

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

by

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### **Introduction**

In evaluating interventions for suicide prevention, numerous studies have undertaken extensive review and comparative analysis to understand suicide risk and self-harm among Veterans, to optimise the mental health and well-being of current ADF members and their families.<sup>1</sup> Combat-related mental illness occupies much of the focus of contemporary narratives, as do risk factors specific to non-combat-related conditions.<sup>2</sup> 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.<sup>3</sup> This is increasingly being recognised as separate from Post-Traumatic Stress Disorder (PTSD) or anxiety and depression.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.’<sup>7</sup> 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)*

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

<sup>2</sup> 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)

<sup>3</sup> 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>.

<sup>4</sup> 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>.

<sup>5</sup> Jones, K., Varker, *et al.* (2020), 34.

<sup>6</sup> *Ibid*, (41)

<sup>7</sup> Lindsay, P., *The Spirit of the Digger*, Harper Collins, 2003, 16. ‘<http://theanzacall.com.au/anzacs/anzac-values.html>’.

*Regulations 2018* has the potential to expose ADF Commanders to the risk of making procedurally unfair decisions (See Enclosure A: Defence Inquiry Inequities).<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

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).<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> ADF families can also be significantly impacted by decision-making within the ADF workplace (See Enclosure C: Case Study 2—Affected ADF Spouse).

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<sup>8</sup> Defence (Inquiry) Regulations 2018 (Cth).

<sup>9</sup> 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>

<sup>10</sup> 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](https://www.defence.gov.au/pathwaytochange/_Master/Docs/120410-Pathway-to-Change-Evolving-Defence-Culture-web-version.pdf)

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

<sup>12</sup> 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>.

<sup>13</sup> 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>.

<sup>14</sup> 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.

<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> 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),

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<sup>16</sup> 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>

<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup>

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.

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**Enclosure A: Defence Inquiry Inequities**  
**Enclosure B: Case Study1 —Affected ADF Member**  
**Enclosure C: Case Study 2—Affected ADF Spouse**

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<sup>18</sup> 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>

<sup>19</sup> 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](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*).<sup>20</sup>
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*).<sup>21</sup>
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.<sup>22</sup>

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

<sup>21</sup> Ibid.

<sup>22</sup> 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](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.<sup>23</sup> 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.<sup>24</sup> (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.)<sup>25</sup>
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 investigators), or career public service lawyers who have never been in a courtroom. The

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<sup>23</sup> 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](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed%20inquiries/2004-07/miljustice/report/c08).

<sup>24</sup> 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](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed%20inquiries/2004-07/miljustice/report/c10).

<sup>25</sup> Ibid 10.40

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 Case<sup>26</sup> and Lawyer and former ADF soldier Mick Bainbridge’s story).<sup>27</sup>
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 cases the findings are flawed because they are not always supported by evidence that establishes the truth of something.

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<sup>26</sup> 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).

<sup>27</sup> 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).

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.<sup>28</sup> 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.<sup>29</sup> The ADF member responding to a notice to show cause or preparing their appeal against a decision is pitted against the considerable resources of the ADF. Moreover, its authority, status, and influence of senior Officers often defend their own judgment.

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<sup>28</sup> 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](https://austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_reg/dr2016147/s41.html).

<sup>29</sup> Ibid 10.44.

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.<sup>30</sup>
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.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup> 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 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

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<sup>30</sup> Ibid.10.45.

<sup>31</sup> 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](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/jfadt/military/reptindx).

<sup>32</sup> 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>

<sup>33</sup> 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](https://www.aph.gov.au/petition_list?id=EN2256).

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.

## **ENCLOSURE B: Case Study 1—ADF Affected Member**

*(Information submitted by the ADF affected 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 ADF members and their families, putting them at increased risk of suicide and self-harm. All of the inequities outlined in Enclosure A—Defence Inquiry Inequities were present in this case study.

