

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

by

Dr Kay Danes, OAM, PhD (Law & Justice), MHumRights.

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 current ADF members and their families.¹ Combat-related mental illness occupies much of the focus of contemporary narratives, as do risk factors specific to non-combat-related conditions.² 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.³ This is increasingly being recognised as separate from Post-Traumatic Stress Disorder (PTSD) or anxiety and depression.⁴ 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.⁵

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 ADF 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.⁶ 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.’⁷ Adhering to sound Defence policy and lawful directives reassures ADF members access to procedurally fair decisions whenever disputes in the ADF workplace arise. Moreover, to reassure that complaints will be managed early, and well. The current discussion on policy inequities maintains that the *Defence (Inquiry)*

¹ Defence Health. ‘Defence Health & Well-Being “Fighting Fit”’. <https://www1.defence.gov.au/adf-members-families/health-well-being>.

² 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)

³ 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>.

⁴ 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>.

⁵ Jones, K., Varker, *et al.* (2020), 34.

⁶ *Ibid*, (41)

⁷ Lindsay, P., *The Spirit of the Digger*, Harper Collins, 2003, 16. ‘<http://theanzaccall.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).⁸ That risk may cause irrevocable harm to ADF 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 Enclosure C: Case Study 2—Affected ADF Spouse). Moreover, putting ADF 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.⁹ If we are to achieve that aim, then we must explore the inequities of the *Defence (Inquiry) Regulations* policy. In doing so, carefully consider contemporary narratives that evolve organisational ethics and codes of conduct, reset the moral compass, to connect the ADF 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 ADF members outside of an operational environment.¹⁰

This discussion demands a fearless approach. ADF 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).¹¹ 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.¹² Repeatedly, ADF 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 that 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.¹³ 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.¹⁴ This can create long-term negative consequences for both the ADF member and their family *beyond service*. This is especially true if the transition process has been initiated due to the non-compliance of defence policy, or resulting from either a perceived or actual denial of procedural fairness. The overwhelming amounts of stress this causes an ADF member and their family can exceed their ability to cope, and lead to devastating consequences.¹⁵ ADF families can also be significantly impacted by decision-making within the ADF workplace (See Enclosure C: Case Study 2—Affected ADF Spouse).

⁸ Defence (Inquiry) Regulations 2018 (Cth).

⁹ 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>

¹⁰Department 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

¹¹ Townsville Bulletin, 'Family torn apart by Defence Inquiry into Airman's Death.' January 19, 2021.

¹² 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>.

¹³ 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>.

¹⁴ 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.

¹⁵ 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>.

ADF workplace reforms, that build a fair, just, and inclusive workplace and reassure ADF 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 ADF 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 ADF 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.¹⁶ 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. In contrast, an ADF 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 ADF 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 ADF 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.¹⁷ Sufficient evidence upholds that ADF 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).

The following recommendations are offered in good faith to plead policy reforms to ensure ADF members have realistic opportunities to resolve their complaint in the workplace. In doing so, protect their professional reputation and mental health. 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. 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 Defence influence. (Evidence upholds that the IGADF and Ombudsman invariably default to Defence decisions),

¹⁶ 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>

¹⁷ Commonwealth of Australia, (2005). *The effectiveness of Australia’s military justice system*. 16 June 2005. administrative system—Investigations. [8] ISBN 0 642 71424 X.

5. To put in place access to genuine mediation and early resolution of complaints administratively by pursuing negotiated solutions for ADF members, before a grievance is processed, and if necessary, establish *funding* to ensure ADF members have equal access to resources as required;
6. Introduce a corrective action policy to ensure procedural fairness; and
7. Implement a reparation policy in acknowledgement that violations were committed against the ADF 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 practice. 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.¹⁸ 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.¹⁹

Supposing we do not consider the impact these inequities have on our ADF members professional reputations and mental health? In that case, ADF 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 focusses 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 practice to advance towards a fairer, more just and mentally robust workplace.

Dr Kay Danes, OAM, PhD (Law & Justice), MHumRights.

