

## **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*.<sup>1</sup> 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.<sup>2</sup>

### **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.

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<sup>1</sup> Australian Government, 'International Civil and Political Rights' August 13, 1980.  
<https://www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/8B8C6AF11AFB4971CA256B6E0075FE1E>.

<sup>2</sup> 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.<sup>3</sup> 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)*.<sup>4</sup>

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,

<sup>3</sup> Department of Defence, 2021. 'Unacceptable Behaviour.' <https://www1.defence.gov.au/about/complaints-incident-reporting/unacceptable-behaviour#what-is-unacceptable-behaviour>.

<sup>4</sup> 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 fledging SAS Resources Trust through direct approaches to industry and State Government officials that gave the impression this was a sanctioned approach. A significant amount of money was raised (in the order of \$7,000,000 to \$10,000,000) with limited oversight by the HQ. When this was realised, a constitution and appropriate funds management was commenced, and large discrepancies in accounting for the donated funds were found. Disciplinary action against the Defence member was not taken as it would have led to reputational damage to the SASR and hurt a number of the Defence member’s followers who assisted him in the fundraising. The Defence member was counselled and moved to Canungra.”

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.



8<sup>th</sup> July 2019

[Redacted] [gmail.com](#)

Dear [Redacted]

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

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

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

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

Beyond that there is really nothing more I can add.

Yours sincerely

  
[Redacted] Trust

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.<sup>5</sup>

## 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.

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<sup>5</sup> 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](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*

<b>False Allegation (1)</b>	<b>Counter Claim by ADF member (1)</b>
<p>The Inquiry officer argued that I had been 'counselled' and 'reprimanded' for a number of 'misdemeanours' throughout my career by commanders.</p>	<p>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).</p>
<b>False Allegation (2):</b>	<b>Counter Claim by ADF member (2)</b>
<p>The accumulation of misdemeanours has 'led to many commanders (and peers) not trusting his judgment.'</p>	<p>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.</p>
<b>False Allegation (3):</b>	<b>Counter Claim by ADF member (3)</b>
<p>“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.”</p>	<p>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.</p>
<b>False Allegation (4):</b>	<b>Counter Claim by ADF member (4)</b>
<p>“Many of these events have led to formal investigation or administrative inquiry and some are still ongoing.”</p>	<p>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.</p>

<b>False Allegation (5):</b>	<b>Counter Claim by ADF member (5)</b>
<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>
<b>False Allegation (6):</b>	<b>Counter Claim by ADF member (6)</b>
<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>
<p><b>False Allegation (7):</b></p>	<p><b>Counter Claim by ADF member (7)</b></p>
<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.<sup>6</sup> 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>

<sup>6</sup> 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>.

<b>False Allegation (8):</b>	<b>Counter Claim by ADF member (8)</b>
<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 XXXXXXXX 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.

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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]

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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.

[REDACTED]

a - - -

A

Yeah.

Q203.

- - - (indistinct) term?

A

[REDACTED]

[REDACTED]

66

Sensitive: Personal

[REDACTED]

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.

[REDACTED]

INTERVIEW CONCLUDED

[REDACTED]

49

Sensitive: Personal

[REDACTED]

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.

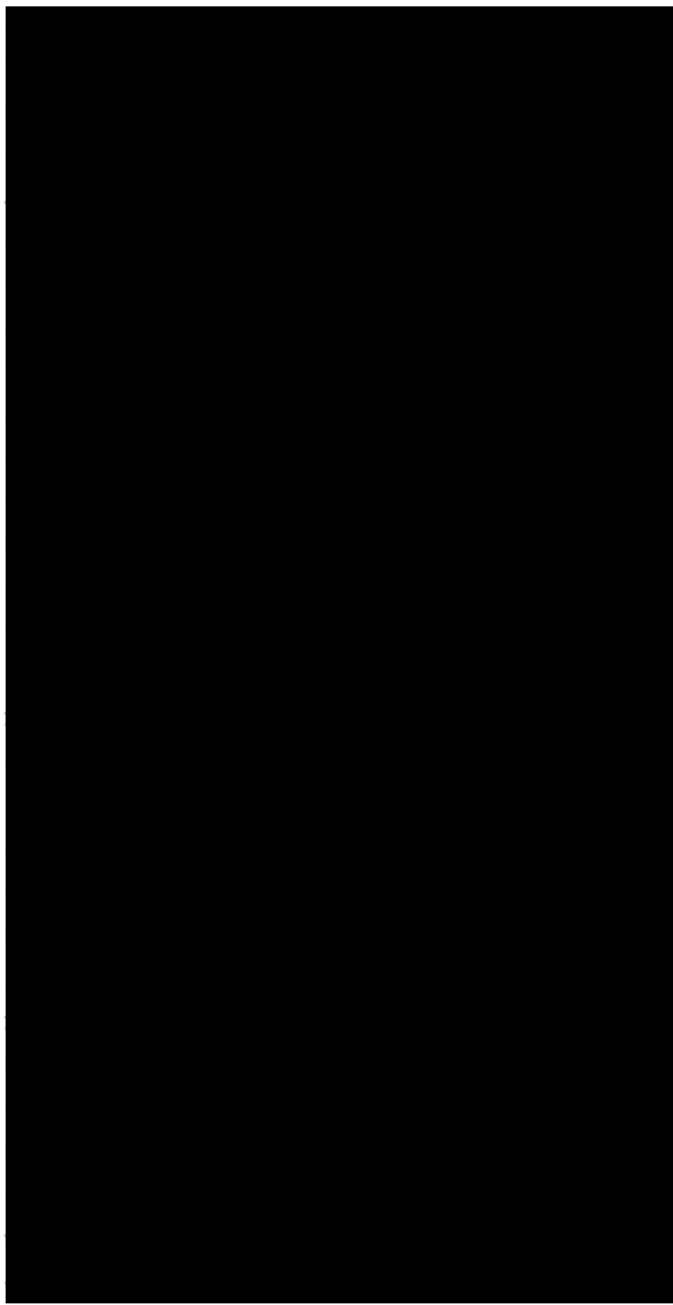
A

Q125.

A

Q126.

A



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.