### **A brief note on ADF Procedural Fairness**

The main legal principles that underpin procedural fairness are that decision-makers must afford an ADF member whose interests may be adversely affected by a decision a fair opportunity to present their case (Fair Hearing Rule). The affected ADF member must know the case against them. This requires the decision-maker to disclose any adverse information which is ‘credible, relevant and significant’ to the affected ADF member, regardless of whether it is relied on in the final decision-making process. The decision-maker must not be biased and must not be seen to be making an unfair, partial and 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, but such is seldom afforded to complainants.<sup>34</sup>

### **A brief note on ADF Performance Appraisal Report (PAR):**

The PAR is a vital component of the Career Management System or Performance Management Framework. The data 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). The governance architecture underpinning how the ADF conducts its business is defined in the Defence Force Discipline Act 1982.<sup>35</sup> ADF policies do not permit Commanders to include ADF spouses in Performance Appraisal Reports (PARs).

### **SUMMARY OF COMPLAINT**

My superior Officer was required to write PARs for two consecutive years so that I could remain competitive in the workplace. He deliberately strategised to avoid writing my PARs. As a result, I was taken to a Senior Warrant Officer Personnel Advisory Committee (SWOPAC) without a complete reporting history and deemed non-competitive among my peers. After the SWOPAC met, I was relegated from the top 1/3 of my cohort to the bottom 1/3. I was informed that I would be issued a Mandatory Initiated Early Retirement (MIER), which would result in a premature, involuntary discharge from the ADF.

I submitted a Redress of Grievance to the Chief of Army. My complaint (Unacceptable Behaviour) against my superior Officer was escalated to the Chief of Defence Force (CDF). He then appointed an Inquiry Officer to conduct an Inquiry under *Defence (Inquiry) Regulations 2018*. The review of my complaint ensued over the next FIVE YEARS. At varying stages, I was forced to submit subsequent ROGs to counter decisions resulting from career detriments compounding new career detriments.

After it was found that my superior Officer had admitted to deliberately strategising to avoid writing my PARs, the CDF ordered him to write them four years ‘out of time.’ These PARs contained false information about **my spouse** (See Enclosure C: Case Study 2—Affected ADF Spouse). She submitted a complaint to

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<sup>34</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>.

<sup>35</sup> *Defence Force Discipline Act 1982* (Cth).

the Chief of Army, but the false information was not retracted. My spouse made a complaint to the Minister. (See Enclosure C: Case Study 2—Affected ADF Spouse).

I succeeded in defending myself against the Notification of Management Initiated Early Retirement (MIER), but the harm inflicted on my career and reputation was irrevocable. Not surprisingly, the SWOPAC found that I was no longer competitive against my peers. I was downgraded to a non-designated position for three years, pending my reaching Compulsory Retirement Age.

The Inquiry Officer findings had concluded in favour of the ADF. No adverse findings were made against my superior Officer.

The Chief of Defence Force concluded that “I note that one of the primary reasons underlying your grievance is that you did not receive any performance reports for the period XXX-XX. It is unfortunate that the failure to provide you with performance reports for the period XXX-XX has led to this chain of events. I apologise for these reporting deficiencies and the effect it has had on your subsequent career management.” [Emphasis added].

And with that, the matters were closed. These events had a devastating impact on my professional reputation and mental health, but I was determined to fight against what I believed to be serious injustices inflicted on me from an organisation that I had faithfully served for over four decades.