Southern Cross University
School of Law & Justice Alumni
Researcher/Policy Analyst
LinkedIn: www.linkedin.com/in/kaydanes

Enclosure A: Defence Inquiry Inequities

Further enclosures (case studies) are provided in the submission presented to the Royal Commission on Defence and Veteran Suicide 2021

¹⁸ 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>

¹⁹ 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

Presently, Defence Inquiries:

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.** ADF 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*).²⁰
6. **involve exclusion of evidence.** Defence Inquiry Officers are not technically obliged to submit evidence provided by the ADF 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 ADF 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*).²¹
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 Defence administrative actions, have shown there have been incidents where witnesses have deliberately provided false information, false accusations and misleading statements to Defence Inquiry Officers.²²

²⁰ IGADF, 'Afghanistan Inquiry Report.' (2020). <https://afghanistandinquiry.defence.gov.au/sites/default/files/2020-11/IGADF-Afghanistan-Inquiry-Public-Release-Version.pdf>.

²¹ Ibid.

²² 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 Defence 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 ADF member and their family.
13. **are conducted with 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.²³ 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.²⁴ (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 ADF 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.)²⁵
16. **are conducted by unskilled Defence Inquiry Officers.** IGADF is staffed by some career service police with no real police experience. 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

²³ Parliament of Australia, (2007), Chapter 8 – The administrative system -investigations. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed%20inquiries/2004-07/miljustice/report/c08.

²⁴ Parliament of Australia, (2007). Chapter 10- Adverse Action, appeal processes and external review of administrative procedures. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed%20inquiries/2004-07/miljustice/report/c10.

²⁵ Ibid 10.40

investigators), 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 which 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. 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), this aspect of the inquiry must be immediately suspended and the issue reported to the Appointing Officer or Authority in writing.” This rarely happens. Defence gatekeep information to protect itself from scrutiny.
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 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 risk.
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 Case²⁶ and Lawyer and former ADF soldier Mick Bainbridge’s story).²⁷
22. **lack procedural fairness.** Defence Inquiry Officers are not obliged to accept or report any written, adversarial evidence in their final findings. ADF members are rarely given full access to evidence that Inquiry Officers have relied upon in concluding their findings.
23. **rely on cogent evidence and 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

²⁶ 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).

²⁷ Australian Broadcasting Commission. ‘When the war is over. *Australian Story*, 2018. [https:// www.abc.net.au/austory/mick-bainbridge/9619396](https://www.abc.net.au/austory/mick-bainbridge/9619396).

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 ADF 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, ADF members could enjoy the same rights and have the same safeguards as all Australians. Thus, provide ADF 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 Defence 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 in Defence findings.** Defence Ministers are not always fully informed with an accurate account of the complaint. Inquiry findings frequently and appear to deliberately omit key evidence. Inquiry findings have been known to 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 an ADF member with a Notice To Show Cause.²⁸ The ADF 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.²⁹ The ADF member responding to a notice to show cause or preparing their appeal against a decision is pitted against the considerable resources of

²⁸ 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.

²⁹ Ibid 10.44.

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.³⁰
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 Defence 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 policy in place that gives greater independence, transparency and accountability to ADF members.³¹ Recommendations are seldom implemented in their entirety.
35. **institutional abuse.** Institutional mismanagement, failure to provide due process, military suicide, self-harm, addictive behaviours, and ADF administrative failures go hand-in-hand.³² 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 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 ADF members to resolve workplace complaints. The Petition EN2256 - Apply ADF Policy Reforms to include corrective action collected 3015 signatures over four weeks.³³ The petition was passed to the Defence Minister for 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

³⁰ Ibid.10.45.

³¹ 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.

³² 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>

³³ 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.

ADF misconduct in Afghanistan. McBride is on the record, publicly expressing grave concerns about the impunity and cover-up culture set by defence leadership. 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 ADF member becomes the focus of the complaint instead of the actual complaint.

37. **are not accessible.** The complaint process should be easy to access and understand, and everyone should participate equally. For example, an ADF 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, ADF 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 ADF members.
38. **is a process not free from victimisation.** ADF 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 *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. ADF 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 duty of care to ensure well-being and mental health.** 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 ADF members and Veterans.
40. **have ramifications whereby adverse findings impact civilian identity.** ADF 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, pilots could have licences revoked.

Not an exhaustive list.