

SUBMISSION

Dated: Thursday, 18 November 2021

Royal Commission into Defence and Veteran Suicide

This submission reflects a critical analysis of maladministration in the Australian Defence Force (ADF) and the potential to expose Defence members and Veterans to suicide risk, self-harm and reputational harm.

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About the Authors

The principal author of this submission is Dr Kay Danes OAM—a human rights advocate who has a PhD (Law & Justice), a Master of Human Rights, post-graduate and other professional accreditations in human rights, dispute resolution, and business administration. Kay is a senior human rights advocate at GAP Veteran & Legal Services. Her presentation to the *Defence and Veteran Suicide Prevention Through Understanding Symposium* significantly raised awareness for ADF workplace reforms. In this, Kay argued that if ADF workplace reforms do not keep pace with the rising number of complaints submitted by serving members through the Chain of Command, then Defence members will continue to carry unresolved grievances into life beyond service. This lack of professionalisation in the ADF impacts the organisation's efforts to realistically reduce legal redress claims, suicide risk and self-harm, which arguably will continue to plague the Defence and Veteran community.

Kay has a long history working in Defence and Veteran communities having served on a range of boards since the early 1980s when many of the welfare and support services that exist today were founded. Among those appointments, Kay was the former President of the Army Families Association (WA) Inc, providing support to over 2000 Defence families in West Australia, the founding President of the 1st Commando Regiment Auxiliary, an Ambassador for the Stand Tall for PTS Charity, and more recently an administrator of the Special Air Service Regiment (SASR) Veterans and Families Social Group. Kay has also supported critical training development where her direct involvement led to the development of an in-house training program (Hostage—Survive with Dignity), designed specifically for all Australian Defence Force personnel deploying on operations overseas. Kay is also married to WO1 Kerry Danes, CSM—a 43-year ADF Veteran who served predominately with SASR and Special Operations Command (SOCOMD).

Contributing to this submission is Major (Retd) Glenn Kolomeitz—a former Army officer and veteran of the conflicts in Timor Leste and Afghanistan, a former NSW Police officer with experience in coronial investigations and counterterrorism, and a former defence policy adviser. Glenn is also a director of *GAPLS*, where he specialises in immigration law, public international law, criminal law and appellate administrative law. In addition to undergraduate law, policing, and intelligence analysis degrees, Glenn has postgraduate degrees in international law, defence studies, military law, strategic intelligence, fraud and financial crime investigation, investigation management, and business administration. He is presently writing his doctoral thesis on command responsibility for war crimes.

Also contributing to this submission as a Veteran Adviser is Warrant Officer Class One (Retd) Kerry Danes, CSM, a retired SASR Veteran with over 43 years' service with the ADF. He has deployed numerous times to several ADF operational theatres, including Afghanistan, where he deployed in varying roles and twice as a Regimental Sergeant Major (RSM) of two Special Operation Task Group rotations. Throughout his career, Kerry Danes specialised in counterterrorism, hostage rescue and crisis continuity planning in extreme environments.

GAP Veteran & Legal Services, including its commercial legal entity, *GAP Legal Pty Ltd* (trading as *GAP Legal Services*, to be referred to as *GAPLS* throughout this document), and its subsidiary human resources arm, *GAP Resource Management*, is a veteran-owned and operated, a multidisciplinary firm serving veterans and their families. *GAP* is headquartered in Canberra and has an office in Sydney.

Terms of Reference

In preparing this submission for the Royal Commission into Defence and Veteran Suicide, the focus meets the requirements of the Terms of Reference. Specifically, to inquire into the following areas:

- analysis of the contributing risk factors relevant to Defence and Veteran death by suicide, including the possible contribution of service (including training and deployments).
- the manner and extent to which information about the Defence member or Veteran is held by and shared within and between different government entities (i.e., the ADF, IGADF, Commonwealth Ombudsman etc.).
- the reporting and recording of information relevant to Defence members and Veterans during and after service that impacts mental health (i.e., career management records, findings of Defence Inquiries, communications between the member and the Chain of Command etc.).
- the impact of culture within the ADF on Defence members' and Veterans' physical and mental wellbeing (i.e., maladministration, a duty of care etc.).
- systemic issues in the engagement with families and others (i.e., the treatment of family members during matters relating to the Defence member or Veteran).
- the legislative and policy frameworks administered by the ADF that are relevant to Defence members and Veterans' lived experience of suicide behaviour or risk factors (i.e., specific inequities in policy and failure to follow ADF directives etc.).
- systemic risk factors contributing to Defence and Veteran suicide risk, including defence members' and veterans' social or family contexts.
- specific employment issues for Defence members and Veterans.
- Defence members' and Veterans' economic and financial circumstances (i.e., detriments in the workplace carrying into pension phase).

*The term ADF and Defence are used interchangeably.

Methodology

This submission is based on a qualitative analysis of the lived experiences of Defence members and Veterans of the ADF. The information gathered from more recent consultative sessions with Defence members and Veterans is informed by individual discussions and confidential written material. Information gathered from these consultations has been de-identified, and confidentiality has been strictly maintained. During the consultation process, various incidents of alleged unacceptable behaviour were raised. Only a few case studies have been included in this submission because of the limited time available to compile detailed studies. However, the findings reflect a common theme as to the prevalence of maladministration described by participants. The examination and analysis of those matters also align with similar complaints that are evidenced in the existing literature.

Opening Remarks

This discussion demands a fearless approach and is intended to draw attention to areas of discussion that remain unresolved and, because of this, create irrevocable harm to Defence members outside of an operational environment.¹ This submission upholds that if ADF workplace reforms do not keep pace with the rising number of complaints submitted by serving members through the Chain of Command, then Defence members will continue to carry unresolved grievances into life beyond service. This lack of professionalisation in the ADF impacts the organisation's efforts to realistically reduce legal redress claims, suicide risk and self-harm, which arguably will continue to plague the Defence and Veteran community.

More narrowly, this submission focuses on some of the systemic risk factors that relate to employment detriments caused by the prevalence of maladministration. Arguably, no other Commonwealth entity has such a complex framework to deal with maladministration.² But past reviews continue to fall short of truly affording Defence members a duty of care when incidents in the ADF workplace occur. Significant inequities continue to deny Defence members access to procedural fairness as a fundamental principle of the rule of law.³

In Australia, the right to 'due process' or procedural fairness is not constitutionally guaranteed. Although, at the federal level, the Administrative Decisions (Judicial Review) Act 1977 (Cth)⁴ requires that administrators observe the principle of natural justice. In that context, the Act provides a right to review, which is one aspect of procedural fairness. Therefore, adhering to ADF policies and directives should reassure its workforce access to *procedurally fair* decisions whenever disputes arise, and especially since the *Defence Force Discipline Act 1982* states that Directives and Policies are General Orders that must be adhered to by all ranks, and to do otherwise is a chargeable offence in '*Failing to comply with a general order.*' Moreover, ADF policy instructs that whenever a complaint is raised, it should be managed early and well. Unfortunately, the research shows many complaints take years to resolve if resolved at all.⁵

Hence, more needs to be done to help Defence members resolve grievances at the unit level before their matters escalate to become complex inquiries. The Defence Inquiry process should not be part of the problem; it should be part of the solution—it should resolve issues, not create them. Unfortunately, this is not always the case. It is commonly seen in practice that the ADF can utilise an abundance of human, legal and financial taxpayer resources to minimise liability to itself as an organisation. Moreover, the legal profession is concerned that Defence members will eventually be stopped altogether from accessing legal representation of their choosing. Pursuant to a 2020 Chief of Defence Force Directive,⁶ serving or former Defence members seeking judicial review of administrative decisions are not permitted to access lawyers of their choosing if those lawyers happen to be ADF Reservists of any variety. An application can be

¹Department of Defence. 'Pathway to Change: Evolving Defence Culture.' 2012.

https://www.defence.gov.au/pathwaytochange/_Master/Docs/120410-Pathway-to-Change-Evolving-Defence-Culture-web-version.pdf

² Robyn Creyke, '*Military Administrative Inquiries*,' Commonwealth Ombudsman, <<https://www.ombudsman.gov.au/what-we-do/education-events-and-resources/defence-watchdogs-seminar/military-administrative-inquiries>>.

³ United Nations, *Access to Justice—United Nations and the Rule of Law*, <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>, (2021)

⁴ Australian Government, *Federal Register of Legislation, Administrative Decisions (Judicial Review) Act 1977 (Cth)*.

⁵ Ben Wadham and Deborah Morris, 'Enough inquiries that go nowhere – it's time for a royal commission into veteran suicide,' (The Conversation, 2019) <<http://theconversation.com/enough-inquiries-that-go-nowhere-its-time-for-a-royal-commission-into-veteran-suicide-119599>>.

⁶ Department of Defence, *Joint Directive 03/2020 by Chief of the Defence Force and Secretary, Department of Defence: Management of Conflicts of Duty-ADF Members Who Are Also Legal Practitioners* (EC20-000702, 13 March 2020).

made to Defence Legal for an exemption from this policy, but anecdotal evidence indicates this further administrative process deters such action. The Defence Legal Officer may also be reluctant to represent an affected member because they may fear reprisal and loss of potential earnings from the ADF.

Any lawyer who has acted for a Defence member or Veteran in a defective administration case or fighting ‘weaponised’ administrative processes is fully aware that the ADF is far from the ‘model litigant.’ The case of *Randall v Chief of Defence Force* serves to confirm this whereby the Interlocutory judgment of the Federal Court of Australia (17 September 2020) showed that even though a Defence member was found guilty before a Court Martial, and those convictions were overturned on appeal before a Defence Force Discipline Appeals Tribunal (DFDAT), the ADF still pursued the matters by issuing an administrative termination notice to the member.⁷ The ADF is prepared to fight technical arguments in a bid to wear their victims down and then concede at the last minute with a view to settlement. The ADF will go to extraordinary lengths to fight cases they really should not be fighting, employing the common tactic to brief a battery of lawyers, including senior counsel to fight cases with a view to scaring victims away from proceeding to trial, and to have enormous costs awarded against them. This is reminiscent of strong-arm tactics that have disastrous outcomes in terms of the mental health of victims.

The questions that remain for the Head of Defence Legal and the Chief of Defence Force (CDF) are:

- How many Defence members and Veterans have committed suicide or developed self-harming behaviours while Redress of Grievance Complaints or Defence Inquiry findings are pending?
 - Will CDF commit to implementing ALL the recommendations of the Royal Commission as he did with the Brereton Inquiry?
 - How much do Australian taxpayers spend each year in Defence Legal costs against claims by Defence members and Veterans?
 - How much has the ADF paid out in settlements to victims of ADF abuse and gross maladministration?
 - When will Defence Legal begin behaving like a model litigant, and what steps will the Minister of Defence enact to ensure perpetrators and enablers of abuse at the highest levels are appropriately held to account?
- Examples:
- Legislative instruments by way of ADF directives and policies govern Commander’s conduct, in accordance with the Government’s intent, and yet the Government does not hold Commanders to account for failing to comply with these legislative instruments, particularly when ADF directives and policies are Orders which must be adhered to by all ranks, in accordance with the Australian *Defence Force Discipline Act 1982* (DFDA). The DFDA offence is “failing to comply with a general order.”
 - ADF provides selected and inaccurate information to senior Government Officials, which prevents Defence members from accessing natural justice. (The Case studies in this submission show the Defence Minister, IGADF and Defence Ombudsman default to the ADF findings in spite of compelling legal evidence.
 - Why does the ADF deem it necessary to redact documentation to such an extent that even the affected member is not given disclosure in order to defend what could

⁷ [2020] FCA 1327 (17 September 2020).

be flawed evidence? Is that undertaking driven by incompetence, or is the ADF engaged in “deliberate obfuscation and contrived secrecy?”⁸

After decades of inquiries into a culture of abuse and gross maladministration in the ADF, we are yet to see the perpetrators and enablers of the abuse at the highest levels held to account. As long as the abusers continue to climb the rungs of the ADF career ladder or get parachuted into senior public service jobs, the abused will never obtain natural justice.

Arguably, neither truth nor reconciliation is achieved from Defence Inquiries. It is time for the Defence Minister to agree to release Volume 2 of the DLA Piper Report into Defence Abuse⁹ so the public and, importantly, the victims can see how many perpetrators and their enabling lawyers and other accessories-after-the-fact have remained and prospered in the ADF or the public service. It may also be a means by which some of Australia’s surplus generals are disposed of.

The report by the National Commissioner of Defence and Veteran Suicide Prevention, Dr Bernadette Boss, contained thirty-nine recommendations, including one that seeks to establish funding to promote a free Veterans’ National Legal Service and Veteran’s National Legal Helpline.¹⁰ If upheld, this type of service could have the potential to level the playing field for many Defence members who have been impacted by institutional abuse as the high rate of suicide risk is not simply combat-related, according to research.¹¹

Many Defence members have been and continue to be impacted by maladministration because there is no corrective action or reparation policy in place in the ADF to restore the affected member to their former professional status when adverse actions are not upheld. The mechanism created to ‘fix’ military injustice and address ADF maladministration – the Inspector General of the ADF (IGADF) – is said to be so corrupted and beholden to the senior command that it merely serves to exacerbate the abuse and allow the senior ADF leadership to hide behind a façade of ‘independent’ oversight and review. The IGADF is a construct made up of Defence members who are subordinate to the CDF and Service Chiefs and who rely on them to manage and recommend their career advancement. The IGADF is simply a mechanism by which the ADF can *mark its own homework*. Hence why a review of the percentage of IGADF decisions purportedly review the outcomes of internal administrative inquiries in favour of the ADF chain of command. Defence members are subsequently forced to seek compensation for detriment caused by defective administration, those who have the mental stamina to undertake that complex process. But Defence Legal or its private legal panel firms rely on the outcomes of IGADF reviews of internal inquiries and/or adverse administrative action to rebut claims of defective administrative or, at the very least, diminish the quantum of ‘damages’ sought.

But whilst the Scheme for Compensation for Detriment caused by Defective Administration (CDDA) offers advice below on reparation, it actually only has the capacity to deliver compensation, at best:

⁸ Hugh Poate, ‘Senate Committee Inquiry into Australia’s Engagement in Afghanistan Submission by Hugh Poate,’ *Parliament of Australia* (21 October 2021) <file:///C:/Users/the_d/Downloads/Sub57%20Poate.pdf>.

⁹ Parliament of Australia, ‘Report of the DLA Piper Review and the government’s response,’ *Commonwealth of Australia*, 2013 <

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed_inquiries/2010-13/dlapiper/report/index >.

¹⁰ Dr Bernadette Boss, ‘Preliminary Interim Report,’ (Interim National Commissioner for Defence and Veteran Suicide Prevention) <<https://www.nationalcommissionerdrvsp.gov.au/our-work/independent-review-past-defence-and-veteran-suicides>>.

¹¹ Ben Wadham and Deborah Morris, ‘Enough inquiries that go nowhere – it’s time for a royal commission into veteran suicide,’ (The Conversation, 2019) <<http://theconversation.com/enough-inquiries-that-go-nowhere-its-time-for-a-royal-commission-into-veteran-suicide-119599>>.

If an entity's defective administration is found to have resulted in a claimant suffering detriment, the overarching principle to be used in determining an appropriate level of compensation for a claimant is to restore the claimant to the position they would have been in had defective administration not occurred.¹²

Most members want justice, not money. This is why the recommendations by Dr Bernadette Boss are so critical and should also inform the Royal Commission into Defence and Veteran Suicide Risk. It is wrong to subject any person to *any* form of inquiry where they are denied procedural fairness and equal opportunity to appropriately defend themselves or to strip away that person's dignity and fair hearing rights. This is a fundamental breach of the rights of anyone accused in the Australian justice system, as it should be in the ADF.

