaign to end defence abuse of women,' Daily Telegraph, 07 May 2022, Retrieved from <https://www.dailytelegraph.com.au/news/nsw/uniform-justicetelegraph-campaign-to-end-defence-abuse-of-women/>.

<sup>8</sup> Dr Daniel Mealey (19 November 2023), Opinion provided to the author via email.

## **Briefly: the administrative process of inquiry**

As a general rule, there are five different methods of ADF administrative inquiries.<sup>9</sup> The most common being an Inquiry Officer Inquiry (IOI), typically arising from an unresolved complaint by an ADF member to their chain of command. This type of administrative inquiry operates as an inquisitorial system that is conducted under the *Defence (Inquiry) Regulations 2018* in military injustice, personnel disputes, procurement issues and other matters. When an ADF member believes their complaint through the IOI process has either failed or has not been appropriately examined, they are able to escalate their complaint higher in the chain of command, which may, though not always, result in an administrative inquiry conducted by the IGADF, appointed by the Australian Government to oversee the quality and fairness of Australia's military justice system. Note that the Inspector-General reports to the Minister of Defence directly.<sup>10</sup> An IGADF Inquiry is conducted under section 110C of the Defence Act 1903 and the relevant Regulation—*IGADF Regulation 2016*.

There exists a perception that although the IGADF sits outside of the ADF chain of command, the process of an IGADF administrative inquiry is not nearly *independent* enough from the ADF command. This too contributes to the broadly held perception that the IGADF has failed to influence a fair and supportive mechanism by which ADF members can be heard.

The IGADF reports his findings to the CDF. The Department of Defence, the ADF and the IGADF all fall within the one Defence portfolio and draw from the same funding pool. The IGADF is staffed primarily by serving and Reserve ADF officers who retain their commissions, while the remainder are drawn from the Defence Department. Senior APS staff in the Defence Department hold rank-equivalents.<sup>11</sup>

Concerns among stakeholders prevail about the *reliability* of the IGADF to appropriately safeguard the military justice system.<sup>12</sup> Namely because the IGADF's only authority is to make *recommendations, not enforce* those recommendations. There is no legal requirement for the ADF service Chiefs or Chief of Defence Force to *act* on IGADF recommendations. Past reviews have carried forward many of the same recommendations that are never actioned—which raise concerns regarding unclear accountability of decision makers, the delivery of delayed and irrational outcomes, the disproportionate investigative effort compared to the nature of the decisions to be made and to manage and resolve an incident or complaint. All of which point to the conclusion that the current *management outcomes* in the ADF are not reducing the risk of legal claims against the ADF by its members.

IGADF reports have found that the majority of complainants who give feedback about the Defence administrative inquiry process consistently argue that inquiries are '*unfair and unsupportive*' and that the '*ADF culture, in their experience, still makes it difficult for victims to come forward and to*

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<sup>9</sup> Senate Foreign Affairs, Defence and Trade Legislation Committee (June 2005), 'The effectiveness of Australia's military justice system,' *Senate Printing Unit*, Parliament House, Canberra. ISBN 0 642 71424 X.

<sup>10</sup> Australian Government (2023), 'Who we are,' Inspector-General of the Australian Defence Force. Retrieved from <https://www.igadf.gov.au/who-we-are>.

<sup>11</sup> Hugh Poate (2023), 'Submission to the Hon Duncan Kerr SC,' *IGADF 20-year review*, 19 October 2023 [P4].

<sup>12</sup> GAP Veteran & Legal Services (2021), 'Submission to Senate Foreign Affairs, Defence and Trade Legislation Committee *Inquiry into the provisions of the Defence Legislation Amendment (Discipline Reform) Bill 2021*, 30 September 2021, p. 3.

*receive justice without fear of career or reputational impairment.*<sup>13</sup> This claim was upheld in evidence submitted to the Royal Commission into Defence and Veteran Suicide in 2021, whereby victims of abuse were:

often ostracised from their peers for reporting the abuse and suffered retribution in the form of limited deployments and promotions because the victims were seen as “the problem” for making an official complaint.<sup>14</sup>

Further, past reviews commissioned by Government have also found issues with Defence’s management of complaints, including *failings in the application of administrative and judicial processes.*<sup>15</sup> While it can be argued that the ADF should retain its autonomy in matters of security and operations, it can also be argued that Defence needs to improve its handling of workplace grievances. This is to ensure that ADF members are afforded the same rights to a fair and effective resolution as any other Australian in society or any other organisation. This is a point also upheld by previous ADF commanders:

the ADF is not separate from the community, nor should it be, and that it needs to at all times abide by the same standards of accountability as every other Australian organisation.<sup>16</sup>

The idea that natural justice can be achieved when Defence has the power to directly influence IGADF reviews and their internal practices is a viewpoint that should be questioned. The fact that IGADF inquiry officers are required to provide regular updates to Defence on their investigation progress raises the question: How can an organisation like the ADF hold itself accountable? This is especially important because ADF members need to have confidence in the system and have access to a reliable external alternative dispute resolution process to prevent potential harm caused by a lack of transparency and due process.

Recommending Defence reforms to workplace policies is a positive step forward. However, these reforms are urgently needed before more lives and reputations are put at risk. The IGADF has an opportunity here to ensure that workplace reforms focus on minimizing and preventing inequities that lead to personal injury in ADF service. This includes addressing current workplace policy inequities that hinder the administrative system from improving ADF best practices, and moving towards a fairer, more just, and mentally robust workplace.

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<sup>13</sup>Australian Government (2023), ‘Inspector General of the Australian Defence Force Inquiry Report – Implementation of Military Justice Arrangements for dealing with Sexual Misconduct in the Australian Defence Force’, (23) Retrieved from <https://www.defence.gov.au/sites/default/files/2022-03/IGADF-Report.pdf>.

<sup>14</sup> “Interim Report, Royal Commission into Defence and Veteran Suicide,” (20 Aug 2022), [https://defenceveteransuicide.royalcommission.gov.au/system/files/2022-08/interim\\_report.pdf](https://defenceveteransuicide.royalcommission.gov.au/system/files/2022-08/interim_report.pdf).

<sup>15</sup> Ibid, p25.

<sup>16</sup> Jack Snape (19 Nov 2020), ‘Accountability to be focus of response to ‘appalling’ behavior in Afghanistan war crimes report, Defence Minister says’. Retrieved from <https://www.abc.net.au/news/2020-11-19/afghanistan-war-crimes-report-linda-reynolds-defence-force/12899702>.



