



## Royal Commission Melbourne Hearing Block – 08 September 2023 [Day 10]

### RSL References:

#### Positive:

#### Negative:

#### General:

#### Timeline:

8:37am – Commission commenced  
8:40am – Examination began  
9:03am – Commonwealth objection  
10:33am – short adjournment  
10:55am – session recommenced  
12:47pm – Lunch adjournment  
1:36pm – Session recommenced  
1:56pm – Commonwealth objection  
2:50pm – Closing remarks  
3:09pm – Royal Commission adjourned until **20 November, 2023**.

**Closing remarks:** It was heartening to hear from those with lived experiences, and it is the Royal Commission's aim to address systemic, ongoing and contributing factors that are leading to suicide and suicidality for our Defence Force personnel.

### Key aspects of Melbourne Hearing Block:

- Experience of ADF personnel transitioning
- Hierarchy management of ADF personnel behaviour
- Lack of support for ADF members from DVA and Defence
- Independence of the Office of the IGADF
- Concerns of the culture within management tiers of the ADF
- Cooperation between Victorian and Commonwealth governments
- State challenges to support veterans due to lack of data provided by the Commonwealth
- Improvement to support families in aiding ADF members throughout their service and deployments

Witnesses	Witness	Description
8:30-10:30am	James Gaynor <i>Inspector-General of the Australian Defence Force</i>	Commonwealth Witness
10:30-10:45am	Short Adjournment	
10:45am-12:45pm	James Gaynor continued	Commonwealth Witness
12:45-1:45pm	Lunch Adjournment	
1:45-3:00pm	James Gaynor continued	Commonwealth Witness

Evidence Tendered	
Type	Body / Comment
Draft Inquiry Report, Next-of-Kin	'The manner in which DSIR will engage with next-of-kin regarding a draft report will depend upon the category of death under consideration. As a lengthier, more formal inquiry will almost always be required in the case of a death by suicide, the process for engaging with the next-of-kin is commensurately more details. The inquiry team will produce a draft report after engaging with the next-of-kin and other witnesses during the inquiry phase, after which the Director and the IGADF draft will clear the draft for the next-of-kin to review.'
DSIR, Section 21 Part 4, Div 2.  (Conduct of Inquiries, Procedure)	<i>IGADF Regulations 2016 – Directions regarding disclosure of evidence:</i> 'This Section can be applied where it is necessary to fairness of a person who may be affected by an enquiry, or to protect the interests of the Commonwealth.'
Verbal	We are starting to undertake an After-Care Model, which includes a post-engagement team. They will communicate with people, especially complainants, and those related to those who have experienced a service death, to make sure that other arrangements have been given effect.
Verbal	Ashurst has been given assistant IGADF capabilities to undertake some aspects of death inquiries and are under the supervision of former director of enquiries and investigation, who has experience in the IGADF processes. They are conducting witness interviews, drafting reports and collating data.
IGD.0007.0002.0003	<b>General [9]</b> The purpose of the Preliminary Phase is to collect readily available information from the relevant authorities <b>Assessment [11]</b> At the time of writing, DSIR categorises its cases for internal reporting purposes as follows: <ul style="list-style-type: none"> <li>a. Deaths by suicide</li> <li>b. Deaths by illness</li> <li>c. Deaths in training incidents</li> <li>d. Deaths by accidents</li> <li>e. Deaths relating to substance and alcohol dependency.</li> </ul> <p><b>[12]</b> While deaths by illness (natural causes) may require less information, deaths by dsuicide will normally require a substantially higher level of information before conducting an assessment.</p>
2020 Annual Report	<b>Key Performance Indicators.</b> In February 2020, and in association with the implementation of a new vision and mission statement, the Office of the IGADF established a set of key performance indicators to assist in measuring the quality and efficiency of the outputs of this office. The IGADF will use the KPIs to hold his Office accountable in future reporting periods.  <i>'The complexity of the matrix made it difficult to measure KPIs and the effectiveness...'</i>
EXP.0011.0001.0016	<b>Performance:</b> ADF units reported the agreed with 95 per cent of all suggestions made to change unit processes to align with IGADF's considered best practice (units are expected to implement all recommended corrective actions identified in audit reports in order to ensure compliance with military justice law and policy).  One hundred per cent of all audit reports were completed within the benchmark timeframe of 60 days.
2020 Annual Report	<b>Performance:</b> Given their inevitably tragic subject matter, inquiries into service deaths need to be conducted with the utmost sensitivity. IGADF's preference is that witness interviews in death enquiries be conducted in person rather than virutally. Travel restrictions associated with the global pandemic resulted in the postponement of in-person meetings.
2020 Annual Report	<b>Performance:</b> Staffing deficiencies, many of them illness- and injury-related, in the IGADF Directorate of Select Incident Review caused significant challenges in the ability to address caseload.
Our Strategic Plan	As part of the project, staff participated in a strategic planning workshop. Key findings from the workshop included: <ul style="list-style-type: none"> <li>- The IGADF vision was not widely known and warranted review</li> <li>- The operating mode was somewhat chaotic and not well defined</li> <li>- There was no centralized way for OIGADF to measure effectiveness and efficiency against its statutory functions</li> <li>- There was no centralized approach to Information Management</li> <li>- There was a desire to define the Leadership climate</li> <li>- There was a need to improve the selection, training and development of staff, particularly ADF Reservists</li> </ul>
Defence Act 1903 (Cth) Section 1100 Staff	