Past findings of Senate Committee investigations into ADF administrative failings have shown incidents where witnesses have deliberately provided false information, false accusations and misleading statements to Defence Inquiry Officers.¹³ This flies in the face of natural justice and arguably, suggests that those who fail to adhere to Government-mandated directives and policies, as required by the *Defence Force Discipline Act 1982* (DFDA),¹⁴ should be *personally liable* for the injury their actions inevitably cause. It is, after all, mandated that all ADF personnel are obliged to comply with *general orders* which align with Commonwealth law so that the DFDA may not impair civilian jurisdiction. Therefore, and as the High Court has ruled previously in the case *Private R v Cowen*, all Defence members are subject to the same litigation procedures and penalties as civilians.¹⁵ This includes where Defence members have been denied not only the right to know of an allegation or access the evidence supporting an allegation—but even to the extent that investigations were carried out without their knowledge.¹⁶

The recommendations for ADF reforms are a step in the right direction, but those reforms are urgent because lives and reputations are currently at risk. The Royal Commission will only succeed if it looks deeply and honestly into the cultural and procedural problems in the ADF, including systemic abuse, maladministration, cover-ups, and the current culture of ADF weaponising administration and psychological assessments against Defence members.¹⁷ Those who hold power in the ADF need to be made to respect the rule of law and to show some empathy for others who are adversely impacted by what could be perceived as unscrupulous leadership decisions.

ADF reforms must focus on minimising and preventing inequities that cause moral trauma in service. That includes addressing current policy that encumbers the administrative system from improving ADF best practices that will advance the present culture towards a fairer, more just and mentally robust organisation.

¹² Australian Government, 'Scheme for Compensation for Detriment caused by Defective Administration,' (Department of Finance, 2021) [68] <<https://www.finance.gov.au/publications/resource-management-guides/scheme-compensation-detriment-caused-defective-administration-rmg-409#part-1-the-cdda-scheme>>.

¹³ Senator D J MacGibbon, 'Report on Military Justice Procedures in the Australian Defence Force,' (Administrative Action, 2011) Inquiry into the Review of the Defence Annual Report 2011-2012. *Parliament of Australia*, <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/jfadt/military/MJ_ch_5>.

¹⁴ Defence Force Discipline Act 1982, <<https://www.legislation.gov.au/Details/C2016C00811>>.

¹⁵ *Private R v Cowen* [2020] HCA 31, <<https://eresources.hcourt.gov.au/showCase/2020/HCA/31>>.

¹⁶ Commonwealth of Australia, (2005). The effectiveness of Australia's military justice system. 16 June 2005. administrative system—Investigations. [8] ISBN 0 642 71424 X.

¹⁷ Glenn Kolomeitz and Arthur Rorris, 2020, 'A fish rots from the head: why is ADF top brass still here?' 4 December 2020, <<https://www.illawarramercury.com.au/story/7041628/a-fish-rots-from-the-head-why-is-armys-top-brass-still-here/>>.

Recommended Reading

The following publications and enclosures support this submission:

Danes, K. 2021, 'Pleading Positive Reform: An analysis of suicide risk, self-harm, and reputational peril impacting serving Australian Defence Force (ADF) members.'

ENCLOSURE A: DEFENCE INQUIRY INEQUITIES

ENCLOSURE B: Case Study1 —AFFECTED ADF MEMBER

Annexure to Enclosure B: FALSE ASSERTIONS TO SWO PAC

ENCLOSURE C: Case Study 2—AFFECTED ADF SPOUSE

ENCLOSURE D: Case Study 3— AFFECTED ARMY RESERVIST

ENCLOSURE E: Case Study 4— AFFECTED ADF SAFETY AND GOVERNANCE OFFICER

ENCLOSURE F: ADF MEMBERS RESPONSES TO IGADF SHOW-CAUSE NOTICES

Other Relevant Publications

Danes, Kay. 2021. ['Stand Tall for ADF PTS Reforms.'](#)

Danes, Kay. 2020. ['How dare the ADF Leadership tarnish our 1st Commando Regiment.'](#)

Danes, Kay. 2020. ['Defence Lives Matter... call for Senate Inquiry' CLArion.'](#)

Danes, Kay. 2019. ['Army 'Regs' lead to institutional abuse by Defence' CLArion.'](#)

Danes, Kay. 2018. ['Command Failings that are defence-less' CLArion.'](#)

Danes, Kay. 2016. ['The Moral Ethic of ADF Employment Rights,' CLArion.'](#)

Hanscombe, John, 2020. ['Gerroa lawyer Glenn Kolomeitz blasts Defence culture in wake of war crimes report.'](#)

Kolomeitz, Glenn and Rorris, Arthur, 2020. ['A fish rots from the head: why is ADF top brass still here?'](#)

Summary of Recommendations

The recommendations from former, current or future inquiries associated with Defence and Veteran suicide should be upheld and implemented immediately to safeguard Defence members and Veterans from the risk of suicide and self-harm, namely recommendations from the Preliminary Interim Report: Interim National Commissioner for Defence and Veteran Suicide Prevention (the Preliminary Interim Report) 2021. In particular:

- Establish funding for the promotion of a free Defence and Veterans' National Legal Service and National Legal Helpline.
- Appoint welfare officers and peer-support workers in each unit (independent of the Command) to support those who may be at risk of suffering a career detriment because of defective administration.

More detailed recommendations arising from this submission:

- CDF should commit to implementing all recommendations from the Royal Commission into Defence and Veteran Suicide, as he was quick to do following the Brereton Inquiry.
- The chain of command directly influences how matters are investigated. Defence members charged with presiding over Defence Inquiries are not sufficiently independent. The ADF must be made to ensure the independence and impartiality of the Defence Inquiry process.
- Frequently, the complainant who initiated the Defence Inquiry process is not informed of evidence raised against them and are victimised by Defence. This practice prevents Defence members from defending themselves against maladministration. The focus of the inquiry becomes disproportionately focused on the flaws of the complainant. Full disclosure of evidence obtained throughout a Defence Inquiry should be made available to all parties. This would ensure reliable and robust evidence is relied upon in making critical decisions that could result in a detriment to a party. The Royal Commission must look at that lack of transparency and the culture of ADF *weaponising administration* against its own members.
- Many submissions draw on lived experiences. It is our expectation that a large number of similar concerns to those raised in this submission will not be heard by the Royal Commission because of caveats imposed under the Defence Inquiry Regulations and, indeed, under the Defence administrative inquiry processes more broadly which prevent Defence members from openly discussing their personal matters pertaining to maladministration or other injustices faced in service. This limitation is aggravated by the non-disclosure caveats attached to discretionary settlements under discretionary compensation schemes including the CDDA scheme. If the Royal Commission were to consider these limitations and imposed obstacles, and subsequently enable Defence members and veterans an opportunity to fully disclose the true nature and extent of grievances, many more Defence members and veterans would likely have the confidence to come forward. This would thus provide a more accurate and complete picture of the challenges faced by Defence members and veterans in the course of their service.

Reform ADF Conflict Resolution Practices

The ADF would benefit greatly by re-enforcing the need for its leadership to adhere to all its Directives and Policies in accordance with the DFDA's mandated legal intent.

- In many instances, Inquiry Officers are selected from within an affected Headquarters, Corps or Service and are, therefore, not independent. To eliminate bias during Defence Inquiries, the Inquiry Officers should be selected from outside the affected Headquarters, Corps or Service, which could reduce the potential risk of maladministration.
- Put in place a consolidated, independent and professional investigative service to afford Defence members a duty of care. This can be achieved by the provision of Inquiry Officers who are military police or persons who have undertaken training courses to qualify them to investigate offences and manage investigations. Appoint reservists from the civilian police force to resolve the shortfall in inexperienced Inquiry Officers and to increase the professionalism of investigators, their exposure to personnel who have considerable expertise and skills in civilian police practice and procedures. Police officers could also be engaged for this role by Defence under the Special Duties Police officer policy.
 - Give policing and law enforcement the prominence that it rightly deserves to ensure Defence Inquiry Officers are able to operate independently in a professional investigative manner that will guarantee Defence members a duty of care. Thereby also providing a deterrent for those who may think to obfuscate Defence law.
- Establish independent arbitration in the workplace to ensure genuine mediation is available to all parties to resolve matters at the unit level to avoid the legal risk of redress.
 - Independent arbitration must be established outside of the chain of command to ensure the member's career is not subject to a detriment that would diminish their professional status in the workplace or negatively impact their mental health. Thus, independent arbitration could mitigate the risk of reputational harm to the member. It might also mitigate the institutional harm to the ADF's reputation.
 - In situations where arbitration is required to settle a complaint relating to the loss of a key appointment, a decision should be made to extend the posting cycle of the person filling the appointment until the affected member has had an opportunity to have their claim/complaint thoroughly scrutinised and resolved, thus, mitigating the risk of a decision that cannot be reversed and which is likely to result in a premature, career-ending detriment.
 - IGADF is supposed to be a mechanism to 'fix' military injustice and address ADF maladministration only IGADF is a construct made up of Defence members who are subordinate to the CDF and Service Chiefs and who rely on them to manage and recommend their career advancement. The IGADF needs to be restructured with a proportion of civilian staff to provide continuity and independence of the ADF.

Reform ADF Human and Employment Rights

- Implement explicit legislative processes that offer protections to the human and employment rights of Defence members in the workplace, particularly against reprisals when submitting complaints through their Chain of Command.
- Establish a robust corrective action and reparation policy to restore the affected member to their former professional status when adverse actions are exposed.
- Review and modernise training practices to bring military investigations in line with civilian standards; and
- Increase training to personnel by introducing a mandatory investigative coaching programme for all those who will at some point in their career be called upon to facilitate the function of a Defence Inquiry Officer.

Reform ADF Career Management

- This submission maintains a need to professionalise ADF Career Management to stem the prevalence of maladministration. The ADF is a Registered Training Organisation. While it conveniently remains a capability-focused organisation, it excludes and includes various aspects of the Australian Qualifications Framework and derives little value from awarding qualifications (Cert I, Cert II...). ADF Human Resources practitioners are, however, not professionalised in this role as their primary trade. At best, they occupy a Canberra posting as a human resources practitioner for a maximum of two or three years before returning to their primary trade (i.e., engineer, infantry, etc.).
- There is no requirement for a formal qualification in the field of human resources management within the ADF. Neither is there a designated human resource management Corps. This is in and of itself astonishing, considering human resources are the ADF's greatest and most valuable assets. Most civilian human resources managers hold an Australian Qualifications Framework Level of Competency (i.e., a Certificate IV in Human Resources, a Diploma of Human Resources Management, or a Graduate Certificate or Bachelor of Business (Human Resources Management) to ensure national recognition and consistency in professional development and delivery.¹⁸ The Royal Commission should consider current reforms in this area because currently, there is no real oversight or accountability among those who are tasked with human resources management. Reforms should include career managers declaring a bias or conflict of interest to mitigate their influence over critical decisions (See ENCLOSURE B: Case Study1 —AFFECTED ADF MEMBER). This also feeds into the next point.
- The Royal Commission should consider introducing a Human Resources Corps so that skilled personnel can be posted into this role and bring a level of professionalism and continuity to current practice.
- Evidence can be provided to show specific examples of maladministration whereby some Defence members have deliberately abused their position to disadvantage other Defence members, undermining the legitimacy of the career selection process for key appointments. Such is highly competitive, and it is unacceptable to discriminate against a Defence member who has earned that appointment, especially when they have been informed of the appointment, and it is made public

¹⁸ Australian Qualifications Framework, 2021. 'AQF Qualifications,' < <https://www.aqf.edu.au/aqf-qualifications> >.

to other candidates. Defence members rarely, if ever, recover from that level of maladministration. The impact can affect not only the member's career progression but also their self-esteem and mental well-being. Thus, increasing their exposure to suicide risk and self-harming behaviours. It can also impact them financially for future earnings, including pension earnings beyond military service and their families.

- Previous reviews have recommended guidelines to ensure Defence members who make knowingly false, malicious or vexatious accusations against other members are held accountable and that suitable action is taken against them. This is an area that has not yet been reformed, mainly due to the lack of transparency of Defence Inquiries, whereby complainants are often not informed of the accusations against them in order to put right any detriment to the member falsely accused (See ENCLOSURE B: Case Study1 —AFFECTED ADF MEMBER).

Policy Reform Recommendations

The following recommendations are offered in good faith to plead policy reforms to ensure Defence members have realistic opportunities to resolve their complaints in the workplace. In doing so, protect their professional reputation and mental health. Policy reforms require:

1. For rules of evidence to form the basis of all Defence Inquiries, providing a fair and transparent process to ensure complainants can assert their rights, under equal opportunity law, and that the hearing of their complaint adheres to the principle of open justice and common law,
2. Defence Inquiry Officers be trained investigators with a thorough understanding of applicable civil and military law,
3. Witnesses shall be required to give evidence under oath or affirmation, and Inquiry Officers are prevented from relying on evidence that has not been robustly examined to ensure its authenticity. Those found to be acting negligibly or providing misleading or false information should forfeit any right to protections otherwise afforded to them under legal privilege,
4. Where any complaint is not resolved during service, there must be an independent appeal mechanism to assess the fairness of the decision, *outside* of the Chain of Command and *entirely independent* from their influence. (Evidence upholds that the IGADF and Ombudsman invariably default to Commander decisions),
5. To put in place access to genuine mediation and early resolution of complaints administratively by pursuing negotiated solutions for Defence members before a grievance is processed, and if necessary, establish *funding* to ensure Defence members have equal access to resources as required.
6. Introduce a corrective action policy to ensure procedural fairness, particularly where members have been nominated for key appointments but have been denied an appointment as a result of an administrative failing. In that case, the affected member should be entitled to a process of 'arbitration' in front of a neutral decision-maker who is able to consider the matters before any such key appointments are finalised. Thus, preventing a detriment from being imposed on the member's career that cannot be reversed.
7. Implement a reparation policy in acknowledgement that violations were committed against the Defence member, to repair the damage done by these violations, and to identify the root causes of the violations—to prevent them from occurring again in the future.

An Argument for Workplace Reforms

Publication: Pleading Positive Reform: An analysis of suicide risk, self-harm, and reputational peril impacting serving Australian Defence Force (ADF) members.

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Introduction

In evaluating interventions for suicide prevention, numerous studies have undertaken extensive review and comparative analysis to understand suicide risk and self-harm among Veterans to optimise the mental health and well-being of Veterans and their families.¹⁹ Combat-related mental illness occupies much of the focus of contemporary narratives, as do risk factors specific to non-combat-related conditions.²⁰ But new conversations are now drawing from the connection between moral trauma and an increased risk of suicide and self-harm—where a person feels their deepest and most closely held moral values and ethical beliefs are betrayed.²¹ This is increasingly being recognised as separate from Post-Traumatic Stress Disorder (PTSD) or anxiety and depression.²² In particular, the research increasingly acknowledges that Defence and Veterans are particularly prone to experiencing potentially morally injurious events. Moreover, moral trauma is another important risk factor for ADF suicidality.²³

There is a significant challenge interweaving a broad and complex discussion on moral trauma and its impact in the ADF workplace into a single presentation or submission. So instead, this discussion focuses on two key areas from a *policy risk perspective*: to examine the perceived inequities of already established dispute resolution policies that are to provide Defence members access to a fair, just, and inclusive workplace; and to explore the potential for exposure to suicide risk, self-harm, and reputational peril for those who seek to redress a grievance through their Chain of Command.

Resetting our moral compass- to achieve best practice

Trust plays an essential role in ADF service. The research has found that perceptions of unit leaders as ‘trustworthy’ and ‘able to be confided in’ reduces the risk of suicidal behaviours.²⁴ Former General Peter Cosgrove once said that: ‘Mateship can’t exist without trust and reliability, and we elevate mateship, but it must be built on the fundamental obligation felt by the individual to keep his or her word.’²⁵ Adhering to sound ADF policy and lawful directives reassures Defence members access to procedurally fair decisions whenever disputes in the ADF workplace arise. Moreover, to reassure those complaints will be managed early and well. The current discussion on policy inequities maintains that the *Defence (Inquiry)*

¹⁹ Defence Health. ‘Defence Health & Well-Being “Fighting Fit”’. <https://www1.defence.gov.au/adf-members-families/health-well-being>.

