



**THE HON PETER DUTTON MP  
MINISTER FOR DEFENCE**

Ref No: MC21-000364

Mr Ken O'Dowd MP  
Chair  
Standing Committee on Petitions  
Parliament House  
CANBERRA ACT 2600

Dear <sup>Ken</sup> Mr O'Dowd

Thank you for your correspondence of 15 February 2021 to the former Minister for Defence, Senator the Hon Linda Reynolds CSC, concerning Petition EN2256 - Reforms to the Redress of Grievance and Defence inquiry processes.

The welfare of Australian Defence Force (ADF) personnel and their families is of paramount concern to me and Defence leadership. I recognise that complaint and inquiry processes can be challenging. The Department of Defence and other agencies provide current and former ADF personnel and their families a range of assistance including mental health, medical, legal, pastoral and social work services.

I am committed to ensuring that Defence has a fair, equitable and efficient military justice system that resolves issues in a manner that is timely and sensitive to the welfare of members of the ADF and other people affected by military justice processes. It must also provide the right balance between individual rights, the maintenance of military discipline and operational effectiveness.

In the last seven years Defence has progressed significant reforms to improve the management of incidents, administrative inquiry processes and the redress of grievance system. These reforms address the issues raised in the petition.

On 8 November 2011, Defence commissioned a review of all inquiry, investigation, review and audit systems, processes and structures across Defence. The *Re-Thinking Systems of Inquiry, Investigation, Review and Audit* report looked holistically at arrangements across all of Defence's ADF, APS and integrated workplaces, and proposed models for reform from a 'first principles' perspective.

Key reforms since 2014 have:

- simplified incident reporting arrangements for commanders and managers and provided a single system for reporting incidents
- provided commanders and managers with flexible options for fact finding that are adaptable to the circumstances and in proportion to the scale of issues under consideration
- removed unnecessary formality and complexity from decision-making, empowering commanders and managers to apply judgment, manage risk, and be accountable for their decisions
- formalised training, overseen by the Military Law Centre, for staff who conduct fact finding and statutory inquiries
- enhanced the independence of the Inspector-General of the ADF (IGADF) from the ordinary chain of command through legislative reform
- transformed the redress of grievance process into a more streamlined process overseen by the independent IGADF
- transferred responsibility for inquiry into Service-related deaths to the IGADF.

The reforms outlined above have resulted in more timely decision-making, less complexity and formality in most cases, reduced timelines for resolution of redress of grievance, and provided greater oversight and accountability. For example, the total average time take to finalise grievances is now 85 days (with a median of 63 days), compared to an average time, prior to 2016, of 116 days at the unit level, 498 days at the first level of review by a Service Chief, and 818 days at second level of review by the Chief of Defence Force.

Defence values mediation as a mechanism to resolve workplace complaints, recognising that early intervention strategies empower individuals to proactively work toward resolution at the lowest appropriate level. A range of dispute resolution options are available to all Defence personnel, regardless of ADF rank, employee classification or contractor status.

Readily accessible support and guidance is offered through qualified and extensively trained alternative dispute practitioners and a comprehensive network of workplace behaviour advisors located across Australia to foster early resolution of disputes and effective management of complaints. Alternative dispute resolution options include:

- Interactive Problem Solving
- Conflict Coaching
- Facilitated Conversation
- Mediation
- Group Facilitation

Defence is currently trialling a new approach, through the Improved Complaint Handling Trial, to ensure that commanders and individuals are supported and encouraged to consider alternative resolution options early in the complaints process.

Defence is a large and complex organisation that conducts a wide range of activities and Defence commanders and managers receive and deal with thousands of Incident Reports each year. For the vast majority of incidents, Defence commanders and managers undertake routine fact finding activities to support their decision-making and manage incidents.

For a small number of more complex incidents, the commander may appoint a statutory inquiry, such as an Inquiry Officer Inquiry, under the *Defence (Inquiry) Regulations 2018* (the regulations). For example, 25 Inquiry Officer Inquiries were commenced or completed in the financial year 2019-2020. The majority of these inquiries were completed within six months.

The purpose of an administrative inquiry is to facilitate the making of decisions relating to the Defence Force by providing accurate, reliable and timely information. Consistent with the practice of Commonwealth administrative tribunals and inquiries, Defence statutory inquiries are not bound by the rules of evidence, legal forms or technicalities. The regulations specify that inquiries must be conducted fairly and comply with rules of procedural fairness. All inquiry reports are subject to mandatory legal review before submission to the appointing authority.

The regulations contain both protections and obligations for witnesses. Witnesses who give evidence before a Defence inquiry are protected against reprisals, liability in civil proceedings and self-incrimination. These protections are important as witnesses are under an obligation to answer questions. However, the regulations also make it an offence to give false evidence to a Defence inquiry, and evidence given by a witness can be used in a prosecution for giving false testimony. Witness testimony is rarely, if ever, subject to legal professional privilege. It is in the public interest to provide witnesses with these protections, as a balance against the obligation to answer questions, and to facilitate the ability of Defence to obtain information on serious, sensitive or complex matters.

The military justice system is overseen by the IGADF, a statutorily appointed position established by the *Defence Act 1903*, empowered to inquire into matters concerning the Defence Force, including the military justice system and deaths of ADF members. The IGADF independently exposes and examines failures and flaws in the military justice system. ADF members can make submissions to the IGADF about any matter relating to military justice. Accordingly, complaints regarding Defence statutory inquiries can be raised with the IGADF. The IGADF also directly oversees the redress of grievance system, through which an ADF member can complain about matters affecting their service in the ADF.

Further, the Defence Force Ombudsman, who is not part of the Department of Defence, is also empowered to investigate complaints about actions and decisions of Defence arising from present or past service. Ordinarily, the Defence Force Ombudsman will investigate a complaint where internal review mechanisms have

been exhausted. As an example of the improvements made by Defence in managing applications for redress of grievance, since 2016 complaints to the Defence Force Ombudsman relating to delays in resolving redress of grievance have markedly declined.

Defence is continuing to implement important programs to enhance our military justice system. Key ongoing initiatives include:

- Enhancing assurance of the military justice system, setting baseline requirements against which assurance monitoring is conducted, and seeking process and efficiency improvements across the military justice system.
- Progressing (through the Defence Enterprise Resource Planning Program) the development of a simplified, integrated and standardised enterprise case management system for entering, tracking, resolving and reporting personnel related incidents and cases relating to integrity, legal and audit matters. This capability will enhance the collection of relevant and targeted metrics to support the continuous monitoring and improvement of the military justice system.
- Expanding the Improved Complaint Handling Trial to support resolution of complaints at the lowest appropriate level.
- Updating the Administrative Inquiries Manual to further embed reforms to Defence inquiries, emphasising timeliness and support to persons impacted by inquiries.

These comprehensive and methodical reforms have enhanced the military justice system so that it is more equitable and timely, with appropriate checks and balances in place to maintain effective discipline and operational effectiveness, while safeguarding rights and remaining sensitive to individual welfare.

The recent reforms are ongoing and the matters raised in Petition EN2256 are noted in that context. I thank you for bringing it to my attention.

Yours sincerely

PETER DUTTON

11/05/21