Interim National Commissioner's Report, Box 2.1.	Consistent with the Interim National Commissioner's comments there are a multitude of contributing factors in most deaths by suicide. Some causal factors are service-related, others are not. Family and relationship breakdowns and/or issues are an emerging and recurring theme among contributing factors. Evidence of underlying mental health conditions are a consistent theme, however, the deceased's history of mental ill health is often, but not always, not disclosed to Defence.	
Verbal	The impact on families is evident, and impact on family life. We look at features of relationship dynamics, breakdown, issues, and postings. How that impacts the family and if their death has had contributing factors in the defence members' death.	
Verbal	We have external and international engagement with other bodies who have similar functions to see what others are doing and how we can improve on our systems. The Director Inquiries and Investigations and I attended a presentation about making people feel better about adverse administrative decisions, and those key learnings have been taken away, to have individual support at the time decisions are made to help those individuals work through that process.	
IGADF Regulations, 2016	(b) an avenue, independent of the ordinary chain-of-command, by which failures and flaws in the military justice system can be exposed and examined so that the cause of any injustice (whether systemic or otherwise) may be remedied.	
IGADF Regulations 2016	[12]	
IGD.9999.0002.0751.	[1.52] IGADF Audits do not use the terminology of "findings" because the entire Audit report describes the Audit findings in respect of each specific audit criterion/ An Audit report will make recommendations where a Unit is not complying with legal or Defence policy requirements applicable to the military justice system. It will be therefore mandatory for Units to implement Audit Recommendations. However, it is a matter for the Chain-of-Command to enforce compliance because IGADF has no executive power to compel implementation.	
Verbal	I have no executive authority to implement recommendations.	
Verbal	I have been particularly concerned and have raised this issue with Angus Campbell multiple times, but the labelling of people as 'vexatious litigant' or 'entitled', were particularly troubling. It has been seen in multiple cases, however, I do not remember using the word 'systemic.'	
Verbal	The mental health provision of the <i>Defence Force Discipline Act</i> are out of date. In the past, draft legislation has been prepared to reform and modernise the mental health provisions. The context of this discussion was about the fact that further legislative reform was unlikely to be achieved because of other legislative priorities and so, it was suggested that mental health reform be taken off the agenda. My advice to the Military Justice Steering Group was that these provisions should remain on the forward working plan, and too important to be able to lapse.	
[redacted]	<b>8. Royal Commission into Defence and Veteran Suicide.</b> On 1 Jul 21 I met with [redacted] the Head of the Royal Commission Task Force. In that meeting, I emphasized the need for Defence to present balanced responses to any submissions that Defence officials have acted unreasonably in making decisions about suicide or next-of-kin engagement.	
<b>Minutes, Item 2d. Update on MJSG Charter</b>	IGADF had requested his status to be transitioned to a Permanently Invited Guest rather than a member, to better reflect his statutory role, and independence.	This request was made to better reflect independence and ensure that I did not influence policy reform or development. It is up to the Department to write those policies, and for IGADF to review it.[P

Party	Question	Comments
Commissioner Brown	How does the OIGADF maintain that independence when individuals transition from the Defence, and have considerable experience in the Force? If they have that background, and have that unconscious bias. How is that prevented?	Firstly, although I was a member of the Defence Force, I was a specialist member. I did not have that close connection as those who would have served, have with Defence.
Commissioner Brown	Unconscious bias is nearly almost inherently there. How can you best protect against that and the perceptions that the Office is not independent?	Those who are completely independent may be susceptible to being captured by the organisation because they do not have that experience. People with experience may be able to identify those claims of unconscious bias, but having that experience allows us to ask the appropriate questions, look at relevant things, understand the culture and the ADF, things that may be overlooked or not given necessary weight as it should have been by others.
Commissioner Brown	The longitudinal report says that relationship breakdowns are one of the leading cause of deaths, but the impact of service and contribution of a service career, is the impact of service, leading to breakdown of a relationship, and then causing death, not a nexus with service?	In January 2020, I realised that the level of engagement with families, who have lost a loved one, needed to improve, and we needed further information from them to inform our findings. I can see the connection that you are making.
Commissioner Douglas	The US legislation prevents the Inspector-General to not have any connection to Defence, or the Department of Defence. Would that be beneficial in the Australian context?	No, I think that it is extremely beneficial for appointees to have some sort of knowledge of Defence, and not requiring to rely on Defence Force members. There's a concern that people may attempt to mislead those who do not have experience, and my prior involvement allowed me to understand the role more quickly than somebody who wouldn't know the industry and minimise effectiveness of the IGADF.
Erin Longbottom KC, Counsel Assisting	Do you accept that there is a connection between ADF culture and military justice?	Yes, Counsel.
Commissioner Brown	What we've heard is that the IGADF has staffing challenges, timeliness and other concerns, can you	

**Notes:**

Ms. Zoe Maud SC, Commonwealth of Australia:

- *Mr. Gaynor was told to not watch the evidence of other witnesses from his Office, and he has done that*

Ms. Erin Longbottom KC, Counsel Assisting:

- *Mr. Gaynor was not directed to not watch, it was noted that it was our preference for him to not watch evidence provided by other witnesses within his Office.*