Months after the Inquiry concluded, I submitted a request for information under the *Freedom of Information Act* (FOI). To my disbelief, I discovered that a Senior Non-Commissioned Officer (SNCO) who held a command position, now a Major, and who was responsible for mine and other’s career management, made several false and vexatious allegations to the first and the subsequent SWOPACs about me. (See EXAMPLES OF SNCO FALSE CLAIMS)

Among other falsehoods, that SNCO claimed that several Commanding Officers collaborated to cover-up alleged criminal activity that he claimed I committed and was secretly punished for (See Allegation 6). The Inquiry Officer had hidden these allegations from me and failed to report them to the appropriate authorities, as a legislated requirement of *Defence (Inquiry) Regulations 2018*. I discovered under FOI that several other false allegations had been made about me by the same SNCO. He also shared this information with previous SWOPACs, the Inquiry Officer, the Directorate of Soldiers Career Management Army (DSCM-A), and subsequently higher through the Chain of Command. Those allegations were vexatious and hidden from me by the Inquiry Officer and damaging to my career progression.

Throughout what was a long-running dispute with Defence, 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 Defence,
- 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).

## **DENIED PROCEDURAL FAIRNESS**

The Inquiries into my 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 in 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 ADF members even though their actions caused significant detriments to my career. *On detriments caused to my career:*

- Loss of career advancement, reputation and status,
- Moral trauma brought on by compounding detriments.
- Financial losses: \$1.5 million (salary/pension losses) over the life expectancy rate for myself and my spouse. This amount does not account for the extensive moral trauma that I and my family carry into life as an ADF Veteran family.

## **EXTERNAL REVIEWS DEFAULT TO ADF**

Upon learning that I had been the victim of a vexatious assault by senior Army Officers, I submitted a complaint through my Chain of Command to the Chief of Army, Chief of Defence Force, Inspector-General of the ADF, the Commonwealth Ombudsman, and the Australian Attorney-General. Each of these defaulted to the Defence's position, accepting that Defence had no case to answer and my complaint was not upheld. No-one investigated the allegations that I had committed a potential crime (e.g., major fraud/theft/embezzlement). Each of these (below) concluded that "the Inquiry Officer Inquiry was conducted in an appropriate and transparent manner and that there was sufficient evidence to support the findings." [in favour of ADF]

**IGADF Response:** "A thorough assessment has been undertaken of your submission and other relevant material, particularly the report of the XXXX inquiry. Having carefully considered the matter, the IGADF is satisfied the Inquiry was comprehensive and the inquiry report 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 as, by this stage, I was too traumatised.

## **MINISTERIAL JUSTICE DENIED**

I even complained to the Minister who wrote that these allegations:

*“Were not within the Terms of Reference of the Inquiry Officer Inquiry. They were not investigated by the Inquiry Officer and no comment or findings in relation to the [name redacted] Trust were made by the Inquiry Officer. The Inquiry Officer was not required to seek [my name redacted] comment on alleged past matters or the witness statement about the [name redacted] Trust, and they had no impact on the outcome of the Inquiry Officer Inquiry.”*

AND

*“He [XXX] 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.”*

This statement is entirely false. My complaint and evidence was strong, conclusive and expertly argued according to advice from eminent Defence Legal Officer and Commander in the Royal Australian Navy Reserves Dr. XXXXXXXX, Barrister-at-law and Prominent XXXX Lawyer, XXXXX, of XXXXX Litigation Lawyers.

## LEGAL REDRESS

Lawyer XXXXX wrote to the Chief of Defence Force regarding these matters, having reviewed the redacted Inquiry Officer’s report. He concluded that I had been denied natural justice/procedural fairness, combined with some errors actionable as a matter of administrative law. He further concluded that the redacted Inquiry Officer’s report contained numerous false allegations about me (both in respect of bias and the absence of procedural fairness.) He added further that the publication of those false allegations had an adverse impact on my reputation and, therefore, my career. A subsequent Chief of Army Representatives acknowledged a detriment resulting from my superior Officer’s deliberate failure to submit my PARs. He concluded that my career had been:

*‘... adversely affected by failure to receive XXXX and XXXX PARs and presentation to XXXX PAC without these PARs...’*

AND would

*‘recommend to DGCM-A that in future the conduct of any PAC, regardless of the time available, must treat all candidates equally and be able to be subject to the scrutiny of a third party.’*

To remedy the detriment to me, a Chief of Army Representative instructed that I would be taken to the next SWOPAC. Meanwhile, the Inquiry had continued to proceed.