²⁰ Jones, K., Varker, T., Stone, C., Agathos, J., O’Donnell, M., Forbes, D., Lawrence-Wood, E. & Sadler, N. (2020). Defence Force and Veteran suicides: Literature review. Report prepared for the Australian Commission on Safety and Quality in Health Care. Phoenix Australia – Centre for Posttraumatic Mental Health: Melbourne. <https://www.nationalcommissionerdvsp.gov.au/system/files/2020-11/Defence-and-Veteran-Suicides-Literature-Review.PDF>. (6)

²¹ Michael D. Matthews. ‘Moral Injury: Toxic leadership, maleficent organisations, and psychological distress.’ *Psychology Today*. March 10, 2018. <https://www.psychologytoday.com/us/blog/head-strong/201803/moral-injury>.

²² David Cooling, ‘Moral injury in the ADF Part 1: State morality and individual moral identity.’ *Australian Army Research Centre*. September 15, 2020. <https://researchcentre.army.gov.au/library/land-power-forum/moral-injury-adf-part-1-state-morality-and-individual-moral-identity>.

²³ Jones, K., Varker, *et al.* (2020), 34.

²⁴ *Ibid*, (41)

²⁵ Lindsay, P., *The Spirit of the Digger*, Harper Collins, 2003, 16. ‘<http://theanzacall.com.au/anzacs/anzac-values.html>’.

Regulations 2018 has the potential to expose ADF Commanders to the risk of making procedurally unfair decisions (See ENCLOSURE A: DEFENCE INQUIRY INEQUITIES).²⁶ That risk may cause irrevocable harm to Defence members, an argument that may well be sustained by the critical analysis of present case studies to this research (See ENCLOSURE B: Case Study1 —AFFECTED ADF MEMBER and Enclosure C: Case Study 2—AFFECTED ADF SPOUSE). Moreover, putting Defence members at an increased risk of suicide, self-harm and reputational peril.

Former Chief of the Defence Force (CDF), now Governor General David Hurley, said in his 2013 address to the Gender in Defence and Security Leadership Conference that he wanted the ADF to set the benchmark for other employers.²⁷ If we are to achieve that aim, then we must explore the inequities of the *Defence (Inquiry) Regulations* and related policy. In doing so, carefully consider contemporary narratives that evolve organisational ethics and codes of conduct, reset the moral compass to connect the Defence member to a more holistic and empathetic level of care within their workplace. That is, to honestly explore the impact of moral trauma originating from policy inequities and the potential this has in creating irrevocable harm to Defence members outside of an operational environment.²⁸

This discussion demands a fearless approach. Defence members repeatedly caution that submitting a complaint under the current dispute resolutions mechanisms is to do so at considerable reputational peril (See ENCLOSURE B: Case Study1 —AFFECTED ADF MEMBER).²⁹ Typically because a complaint is likely to be about someone within that member's direct Chain of Command. There is evidence that a growing number of complainants have faced some form of retribution, despite the protections and immunities afforded by the *Defence Act*.³⁰ Repeatedly, Defence members have claimed to be the subject of administrative processes that set the conditions to justify an unexpected or premature termination. For example, an impromptu psychological assessment enacted by a PM008 diminishes the credibility of their complaint and is seen as a way of justifying a medical or an involuntary discharge or a Management Initiated Early Retirement notification.³¹ But whatever the process of separating the complainant from service, the associated trauma can be devastating too. The feeling of 'being betrayed by the system' is repeated often in Defence and Veteran narratives.³² This can create long-term negative consequences for both the Defence member and their family *beyond service*. This is especially true if the transition process has been initiated due to the non-compliance of ADF policy or resulting from either a perceived or actual denial of procedural fairness. The overwhelming amounts of stress this causes a Defence member, and their family can exceed their ability to cope and lead to devastating consequences.³³ ADF families can also be significantly impacted by decision-making within the ADF workplace (See ENCLOSURE C: Case Study 2—AFFECTED ADF SPOUSE).

²⁶ Defence (Inquiry) Regulations 2018 (Cth).

²⁷ Department of Defence, (2013) Gender in Defence and Security Leadership Conference. *Defence News*. <http://news.defence.gov.au/media/stories/gender-defence-and-security-leadership-conference>

²⁸ Department of Defence. 'Pathway to Change: Evolving Defence Culture.' 2012.

https://www.defence.gov.au/pathwaytochange/_Master/Docs/120410-Pathway-to-Change-Evolving-Defence-Culture-web-version.pdf

²⁹ Townsville Bulletin, 'Family torn apart by Defence Inquiry into Airman's Death.' January 19, 2021.

³⁰ Inspector-General ADF (IGADF), 'Afghanistan Inquiry Report.' (2020).

<https://afghanistandinquiry.defence.gov.au/sites/default/files/2020-11/IGADF-Afghanistan-Inquiry-Public-Release-Version.pdf>.

³¹ John Hanscombe, 'Gerroa lawyer Glenn Kolomeitz blasts Defence culture in wake of war crimes report.' *The Newcastle Herald*. November 20, 2020. <https://www.newcastleherald.com.au/story/7021844/untrainable-dog-lawyer-blasts-defence-culture-in-wake-of-war-crimes-report/?cs=9676>.

³² Deborah Morris, 'The cycle of military and veteran suicidality.' National Commissioner for Defence and Veteran Suicide Prevention Bill 2020 [provisions] and the National Commissioner for Defence and Veteran Suicide Prevention (Consequential Amendments) Bill 2020 [provisions] Submission 16- Attachment 1.

³³ Substance Abuse and Mental Health Services Administration. 'Trauma Definition.' August 5, 2014.

<https://web.archive.org/web/20140805161505/http://www.samhsa.gov/traumajustice/traumadefinition/definition.aspx>.

Building a Fair and Inclusive Workplace

ADF workplace reforms that build a fair, just, and inclusive workplace and reassure Defence members that they will not be subjected to some form of retribution for raising a complaint in the workplace, requires everyone at every level to recognise that better work practices will greatly benefit everyone. In recognising that, there is also a need to understand the immense frustration that Defence members feel when seeking to redress a grievance. Even when or if they succeed, there is no reparation policy to undo the damage done to their professional reputation and mental health. Legal professionals who have assisted Defence members in formalising their complaints argue that it is *how* complaints are investigated, managed and concluded that is of deep concern. This is especially true for those fighting perceived injustices from within the workplace alongside the perpetrator to whom their complaint relates.³⁴ The Defence Inquiry process should not be part of the problem; it should be part of the solution—it should resolve issues, not create them. Unfortunately, this is not always the case.

Legal Risk

It is commonly seen in practice that the ADF can utilise an abundance of human, legal and financial taxpayer resources to minimise liability to itself as an organisation. In contrast, a Defence member has far fewer resources, status and power to defend their complaint, even though it may be evidence-based and compelling. At least 40 inequities in the current *Defence (Inquiry) Regulations 2018* policy exist. This establishes the contention for policy reforms to preclude individuals from being complicit, turning a blind eye to, or conferring tacit approval for, professional harm against Defence members. Moreover, those who fail to prevent reprisals against members pursuing their complaint before a Defence Inquiry should be *personally liable* for the personal injury their actions inevitably cause. This includes where they may have forfeited procedural fairness principles, denying Defence members not only the right to know of an allegation or access the evidence supporting an allegation—but even to the extent that investigations were carried out without their knowledge.³⁵ Sufficient evidence upholds that Defence members are rarely given full access to evidence that Defence Inquiry Officers have relied upon in concluding their findings, and the list goes on (See ENCLOSURE A: DEFENCE INQUIRY INEQUITIES).

Policy Reform Recommendations

The following recommendations are offered in good faith to plead policy reforms to ensure Defence members have realistic opportunities to resolve their complaints in the workplace. In doing so, protect their professional reputation and mental health. In addition to the recommendations of this submission, workplace reforms require:

1. For rules of evidence to form the basis of all Defence Inquiries, providing a fair and transparent process to ensure complainants can assert their rights, under equal opportunity law, and that the hearing of their complaint adheres to the principle of open justice and common law,
2. Defence Inquiry Officers be trained investigators with a thorough understanding of applicable civil and military law,
3. Witnesses shall be required to give evidence under oath or affirmation, and Inquiry Officers prevented from relying on evidence that has not been cross-examined to ensure its authenticity.

³⁴ Anthony Galloway and Chris Masters, 'SAS Soldiers given 'show cause' notices over war crimes allegations.' *The Age Newspaper*. November 26, 2020. <https://www.theage.com.au/politics/federal/sas-soldiers-given-show-cause-notices-over-war-crimes-allegations-20201126-p56ibz.html>

³⁵ Commonwealth of Australia, (2005). *The effectiveness of Australia's military justice system*. 16 June 2005. administrative system—Investigations. [8] ISBN 0 642 71424 X.

Those found to be acting negligibly or providing misleading or false information should forfeit any right to protections otherwise afforded to them under legal privilege,

4. Where any complaint is not resolved during service, there must be an independent appeal mechanism to assess the fairness of the decision, *outside* of the Chain of Command and *entirely independent* from Commander influence. (Evidence upholds that the IGADF and Ombudsman invariably default to Commander's decisions),
5. To put in place access to genuine mediation and early resolution of complaints administratively by pursuing negotiated solutions for Defence members before a grievance is processed, and if necessary, establish *funding* to ensure Defence members have equal access to resources as required.
6. Introduce a corrective action policy to ensure procedural fairness, particularly where members have been nominated for key appointments but have been denied an appointment as a result of an administrative failing. In that case, the affected member should be entitled to a process of 'arbitration' in front of a neutral decision-maker who is able to consider the matters before any such key appointments are finalised. Thus, preventing a detriment from being imposed on the member's career that cannot be reversed.
7. Implement a reparation policy in acknowledgement that violations were committed against the Defence member, to repair the damage done by these violations, and to identify the root causes of the violations—to prevent them from occurring again in the future.

Concluding remarks

To conclude, pleading positive reform in the ADF workplace must be considered earnestly in any Defence and Veteran suicide prevention discussions and should not be construed as criticism. Instead, reforms should be viewed as opportunities to review a particular procedure or policy that could benefit the ADF to improve best practices. There is wisdom in the ADF Command, as affirmed by the vision of former commanders espousing the ADF be recognised as a fair, just and inclusive organisation.³⁶ Suppose we are intent on achieving that aim. In that case, we must explore the inequities in policies failing to evolve with contemporary narratives of how everyone should think about their work and behaviour towards others.³⁷

Supposing we do not consider the impact these inequities have on our Defence members professional reputations and mental health? In that case, Defence members will likely continue to carry unresolved grievances into life beyond service, assuming they do not suicide. Failing to act impacts efforts to realistically reduce LEGAL redress claims, SUICIDE risk and SELF-HARM, currently plaguing the ADF Veteran community. It is, therefore, incumbent on all of us to embrace a new whole-of-life support system that focuses on minimising and preventing inequities that cause moral trauma in service. This includes addressing those policy inequities that encumber the administrative system from improving ADF best practices to advance towards a fairer, more just and mentally robust workplace.

³⁶ Department of Defence, (2013) Gender in Defence and Security Leadership Conference. *Defence News*. <http://news.defence.gov.au/media/stories/gender-defence-and-security-leadership-conference>

³⁷ Department of Defence. 'Pathway to Change: Evolving Defence Culture.' 2012.

https://www.defence.gov.au/pathwaytochange/_Master/Docs/120410-Pathway-to-Change-Evolving-Defence-Culture-web-version.pdf

ENCLOSURE A: DEFENCE INQUIRY INEQUITIES

A snapshot of the shortfalls in the current application of Defence Inquiries, which

1. **are not mandatory.** If a Defence member has a complaint, it is only heard at the Chain of Command's discretion.
2. **are not independent.** Officers conducting the inquiries are not independent as they are all under the same command.
3. **lack of transparency:** Freedom of Information can be obtained but is heavily redacted. Transcripts of evidence are contradictory as oral evidence does not match written transcripts.
4. **are conducted in secrecy.** Defence members who participate in a Defence Inquiry are not permitted to make public the outcome of their complaint or disclose the findings (similarly witnesses). This may be seen to conflict with the principle of open justice, a fundamental rule of common law that binds to the concept that abuses flourish when undetected.
5. **involve evidence that is selective.** Witnesses are consulted on a specific condition where the terms of reference are decided by the service chiefs. The full extent of a complaint can never be heard. (*See Afghanistan Report*).³⁸
6. **involve the exclusion of evidence.** Defence Inquiry Officers are not technically obliged to submit evidence provided by the Defence member.
7. **are founded upon permissible hearsay.** Evidence that is not taken under oath. By allowing Defence Inquiry Officers to consider circumstantial evidence and hearsay, without the rules of evidence being bound by legal technicalities, prevents Defence members from having access to a *fair or just hearing* of their complaint.
8. **allow witness collusion.** Some Defence Inquiry Officers have been known to consult witnesses on the terms of reference and give witnesses running updates over the course of the Inquiry.
9. **allow witness bias.** In some cases, witnesses are offered the promise of immunity. Therefore, they can say anything they like and are given guarantees that anything they say, or documents they provide to a Defence Inquiry Officer, are protected from possible prosecution or civil suit. (*See Afghanistan Report*).³⁹
10. **permit false witness testimony.** Evidence from previous cases, including the findings of a 2019 Senate Committee investigation (Report on Military Justice Procedures in the ADF, Chapter 5, Administrative Action) into ADF administrative actions, have shown there have been incidents where witnesses have deliberately provided false information, false accusations and misleading statements to Defence Inquiry Officers.⁴⁰

³⁸ IGADF, 'Afghanistan Inquiry Report.' (2020). <https://afghanistandinquiry.defence.gov.au/sites/default/files/2020-11/IGADF-Afghanistan-Inquiry-Public-Release-Version.pdf>.

³⁹ Ibid.

⁴⁰ Senator D J MacGibbon, (2011). Chapter 5, Report on Military Justice Procedures in the Australian Defence Force. (Administrative Action) Inquiry into the Review of the Defence Annual Report 2011-2012. *Parliament of Australia*. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/jfadt/military/MJ_ch_5.

11. **are undermined by unreliable witnesses.** Some Defence Inquiry Officers have been known to cherry-pick witnesses who will give testimony that best serves the ADF's interests and discount credible witnesses who give testimony in support of the complainant.
12. **are not timely.** A Defence Inquiry is a long and painful drawn-out process, resulting in significant anxiety and emotional trauma for the Defence member and their family.
13. **are conducted with a lack of governance.** Defence Inquiry Officers are protected from prosecution and other civil proceedings.
14. **are conducted by untrained Defence Inquiry Officers.** Defence Inquiry Officers are selected because they have: 'appropriate management and/or research and analytical skills, communication and report writing skills.' They may undertake four days of non-mandatory training. They are not legally trained. Reviews by the Commonwealth Ombudsman and other external organisations have found recurring problems that are not remedied despite recommendations.⁴¹ Inquiry Officers were:
 - inadequate in planning investigations.
 - failed to interview all relevant witnesses and assumptions made about the credibility of witnesses interviewed.
 - pursued irrelevant questioning techniques and failed to put contradictory evidence to witnesses for a response.
 - failed to record evidence properly, and possibly, preparation of witnesses and unauthorised questioning of witnesses.
 - failed to analyse evidence objectively and to weigh evidence appropriately, thereby leading to flaws in the way conclusions were drawn and findings made; and
 - inadequate record keeping.
15. **allow Inquiry Officer bias.** The no bias rule requires the Defence Inquiry Officer to be neutral and act impartially, honestly and without prejudice, and be above suspicion that they are interested in the outcome of the matter or have prejudged it. On the contrary, several reviews of Inquiries suggest that military members can never properly investigate military members because of the intensely hierarchical nature of the ADF.⁴² (See examples where two very experienced investigating Officers listened to hours of evidence and considered their findings carefully, only to have all their findings that were in the Defence member's favour overturned by the Appointing Officer, whilst the same individual endorsed all their conclusions that protected either the office of the Chief of the Air Force or the Commonwealth's interests.)⁴³ To eliminate bias in Inquiries, the Inquiry Officers should be selected from outside the affected Headquarters, corps or service.
16. **are conducted by unskilled Defence Inquiry Officers.** IGADF is staffed by some career service police, and of these, some rarely interview real offenders, rarely if ever give evidence in court or deal with serious crime and are rarely held accountable for their actions or investigations (e.g., by an independent court, the media, or experienced internal investigators),

⁴¹ Parliament of Australia, (2007), Chapter 8 – The administrative system -investigations. https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed%20inquiries/2004-07/miljustice/report/c08.