## Implementing transformative workplace reforms

Advocates who seek transformative workplace reforms argue that the Defence arbitration process is often seen as unfair. The Complaints Resolution Agency (CRA) conducts administrative reviews of grievances referred by ADF members. However, it will only investigate a matter if it has already been addressed by the chain of command. Research has shown that Defence, similar to the Department of Veteran Affairs, has spent significant amounts of money to hire high-level legal firms to contest compensation claims. ADF members rarely have access to the same level of legal advice that Defence relies on when dealing with such matters. As a result, ADF members continue to face hardships within an internal *resolution* system that refuses to reform, leading many to believe that their concerns can only be fairly heard through external avenues such as the media.<sup>17</sup> Numerous parliamentary committees, government departments, commissions and academics have produced a significant body of work that suggest administrative failings result from:

- conflicts of interest in the chain of command;
- a military culture that can influence reporting;
- institutional blind spots;
- fear of reprisals for reporting wrongdoing;
- lack of genuine mediation, and
- written Regulations that fail to offer provisions of fairness, independence, and goodwill because they are not strictly imposed.<sup>18</sup>

Evidence further suggests that Defence administrative inquiries allow witnesses to deliberately provide false information, false accusations, and misleading statements to Inquiry officers. Even when challenged, adverse findings by Inquiry officer are seldom overturned.<sup>19</sup> This failure to uphold natural justice often leads stakeholders to argue that individuals who fail to adhere to Government-mandated directives and policies should be personally liable for the harm caused by their actions.<sup>20</sup>

The current legislation governing Defence administrative inquiries does not require witnesses to give evidence under oath or affirmation, nor does it require witnesses to substantiate their claims with written evidence when giving oral evidence. This raises concerns about achieving truthfulness and transparency. While in some cases a lesser standard of proof (the balance of probabilities) may be appropriate, there are situations where the resolution of matters requires a robust and unbiased inquiry process, especially when primary evidence is available.<sup>21</sup>

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<sup>17</sup> Ainslie Drewitt-Smith (2019), 'Lawyers call for reform of ADF's discriminatory unreasonable internal legal system,' ABC News, Retrieved <https://www.abc.net.au/news/2019-10-01/veteran-claims-defence-legal-system-unfair/11509652>.

<sup>18</sup> Australian Government (2007), 'Chapter 3—Disciplinary investigations,' Retrieved from [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Affairs\\_Defence\\_and\\_Trade/Completed%20inquiries/2004-07/miljustice/report/c03](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed%20inquiries/2004-07/miljustice/report/c03).

<sup>19</sup> Australian Senate Report (2019), 'Report on Military Justice Procedures in the Australian Defence Force, Chapter 5, Administrative Action,' Retrieved from [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=jfa dt/military/mj\\_ch\\_5.htm](https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jfa dt/military/mj_ch_5.htm).

<sup>20</sup> Defence Force Discipline Act 1982, Retrieved from <https://www.legislation.gov.au/Details/C2016C00811>.

<sup>21</sup> The Hon Len Robert-Smith QC (2014), 'Restorative engagement—A new approach.' *The Arbitrator & Mediator*. September 2014. Retrieved from <https://www.austlii.edu.au/au/journals/ANZRIArbMedr/2014/5.pdf>.

The current appeals process fails when independent arbitration default to the position of Defence, as demonstrated in the attached case studies. The IGADF has the potential to make a significant impact by taking proactive measures to ensure that Defence administrative inquiries are conducted in a manner that upholds the rights of complainants under equal opportunity law. By prioritising fairness and impartiality, the IGADF can guarantee a fair hearing for all parties involved in these inquiries. Furthermore, the IGADF can play a crucial role in creating safer work environments within the Defence Force. By closely monitoring and addressing any potential issues or concerns, such as harassment or discrimination, the IGADF can contribute to a culture of respect and inclusivity. This, in turn, will not only improve the overall well-being of service members but also foster a more effective and cohesive workforce.

Another area where the IGADF can make a significant impact is by working towards reducing the increasing number of legal claims, as well as addressing the concerning issues of suicide risk and self-harm within the ADF and Veteran community. By conducting thorough investigations and implementing appropriate preventive measures, corrective action, and reparation policies, the IGADF can help mitigate these challenges and provide necessary support to individuals who may be at risk.

In conclusion, the IGADF has the potential to bring about positive change within the government and the ADF and Veteran community. By focusing on protecting rights, creating safer work environments, and addressing critical issues, the IGADF can contribute to a more equitable and resilient Defence Force.

### **A solutions-based approach—Alternative Dispute Resolution**

How then can workplace reforms be achieved at the lowest level to reduce the risk of harm to ADF members and Veterans [and their families] when grievances arise?

From a ‘big business’ perspective of best practice, the solution is for ADF to explore the concept of developing *alternative dispute resolution* practices:

- Address the grievance at the unit level before it becomes a complex matter for an inquiry;
- Reduce the likelihood of external media scrutiny or litigation;
- Improve safety and wellbeing in the ADF workplace;
- Demonstrate better management of grievances through genuine mediation; and
- Reduce the risk of suicide-risk and self-harm.

Evolving ADF service to this level of best practice would demand the implementation of a *non-uniformed ADR Practitioner Service* comprised of *neutral third-party mediators* who are *experienced, accredited, and skilled* at working with people to resolve disputes in a *fair and impartial* manner. Typically, those with extensive *experience and knowledge* of employment law, industrial relations, fair work law, and who would sit outside of the chain of command.<sup>22</sup>

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<sup>22</sup> This is a different mechanism from the Directorate of Soldier Career Management and Directorate of Officer Career Management which deals with career management in terms of promotions, transfers, postings, transitions etc... These do not manage complaints and resolutions within the ADF.

*ADR Practitioners* could be an extremely useful tool for the ADF to embrace a fresh, transformative ‘non-adjudicatory’ approach to reinforce its commitment to fair, respectful conflict resolution.<sup>23</sup> Importantly, a *non-uniformed ADR Practitioner Service* would be grounded in four key tenets, that:

1. The best decision makers in a dispute are the people directly involved,
2. To effectively resolve a dispute, people need to hear and understand each other,
3. Disputes are best resolved on the basis of the people’s interest and needs, and
4. Disputes are best resolved at the earliest possible time and at the lowest possible level.<sup>24</sup>

## Conclusion

It is a broadly held opinion that mediation is an efficient process that saves time and money and increases the potential for the prompt resolution of a complaint. Certainly, however, there will always still be a need to direct some of the more complex matters through the chain of command and to the IGADF, as required in disciplinary procedures (e.g., Defence Force Discipline Act 1982). The suggestion of Alternative Dispute Resolution does not seek to replace those formal processes. The suggestion is merely to present an alternative approach to the way grievances are managed in the ADF. The current approach is not working well enough.