A year later, I was presented to the SWOPAC constituted by the same personnel who excluded me from consideration of the previous key appointment based on discrimination and personal comments not supported by facts or documents. Another Chief of Army Representative determined that I had been excluded from consideration for another key appointment and wrote:

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

AND

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

Upon review of these matters, Lawyer XXXX concluded that the PAC had been affected by bias and lack of procedural fairness and that the outcome for me was predetermined. The process was misconceived and perpetuated the defective administration of my career.

The Australian Government solicitor replied to my lawyer 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 agreement) by reference to Schedule 3 of the Federal Court Rules 2011 and up to a maximum of \$5,000.*

I did not pursue the matters because I was completely exhausted by the Inquiry process, and traumatised.

## **FINAL REFLECTIONS**

My case reflects the prevalence of a culture of normalised deviance in the ADF. Policy reforms are needed to ensure independence and impartiality AND to address the problems arising from failing to accord natural justice.<sup>36</sup> An independent investigation into the ADF could bring positive changes to improve the competence and integrity of Officers who are tasked to hear complaints from ADF members. There need to be greater protections for complainants to strengthen the processes around procedural fairness, to prevent what is clearly a 'premeditated punishment culture in the ADF' that has left many ADF members, like me, feeling abandoned and abused.<sup>37</sup> I was forced to endure the flawed authoritative actions of senior leaders who, without any remorse, tarnished my reputation and that of my wife. At the conclusion of my military career, I was so badly traumatised and humiliated that an Army psychiatrist issued a PM101 to my Headquarters stating that: *'It is not in XXXXXX best medical interests to attend the farewell function planned.'* I received correspondence the very next day informing me of how disappointed the Commander was. Obviously, so much so that he stripped me of a Commendation that I was to be presented at my farewell for my outstanding commitment to Operations and Training.

## **ASSESSMENT BY A FORMER STATE POLICE INVESTIGATOR**

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<sup>36</sup> Professor Robin Creyke, 2008, 'Military Administrative Inquiries' Commonwealth Ombudsman, Retrieved 15 Jan 2021 at [www.ombudsman.gov.au/publications/speeches/all-speeches/speech-and-presentation-documents/commonwealth-ombudsman/2008/military-administrative-inquiries?fbclid=IwAR2WiUtpTRb7gttXbaTtwpgfKS7CVehmKRe0Iiu0iH4lW5OwV5dPgH7FZoI](http://www.ombudsman.gov.au/publications/speeches/all-speeches/speech-and-presentation-documents/commonwealth-ombudsman/2008/military-administrative-inquiries?fbclid=IwAR2WiUtpTRb7gttXbaTtwpgfKS7CVehmKRe0Iiu0iH4lW5OwV5dPgH7FZoI)

<sup>37</sup> Heston Russell, 'Moral Injury.' *Sunday Telegraph*. January 31, 2021.  
<https://www.voiceofaveteran.org/blog/moralinjury>.

The circumstances, process and outcome, are template Defence grievance. They 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 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 (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. That should result in reparation, acknowledge and repair the harm caused to the person, and identify the root causes of that harm—to prevent them from occurring again in the future.

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

## EXAMPLES OF SNCO FALSE CLAIMS

<b>Army Officer’s Vexatious 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. Defence 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>Army Officer’s Vexatious 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 the 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>Army Officer’s Vexatious 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 most of my career. I was never made aware of these allegations at any time throughout any Inquiry or my career. The Army Officer appears to suggest that the ADF reporting system is deliberately manipulated to reflect a particular narrative.</p>
<b>Army Officer’s Vexatious 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>I have had cause to utilise informal and formal complaint mechanisms available to me throughout my career to address grievances. This is not uncommon for ADF members who have over four decades of service. As a member of the ADF, I have the right to access Defence Policy to resolve a complaint. As the records show, each of my complaints has been upheld. However, the ADF does not have a reparation policy, so it has been necessary to escalate my complaint in those situations. By his own admission, the Army Officer implies that</p>