⁴² Parliament of Australia, (2007). Chapter 10- Adverse Action, appeal processes and external review of administrative procedures. https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed%20inquiries/2004-07/miljustice/report/c10.

⁴³ Ibid 10.40

or career public service lawyers who have never been in a courtroom. The training, skills and knowledge of some investigators in IGADF may be well below that of a civilian police force or prosecution service.

17. **are conducted by some Defence Inquiry Officers who ignore policy directives:** In legal terms, administrative inquiries *may not investigate criminal conduct*. Suppose an inquiry uncovers conduct that may be criminal. In that case, the regulations state that the Inquiry Officer must cease the Inquiry immediately and hand over to the lawful authorities.⁴⁴ This inequity has been recognised in numerous inquiries into the effectiveness of Australia's military justice system and continues to present in contemporary inquiries because recommendations are not upheld. Commanders are able to gatekeep information to protect the ADF from much-needed reform because the Australian government does not enforce recommendations made by Royal Commissions and other instruments of inquiry into Defence Inquiries. The Administration Inquiry Manual states at Annex 4B at paragraph 50:

If, at any time during an inquiry, you conclude that an offence may have been committed in breach of either civil, criminal law or the Defence Force Discipline Act 1982 (DFDA),⁴⁵ this aspect of the inquiry must be immediately suspended, and the issue reported to the Appointing Officer or Authority in writing.

18. **condone inaccurate interpretation.** Defence Inquiry Officers can *interpret events* according to their own *opinion* and not as events actually occurred. They have the freedom to use their own discretion to decide what information shall inform their proposed findings. This is true, regardless of if it is focussed heavily on unsubstantiated hearsay and disregards credible witness testimony, as is often the case.
19. **allow defective investigation conduct.** Poor record-keeping and communication, lack of support, conflicts of interest, and privacy breaches can exacerbate the Inquiry of a complaint and trigger mental health risks.
20. **encourage withholding of evidence.** Some Defence Inquiry Officers select only certain parts of a complainant's evidence to inform the final findings. They prevent full disclosure from the complainant.
21. **are unethical.** Defence Inquiries are not independent or ethical because they allow complainants to be victimised and publicly humiliated (See David McBride Case⁴⁶ and Lawyer and former ADF soldier Mick Bainbridge's story).⁴⁷

⁴⁴ Parliament of Australia, 'The Effectiveness of Australia's Military Justice System, Chapter 2, Australia's military justice system: an overview' (16 June 2005). <
[https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed%20inquiries/2004-](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed%20inquiries/2004-07/miljustice/report/c02#:~:text=The%20Administrative%20Inquiries%20Manual%20provides%3A%20A%20General%20Court,of%20the%20most%20senior%20officers%20of%20the%20>)

[07/miljustice/report/c02#:~:text=The%20Administrative%20Inquiries%20Manual%20provides%3A%20A%20General%20Court,of%20the%20most%20senior%20officers%20of%20the%20>](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed%20inquiries/2004-07/miljustice/report/c02#:~:text=The%20Administrative%20Inquiries%20Manual%20provides%3A%20A%20General%20Court,of%20the%20most%20senior%20officers%20of%20the%20>).

⁴⁵ *Defence Force Discipline Act 1982*, < <https://www.legislation.gov.au/Details/C2021C00458>>.

⁴⁶ Nick Xenophon. 'If moral courage matters, this whistle-blower needs defending.' *The Age Newspaper*. November 17, 2020. <https://www.theage.com.au/national/if-moral-courage-matters-this-whistleblower-needs-defending-20201116-p56ey4.html>.

⁴⁷ Australian Broadcasting Commission. 'When the war is over.' *Australian Story*, 2018. <https://www.abc.net.au/austory/mick-bainbridge/9619396>.

22. **lack procedural fairness.** Defence Inquiry Officers are not obliged to accept or report any written, adversarial evidence in their final findings. Defence members are rarely given full access to evidence that Inquiry Officers have relied upon in concluding their findings.
23. **rely on cogent evidence and a lesser standard of proof.** Defence Inquiry Officers assume an investigator's role to determine whether there is a sufficient amount of evidence to prove allegations. They are not trained, investigators. The amount of proof required is known as the 'standard of proof.' In civil cases, the standard of proof is the balance of probabilities, a lesser standard than the proof required (beyond reasonable doubt) in criminal matters. The balance of probabilities is determined by whether an alleged event is 'more probable than not' or which version of an allegation is more probable.' Inquiry Officers make recommendations that are not technically admissible as evidence in a court or tribunal. In most cases, the findings are flawed because they are not always supported by evidence that establishes the truth of something.
24. **force a waiver of Constitutional Rights.** The Defence Inquiry process forces Defence members to waive their Constitutional right to protections, as Australian citizens under Commonwealth Law, despite that they are not legally obliged to waive such protections. Expanding civilian police and courts' involvement in areas where they have the expertise and structures to better handle such matters and creating a court that reflects principles enshrined in the Commonwealth Constitution, Defence members could enjoy the same rights and have the same safeguards as all Australians. Thus, provide Defence members with a process that will provide impartial, rigorous and fair outcomes and one that is transparent and accountable.
25. **are immune to scrutiny by a system of self-protection.** ADF uses the full weight of its resources, human, legal and financial (taxpayer funds), to minimise liability and reputational harm to itself. Adverse comments are often left on the Inquiry findings even when proved to be false. This is to discredit the complaint to validate the flawed Inquiry findings.
26. **is a process presently concealing Commonwealth Law violations.** *Defence Force Discipline Act 1982 (DFDA 1982)* is an act of Parliament - A decree proclaiming the law passed by the legislature and given Royal Assent by the Crown. Defence Inquiry Officers must follow ADF policies, instructions and directives as a 'general order.' (DFDA 1982 Part 1 Sect 3 – "general order"). If they do not follow the policy or instruction (*Defence (Inquiry) Regulations 2018*, then they are failing to comply with a general order (*DFDA 1982 Part 3, Division 3, Sect 29*) and should be subjected to disciplinary action, as stated in the *DFDA 1982*. Defence Inquiry Officers have concluded findings based on comments not supported by facts or documents.
27. **often misleads Ministers reviewing or commenting on Defence Inquiry findings.** Defence Ministers are not always fully informed with an accurate account of the complaint. Defence Inquiry findings frequently omit key evidence, and there are many recorded instances where Defence Inquiries contain false evidence.
28. **lack of corrective action:** Current policy inequities compound existing detriments because the ADF does not have any corrective action policy.

29. **creating financial detriments.** A Commanding Officer can issue a Defence member with a Notice To Show Cause.⁴⁸ The Defence member has only 14 days to represent why they should not be the subject of the proposed administrative action by way of a written reply. That representation is then submitted to the same individual who issued the Notice to Show Cause. The person who believes there is a problem is also the investigator and authorised decision maker! This allows for complete abuse of power in totality and misfeasance. This is a significant contributor to why there are so many young Veterans prematurely out of the ADF and being managed by DVA. This point is frequently overlooked. Some Veterans are too young to access their Superannuation which creates a financial detriment on top of existing administrative liability.
30. **allow unequal access to financial resources.** Past reviews have shown a distinctly unequal position to the party making the allegation.⁴⁹ The Defence member responding to a notice to show cause or preparing their appeal against a decision is pitted against the considerable resources of the ADF. Moreover, its authority, status, and influence of senior Officers often defend their own judgment.
31. **creates an unfair legal advantage.** The role of a legal Officer appointed to assist the member in the preparation of their complaint is to provide specialist advice concerning the grounds for complaint. The legal Officer is not there to conduct an inquiry or investigation into the complaint or make negotiations on behalf of the member, expressly without authorisation from the legal office, which will only be given in exceptional and complex cases.⁵⁰
32. **exclude external collaboration.** Independent decision-makers almost always invariably default to the ADF's decision (e.g., Commonwealth Ombudsman, IGADF, Defence Minister, Attorneys General, DVA). This is despite key evidence substantiating that Defence Inquiry Officers may not have adhered to ADF policy or common law. External decision-makers have no legal authority to enforce any of the recommendations they make as the ADF is governed by its own autonomy.
33. **lack independence.** The Australian Government established the IGADF as a statutory appointment outside the Chain of Command to independently monitor and assess the military justice system's health and effectiveness. Typically, IGADF are former Army Officers who hold a range of military justice roles. All appointed under the IGADF are also typically ADF Officers. Many are of the opinion that this casts serious doubts over the legitimacy of a Defence Inquiry being independent.
34. **have been subjected to policy reform over decades.** Past Senate inquiries into Australia's military justice system's effectiveness have continually recommended administrative reviews to put a policy in place that gives greater independence, transparency and accountability to Defence members.⁵¹ Recommendations are seldom implemented in their entirety.

⁴⁸ AustLII, 'Defence Regulation 2016 – REG 41 Manner of making a complaint.' *Commonwealth Consolidated Regulations*. https://austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_reg/dr2016147/s41.html.

⁴⁹ Ibid 10.44.

⁵⁰ Ibid.10.45.

⁵¹ Parliament of Australia, (1999). Completed Inquiry: Military Justice in the Australian Defence Force. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/jfadt/military/reptindx.

35. **institutional abuse.** Institutional mismanagement, failure to provide due process, military suicide, self-harm, addictive behaviours, and ADF administrative failures go hand-in-hand.⁵² A petition was submitted to the House of Representatives in 2021 asking the House to support changes to the *Defence (Inquiry) Regulations 2018* so that Defence Inquiries are subject to legal technicalities, rules of evidence, principles of open justice and common law; Defence Inquiry Officers undertake legal training; witness testimony is taken under oath/affirmation; introduce an appeal process outside the Chain of Command and corrective action policy to ensure procedural fairness, and access to genuine mediation for Defence members to resolve workplace complaints. The Petition EN2256 - Apply ADF Policy Reforms to include corrective action collected 3015 signatures over four weeks.⁵³ The petition was passed to the Defence Minister for a response on February 10, 2021.
36. **are conducted with intimidation.** Former Defence Legal Officer responsible for conducting Defence Inquiries, David McBride, is on the record upholding that ADF intimidates and prosecutes whistle-blowers. He has been threatened with long prison terms for exposing alleged ADF misconduct in Afghanistan. McBride is on the record, publicly expressing grave concerns about the impunity and cover-up culture set by the ADF leadership.⁵⁴ For that exposure, he is ridiculed and victimised. It seems absurd to continue politically motivated charges against the former Defence Legal Officer, notably since the IGADF has reported on those same allegations raised by McBride. Defence Inquiries are commonly known as adversarial proceedings where the Defence member becomes the focus of the complaint instead of the actual complaint. Hugh Poate also gave evidence to a Senate Committee hearing about ADF intimidation of families.⁵⁵
37. **are not accessible.** The complaint process should be easy to access and understand, and everyone should participate equally. For example, a Defence member may require a lawyer to help them prepare their complaint. Often Defence Inquiries are complex matters that require a fuller understanding of the law. In some circumstances, Defence members may be entitled to assistance from an ADF Legal Officer (paid for out of the Army reserve budget) when seeking to redress a grievance. Still, such are not permitted to prepare complex legal defences for Defence members. As stated previously, the legal profession is concerned that Defence members will eventually be stopped altogether from accessing legal representation of their choosing. Pursuant to a 2020 Chief of Defence Force Directive,⁵⁶ serving or former Defence members seeking judicial review of administrative decisions are not permitted to access lawyers of their choosing if those lawyers happen to be ADF Reservists of any variety.
38. **is a process that is not free from victimisation.** Defence members who raise a complaint are often fighting their perceived injustice from within the workplace, often alongside their abuser. Absent, incomplete or missing file notes resulted in all the responsibility being placed on the person who believed they were the victim rather than on the alleged aggressor/offender. (See

⁵² Ben Wadham and Deborah Morris, (2019) Enough inquiries that go nowhere – it's time for a royal commission into veteran suicide. *The Conversation*. [http:// theconversation.com/enough-inquiries-that-go-nowhere-its-time-for-a-royal-commission-into-veteran-suicide-119599](http://theconversation.com/enough-inquiries-that-go-nowhere-its-time-for-a-royal-commission-into-veteran-suicide-119599)

⁵³ Kerry and Kay Danes, 'Petition EN2256 – Apply ADF Policy Reforms to include corrective action.' House of Representatives. January 14, 2021. https://www.aph.gov.au/petition_list?id=EN2256.

⁵⁴ Nick Xenophon. 'If moral courage matters, this whistle-blower needs defending.' *The Age Newspaper*. November 17, 2020. [https:// www.theage.com.au/national/if-moral-courage-matters-this-whistleblower-needs-defending-20201116-p56ey4.html](https://www.theage.com.au/national/if-moral-courage-matters-this-whistleblower-needs-defending-20201116-p56ey4.html).

⁵⁵ Hugh Poate, 'Senate Committee Inquiry into Australia's Engagement in Afghanistan Submission by Hugh Poate,' *Parliament of Australia* (21 October 2021) < file:///C:/Users/the_d/Downloads/Sub57%20Poate.pdf>.

⁵⁶ Department of Defence, *Joint Directive 03/2020 by Chief of the Defence Force and Secretary, Department of Defence: Management of Conflicts of Duty-ADF Members Who Are Also Legal Practitioners* (EC20-000702, 13 March 2020).

Committee Hansard, 28 April 2004, pp. 29-30), and (*Submission P13A*, p. 2) which states medical information detailing a beating was not placed on a file (See *Submission P52*, pp. 2–3) refers to an event not reported but which left long-term effects on one of the witnesses. Defence members say they have suffered reprisals for complaining or providing evidence, leaving them feeling ostracised and without support. (See statement by Mr Southam: ‘These have caused me to be medically discharged as a result of psychological issues, and I have attempted suicide along the way after some three years of trying to find some resolutions in relation to these submissions’ - *Committee Hansard*, 09 June 2004, p. 64; *Submission P50*).

39. **fail to adequately provide a duty of care to ensure the well-being and mental health of Defence members.** During an inquiry, many cases show that the ADF fails to meet its duty of care administratively, as reflected in the increased number of complaints and suicide and self-harm cases relating to Defence members and Veterans.
40. **have ramifications whereby adverse findings impact civilian identity.** Defence members who are qualified in a particular profession may incur additional professional ramifications. For example, medical Officers may incur reputational harm if Inquiry Officers or Commanders influence contact between Joint Health Command to the Australia Health Practitioner Regulation Agency. Similarly, legal Officers could be disbarred, and pilots could have licences revoked.

This is not an exhaustive list. Moreover, upon completion of an inquiry, a report must be submitted to the Appointing Authority (AA), who then considers the report and ensures that it adequately addresses the terms of reference (TOR) and that the evidence supports the findings and the recommendations. As part of this initial review process, the AA must obtain advice from a Legal Officer. The Legal Officer must review the report and consider whether the investigation satisfactorily addresses the TOR, whether the conclusions are supported by the evidence, and any other relevant matters. At no time, however, does the Administrative Inquiries Manual provide any advice in the event Inquiry Officers fail to ensure the evidence that supports their findings and recommendations is accurate, or if all the evidence taken has been made available, for review, by those who could be impacted by those findings and recommendations. As the enclosures to this submission have found, many instances of inaccurate findings and recommendations prevail, but there is no policy to remedy the detriment to the Defence member when that occurs. It is apparent that decisions rely on the assumption that the Defence Inquiry Officer’s ‘investigations’ are infallible.

Historically, there is evidence of a range of problems experienced in the conduct of Defence Inquiries, and these failings have been raised many times by external organisations, such as the previous findings of the Commonwealth Ombudsman, which include the following:

- Inadequate planning of investigations,
- Failure to interview all relevant witnesses and assumptions made about the credibility of witnesses interviewed,
- Pursuit of irrelevant issues in witness interviews, use of inappropriate questioning techniques and failure to put contradictory evidence to witnesses for a response,
- Failure to record evidence properly and, possibly, preparation of witnesses and unauthorised questioning of witnesses,
- Failure to analyse evidence objectively and to weigh evidence appropriately, thereby leading to flaws in the way conclusions were drawn and findings made, and
- Inadequate record keeping.⁵⁷

⁵⁷ Australian Government, ‘Chapter 3—Disciplinary investigations,’ <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed%20inquiries/2004-07/miljustice/report/c03>.