A more responsive approach to mediate disputes in the ADF workplace is needed. Such an approach should take into consideration the trauma inflicted on ADF members and Veterans who are subjected to administrative inquiries. This is sensible. By influencing the engagement of an alternative dispute resolution service, the IGADF can better serve ADF members and Veterans by ensuring they have access to:

- non-adversarial-win-win solutions and avoid costly litigation,
- more stable outcomes based on fair and equitable decisions,
- more responsive support mechanisms at the point of initial exposure to a workplace detriment, to mitigate harm before matters are escalated through the chain of command,
- a policy that actually does what it claims to do—focus on resolving the issue(s) at the earliest opportunity and at the lowest appropriate level.<sup>25</sup>
- access an arbitration process that has executive power to remedy flawed decisions made by the ADF, and to ensure accountability.

If the saying is true, then an ounce of prevention is surely worth a pound of cure!<sup>26</sup>

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<sup>23</sup> The accreditation process to becoming an *ADR Practitioner* is a standard practice across Australia where applicants meet threshold training, education, and specific assessment requirements as part of the National Mediator Accreditation System.

<sup>24</sup> Victorian Public Sector Commission (2022), ‘Alternative Dispute Resolution,’ Chapter 2.2, Retrieved from <https://vpssc.vic.gov.au/workforce-capability-leadership-and-management/managing-negative-behaviours/developing-conflict-resilient-workplaces/guide-2-the-conflict-resilient-workplace/#heading3>.

<sup>25</sup> Australian Government (2023), ‘Complaints and Resolution’, Retrieved from <https://www.defence.gov.au/about/complaints-incident-reporting/complaints-resolution>.

<sup>26</sup>Parliament of Australia.(2004-07), ‘Chapter 8—The administrative system—investigations.’ Parliamentary Business. Retrieved from [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Affairs\\_Defence\\_and\\_Trade/Completed%20inquiries/2004-07/miljustice/report/c08](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed%20inquiries/2004-07/miljustice/report/c08).

## Case Study 1—an affected ADF member

In this case study, the complainant's Redress of Grievance failed due to the non-compliance with Defence policy. The Inquiry Officer, who was responsible for investigating the complaint as a public official, failed to adhere to their duty of impartially exercising their powers and not misusing information. This lack of procedural fairness had a negative impact on the outcome of the Inquiry. Adding to this harm, the IGADF declined to investigate the issues or conduct a review prior to reaching an erroneous conclusion that it had been "satisfied that the Inquiry Officer Inquiry was comprehensive, legally reviewed and validated."

### The Complainant

The ADF member, referred to as "the complainant," served the Australian Defence Force (ADF) for four decades, primarily in the Australian Special Forces. They played a key role in initiating various world-class training and capability solutions to enhance Australia's Special Operations capacity. The complainant maintained an exemplary service record.

### The Issues

In 2012, the complainant's career suffered considerable damage due to inappropriate conduct (Unacceptable Behaviour) by a superior. The complainant sought resolution through their Chain of Command, which exacerbated the harm and led to a substantial loss of professional status, reputation, and financial damages (i.e., \$1.45 million dollars in salary/pension calculated over the complainant's life expectancy, at a rate determined by DVA).

The complainant's superior intentionally neglected to submit mandatory Performance Appraisal Reports (PARs) for the reporting period of 2012 and 2013. This failure to report constitutes a violation of Defence Policy (DI (A) PERS 116-16), which clearly states that PARs are a crucial component of the Performance Management Framework. The data from these appraisals is used to develop career plans, identify potential for promotion postings and courses, and support administrative action resulting from unsatisfactory performance. The failure to submit PARs for two consecutive years caused a significant detriment that had the potential to end the complainant's career.

The complainant was not able to resolve the matter at the lowest level because no one in their chain of command would consider the following;

1. During the 2014 Senior Warrant Officer Personnel Advisory Committee (SWO PAC) meeting, the complainant was considered a strong candidate for the position of Sergeant Major of the Special Operations Command (SM SOCOMD). He ranked in the top 1/3 of his cohort. However, after the SWO PAC meeting, he was placed in the bottom 1/3 of a general pool of Warrant Officers and was notified that he would be issued a notification to retire early, as per the Mandatory Initiated Early Retirement (MIER) policy.
2. The Directorate of Soldier Career Management - Army (DSCM-A) acted against Defence policy, which states that a Defence member must have a complete reporting history before being presented to a SWO PAC. (The complainant argued that their PARs were not issued before being presented to the SWO PAC.)
3. DSCM-A failed to institute appropriate administrative procedures to mitigate the significant detriment that would most certainly result (and did).

The complainant was instructed to refer the matters to their Chain of Command if they were not satisfied with the advice from DSCM-A and Army Headquarters. Acting on that advice, the complainant submitted a Redress of Grievance which resulted in an Inquiry Officer Inquiry that took FOUR YEARS to conclude.

The findings of that IO Inquiry upheld that the superior deliberately failed to submit PARs which created a deliberate detriment for the complainant. But in their conclusion, the Inquiry Officer did not seek to *triage* the detriment to the complainant. Nor did they seek to provide the complainant with a sincere and meaningful apology or seek to restore the complainant's professional status and reputation, as required by Defence policy.

Instead, the Inquiry Officer made the determination that there was "insufficient evidence to make a finding of Unacceptable Behaviour" towards the superior. Therefore, no corrective action was taken to right the wrong done to the complainant, despite the fact that the superior admitted to deliberately strategizing to harm the complainant's career. Moreover, the Inquiry Officer insisted the complainant was at fault for not obtaining the 2012 and 2013 PARs.

### **Ω INTERVENTION POINT Ω**

**Had the matters been referred to an alternative dispute resolution process at this point, to negotiate corrective action and reparation for the affected ADF member, it could have mitigated further detriment [and trauma] to that member and their family.**

#### **The compounding detriment**

In the complainant's Redress of Grievance, he obtained a number of successful determinations, including a determination from Major General (MAJGEN) ██████ that the complainant's career had been discriminated against.