	<p>matters under investigation or administrative Inquiry suggest guilt. This mindset is at the core of the redress process's inequities, where complaints are met with an adversarial response.</p>
<b>Army Officer's Vexatious 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 Army Officer is suggesting a secret investigation that found I acted inappropriately in my management of others. If that was the case, why was I never informed?</p>
<b>Army Officer's Vexatious 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</p>	<p>False and vexatious. I first learnt of these slanderous allegations AFTER I had applied under the <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 what were clearly vexatious claims that had not only misinformed a Defence Inquiry, but had deliberately misled the Defence Minister, the Defence Ombudsman and Inspector General of the ADF, into accepting fabricated findings? It is inconceivable that the Unit CO and the CDF would cover up suspected fraud and misconduct, both reportable offences. The seriousness of these allegations alone should have resulted in the Army Inquiry Officer, bringing the matters to my attention. That would have ensured my access to procedural fairness and, beyond that, an investigation by lawful authorities. There was never any "discrepancies in accounting for the donated funds", as alleged by the Army Officer. 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 furnish him with an accurate record of all meetings, including business activity.</p>

<p>fundraising. The ADF member was counselled and moved to XXX [interstate].”</p>	<p>I was never “counselled and moved to XXX.” [Interstate]. From 1993 to 1995, I was on a promotional posting to XXX. I did not return to my Unit until 1996, when the alleged offence was supposed to have occurred, resulting in my posting out of my Unit as punishment.</p> <p>In 1997, I assumed a higher status XXX in my Unit and was subsequently deployed on operations.</p> <p>No action has been taken against the Army Officer who made these vexatious claims, and the Minister argued that they did not inform the ‘Terms of Reference’ of the Inquiry, therefore, were not relevant. (See MINISTERIAL JUSTICE DENIED).</p>
<p><b>Army Officer’s Vexatious 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 XXXX Mess area at XXX. 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 Army Officer misrepresented me entirely.</p> <p>The PAC were obliged to follow strict administrative processes by Defence Policy.<sup>38</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 outside the Inquiry Officer’s own Terms of Reference. Had I known that I would 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>The Army Officer 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 ADF members. I was not reimbursed by the 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.</p> <p>I am confident 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>38</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>Army Officer’s Vexatious 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. 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 Army Officer 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 Army Officer 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 can put an ADF member's spouse at risk of reputational harm, suicide-risk and self-harm. 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 ADF members.

### **THE BASIS OF MY COMPLAINT.**

My spouse, being an ADF member, submitted a complaint through the Chain of Command under the Redress of Grievance system. That complaint is described at 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 Defence business. I had made my plans separate to 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 of 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: Cast 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 the Chief of Defence Force directed an Inquiry into the matters, the Chief of Army instructed the Army Officer to write the reports, despite the fact that they would be submitted FOUR years out of time and against Defence Policy.

My husband refused to sign and accept those reports because they misrepresented his service to the ADF, were in violation of Defence policy, denied him procedural fairness, and contained offending remarks written about me, also a violation of Defence 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 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 negatively discussed my visit to the XXXX School 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. Still, 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.

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Greetings from [REDACTED]

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[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 brgladeir [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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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 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.

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 violate Defence reporting processes.

I felt incredibly betrayed by the ADF. The moral trauma resulting from this event caused me considerable distress. I required counselling to prevent me from suffering anxiety, depression, and feelings of being violated. I wanted to self-harm, and I expressed feeling like that to others as a cry for help.

Distressed, I sought that these matters be referred to a Senate Inquiry. I wrote to the Minister for Defence appealing for his support. 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**

MC18-002559

16 OCT 2018

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