As argued in previous Inquiries, utilising military police to investigate complaints of ‘Unacceptable Behaviour’ is recommended on the basis of good practice. Military police frequently participate in up-to-date military and civilian police training courses that enable them to maintain the capacity to investigate offences and manage investigations. Alternatively, the recruitment of reservists from the civilian police force could resolve the shortfall in inexperienced Inquiry Officers and serve to increase the professionalism of investigators or by engaging Special Duties Police Officers. Either of these options would markedly improve the standard applied to Defence Inquiries. Thus far, this recommendation has not been implemented.

Arguably, the Defence Inquiry process, and in fact, the military justice system can never be effective until its leadership give policing and law enforcement the prominence that it rightly deserves, and in so doing, put in place a consolidated, independent and professional investigative service to afford Defence members a duty of care.

ENCLOSURE B: Case Study 1—AFFECTED ADF MEMBER

(Information submitted by the Affected ADF Member)

This case study provides a typical example of how individuals in the Chain of Command can utilise their status and power to create significant and unnecessary detriments to Defence members and their families. This abuse of power has the potential to put Defence members at increased risk of suicide and self-harm and reputational harm. All the inequities outlined in ENCLOSURE A—Defence Inquiry Failings were present in this case study.

Note, the supporting evidence to each of the studies outlined in each of the enclosures can be provided to validate all claims made in the respective case studies.

A brief note on ADF Procedural Fairness

Australia is a party to seven core international human rights treaties. Fair trial and fair hearing rights are contained in Article 14 of the *International Covenant on Civil and Political Rights*.⁵⁸ Procedural fairness is an administrative law principle that traditionally involves two requirements: the fair hearing rule and the rule against bias. The hearing rule requires a decision-maker to afford a person an opportunity to be heard before making a decision that will affect their interests. The rule against bias ensures that the decision-maker can be objectively considered to be impartial and not to have pre-judged a decision.

ADF decision-makers must provide Defence members with a fair and equal opportunity to present their case in writing BEFORE any decision is made that will negatively affect the member, regardless of whether it is relied upon in the final decision-making process. That decision-maker must not be biased and must not be seen to be making an unfair or unprofessional decision based on something other than the rights of the member and the merits of the case (Bias Rule). The ADF has a policy to correct common defects in procedural fairness.⁵⁹

ADF Performance Appraisal Report (PAR):

Relevant to this case study is the Performance Appraisal Report (PAR) and is a vital component of the Career Management System or Performance Management Framework in the ADF. The data from a PAR is used to develop career plans, identify potential for promotion, postings and courses, as well as manage underperformance where identified. Annual reporting is mandatory according to Defence Policy (DI (A) PERS 116-16). ADF policies do not permit Commanders to include ADF spouses into PARs.

Privacy

Every effort has been made to de-identify persons mentioned in these case studies, in accordance with the *Privacy Act 1988 (Cth) (Privacy Act)* and to minimise legal liability.

⁵⁸ Australian Government, 'International Civil and Political Rights' August 13, 1980.

<https://www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/8B8C6AF11AFB4971CA256B6E0075FE1E>.

⁵⁹ Angus Houston, 'Guide to Administrative Decision-Making,' Executive Series. ADFP 06.1.3. January 25, 2010. <https://defence.gov.au/adfwc/Documents/DoctrineLibrary/ADFP/ADFP%2006.1.3.pdf>.

SUMMARY OF COMPLAINT

Beginning in 2012, I suffered significant damage to my career as a result of defective administration. Senior Army officers did not comply with mandatory administrative procedures, which resulted in significant personal, mental and economic detriments to me.

In 2012, I was appointed to undertake a highly competitive senior role at a diplomatic, military posting overseas. ADF representational postings are considered to be prestigious and most, as in this case, require the member holds high-security vetting clearance (Top Secret or Top-Secret Positive Vetting). Throughout the majority of my career spanning over four decades, I have held Top Secret and Top-Secret Positive Vetting Security Clearances.

In early 2014, while on posting overseas, I had cause to raise an 'Unacceptable Behaviour' complaint against a senior Army officer with whom I worked.⁶⁰ Among other things, I complained that the senior Army officer deliberately failed to complete and submit my Performance Appraisal Reports (PARs) for the 2012 and 2013 years, and this adversely impacted me. As it is known, PARs are a vital component of the Career Management System in the ADF and critical for developing career plans, identifying potential for promotion, postings and courses. Annual reporting is mandatory according to *Defence Policy (DI (A) PERS 116-16)*.⁶¹

The senior Army officer knew that it was *mandatory* to write the PARs so that I could remain competitive in the workplace. He admitted to deliberately strategising to avoid writing my PARs, a claim substantiated by the findings of an official inquiry into the Redress of Grievance I submitted to Army. His actions caused me to be taken to a Senior Warrant Officer Personnel Advisory Committee (SWO PAC) without a complete reporting history. That action alone guaranteed that I would not be competitive among my peers for career progression.

After the SWO PAC met, I was relegated from the top 1/3 of my cohort to the bottom 1/3 and informed that I would be issued a notification of a Mandatory Initiated Early Retirement (MIER) which would result in my premature and involuntary discharge from the ADF.

To be clear:

BEFORE the SWO PAC assembled, I was deemed by the Directorate of Soldier Career Management-Army (DSCM-A) to be one of the most suitably qualified candidates for one of the most senior command positions in the entire Special Operations Command.

AFTER the SWO PAC assembled, I was told that I was no longer fit for service in the entire ADF!

This single example alone shows a complete failure of ADF policy and procedure!

The senior Army officer was absolutely at fault according to ADF policy. But DSCM-A was also at fault because they failed to investigate the matter when I first made them aware that the senior Army Officer had not written my PARs and that inaction would adversely affect my career. DSCM-A, against their own policy, require that a Defence member must have a complete reporting history prior to being presented to the SWO PAC. DSCM-A knew that my reporting history was not complete and the obvious impact this would have on my career progression, and yet they still presented me to the SWO PAC. In these instances,

⁶⁰ Department of Defence, 2021. 'Unacceptable Behaviour.' <https://www1.defence.gov.au/about/complaints-incident-reporting/unacceptable-behaviour#what-is-unacceptable-behaviour>.

⁶¹ Department of Defence, 'Annual Performance Appraisal Reporting,' *Australian Defence College*, <<https://defence.gov.au/adfcr/PAR.asp>>.

the senior Army officer and DSCM-A did not comply with mandatory administrative procedures, which resulted in significant personal, mental and economic detriments to me.

I submitted a Redress of Grievance (ROG) to the Chief of Army, fully expecting a swift resolution of my matters, despite the fact that a ROG is a complex legal undertaking that requires a solid understanding of *the Defence Regulation 2016 (Cth)*.

Chief of Army's delegate, MAJGEN M, conducted an inquiry in 2015, IAW my ROG and found "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 M also stated, "inconsistency between reporting history and PAC outcomes; the complaint is sustained, and you are to be presented to the 2016 SWO PAC."

Corrective action in the 2016 SWO PAC never occurred. This was confirmed during the CDF directed Inquiry that revealed that the ADF (WO1) and other SWO PAC panel members made several misleading statements, presenting them as statements of fact. Their statements gave a false impression of me to other decision-makers on that and subsequent career panels. Under these circumstances, it was impossible for me to get procedural fairness and the corrective action MAJGEN M had prescribed.

After receiving the response to ROG from MAJGEN M, I harboured concerns about the lack of independence of DSCM-A and some of the 2016 SWO PAC members and their denial of procedural fairness. I was left with no other option but to escalate my complaint to the Chief of Defence Force (CDF), requesting he direct that an independent arbitrator be appointed to oversee the conduct of the 2016 SWO PAC. A redress to the Chief of Defence Force from within the Army was processed through Army Headquarters, who was aware of the content of my ROG. Chief of Army ordered the senior Army officer to write the PARs, which were now four years 'out of time', and he did without any communication with me (as is required). Nor did the senior Army Officer provide any mandatory counselling to me (as ADF policy mandates) to counter any adverse comments that could create a further detriment to me. It is obvious that the rationale for instructing the senior Army Officer to write the PARs, now four years out of time, was so Army Headquarters could say the PARs had been written. This was later reflected in the CDF's response to me.

Unfortunately, the CDF's investigation of my ROG was not responsive enough to provide its findings prior to the 2016 SWO PAC. Not surprisingly, the SWO PAC consisted of some of the same members on the previous 2014 SWO PAC. I was again denied procedural fairness. Note that this was the SWO PAC that MAJGEN M said would afford me corrective action.

The delay in the CDF's response also caused me to be further discriminated against in the selection of the Regimental Sergeant Major's (RSM) Special Forces (SF) position. Consequently, I was compelled to submit another ROG. The Inquiry findings from that revealed I was discriminated against and denied an opportunity to a fair go in the selection of the RSM/SF, Sergeant Major (SM) Special Operations Command (SOCOMD) and other Tier Bravo appointments. Additionally, the findings of the ROG, which was supposed to question how the selection for the RSM/SF position was conducted in November 2015, further

revealed that the investigating officer, LTCOL S, found that it was likely I had been discriminated against. He cited the following: “Regardless of whether or not you would have been selected as the RSM/SF and/or actually made it onto the preferred candidate list you appear to have been discriminated against based on a personal undocumented assessment of SOCOMD rather than having your suitability assessed in comparison with you peers.”

Even though ‘likely discrimination’ had been raised in an official report, and numerous senior officers were aware of this, no action was taken to address what was a reportable incident IAW ADF policy. Discrimination in the workplace is also aligned to Commonwealth Laws.

The CDF appointed an Inquiry Officer to conduct a Defence Inquiry under *Defence (Inquiry) Regulations 2018*. This is where a relatively simple administrative matter that should have been dealt with at the lowest level transformed into a highly complex inquiry. It was conducted across multiple ADF departments, involved numerous senior ranking officers, and was drawn out over a TWO-YEAR period. Due to the number of decision-makers involved at varying stages, I was forced to submit subsequent ROGs in an attempt to counter some of those decisions that compounded new career detriments compounding over a SIX-YEAR period.

Judgements were made throughout the process that was based on inaccurate information, and as the inquiry unfolded, it became known to me that seriously false information had been given to decision-makers that increased existing detriments to me.

After the inquiry, a Freedom of Information (FOI) request disclosed that the senior Army officer admitted to deliberately strategising to avoid writing my PARs. I should have received an apology, and the ADF should have made reparations to restore my career and reputation. They did neither.

ADF policy maintains that if adverse comments are to be made on a soldier’s employment record, then it is <i>mandatory</i> that the member has an opportunity to defend themselves against any detriment those comments may result. I was not consulted at any time before, during or after, adverse comments were made on my PARs, and those adverse comments were false and unsubstantiated.
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DETRIMENT TO ADF SPOUSE

False comments about **MY SPOUSE** were included in my PAR to create a detriment to me. My spouse is an Order of Australia recipient and an upstanding member of the community. She submitted a complaint to the Chief of Army and escalated that complaint to the Minister of Defence. Neither upheld her request for an apology or a retraction of the false information from my military employment record. My spouse suffered public humiliation to the extent that it impacted her mental health. (*See* ENCLOSURE C: Case Study 2—AFFECTED ADF SPOUSE).

EVIDENCE OF ADF POLICY AND LEADERSHIP FAILINGS

The Inquiry Officer findings concluded with no adverse findings against the senior Army Officer despite him deliberately strategising to harm my career and making false claims against my spouse. I continued to argue ADF policy and leadership failings and was successful in having the Notification of Management Initiated Early Retirement (MIER) overturned. The harm inflicted on my career and reputation, however, was irrevocable. I was downgraded to a non-designated position for three years, pending my reaching Compulsory Retirement Age in 2018, and my career aspirations were vexatiously destroyed through deliberate lies and maladministration.

Maladministration prevented me from attaining senior appointments, and this impacted my income and diminished my subsequent pension and superannuation entitlements.

Not fully understanding how the Defence Inquiry Officer could have concluded that no harm had been done to me, I submitted a request for information under the *Freedom of Information Act* (FOI). To my dismay, I discovered that my complaint against the senior Army officer was not the only issue that had created a significant detriment to my career and reputation. The FOI revealed that an ADF (WO1) had also corrupted the career selection process, having made several false allegations to the SWO PAC (See Annexure to ENCLOSURE B: FALSE ASSERTIONS TO SWO PAC).

The ADF (WO1) claimed that in the early 1990s, several Commanding Officers collaborated to cover up criminal activity that I was alleged to have committed while being a member of the SASR. The ADF (WO1) claimed that I was secretly punished consequently (See Annexure to ENCLOSURE B: FALSE ASSERTIONS TO SWO PAC). The Inquiry Officer hid all those claims from me.

“The Defence member was reprimanded by a previous SOCAUST over raising money for a fledgling 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.”

Not only was this statement entirely false and intended to harm my career progression, but there was also no evidence to substantiate the claim. Furthermore,

- I had never been reprimanded at any time for any incidents throughout my entire service with the ADF. If it were, otherwise, there would have been a disciplinary or counselling record to that effect.
- My service history throughout my entire career with the ADF was exemplary, and hence why I was competitive for promotions and representational postings.
- I was never "counselled and moved to Canungra", as my employment record shows. From 1993 to 1995, I was on a promotional posting to Canungra.
- The SASR Resources Trust was not established until after the Blackhawk accident in Townsville on 12 June 1996.
- I did not return from posting to SASR until 1996 and was promoted to a position as Squadron Sergeant Major of a Squadron.
- In 1997, I was deployed on operations overseas.
- It is inconceivable that the SASR CO, 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.
- After my spouse read the false claims against me, she wrote to the SASR Resources Trust. That response is provided in the letter on the next page.



8th July 2019

[REDACTED]
[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]
[REDACTED] Trust

Peace of mind for our SAS and their families

PO Box 633 Nedlands WA 6908 P 08 9389 8897 E admin@sasresourcesfund.org.au
ABN 82 135 715 704

I argue that the statements provided by the ADF (WO1) to the Defence Inquiry Officer were false, and evidence could have substantiated that claim. Yet, the false statements remained detailed within the final findings presented by the Inquiry Officer. I believe this diminished the perception to superiors of my integrity and professional standing.

In any court of law, such false and malicious allegations would constitute defamation proceedings. The Inquiry Officer did not see fit to inform me of these falsehoods, which denied me the opportunity to defend myself.

Up until my retirement from the ADF, I held a Top-Secret Positive Vetting Security Clearance for the majority of my service. I would not have held such a high-security clearance if there were any truth to the allegations.

The Inquiry Officer did not bother to undertake a simple check of the evidence because the person who provided that evidence was deemed by the Inquiry Officer to be a 'highly credible witness' and because of the position they held. A simple phone call or an email to the SASR Resources Trust could have easily shown that the evidence that the Defence Inquiry Officer had relied upon was false. Had the Inquiry Officer acted with a semblance of a duty of care to me, he could have prevented a significant detriment to my career and reputation.

Among other falsehoods, the ADF (WO1) also falsely claimed:

"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."

Again, this statement is entirely false AND unsubstantiated by any evidence. Moreover, it was intended to harm my career progression. Had the Inquiry Officer asked me if there was any substance to such accusation, I could have easily provided evidence to counter those false allegations.

Again, the Inquiry Officer did not even bother to undertake a simple check of the evidence. He deemed the person providing that evidence as a 'highly credible witness' because of the position they held. Their oral evidence was not only grossly inaccurate, but it was also deliberately dishonest, and I believe, provided to discredit me.

Of note:

- The Defence Inquiry Officer hid this information from me. I was never made aware of any 'subsequent investigation' which is contrary to ADF Policy that affords me the right to know of any proceedings that would involve me, as a member of the ADF, and that could result in adverse findings,
- Qualifications and trade recognition follows a strict process and is administered by the DSCM-A and respective trade managers as the approving authorities, of which I had no role and nor was I part of that process,

- I have held both Top Secret and Top Secret with Positive Vetting security clearances for the majority of my career. Had the allegations been true, I would not have maintained those security clearances.