*You have grounds for complaint in relation to being presented to the Mar 14 SWO PAC without the PARs for 2012 and 2013." And: "While I agree that members share responsibility with their assessors for obtaining PAR, in this case, I consider you took all reasonable action to achieve this outcome, but you were unsuccessful through no fault of your own and for reasons beyond your control." "I am not comfortable with the fact that the PAC failed to consider all of the available information on your performance, especially since you were presented to that out-of-session PAC as a consequence of your reasonable concern that you were presented to the Mar 14 SWO PAC with an incomplete reporting history. I, therefore, have sufficient concern about the validity of the Jun 14 out-of-session PAC outcome to warrant giving you the benefit of any doubt. Accordingly, I find this element of your complaint is sustained.*

MAJGEN ██████ further stated that there was:

*inconsistency between reporting history and PAC outcomes; the complaint is sustained, and you are to be presented to the 2016 SWO PAC.*

Clearly MAJGEN ██████ sought to instil corrective action. However, the 2016 SWO PAC that was convened constituted the very same personnel who had also convened the 2014 SWO PAC. Then in late 2015, a special appointment for ██████ was created. A SWO PAC was NOT officially convened. Instead, a panel of candidates were identified by individuals at DSCM-A. The complainant was excluded from selection. **(denying the complainant's ability to compete equally with his peers)**

Evidence obtained under Freedom of Information later revealed that a telephone conversation occurred between two individuals at DSCM-A who determined that the complainant “*was not considered suitable for the [REDACTED]*” due to “*risks associated with reputation and past performance.*” One of those individuals had been on the 2014 SWO PAC and subsequent 2016 SWO PAC. After this discovery, the complainant escalated their complaint to the chain of command which determined that:

*.. you appear to have been discriminated against based on a personal undocumented assessment of SOCOMD rather than having your suitability assessed in comparison with your peers.*

and

*... you were excluded from consideration for this appointment due to comments that were made by individuals that were not supported by facts or documented evidence.*

No action was taken to remedy the detriment to the complainant’s career which compounded.

### **Misconceived Presentation to the 2016 SWO PAC**

The complainant was presented to a 2016 SWO PAC but was not selected for promotion. That SWO PAC was constituted by the very same personnel who excluded the complainant from consideration at the 2015 [REDACTED] appointment, and who had also convened the 2014 SWO PAC.

The complainant’s career and professional reputation was undoubtedly adversely affected.

- The presentation to the 2016 SWO PAC provided the complainant no remedy for redress and was illusory.
- The 2016 SWO PAC and the selection process for the 2015 [REDACTED] position was affected by bias, inappropriate workplace relationships, conflict of interest, and lacked procedural fairness and impartiality, and the outcome for the complainant, was clearly predetermined.
- The 2016 SWO PAC and selection process for the 2015 [REDACTED] position process miscarried by the lack of independence and lack of fresh assessment, and the improper use of rank and position.
- False and malicious allegations were made about the complainant without his knowledge, which denied him procedural fairness.

Further evidence of defective administration considers that the Chief of Army ordered the complainant’s superior to write the 2012 and 2013 PARs four years ‘out of time’ which is contrary to Defence Policy and was done without any communication with the complainant. This is also contrary to Defence policy which clearly states that if adverse comments are to be made on a soldier’s employment record, then the member must have an opportunity to defend themselves against any detriment those comments may result. The superior also made false claims against the complainant’s spouse in his PAR. This too violates Defence Policy and shows reckless indifference. The superior knew the missing PARs would create a career-ending detriment and guaranteed the complainant would not be able to compete fairly with his peers.

The complainant pursued the Redress of Grievance of the matters and whilst he succeeded in having the Notification of Management Initiated Early Retirement (MIER) overturned, the complainant was downgraded to a non-designated position for three years, pending him reaching Compulsory Retirement Age in 2018. His career aspirations were vexatiously destroyed through deliberate lies and maladministration and misfeasance.

### **Evidence of Maladministration and Misfeasance**

Information obtained under the Freedom of Information Act (FOI) **after the conclusion** of the Inquiry Officer Inquiry, revealed that during the 2014 SWO PAC the then [REDACTED] [REDACTED] made scandalous and false statements about the complainant which was information provided to the Inquiry Officer. Specifically, that the complainant:

*was reprimanded by a previous SOCAUST over raising money for a fledging SAS Resources Trust through direct approaches to industry and State Government officials that gave the impression this was a sanctioned approach. A significant amount of money was raised (in the order of \$7,000,000 to \$10,000,000) with limited oversight by the HQ. When this was realised, a constitution and appropriate funds management was commenced, and large discrepancies in accounting for the donated funds were found. Disciplinary action against the Defence member was not taken as it would have led to reputational damage to the SASR and hurt a number of the Defence member's followers who assisted him in the fundraising. The Defence member was counselled and moved to Canungra.*

And:

*A subsequent investigation found that the Defence member had told the soldiers he could get them qualified or get recognition of current competency that would allow them to deploy on operations when he did not have the authority to do either of these things. Many of the soldiers dropped the issue after it was explained to them that the Defence member did not have the authority to assure them, they could deploy, however, one member was still pursuing compensation about this matter at the end of [date redacted], and the matter has been brought to the attention of CA and CDF.*

And:

*During a PAC when the ADF member was being considered for a position, one of the PAC members stated he did not believe the ADF member was appropriate for the particular appointment due to his previous interactions. The PAC member then described an incident from the 1990s in which the ADF member used range refurbishment stores and funds, and then requested components from other Services or units, to make three-dimensional mock-ups for the Canungra Mess area at Canungra. The ADF member convinced other members to assist him in breaching governance rules to reallocate resources, make official requests for an unsanctioned project, and compile requests to appear as though the resources would be used for military training activities when the activity was more in support of his role as the supervisor/assistant to the Mess.*

These statements are entirely false and were disclosed to the Inquiry Officer but were not disclosed to the complainant. The Inquiry Officer hid this critical information from the complainant which is contrary to ADF Policy that affords complainants the right to know of any proceedings that would involve them, and that could result in adverse findings.

The Inquiry Officer denied the complainant an equal opportunity to appropriately defend themselves against false allegations made in secret to the Inquiry Officer. Had the complainant an opportunity to defend themselves, then the following could have been argued in their defence, that:

- The complainant was never “counselled and moved to Canungra.” Employment records show that from 1993 to 1995, the complainant was on a promotional posting to Canungra and during this posting. The complainant’s employment records reflect that they were posted to the Unit in Canungra, as an instructor.
- The complainant has never been reprimanded at any time for any incidents throughout his entire service with the ADF. There are no disciplinary or counselling records to support the false allegations made about the complainant.
- The complainant has never been a supervisor/assistant to any Mess in their entire career and had no access to Defence funds. The Inquiry Officer could have easily verified the expenditure of Mess funds through a simple audit. The Inquiry Officer did not bother to do any due diligence on allegations of fraud.
- The complainant used their own personal funds to transform the Mess at Canungra into a learning centre for Defence members. The complainant was not reimbursed by Army, and nor did they seek any reimbursement.
- The complainant was awarded a Commendation from the ADF for their contribution to this project.
- The complainant did not raise money for the SAS Resources Trust, as alleged, and was not, at any time, involved with the SASR Trust. Moreover, it is inconceivable that the SASR Commanding Officer, the board of Trustees, the CDF, and the Australian Tax Office would cover up financial discrepancies of any amount, let alone \$7-10 million dollars, as inferred by [REDACTED].