Another falsehood was presented during the SWO PAC by the ADF (WO1):

“During a PAC when the Defence member was being considered for a position, one of the PAC members stated he did not believe the Defence member was appropriate for the particular appointment due to his previous interactions. The PAC member then described matters from the 1990s in which the Defence member used range refurbishment stores and funds, and then requested components from other Services or units, to make three-dimensional mock-ups for the [name redacted] Mess area at Canungra. The Defence 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.”

- This was an outrageous accusation that could have easily been refuted had I known that it was being articulated to the career panel. I was never at any time a supervisor/assistant to this Mess or any other. I was not even a member of the Mess committee or a member of the Mess. I was posted to Canungra as an instructor at the Jungle Warfare Centre (JWC) at Battle Wing.
- In my off-duty hours, I used my own personal funds to transform the soldier’s Mess into a learning centre for soldiers. I was not reimbursed by Army and nor did I seek any reimbursement. I was awarded a Land Commander’s Commendation in 1994 for this project.
- Had I known that I was being accused of fraud and misconduct in secret, I would have easily been able to refute such scandalous LIES with supporting witness testimony. After becoming aware of this claim, I contacted the Commanding Officer (CO) JWC and my Team Commander when I was posted there. Both provided statements that fully refuted these vexatious claims. Their statements were not used to remedy the detriments to my career.

DEFENCE INQUIRY OFFICER FAILINGS

What the above information demonstrates is that lies were told about me at a critical time when I was being considered for one of THE MOST senior positions in the Special Operations Command.

The Defence Inquiry Officer kept that critical information a secret from me. Had the Defence Inquiry Officer believed the information to be true, that I had committed fraud, theft and/or embezzlement, then they should have reported this activity to the lawful authorities, in accordance with ADF Policy. At no time did they report the matter.

The Defence Administrative Inquiries Manual (2017) and *the Defence Force Discipline Act 1982* advise that Inquiries conducted under the Defence (Inquiry) Regulations cannot make findings where a criminal offence may have been committed, and in such circumstances, the Inquiry Officer must suspend the Inquiry and report the matter to the appropriate ADF Investigative Service, Service Police, or civilian police, as relevant.

Similarly, had the Defence Inquiry Officer thought the information to be untrue, they should not have allowed the claims to inform their findings. Such had been shared broadly with my superiors and other members of the ADF. Those falsehoods remain permanently affixed to my military employment record.

Unfortunately, by the time I discovered this, the Defence Inquiry had been concluded, and my reputation and career had been destroyed. The reason behind why the Inquiry Officer did not investigate these claims but still allowed them to remain in the Inquiry Report is questionable. Either they believed the information was correct but failed to report the matters as serious criminal claims which they were obliged to report to the appropriate, lawful authority, or they deliberately left the allegations in the Inquiry Findings to misrepresent the facts and discredit me. Both cases highlight serious and deliberate maladministration from which I can never recover.

EXTERNAL REVIEW

I submitted a complaint about these matters and my concerns to my Chain of Command. I also sought an external and independent review:

- Chief of Army,
- Chief of Defence Force,
- Inspector-General of the ADF,
- Australian Attorney-General,
- Commonwealth Ombudsman
- Information Commissioner, and
- Minister of Defence

Each of these departments concluded as follows:

Chief of Army and Chief of Defence Force: both concluded that “the Inquiry Officer Inquiry was conducted in an appropriate and transparent manner and there was sufficient evidence to support the findings”, which essentially found that my complaint was not upheld.

IGADF Response: “A thorough assessment has been undertaken of your submission and other relevant material, particularly the report of the XXXX 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).” I did not pursue a CDDA claim because, by this stage, I 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.

In all my endeavours to engage a fair hearing of my matters, the actions of the Inquiry Officer did not adhere to ADF Policy. Specifically, that policy instructs Inquiry Officers to 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).

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

- denied natural justice in the absence of good governance and accountability,
- subjected to having Army Regulations misused against me,
- maliciously portrayed by false statements alleging I mishandled many millions of dollars,
- refused the opportunity to correct misinformation about me,
- suffered the consequences of a flawed legal system in the ADF,
- subjected to a psychological assessment at the instruction of my superior officer, who sought to use that to justify my removal from my current location (a representational overseas posting),
- issued a Mandatory Initiated Early Retirement Notification Letter to prematurely end my career,
- ignored by those in superior positions, all the way up to Ministerial level,
- deprived the opportunity for well-established legal principles to operate in my favour,
- subjected to slanderous comments about my spouse, included in my employment record. (*See ENCLOSURE C: Case Study 2— AFFECTED ADF SPOUSE*).

ASSESSMENT BY A FORMER STATE POLICE INVESTIGATOR

The circumstances, process and outcome for a Defence member’s grievance often involve a denial of natural justice, a sloppy, unprofessional (or deliberate maladministration/official misconduct) Inquiry that is allegedly independent but clearly not.

The complainant suffers various forms of detriment, including career and financial, reputational damage and worst of all, mental health stresses that then flow to the family.

As a former police officer who responded to thousands of grievances, I can say that every complainant needs to be:

1. Heard (through some form of mechanism to complain),
2. The complaint to be independently reviewed (Independence needs to be real and perceived),
3. The review needs to be transparent and provide natural justice for all parties. Noting that not all disputes/complaints will be resolved to the satisfaction of all parties, but transparency, professionalism and natural justice can do wonders for expectation management, and
4. Redress the wrongs. Noting that not all complainants actually want to go this far. For many people, being heard and receiving sincere acknowledgement of wrongdoing is all they want.

What is underestimated is the dedication, commitment and trust that serving members (and families) put into the ADF. When they are wronged, they need a genuine mechanism for independent review, and that should result in reparation, to acknowledge and repair the harm caused to the person, and to identify the root causes of that harm—to prevent them from occurring again in the future.

The mental trauma that is caused by the organisation, by failing to put in place a genuine mechanism for independent review, cannot be underestimated.

ONGOING DEFECTIVE ADMINISTRATION

The Inquiries into the matters failed to provide me with any opportunity to challenge false allegations about me, particularly in the final Inquiry report BEFORE it was released to third parties. This constitutes breaches of procedural fairness. I was DENIED my common law rights to:

- receive all relevant information before preparing my reply to support my complaint,
- an opportunity to reply to any proposed findings in a way that would be appropriate for the circumstances,
- to be notified of any negative information about me and to disclose that to me in order to raise a defence BEFORE any decisions were made.

No adverse findings were made against any Defence members, despite the fact, their actions caused significant compounding detriments to my career and were harmful to my career aspirations, emotional well-being, my reputation, and that of my spouse.

Evidence of detriments are contained in the following statements made by senior commanders:

1. “On 24 September 2015, MAJGEN M found that [my name redacted] career was adversely affected by the failure to receive PARs for the 2012 and 2013 period. To redress this grievance, [my name redacted] would be presented to the 2016 SWO PAC for consideration for promotion.”
2. On 16 December 2015, LTCOL S, in a review of my inquiry, found that during the selection process for the new RSM/SF position, I was “excluded from consideration for this appointment due to comments that were made by individuals that were not supported by any factors or documented evidence.” And “Regardless of whether or not you would have been selected as the RSM/SF and/or actually made it onto the preferred candidate list, you appear to have been discriminated against based on a personal undocumented assessment of SOCOMD rather than having your suitability assessed in comparison with you peers.”
3. To redress this grievance, COL F [name redacted] sought to remove adverse comments from my record. He wrote: “While ROG decisions have been found in [my name redacted] favour, it is apparent that he has not been provided with any real redress, rather recommendations were made to improve the administrative processes for future. Those recommendations are of no benefit to [my name redacted] as the damage has already been done.”
4. Despite the fact, the ‘likely discrimination’ had been raised in an official report and that numerous senior officers were aware of this, no action was taken to address what is a reportable incident in accordance with ADF policy. Moreover, discrimination in the workplace is aligned to Commonwealth Laws, and I was entitled to protections but was denied protection.
5. On 23 November 2016, the Chief of Defence Force wrote: “I note that one of the primary reasons underlying your grievance is that you did not receive any performance reports for the period 2012-13. It is unfortunate that the failure to provide you with performance reports for the period 2012-13 has led to this chain of events. I apologise for these reporting deficiencies and the effect it has had on your subsequent career management.” The CDF also conveyed these sentiments to me in person.

6. The CDF's directed Inquiry was conducted in 2017/18. The findings from that inquiry I obtained through an FOI request and revealed that corrective action in the 2016 SWO PAC never occurred. Moreover, the ADF (WO1) and other SWO PAC panel members made several misleading statements about me and presented them as statements of fact. This gave a false impression of me to the other decision-makers. Under these circumstances, it was impossible for me to get procedural fairness in accordance with the corrective action MAJGEN M had intended. The ADF (WO1) also conveyed this information to DSCM-A during the selection process for the RSM/SF position, which discriminated against me being considered for this position, one that I was well-qualified for and experienced to undertake.

My grievance was not simply a matter of not receiving PARs for two consecutive years, which is what the CDF stated in his letter to me on 23 November 2016. His view of the matter and apology trivialised the injustice I had experienced and offered no corrective action or reparation to restore my career and reputation. This, in spite of the fact that he and other commanders acknowledged my career had been harmed. The CDF's apology did nothing to heal the moral trauma inflicted on me at being betrayed by the system I had given over four decades of service to. The detriment to my career also resulted in significant financial losses (i.e., \$1.45 million in salary/pension calculated over my life expectancy (rate determined by DVA). Neither did the CDF apology extend to my spouse, who continues to suffer significant emotional trauma and anxiety as a result of these events.

My complaint was solid and straightforward. I had articulated my complaint according to advice from a Defence Legal Officer (DLO Barrister) whose insights are compelling:

"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.

Further to your email below, attached is a draft of a minute to IGADF and a draft submission to be enclosed with that minute, for your careful consideration".

DLO Barrister
CMDR, RANR

This statement alone should have caused someone to question the validity of the Defence Inquiry.

It did not.

MINISTERIAL JUSTICE DENIED

The only remaining option available to me as a serving member was to elevate my complaint to the Minister of Defence. I particularly drew her attention to the false allegations concerning the SAS Resources Trust.

The Minister's response, however, confirmed that no action would be taken against the ADF because the allegations were not within the "*Terms of Reference of the Inquiry Officer Inquiry*" and "*The Inquiry Officer was not required to seek [my] 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 me

"He [My name redacted] 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 were entirely false on the basis that ADF policy stipulates that if adverse comments are to be made against any Defence member that they are to be informed before those comments are formalised in any employment documentation (ADFP 06.1.3 Guide for Administrative Decision-Making Chapter 2).

I was not consulted at any time before, during or after, adverse comments were made on my PARs or to the SWO PACs, and those adverse comments that were false and unsubstantiated remain as a permanent stain on my otherwise exemplary military employment record.

Moreover, the Minister failed to address the fact that not only was I not informed that adverse comments were made against me, but they were deliberately kept secret, and I only learned of them through an FOI request.

Had I known what had been falsely reported to the Defence Inquiry Officer, I would have been able to submit a counter-response to protect my reputation and that of my spouse.

On that basis, the Minister failed to consider the evidence before her that substantiated the fact that my spouse and I were both clearly denied procedural fairness. At no stage did the Minister of Defence draw attention to the failings of the Defence Policy that required the Defence Inquiry Officer to cease their investigation and report the matter to the appropriate, lawful authorities immediately at the onset of allegations of a criminal offence.⁶²

LEGAL REDRESS

Having failed to engage any support from the Minister of Defence, I instructed my lawyer to write to the Chief of Defence Force to inform him that I had been denied natural justice/procedural fairness, combined with some errors actionable as a matter of administrative law.

⁶² Parliament of Australia, 'The Effectiveness of Australia's Military Justice System, Chapter 2, Australia's military justice system: an overview' (16 June 2005). <
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed%20inquiries/2004-07/miljustice/report/c02#:~:text=The%20Administrative%20Inquiries%20Manual%20provides%3A%20A%20General%20Court,of%20the%20most%20senior%20officers%20of%20the%20>.

My lawyer articulated that the redacted Defence Inquiry Officer's report contained numerous false allegations about me (both in respect of bias and the absence of procedural fairness.) Those false allegations had an adverse impact on my reputation and career.

My lawyer further described that the actions of the SWO PAC had not only been affected by bias but by a lack of procedural fairness and that the outcome for me was predetermined. He determined that process was "*misconceived and perpetuated the defective administration of your career*" and that it had caused significant damage to my career "*as a result of a series of inappropriate conduct by other Army personnel*" and "*that damage has only been exacerbated as a result of defence administration where those internal processes have miscarried, by infection of error, mishandling and/or bias (ostensible or actual)*).

The Australian Government solicitor responded on behalf of the Chief of Defence Force, 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 xxxx 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 XXXX*
- 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.

At first, I did not pursue their offer because I could not afford to be embroiled in a protracted legal debate which is what would have resulted. The ADF has a propensity to cash starve anyone attempting to hold the hierarchy to account. The ADF has unlimited financial resources, whereas other Defence members and I do not.

Consequently, these matters traumatised me to the extent that I could not attend my own farewell from Army in celebration of over 40 years of exemplary service. The decision to boycott my own farewell was a decision I did not take lightly and was supported by my psychiatrist. He agreed that attending, under those circumstances, would only increase the moral trauma I was feeling and would put my mental health at further risk. My psychiatrist wrote a supporting letter which was forwarded to the Headquarters. The correspondence I received in response to my decision was to inform me that the Commander was disappointed and that I was "making a big mistake."

Within days of that letter, my wife received instructions from the Headquarters to attend my farewell even though I requested they not contact my wife. She, too, was deeply distressed about the way I had been treated.

When neither of us attended their function, the Commander stripped me of his Commander's Commendation that I was told would be presented to me at my farewell. This, for my outstanding commitment to Operations and Training during my posting to the Headquarters and for my service to those deploying to Afghanistan. I thought this decision showed no regard for my mental health or respect for my military service. I was deeply humiliated. I still feel the sting of that betrayal that my 43-year career ended without any care or concern for my personal wellbeing. These feelings make it impossible for me to feel good about my service, even though I served with distinction.

Annexure to ENCLOSURE B: FALSE ASSERTIONS TO SWO PAC

False Allegation (1)	Counter Claim by ADF member (1)
The Inquiry officer argued that I had been 'counselled' and 'reprimanded' for a number of 'misdemeanours' throughout my career by commanders.	False and vexatious. ADF policy states that "Commanders must maintain complete and accurate records on the member under their command. These records should contain, but are not limited to, information on personnel profiles, lapses in professional conduct, potential disciplinary issues, records of conversation, unacceptable behaviour issues, career courses and other information the Commander deems necessary." My Performance Appraisal Report (PAR) history and Defence Conduct Record evidence that I served with distinction and prior to these events recommended for promotion. No reprimands, no misdemeanours, no charges, no unbecoming conduct of any kind, and no record of counselling for an offence has ever been recorded on my file since joining the ADF (1976).
False Allegation (2):	Counter Claim by ADF member (2)
The accumulation of misdemeanours has 'led to many commanders (and peers) not trusting his judgment.'	Outrageous slander. I have consistently scored the highest categories in all PARS provided from 2006 to present. My service history is exemplary. I have been recognised by Honours and Awards. I have a Medal for Conspicuous Service, combined with other Meritorious Commendations, accumulating in an overseas Representational (hardship) posting which is highly competitive. I have held both Top Secret and Top Secret with Positive Vetting security clearances for the majority of my career.
False Allegation (3):	Counter Claim by ADF member (3)
"These events have come to light in the years after the member left the role, and therefore they have not been reflected in his annual performance reporting."	FALSE. As above (1-3). I have held both Top Secret and Top Secret with Positive Vetting security clearances for the majority of my career. I was never made aware of these allegations at any time throughout any Inquiry or my career. The ADF (WO1) suggests that the ADF reporting system is deliberately manipulated to reflect a particular narrative.
False Allegation (4):	Counter Claim by ADF member (4)
"Many of these events have led to formal investigation or administrative inquiry and some are still ongoing."	Throughout my career, I have had cause to utilise informal and formal complaint mechanisms available to me, to address grievances. This is not uncommon for Defence members who have over four decades of service. As a member of the ADF I have the right to access ADF Policy to seek a resolution of a complaint. As the records show, each of my complaints have been upheld, however, the ADF does not have a reparation policy so in those situations it has been necessary to escalate my complaint. By his own admission, the ADF (WO1) is implying that to have matters under investigation or administrative inquiry implies guilt. This mindset is at the core of the failings of the redress process, where complaints are met with an adversarial response.