Evidence from the SAS Resources Trustee to the complainant’s spouse refutes the claims by [REDACTED] that the complainant misappropriated \$7- \$10 million dollars. The complainant’s spouse wrote to the SAS Resources Trustee upon learning that allegations of fraud were made against the complainant (refer to the letter on the next page).





8<sup>th</sup> July 2019

[Redacted] [gmail.com](#)

Dear [Redacted]

Your email came as a significant surprise to the SAS Resources Trust, because we have never heard anything at all about any of the matters to which you refer.

Further, the SAS Resources Trust has never lost any money that had been received by it, whether due to misappropriation or any other cause (let alone between AUD\$7-\$10 million dollars) since we were established in October 1996.

Additionally, since 1996 our accounts have been audited on an annual basis by Ernst & Young, and having been both the original Trust lawyer for 15 years and a Trustee since inception, I can say with confidence that no such issue has ever been raised in their annual audit.

As to whether or not any money that was intended to be donated to the SAS Resources Trust by any group or individual, was not paid to and received by us as intended, is concerned, we have similarly never heard of any such event and cannot comment on any such a matter.

Beyond that there is really nothing more I can add.

Yours sincerely

  
[Redacted] Trust

Furthermore:

- The SAS Resources Trust was established following the Blackhawk accident in Townsville on 12 June 1996. To suggest that the complainant was responsible for misappropriating those funds is malicious. Moreover, when the complainant was posted to Canungra, the SAS Resources Trust did not exist.
- The complainant returned to SASR from Canungra before the Black Hawk Accident and was promoted to the position of Squadron Sergeant Major (SSM) of Base Squadron based on his exemplary service at Canungra.
- The complainant was deployed on operations overseas with SASR and was promoted to the position of SSM of 1 SAS Squadron to help rebuild Squadron morale after the Blackhawk accident.
- The complainant retained Top Secret Positive Vetting (TSPV) clearance for all of their military service over four decades.

The following is argued concerning the detriments to the complainant, that:

- a decision was made to the detriment of the complainant which no reasonable person could have arrived at had they all the facts concerning the matter.
- The decision to accept the statement as factual, in determining the suitability of the complainant for promotion, was entirely irrational against his exemplary employment and disciplinary reporting history.
- Both the SWO PAC and Inquiry Officer failed to give adequate weight: the timeline which, if examined, would have proved the statement to be false; a simple inquiry to the SAS Resources Trust could have established the truth or an investigation of the complainant's PMKEYs to establish his posting cycle.
- Both the SWO PAC and Inquiry Officer made a decision that was plainly unjust, arbitrary, capricious and did not relate intelligibly to the purpose of the statutory power being exercised.
- All the parties involved in the flawed decision-making processes and/or the review of decisions made failed to uphold legal unreasonableness.

### **Compounding Defective Administration**

When the Inquiry Officer Inquiry concluded, the complainant escalated their complaint for an EXTERNAL review, to which the following responses are summarised below:

**Chief of Army** concluded that “the Inquiry Officer Inquiry was conducted in an appropriate and transparent manner and there was sufficient evidence to support the findings.”

**Chief of Defence Force** concluded similarly through an Australian Government solicitor who responded on behalf of the CDF stating that they had:

*reviewed the material relating to your client and have been unable to identify any basis for a cause of action that your client might have against the Commonwealth in respect of the issues you address in your [REDACTED] letter. However, against the possibility that you are able to identify a cause of action, we have instructions to meet the cost of the preparation by you of a statement of claim to be filed in the Federal Court, identifying in the form of a pleading the:*

- a. factual matters relied on by [REDACTED]*
- b. cause of action asserted to exist; and*
- c. any damage said to have suffered.*

*The Commonwealth will meet the reasonable cost of the preparation of the proposed Statement of Claim, such costs to be assessed (in the absence of an agreement) by reference to Schedule 3 of the Federal Court Rules 2011 and up to a maximum of \$5,000.*

The complainant did not pursue their offer because he could not afford a protracted legal debate, whereas, the ADF has unlimited financial resources.

**IGADF Response:** “A thorough assessment has been undertaken of your submission and other relevant material, particularly the report of the [REDACTED] inquiry. Having considered the matter, the IGADF is satisfied the inquiry was comprehensive, and the inquiry report was legally reviewed and validated. Accordingly, he has **determined not to inquire** into the matters you have raised or to refer them for a Senate inquiry.”

**Response from Australian Attorney - General:** “The matters you raise do not fall within the Attorney-General’s portfolio responsibilities, so your correspondence has been referred to the Commonwealth Ombudsman for their information and response as appropriate.”

**Response from the Commonwealth Ombudsman:** “I am of the opinion that no investigation is warranted in all circumstances in relation to this. I note that the IGADF assessment stated that it would be open for you to approach the Directorate of Special Financial Claims in relation to a claim for compensation in relation to any financial detriment that may have been suffered by you or your wife. Your best option is to lodge a claim via the Scheme for Compensation for Detriment caused by Defective Administration (CDDA).”

The complainant did not pursue a CDDA claim because, by this stage, he was too traumatised.

**Response from the Officer of the Australian Information Commissioner (AOIC):** “The OAIC has considered your complaint about Defence and formed the view that there has not been an interference with your privacy.”

**Ministerial Response:** The complainant elevated his matters to the Minister of Defence and drew attention to the false allegations concerning the SAS Resources Trust.

*the Inquiry Officer was not required to seek [the complainant's] comment on alleged past matters or the witness statement about the SAS Resources Trust, and they had no impact on the outcome of the Inquiry Officer Inquiry.*

AND the Minister said of the complainant that he was:

*unable to provide any evidence that substantiated his claim that his superior officer had adversely impacted the considerations of his suitability for career advancement.*

The Minister's statements ignored the fact that the complainant was never informed of any allegations of fraud. The Terms of Reference outline the path by which an Inquiry officer is to take, however, the Minister of Defence and the Chief of the Defence Force have broad powers, incidental to their statutory functions under the Defence Act 1903(Defence Act), to inquire into any matter concerning the Defence Force.<sup>27</sup>

**Defence Legal Advice:** The complainant sought legal advice from a senior Defence Legal Officer who Defence allocated [paid] three hours to conduct a review of what had become a highly complex matter. His statement alone should have caused someone to question the validity of the Defence Inquiry. The complainant made certain that everyone from the Chief of Army to the Minister (including the IGADF) had a copy of the barrister's statement.

*"There were, as you referred to in the documents, significant adverse allegations made as to you to the Inquiry Officer (IO) which were not put to you in any way and as to which you did not have an opportunity to respond. Those significant adverse allegations were then included within the evidence before the IO and were included with the IO report in the evidence. Those allegations appear from the IO report to have been material to findings made by the IO, having regard to statements by the IO in the report. That significant adverse evidence was not within your knowledge at all until after you received it by an FOI request. Those specific circumstances are a denial of procedural fairness to you."*

██████████  
Defence Legal Officer (Barrister)

The complainant was defeated and left mentally distraught.

<sup>27</sup> Karen Elphick (02 Oct 2019), 'Legal framework for Defence administrative inquiries into a 'matter concerning the Defence Force': a quick guide,' Laws and Bills Digest Section. Retrieved from [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1920/Quick\\_Guides/LegalFrameworkDefence](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/Quick_Guides/LegalFrameworkDefence).

Throughout what was a long-running dispute with the Command, the complainant was:

- denied natural justice in the absence of good governance and accountability, and subjected to having Army Regulations misused against him,
- maliciously portrayed by false statements alleging he mishandled millions of dollars,
- refused the opportunity to correct misinformation about himself and events,
- suffered the consequences of a flawed legal system in the ADF, and was subjected to a psychological assessment at the instruction of his superior who sought to use that to justify his removal from a representational overseas posting,
- issued a Mandatory Initiated Early Retirement Notification Letter to prematurely end his career,
- unsupported by those in superior positions, all the way up to Ministerial level,
- deprived the opportunity for well-established legal principles to operate in his favour, and
- subjected to slanderous comments about himself and his spouse (Refer to case study 2).

There were significant adverse allegations made to Inquiry Officer which were not put to the complainant. Those allegations were material to findings made by Inquiry Officer. Those specific circumstances are a denial of procedural fairness to the complainant.

The Inquiry Officer did not adhere to ADF Policy which requires Inquiry Officers ensure they do not “make an administrative decision without first affording the affected member(s) procedural fairness” (ADFP 06.1.3 Guide for Administrative Decision-Making Chapter 2).

The detriment to the complainant’s career resulted in significant financial losses (i.e., \$1.45 million in salary/pension calculated over the complainant’s life expectancy (rate determined by DVA).

The complainant had expected to continue his service post CRA, as an Army Reservist (SERCAT 3). These events prevented him from doing so. The complainant was not able to attend his planned farewell from the ADF despite learning that he had been nominated for a Commendation from the Commander of [REDACTED] [REDACTED] for his service to the Command in developing [REDACTED] (A witness confirmed seeing the Commendation in the [REDACTED] Office and had knowledge that it was to be presented at the complainant’s planned farewell).

The commendation was never presented.

The complainant suffered considerable damage to his career because of a series of inappropriate conduct by Army personnel. In particular,

- the actions of [REDACTED] were affected by bias and a lack of procedural fairness and the outcome for the complainant was predetermined.
- the actions of the complainant's superior created a significant career-ending detriment, compounded by the actions of Inquiry Officer, who failed to accord procedural fairness in 'investigating' the matters.
- further defective administration resulted from the flawed decision-making of those who undertook an EXTERNAL review of the complaint by the complainant.

These actions combined were misconceived and perpetuated the defective administration of the complainant's career and caused significant personal and mental injury to him.

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**Next: Case Study 2 is linked and represents a compounding detriment to the matters disclosed in Case Study 1.**

The Minister of Defence made the erroneous conclusion that "the inquiry was conducted appropriately and there was sufficient evidence to support its findings."

## A Case Study 2—an affected ADF Spouse

In Australia, there are federal and state laws in place to protect Australian citizens from discrimination, as well as treaties to safeguard their human rights. However, ADF policies do not allow spouses to be included in Performance Appraisal Reports (PARs). The following case study highlights a significant failure of a Defence administrative inquiry that failed to uphold the rights of an ADF spouse. Additionally, the Minister of Defence provided a letter defending the Defence's position, despite evidence contradicting the findings of the inquiry. While the ADF may view these matters as historical and insignificant, they hold significant importance to the ADF spouse. They represent an unresolved injustice that continues to evoke strong emotions in the spouse, overshadowing her ability to fully appreciate and celebrate her husband's lengthy and outstanding service to the ADF.

### The Matters

Whilst on an overseas military representational posting, my husband frequently travelled to a neighbouring country to where we were located. He was tasked to deliver Intensive English Language Testing to military students at a Language Academy.

On one occasion that I had travelled with my husband to that country, I did so at my own expense. This, contrary to the statement made by my husband's superior on an official military employment record. I made my plans separate from my husband's work plans, and for my own recreational leave from living in what Defence considered a 'hardship posting.' I paid for my own travel, accommodations, and expenses from my own savings. I was not subject to any travel restrictions. I did not require anyone's permission to travel to that country or throughout the region.

Upon learning that I was in-country, the Brigadier-General in charge of the country's military Language Academy invited me to provide some insight into English to the adult students [conversational English instruction]. It would have been impolite to refuse, and I did not want to create any unfavourable impressions that could reflect on Australia or the Australian Defence Force (ADF). While my acceptance of the Brigadier-General's personal invitation was solely my decision, my husband informed his superior as a courtesy. His superior simply acknowledged it as typical of that Army's hospitality, and nothing more was said about the matter.

A year later, my husband submitted a Redress of Grievance, successfully arguing that his superior had failed in his duty to write his PARs, which significantly harmed his career. When no corrective action or reparations were made, my husband was compelled to escalate his Redress of Grievance through the chain of command. But in a troubling turn of events, the Chief of Army went against ADF Policy and instructed my husband's superior to write the reports, which were shockingly four years overdue. Despite the pressure, my husband stood firm in his principles and refused to sign or accept those reports. His decision was driven by the fact that those reports not only misrepresented his dedicated service to the ADF but also flagrantly violated ADF policy. Moreover, those reports denied my husband the basic right of procedural fairness, leaving him feeling unjustly treated. To add insult to injury, the reports even contained offensive remarks directed towards me, further exacerbating the already distressing situation.