False Allegation (5):	Counter Claim by ADF member (5)
<p>“A subsequent investigation found that the ADF 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 ADF 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 xxxx, and the matter has been brought to the attention of CA and CDF.”</p>	<p>SLANDER. Not only did the Inquiry Officer keep this information hidden from me, but no evidence also exists to substantiate the claims.</p> <p>I have never been provided with any documentation that evidences any investigation into my service, other than my own requests to access informal and formal complaint mechanisms available to me to address grievances. The ADF (WO1) is suggesting a secret investigation took place that found I acted inappropriately in my management of others. If that was the case, why was I never informed?</p>
False Allegation (6):	Counter Claim by ADF member (6)
<p>“The ADF member was reprimanded by a previous XXXX over raising money for a fledging XXX 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 was found. Disciplinary action against the ADF member was not taken as it would have led to reputational damage to XXX and hurt a number of the ADF member’s followers who assisted him in the fundraising. The ADF member was counselled and moved to XXX [interstate].”</p>	<p>False and vexatious. I first learnt of these slanderous allegations AFTER I had applied under <i>Freedom of Information Act</i> for a copy of the Inquiry findings. I immediately wrote to the Trustee of the Trust (which is far from ‘fledging’) and was given a letter that proved the allegations were entirely false. I was unable to submit that evidence to the Inquiry Officer because the matters had been closed.</p> <p>Why did the Senior ADF Leadership accept clearly vexatious claims? These had not only misinformed a Defence Inquiry but had deliberately misled the Defence Minister, the Defence Ombudsman and Inspector General of the ADF. It is inconceivable that the Unit Commanding Officer (OC) and the CDF would cover up suspected fraud and misconduct, both reportable offences. The seriousness of these allegations alone should have resulted in the Defence Inquiry officer bringing these matters to my attention to ensure procedural fairness, and beyond that, an investigation by lawful authorities. There was never any "discrepancies in accounting for the donated funds", as alleged. The Australian Taxation Office (ATO) kept meticulous auditing records, as did the entities involved in managing donations. Those records were provided to the Unit CO as Minutes to provide him with an accurate record of all meetings, including business activity.</p> <p>I was never "counselled and moved to Canungra." From 1993 to 1995, I was on a promotional posting to Canungra. I did not return to my Unit until 1996, when the alleged offence was supposed to have occurred, which resulted in my posting out of my Unit as punishment.</p>

	<p>In 1997, I assumed a higher status as an SSM in SASR and was subsequently deployed on operations.</p> <p>No action has been taken against the ADF (WO1) who made these vexatious claims, and the Minister argued that they did not inform the 'Terms of Reference' of the Inquiry, therefore, they were not relevant. (See MINISTERIAL JUSTICE DENIED).</p>
False Allegation (7):	Counter Claim by ADF member (7)
<p>In the Inquiry report it was claimed that: "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."</p>	<p>False and vexatious. The ADF (WO1) misrepresented me entirely. The PAC was obliged to follow strict administrative processes in accordance with ADF Policy.⁶³ They and the Inquiry officer denied me procedural fairness when they kept the allegations of fraud and misconduct hidden from me. The Inquiry officer accepted hearsay as contemporaneous documentary evidence, which was outside the Inquiry officer's own Terms of Reference. Had I known that I was going to be accused of fraud and misconduct, I could have called on witnesses who were involved in these projects and who could have refuted the allegations.</p> <p>After becoming aware of this claim, I contacted the CO JWC and my Team Commander while I was posted there, and both provided statements that fully refuted these vexatious claims.</p> <p>The ADF (WO1) misrepresented me entirely. As the records would reflect, I was never at any time a supervisor/assistant to any Mess and never have been in my entire career. I was not even a member of the Mess Committee. I was posted to the Unit as an instructor.</p> <p>I used my personal funds to transform the Mess into a learning centre for Defence members. I was not reimbursed by Army and nor did I seek any reimbursement. I could easily have provided a copy of my bank records had I known that I had been accused of financial fraud. I was awarded a Commendation from the ADF for my contribution to this project. I am certain that I would not have retained Top Secret Positive Vetting (TSPV) clearance that I held then if there was any substance to these allegations.</p>

⁶³ Jai Wright, 'Writing your PAC statement- A Warrant Officer's Perspective.' *The Cove*. May 16, 2019. <https://cove.army.gov.au/article/writing-your-pac-statement-warrant-officers-perspective>.

False Allegation (8):	Counter Claim by ADF member (8)
<p>The Army officer "says he is aware of the consolidated list of incidents involving the ADF member because of his roles over the past six years."</p>	<p>False and vexatious. If this were true, then there would be a record of misconduct on my Defence Conduct of Duty record or at least a notation on my military record. Immediately when I learned of these scandalous allegations, I put in a request under the <i>Freedom of Information Act</i>. I was informed that no such list existed.</p> <p>The ADF (WO1) is implying that the ADF keeps secret lists on its members.</p> <p>The Inquiry Officer accepted the allegations as they remained in the final findings of the Inquiry and hid those allegations from me during the conduct of the Inquiry. It was only AFTER the Inquiry concluded and AFTER I obtained information under the <i>Freedom of Information Act</i> that I then learned of the allegations.</p> <p>The ADF (WO1) made the claims without documented evidence.</p> <p>At no time was I given an opportunity to respond to the allegations.</p> <p>I was denied natural justice/procedural fairness, combined with some errors actionable as a matter of administrative law. Further, the publication of those false allegations had an adverse impact on my reputation and, therefore, my career.</p>

ENCLOSURE C: Case Study 2—AFFECTED ADF SPOUSE

(Information provided by the Civilian)

This case study should be read in conjunction with ENCLOSURE B: Case Study 1—AFFECTED ADF MEMBER. This case study provides a unique example of how an Army Officer used a Defence member's spouse to create a detriment to the member. In Australia, there are a number of federal and state laws that exist to protect Australian citizens (civilians) from discrimination and treaties to protect citizens from breaches of human rights. ADF policies do not allow for spouses to be written into Performance Appraisal Reports (PARs) of Defence members.

THE BASIS OF MY COMPLAINT.

My husband, being a Defence member, submitted a complaint through the Chain of Command under the Redress of Grievance system. That complaint is described at ENCLOSURE B: Case Study 1—AFFECTED ADF MEMBER. During these matters, my husband and I learned of false allegations made about us both.

Whilst on an overseas representational posting, my husband frequently travelled to XXXX, a neighbouring country where we were located, to deliver Intensive English Language Testing to students of the XXXX Army. On one particular occasion, I had travelled with my husband. I had not travelled on ADF business. I had made my plans separate from his for my own recreational leave. I had paid for my own travel, accommodations and expenses from my own pocket. I was not subject to any travel restrictions, and I did not require anyone's permission to travel to that country.

Upon learning that I was in-country, the Brigadier-General in charge of that country's military Language School invited me to give some insight into English to the students at that school. To refuse would have been impolite and could have resulted in creating unfavourable relations with the Army of that country and the ADF. My acceptance of the Brigadier-General's personal invitation was my decision alone. However, my husband did inform his superior Officer afterwards, who simply said it was typical of the XXXX Army's hospitality. Nothing more was said about the matter.

During a Redress of Grievance investigation of my husband's complaint (See ENCLOSURE B: Case Study 1—AFFECTED ADF MEMBER), he had successfully argued that his superior Officer had failed in his duty to write his PARs, and this had caused a significant detriment to my husband's career.

After my husband elevated his Redress of Grievance to the Chief of Defence Force, which was processed through Army Headquarters, the Chief of Army instructed the Army Officer to write the reports. This, despite they would be submitted FOUR years out of time and against ADF Policy.

My husband refused to sign and accept those reports because they misrepresented his service to the ADF, were in violation of ADF policy, denied him procedural fairness, and contained offending remarks written about me, also a violation of ADF policy. The Army Officer had referred to my visit to XXXX four years earlier. He wrote, *'her presence reflected very poorly on the ADF....'* The following is a redacted extract of the Performance Appraisal Report (PAR):

“Regrettably XXXXXXXXX displayed a serious lapse of judgement when he XXXXXX to XXXXX on an XXXX visit to the XXXXX School of Languages. While the XXX were very gallant in welcoming her, her presence reflected very poorly on the ADF. The problem was compounded when he subsequently visited XXX HQ and, when his counterparts realised XXXX 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, I learned that the Army Officer had discussed my visit to the XXXX School negatively with other Australian Embassy Officials of that country. I attempted to have those allegations expunged from those records, unsuccessfully.

The Army claimed the comments about me were not a criticism, but I felt that if they were communicated to third parties, then any reasonable person reading that statement, without any prior knowledge of the events, would likely think less of me. For that reason, I repeatedly asked that the comments be expunged from my husband's military record.

I submitted evidence to reviewing Officers and Ministers to prove the comments were false. The following copy of an email from the Commandant of the XXXX School was submitted and ignored.

I continued to seek assurances that all erroneous comments relating to me were expunged from official military records. *This was denied.* I sought access to the documents that were referred to me under the *Freedom of Information Act*. I was given 1041 pages relating to me which 98-99% were entirely blacked out/redacted.

Greetings from [REDACTED]

29 August [REDACTED] at 15:41

To whom it may concern,

[REDACTED] visited the [REDACTED] armed forces Language Institute on one occasion in [REDACTED] at the time when I was assuming my position as head of the English language wing. She was invited, along with [REDACTED] to visit our language institute, upon arrangements made by the directorate of training at [REDACTED], to conduct test for a number of our officers attending military courses in Australia. [REDACTED] was kindly asked, by the commandant brgiadeir [REDACTED] to give some insight in English to our students who were attending an English language course at the time of her visit. The contribution [REDACTED] made that day was highly appreciated, by myself and other instructors at the wing, in the spirit of the friendship between [REDACTED] and Australia. During my work as head of the English Language Wing, I had the chance to work with [REDACTED] in several occasions, and I personally think [REDACTED] good representatives of Australia and our friends in the ADF.

Regards,

COL (R)
[REDACTED]

In my repeated appeals to the respective service Chiefs, I was informed that *'the Inquiry Officer Inquiry was conducted in an appropriate and transparent manner and that there is sufficient evidence to support the findings made by the Inquiry Officer.'*

Arguably this statement is false as the allegations about me were *inappropriate* and in violation of ADF reporting processes. I felt incredibly betrayed by the ADF.

The moral trauma resulting from this event caused me considerable distress which I required counselling to prevent me from suffering anxiety, depression, and feelings of being violated. To prevent other ADF spouses from being subjected to this level of abuse in the future, I sought that these matters be referred to a Senate Inquiry.

I wrote to the Minister for Defence appealing for his support.

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 1 Sept [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 to 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, despite evidence contrary to their findings. These matters are now historical in the eyes of the ADF and do not matter. But to me, my husband and my family, they matter a great deal. They are representative of a wrong that has never been made right.

To this day, these events leave me feeling very emotional and diminish my ability to fully celebrate my husband's long and exemplary service to the ADF.

THE HON CHRISTOPHER PYNE MP
MINISTER FOR DEFENCE
LEADER OF THE HOUSE
MEMBER FOR STURT

Dear [REDACTED]


Thank you for your emails of [REDACTED] regarding what you consider to be false allegations about you that were used in a recent Army Inquiry. I apologise for the delay in responding.

I understand that you have previously raised your concerns with the former Minister for Defence, the Minister for Defence Personnel, the Chief of Defence Force and the Chief of Army, and that you are not satisfied with the response to date.

I have reviewed your concerns and have considered all matters raised in their totality. While I regret the impact this situation has had on you [REDACTED] I am satisfied that the Inquiry was conducted appropriately and there was sufficient evidence to support its findings. Consequently, I do not intend to elevate your concerns to a Senate Inquiry.

I wish you all the best for the future.

Yours sincerely


Christopher Pyne MP

ENCLOSURE D: Case Study 3— AFFECTED ARMY RESERVIST

Background

In 2016, I was directed by my Commanding Officer to deploy to Afghanistan and conduct an audit of the practices of Australian soldiers who provide protection to mentors and advisers helping Afghanistan develop its defence and security forces.

Following my return to Australia, I was tasked to address the critical skills and safety shortfalls I had identified in their practices. I developed specific training, which became the Army blueprint for the [REDACTED] training.

Under a Commonwealth Agreement, I was appointed to a position to oversee private contractors engaged in delivering the training under my instruction and recommendation.

Over a three-year period, I provided governance for 23 training courses delivered to over 1,400 ADF personnel. All without incident.

In October 2018, I reached Compulsory Retirement Age (CRA) and was discharged from the ADF.

On 01 Nov 2018, I was contracted by the ADF as an Army Reserve (ARES) member and offered 37 Army Reserve Training Days (ARTDs) to continue delivering this training for ADF personnel deploying to Afghanistan.

During the preliminary planning phase leading up to the commencement of the course, the Officer Commanding (OC) of the deploying Unit requested that an addition of four (4) soldiers be included in the diver training. This would give those soldiers niche skills and qualifications for operational service and the OC greater command flexibility.

In accordance with the Commonwealth Contract for Services, I had the authority to vary the Net Training Liability (NTL), subject only to it not increasing the contract price. I confirmed that the proposed increase of four (4) soldiers did not incur additional costs. There was no requirement for me to seek approvals from the Contract Manager of the Commonwealth Contract as there was no amended quote or change to the current terms of service. Moreover, at the OC's request, I had permitted an addition of nine (9) soldiers to the tactical phase of this training, which only ended the day before the driver training commenced, delivered by the same private contractors, under the exact same contract and conditions.

The Incident

On the first day of the driver training, a senior officer from the Headquarters advised my colleague that the addition of four (4) extra soldiers were to be removed from the course on the advice that the private contractors had requested additional remuneration to train them and had threatened to cease the training. I complied with those instructions and invited the four (4) soldiers to return to the training the next day if their OC and the senior officer from the Headquarters resolved those matters preventing their participation.

The next day the addition of four (4) soldiers returned and resumed the training until about mid-morning. My colleague informed me that they were to be removed, a second time, from the training. He further advised that I was to continue the training to the remaining course; however, all instructions in relation to that training would be delivered via my colleague as the private contractors refused to follow my

instructions. This seriously undermined my position to govern the safety elements of the training in accordance with the terms of the Commonwealth Contract.

Just before lunch, I was dismissed from the course entirely. I was instructed to leave the training area. This information was conveyed to me by the WO1 at the Headquarters, who had been appointed to monitor the training. I was not given any explanation for this instruction by the WO1 or the senior officer from the headquarters.

The Safety and Governance officer of the training confirmed that my removal represented a serious breach of the Commonwealth Contract, Defence policy and safety. In accordance with the Commonwealth Contract, the training could not proceed without my appointment unless a new contract was written with a new Risk Assessment Summary submitted. This was not done, which was a breach of the Commonwealth Contract and Army Training and Safety.

My colleague informed me that the senior officer of the Headquarters had attempted to organise one of the private contractors to assume my role, which was in breach of the specified terms of the Commonwealth Contract. Moreover, such an appointment would relinquish full control of all Army's governance of the training to a civilian, thus creating a further conflict of interest and exposing Army to potential governance risks.

I left the training area as instructed and informed Range Control of my departure as a standard (required) practice. Approximately one hour later, I received a telephone call from my colleague who stated that I could return to the training and that the senior officer from the Headquarters would not further interfere in the conduct of the training. I agreed to return on the proviso that I could perform the full duties in accordance with the Commonwealth Contract. This meant the private contractors would be required to follow my instructions as they had done on the previous 23 training courses. I also requested that the additional four (4) soldiers be allowed to complete the training in support of the OCs operational needs and ahead of their deployment to Afghanistan. I felt that soldiers deploying to armed conflict should be given appropriate pre-deployment training as a Duty of Care.