The superior referred to my visit to the Military Language Academy four years earlier and expressed that my presence reflected poorly on the ADF. The following is a redacted extract of the Performance Appraisal Report (PAR):

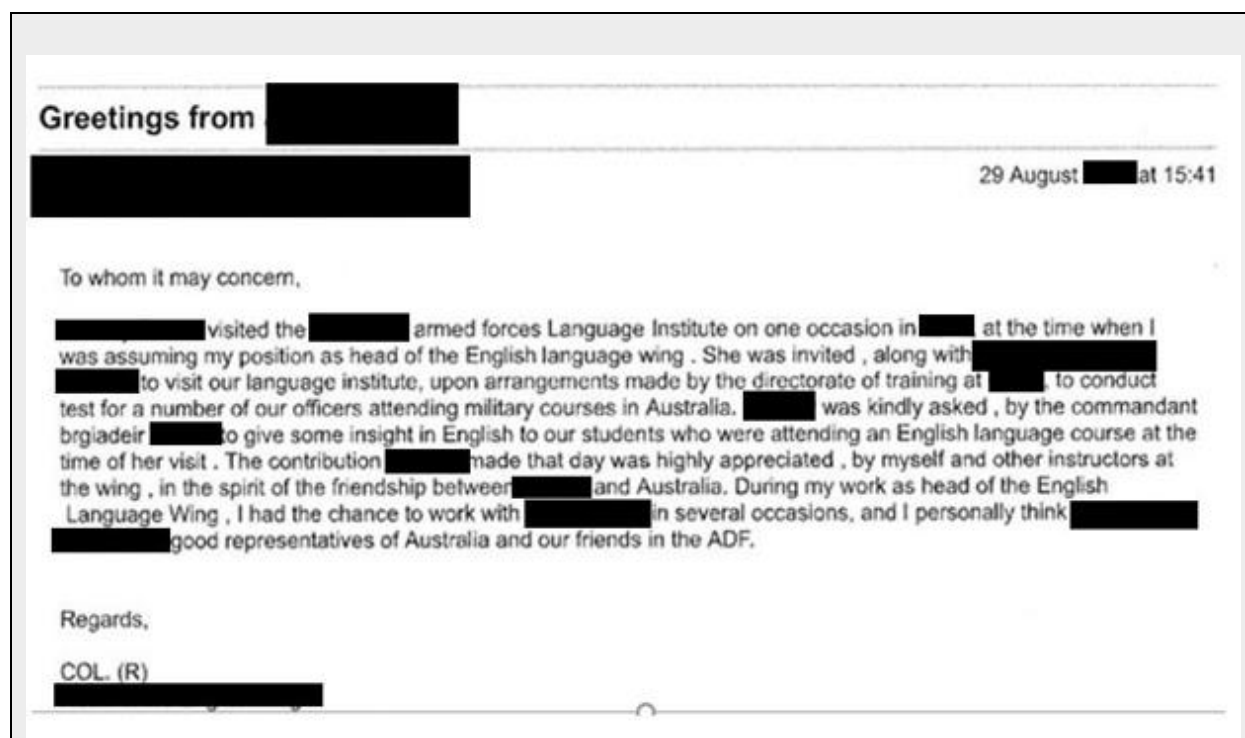
*“Regrettably [REDACTED] displayed a serious lapse of judgement when he [REDACTED] to [REDACTED] on [REDACTED] visit to the [REDACTED]. While the [REDACTED] were very gallant in welcoming her, her presence reflected very poorly on the ADF. The problem was compounded when he subsequently visited [REDACTED] HQ and, when his counterparts realised [REDACTED] was in the car, they displayed their traditional hospitality and invited her into the Headquarters. This scenario should never have arisen.”*

To my further humiliation and dismay, I discovered that not only had my husband’s superior discussed my visit to the Military Language Academy in a negative light with other Australian Embassy Officials in that country, and Embassy staff in the country we were located, but also with other official parties. Despite my efforts to expunge these damaging allegations from Defence records, the Army, in their response, attempted to downplay the impact of these comments by claiming that they were not intended as a criticism. However, I strongly believed that the dissemination of such negative remarks about me would undoubtedly lead any reasonable person, devoid of any prior knowledge of the events, to form a less favourable opinion of me.

I sought support and evidence from various sources. Fortunately, the Commandant of the Military Language Academy graciously provided me with a copy of an email, serving as a testament to counter the inappropriate and unjust slurs made against us. The email not only sheds light on the inaccuracies and falsehoods propagated about my visit, but it also highlights the unwarranted and undeserved damage inflicted upon my professional standing. By presenting this email as evidence, I aimed to challenge the unfounded allegations and restore my credibility within the military community.

(Refer to email on the next page)





At the very least, I believe that I deserved to receive a sincere apology for the ordeal I went through. It was not just a matter of seeking reassurances, but rather a matter of seeking justice and accountability. I persisted in my efforts to ensure that all erroneous comments and false accusations pertaining to me were completely expunged from the official military records. Unfortunately, my pleas for this crucial step towards rectification were met with denial. In addition to seeking the removal of false information about me, I also sought access to documents that referred to me under the Freedom of Information Act. This was an important step in my pursuit of truth and transparency. To my dismay, when I finally obtained the documents, I discovered that a staggering 98-99% of the content had been entirely blacked out and redacted. It was disheartening to realise that the information I sought was deliberately withheld from me, further obstructing my path to resolution.

Throughout this distressing process, I made repeated appeals to the respective service Chiefs, hoping to find some semblance of understanding and justice. However, their responses only served to compound my disillusionment. I was told repeatedly that the Inquiry Officer had conducted the inquiry in an appropriate and transparent manner, and that there was sufficient evidence to support their findings. Yet, I cannot help but question the veracity of such statements when the allegations made against me were not only inappropriate, but also blatantly violated ADF reporting processes. The emotional trauma inflicted upon me [and my husband] as a result of this ordeal was profound, leading to considerable distress that required professional counselling to prevent the onset of anxiety, depression, and an overwhelming sense of violation.

Driven by a deep sense of responsibility and a desire to prevent other ADF spouses from enduring similar levels of abuse and injustice, I made the decision to take further action. I strongly advocated for these matters to be referred to a Senate Inquiry, recognising the need for a thorough and independent examination of the systemic issues at play.

In my pursuit of justice, I wrote a heartfelt appeal to the then Minister of Defence. I hoped to secure his support in initiating the necessary steps to rectify the wrongs inflicted upon me [and my husband] to prevent future occurrences of such egregious misconduct to other spouses.

Senator the Honourable Christopher Pyne  
PO Box 6100  
Senate Parliament House  
Canberra ACT 2600

22 August [REDACTED]

Re: Letter to Minister of Defence – [REDACTED] Spouse Complaint [REDACTED]

Recently I received correspondence [REDACTED], from Mr. Robert Curtin, Chief of Staff for the Hon Darren Chester in response to a complaint I submitted to the Senator the Hon Marise Payne, former Minister for Defence regarding a flawed Army Inquiry. My complaint was that false allegations were made about me in my husband's Performance Appraisal Report, and this was used as evidence in an Inquiry report of [REDACTED] raised by my husband [REDACTED]

In light of your recent appointment, I wish to bring these matters to your attention as it is my opinion that Defence has acted inappropriately towards me as an Australian citizen and civilian.

False and unsubstantiated allegations were made about me by an Army [REDACTED] officer in my husband's Performance Appraisal Report 2012. Defence has not provided any justification that would reasonably support their claim that the allegation about me were in any way accurate or appropriate. The Inquiry officer ignored counter evidence I provided to the false allegation contained in the PAR. The fact that allegations were made about me and used by the Army [REDACTED] officer in an attempt to discredit my husband in his Performance Appraisal Report is not only extraordinarily wrong, but it is in violation of Defence Policy.

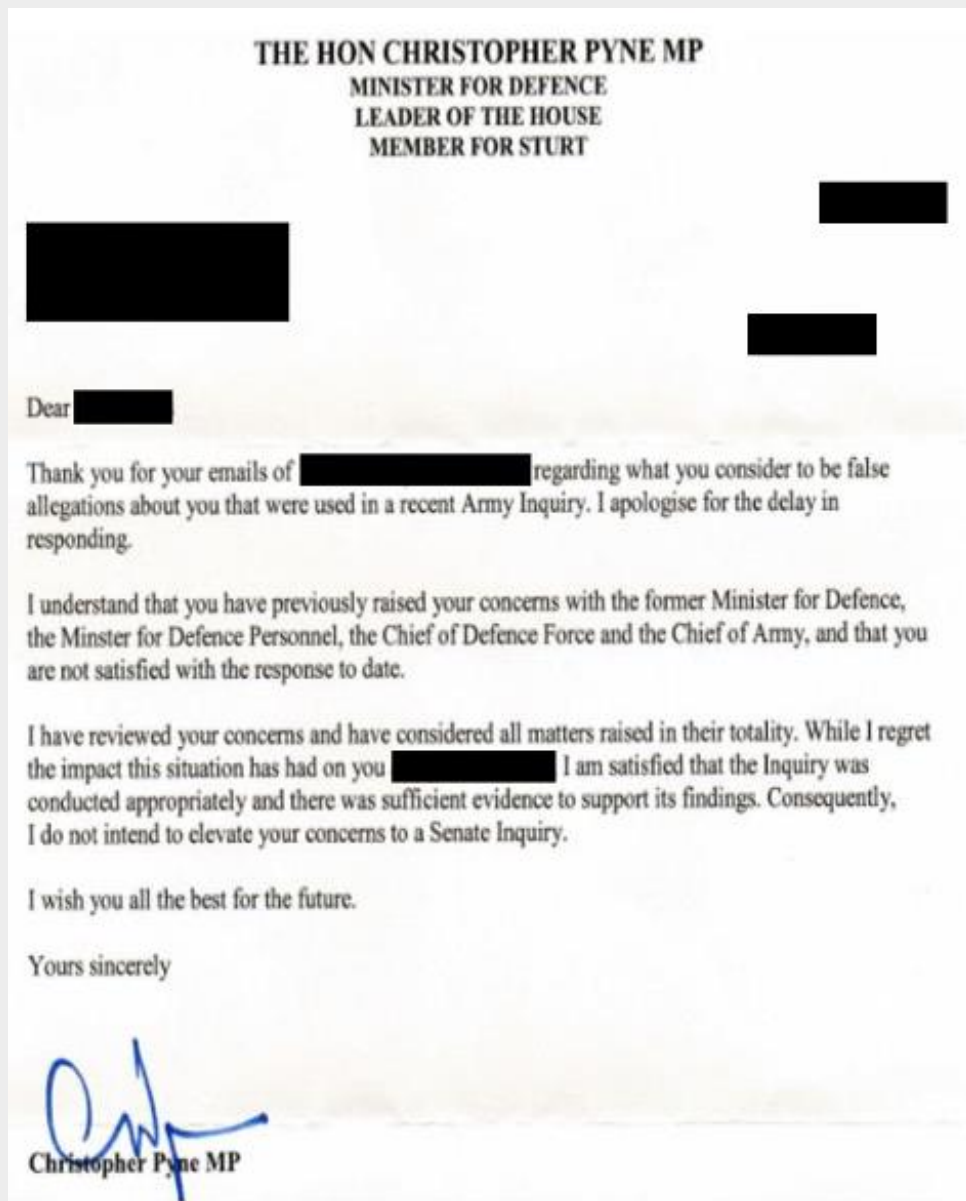
It was upheld by the Inquiry Officer that the Army officer deliberately strategised to avoid writing my husband's Performance Appraisal Report 2012 and 2013. This evidences that correct procedures were not followed in accordance with Defence Policy as it was claimed by Chief of Army and Chief of the Defence Force. Refusing to follow mandatory Defence procedures is unacceptable behaviour and yet no corrective action was taken to remedy the detriment to me or to my husband. As you are aware, the law requires that all persons are equal before the law and are entitled without any discrimination to equal protection of the law. Scandalous and false allegations were made to the Inquiry officer which we were not given an opportunity to respond to or present arguments against, and that demonstrates that we were denied procedural unfairness and natural justice.

I contend that both Offices of the Commonwealth Ombudsman and the Defence Minister have taken Army's version of events without considering all the matters in totality. The Army Inquiry was not only flawed but unlawful. Given the seriousness of these matters and the overwhelming evidence we are able to present to ensure an honest and accurate account of the matters, I respectfully request that they be elevated to a Senate Inquiry.

I look forward to your response.

Regards,  
[REDACTED]

The Minister's letter defended the position of Defence even though there was evidence contradicting their findings.



How could the Minister be fully satisfied and confident that the Inquiry was conducted appropriately, in light of the evidence presented to him? This particular example serves as a compelling illustration, highlighting the potential for ADF families to endure the unfortunate consequences of unsuccessful Inquiry Officer Inquiries. It underscores the significance of ensuring that all aspects of the inquiry process are conducted effectively and fairly, so as to uphold the principles of justice and provide proper recourse for those affected.

Even now, these events evoke strong emotions in me [and my husband] and overshadow our ability to fully appreciate and celebrate our family's lengthy and outstanding contributions to the ADF over the past four decades.