The senior officer from the Headquarters agreed on the first point but not the latter. Subsequently, I did not return to the training.

- I was not informed of any decision-making process intending to discharge me from the contractual arrangements I had with the contracting party (ADF) or my obligations under the Commonwealth contract.
- I was not prior to or at the time or any time since informed of any reason why I would be suddenly and unexpectedly removed from the training,
- I was not provided with any follow-up counselling by Army to advise me of why I was suddenly and unexpectedly removed from the training,
- I was not provided with any evidence of any complaint against me by the Army or any other entity or third party involved in the training, and
- I believe my dismissal under these circumstances was unfair, unjust, and unreasonable.

The Safety and Governance officer of the training stated that the senior officer from the Headquarters had sought to order him to assume my role and threatened him with Defence Force Disciplinary Action if he did not comply. The Safety and Governance officer left the training and later submitted a complaint to his Chain of Command and to the Chief of Army. His complaint related to his claim of workplace bullying by the senior officer from the Headquarters. He also elevated his complaint to the Inspector General Australian Defence Force (ENCLOSURE E – Case Study 4—AFFECTED ADF SAFETY AND GOVERNANCE OFFICER).

FLAWED DEFENCE INQUIRY

In the days that followed, I also submitted a complaint to the Chief of Army about the senior officer from the Headquarters. I learned that he submitted a counter-complaint to my complaint. I applied for a copy of that complaint under Freedom of Information but was denied access to any documentation.

I was informed that the matters were to become subject to a Defence Inquiry under the *Defence (Inquiry) Regulations 2018*. I wrote to the appointed Inquiry officer to inform him that I would not participate in that process. I believed the Inquiry process was flawed in that it does not provide any fair hearing rights or legal protections for participants. Given that I was no longer a serving member, I was not compelled to participate. Although throughout the inquiry, I provided the Inquiry Officer written responses to his questions and forwarded him overwhelming evidence to counter his proposed findings.

The Safety and Governance officer participated in the Inquiry as a witness to the bullying by the senior officer from the headquarters. His oral evidence to the Inquiry Officer was different to the transcript of that evidence he received. He filed a complaint and subsequent complaints when he was ignored (ENCLOSURE E – Case Study 4—AFFECTED ADF SAFETY AND GOVERNANCE OFFICER).

Fabrications by Inquiry Officer

Under the *Freedom of Information Act*, I learned that the Inquiry Officer made a false omission during the Inquiry. He had also based his entire Inquiry on false and defamatory testimony.

The Inquiry Officer concluded that on the balance of probabilities, I had actively sought to hide the addition of the extra four (4) soldiers on the training to prevent my chain of command from discovering that I had permitted them to participate. This is simply not true as I removed the four (4) soldiers from the training in front of witnesses.

Not once during the Inquiry did anyone ask the question of why those soldiers were excluded from training that was designed to prepare them for the challenges they would face on operations in Afghanistan.

As of November 2021, I have still not been informed of the outcome of the Inquiry and whether any adverse findings were made against me.

DETRIMENT

I believe the senior officer from the Headquarters abused his power and subjected me to workplace discrimination, bullying and harassment. He circumvented the terms of a Commonwealth Contract and, in doing so, injured my ability to work through reputational damage and unfair practices that he inflicted on my service. His actions prevented four soldiers from attending the training they needed to deploy, and this created an additional risk for them. His actions denied the OC of the deploying unit a greater level of

command flexibility in having the addition of four (4) soldiers trained for a specific role, as he had requested. Those members were required to meet his directed operational tasking.

Incredibly, I am advised that the OC of the deploying unit was not even interviewed by the Inquiry Officer. Had he been interviewed, then he would have supported my version of the facts and of this I am sure. I was contracted on an Army Reserve DA26 commitment for the 37 training days by his unit. I was, therefore, in the direct chain of command of the OC of the Deploying unit and obliged to follow his directions.

These events caused me to lose seven (7) days of remuneration that would have been paid to me had the senior officer from the Headquarters not unlawfully removed me from the training activities that I was legally contracted to provide under the Commonwealth Contract. The amount of lost remuneration to me personally amounted to Four Thousand, Seven Hundred and One Dollars and sixty-two cents (\$4,701.62).

Given that I was the founder of the training and had been advised by the Headquarters that they would continue to engage me to conduct the training packages into the future, I had every expectation that I would continue my service as an Army Reserve soldier, at least until I reached compulsory retirement at age 65 years. According to the training schedule, this would have amounted to remuneration of at least Four Hundred and Ninety-Three Thousand, Six Hundred and Fifty-Nine Dollars and Seventy Cents (\$493,659.70).

These events have caused me significant emotional trauma and professional detriment that has carried forward into my civilian life.

ENCLOSURE E: Case Study 4— AFFECTED ADF SAFETY AND GOVERNANCE OFFICER

I was a participant in a Defence Inquiry that was undertaken some time post the event. My complaint was in relation to the mistreatment that I was subjected to by the same Army officer as described at ENCLOSURE D: CASE STUDY 3—AFFECTED ARMY RESERVIST. My complaint also raised concerns in respect to the conduct of the Inquiry in which I described events that supported the affected ADF RESERVIST who is described at Enclosure D.

The conduct of the Inquiry officers and their questioning was very much targeted at the “Individual” in an “Interrogative style.” I was forced to defend myself from TOTAL LIES targeted at me and others I worked with, including the affected ADF RESERVIST described at Enclosure D.

I repeatedly asked for a complete copy of the transcript of my interview and was denied. When eventually I received an *Edited Version* there were quite a number of anomalies. For one, my responses in many instances were entirely deleted (I can show examples of this to the Commissioners of the Royal Commission if required). In other instances, the words “(indistinct)” were used to describe omissions in the audio version of the transcript, although without hearing the audio transcript, that can only be the assumption as to why that term was actually used. Ellipses (...) are usually used in transcribing oral recordings to signify that material has been left out. Throughout the transcript, no ellipses were used. Rather, the em dash (—) was prevalent and oddly did not attribute this to false starts, interruption, omission or otherwise.

Q202.

a - - -

A

Yeah.

Q203.

- - - (indistinct) term?

A

66

Sensitive: Personal

The Inquiry Officers asked me to sign and accept a transcript that showed the interview concluded at Q123 on page 49 when, in fact, it did not conclude until Q231 on page 73.

Q123.

INTERVIEW CONCLUDED

49

Sensitive: Personal

I am not permitted to share the actual contents of an inquiry even though it is my own personal testimony and speaks to critical evidence of maladministration. I am, however, able to share the unredacted evidence of my testimony to the Commissioners of the Royal Commission, if compelled. I am willing to submit to meeting with them to expose the truth. All the information I provided in the 24 pages that the Inquiry

Officers attempted to withhold from me represent critical evidence that not only supported my testimony of events that occurred during the matters described at ENCLOSURE D: CASE STUDY 3— AFFECTED ARMY RESERVIST, but as well, the testimony that validated the affected ADF RESERVIST'S version of events, and my claim of mistreatment by an Army Officer. When I asked the Defence Inquiry Officers to explain why all that evidence had been omitted, I was told that the fault lay with the civilian transcription company whom they engaged. I found this to be astonishing, considering the ADF goes to great lengths to engage professional service providers. That any company contracted to the ADF would delete '24 pages' in error is not convincing.

Below is a screenshot of the second transcript that was provided to me after I complained that the initial transcript was incomplete. This shows that the interview did not conclude at Q123.

Sensitive: Personal

Q122.

A

**Note the
interview does
NOT conclude
here as stated
by the Defence
Inquiry
Officers.**

Q123.

A

Q124.

A

Q125.

A

Q126.

A

49

Sensitive: Personal

The second transcript showed the interview actually concluded at Q231 on page 73 (Screenshot examples below).

Sensitive: Personal

Q127.
A

Q128.
A

Q129.
A

50
Sensitive: Personal

Sensitive: Personal

Q130.
A

Q131.
A

Q132.
A

Q133.
A

Q134.
A

Q135.
A

Q136.
A

Q137.
A

51
Sensitive: Personal

Sensitive: Personal

Q230.
A

Q231. Happy, great. Interview terminated at 1032 hours.
INTERVIEW CONCLUDED

73
Sensitive: Personal

Case study 4
continued next
page...

Continued Case study 4 from previous page...

When I volunteered to participate in the Defence Inquiry, I had every expectation that it would afford everyone procedural fairness. It turns out the Inquiry was flawed and deliberately so.

Since my participation, I have become aware of other anomalies that could suggest an undisclosed conflict of interest, whereby the Assistant Inquiry Officer appears to have had a connection to a key witness for Defence and to whom the Assistant Inquiry Officer promoted and praised on their social networking platform. This relationship was not declared at any time throughout the Defence Inquiry that I was aware of if there was a relationship. But even so, if they were not actual friends during the Defence Inquiry, it should have been disclosed that they belonged to the same 'community cohort' and were both prominent in that cohort, and this would have been obvious to them and others. I refrain from stating the cohort as it could identify the parties involved, but I am able to disclose this with the Commissioners of the Royal Commission if required.

Finally, I have been affected emotionally (medical referrals can be provided as evidence) and have suffered financial detriments (removed from Army Reserve Training Days). I did not serve 37 years in the ADF to be abused, bullied, and asked to justify my position when I had been duly appointed. I didn't deserve to be disrespected.

I am unable to let these matters go without raising a second formal complaint because I have tried and failed to feel good about myself and the way my career has been damaged by an Inquiry that did not seek to right the wrongs that were done to me or my peers, other Defence members who were made scapegoats to the Army officer's unacceptable behaviour, and the attempt to cover up this inappropriate bullying and harassment in a formal Inquiry.

I have been affected emotionally (moral trauma), and my reputation has been damaged, where once I was a highly respected Work Health and Safety Manager.

ENCLOSURE F: ADF MEMBERS RESPONSES TO IGADF SHOW-CAUSE NOTICES

How do you feel about the treatment you have been subjected to?

- *“Completely abandoned by ADF/Army despite decades of selfless service (including that of my family).”*
- *“ADF senior leadership has been completely silent, along with every single former Officer Commanding, Commanding Officer, Colonel, Brigadier or Major General, who served and who could have refuted the events unfolding in the media, except that Defence policy does not allow serving members to publicly comment.”*
- *“Through their silence, the Command has allowed the media to own and drive a vindictive and defamatory agenda against us.”*
- *“How we’ve been treated is completely unfair, bias and not timely. Indecision paralysis in Canberra continues.”*
- *“The Command has allowed moral judgements with no legal substance to drive their decisions, which have resulted in many of us losing critical positions that we had previously been selected for, on merit, in an extremely competitive SF environment. Those critical appointments are now being filled by persons who were, at the time, considered by Defence to be less competitive for those appointments which could, in future, negatively impact on Defence capability.”*
- *“We have been denied a fair and swift deliberation based on facts, not media vitriol.”*
- *“These Inquiries are nothing but a witch-hunt. They ruin the lives of good people and allow liars to corrupt the process so that getting a fair hearing is impossible.”*

How has the treatment impacted you professionally?

- *“My reputation and professional working relationships are damaged beyond repair. My career is effectively destroyed and will impact my transition to civilian life.”*
- *“A simple google search says I’m a war criminal, yet I’ve done nothing wrong, illegal or criminal. How do I come back from that picture the media has painted?”*
- *“I am damned for drinking in a bar that was part of an authorised activity! My career has been destroyed because Defence is so risk adverse, yet the Command authorised the bar and the alcohol!”*

How has the treatment impacted you personally?

- *“Most of the time I want to hide under a rock and not come out. Those who put me under the bus, are serving members (and some recently separated). Their actions fly in the face of every tenant of service and teamwork. How can they be allowed to engage with the media with baseless and hate-based defamatory commentary, completely unchecked by Defence?”*
- *“Life is super stressful, and many of us need help moving forward. Thankfully, I have sound resilience. Without the support of friends, family and my own intrinsic strength, one could easily see how some folks may go into a very dark hole and not return....*

What do you need to restore your life to a standard that would enable you to feel good about life?

- *“Allow those of us who wish to serve on, continue our service. Understand that everyone makes a mistake—we are all human, after all. Help others learn from a mistake and assist Defence in realigning its warfighting leadership. We will need it in the future.”*
- *“Maybe in the future, don’t authorise private events and tell us we can attend those events to get some respite from battle if the Command is going to lie about knowing anything about those events!”*
- *“Clearly, a timelier administration inquiry process. Someone needs to make a decision and not let people who have been loyal to Defence hang in limbo for years on end!”*

What corrective action do you think should be in place to restore your reputation and status?

- *“Depressingly, I think it’s past all that. My career is unsalvageable!”*
- *“The corrective action would have been possible had the due process been afforded. I lost the opportunity to fill a critical appointment in SASR, one that requires niche skills and capability, all because I was photographed drinking in a bar at an authorised event a decade ago. The investigation into those matters was not timely or fair.”*
- *“I’ve exhausted every avenue to fix the wrongs done to my career because other people told lies. I now struggle to live with the knowledge that once I was part of a world-class fighting unit, and now I feel humiliated and without any honour. I did nothing wrong.”*

Do you think you are owed an apology?

- *“Yes, but not for any image. We own that. Rather for not ‘having our backs’ while the media peddled defamatory and baseless stories that tarred us all with the same brush.”*
- *“I did nothing illegal, and had I been a civilian accused of a crime, then that investigation would have been done completely differently, and I would not have been subjected to years of trauma for something I absolutely did not do!”*

Despairing vets facing a lethal enemy within

Mentally damaged ADF veterans and suicides stemmed less from battlefield trauma experiences than from Defence's "weaponised" workplace culture in dealing with its troops, a study has found.

And the agency to "fix" military injustice and address perceived Defence maladministration — the Inspector General of the ADF (IGADF) — has been labelled as so tied to senior command it has been rendered ineffective.

"(It) is said to be so corrupted and beholden to the senior command that it merely serves to exacerbate the abuse and allow the senior ADF leadership to hide behind a facade of 'independent' oversight and review," report author and researcher Dr Kay Danes has concluded.

Her study, an addendum to a lengthier appraisal to be submitted to the Royal Commission Into Defence And Veteran Suicide and based on first-hand interviews, aims squarely at Defence.

Dr Danes said the "failings" in the processes and administration of Veterans Affairs has long been recognised but the problems begin before ADF personnel leave the military.

"It is maladministration," Dr Danes said in her scathing appraisal.

She said it was notable Defence Legal was quick to pursue personnel but even if individuals were exonerated, rarely were their superiors brought to account.

Rank rivalries see some actively seek to derail the careers of others and though exonerated, their careers are derailed and do not recover. They eventually leave the services with mental scars.

She cites the issue with a bar in Afghanistan, the Fat Lady's Arms, almost a decade ago where several ADF personnel drank alcohol which resulted in administrative action against them now even though approval was sought and granted by the commanders of Joint Task Force 633 to consume alcohol.

"This has plunged these guys into despair and impacted them in a way that can never be undone ... some have lost key appointments on other allegations which were not investigations of fact," Dr Danes said. "I know so many defence personnel still serving, but looking to pull the pin, they can't take it any more, there is just no justice."

Due process and procedural fairness exist in civil society but the same standards do not apply in Defence which had a weaponised administration against its own people, she concluded.

In a briefing note to the royal commission which begins in Brisbane next month, Defence said it was recognised there were issues and steps taken to address them.

Anticipating likely recommendations from the royal commission, Minister for Veterans' Affairs and Defence Personnel Andrew Gee this week announced the appointment of more independent consultants to overhaul the department's claims processing system.

Consultants McKinsey & Company will work with families who have lost loved ones to suicide to formulate recommendations that will overhaul the system to better serve veterans.

Mr Gee said the backlog of claims is unacceptably high and "this is not another review" but rather immediate change would be implemented.



Article by Charles Miranda—Senior Correspondent News Australia (2021)

If reading this has caused you any discomfort, please reach out to the following for support.

Safe Zone Support 1800 142 072 is a free and anonymous counselling line for all current and ex-serving ADF personnel, veterans and their families. It is available 24 hours a day, seven days a week.

The Defence Member and Family Helpline 1800 624 608

Defence All-hours Support Line 1800 628 036

Call Triple (000) if you feel you may hurt yourself or someone else.