



Royal Commission Melbourne Hearing Block - 29 August 2023 [Day 2]

RSL References:

Nil

Positive:

Nil

Negative:

Nil

General Notes:

Acknowledgment of four Australian servicemen in Queensland

Acknowledgment of three American servicemen in Northern Territory

Significance of Peace Time training risks and aim to mitigate those risks appropriately

Inherent risks, deaths and injuries to be treated as Operational risks, deaths and injuries

Opinions of Mr. Humphreys to be his – and not to be an opinion of the Court, or opinions of the Commonwealth.

Time line:

10:06am:	Witness affirmed.
10:24am:	Objection: Parliamentary Privilege.
11:00am:	Adjournment
11:19am	Witness affirmed.
11:32am	Debate: Parliamentary Privilege, Confidentiality, Cessation of Live Feed.
11:36am	Agreed: The hearing has been muted for privacy reasons.
11:51am-12:06pm	Feed ceased.
12:06pm-12:15pm	Feed ceased.
12:28pm -12:38pm	Feed ceased.
12:38pm-12:45pm	Feed ceased.
1:06pm-1:09pm	Feed ceased.
1:28pm	Lunch adjournment.
1:32pm	MB2 affirmed.
2:58-3:00pm	Feed ceased.
3:03pm	Closing
3:05pm	Commission adjourned until 8:30am, 30 August 2023.

Topics:

1. Disciplinary system in Defence
2. AAT Review and VRB Tribunal
3. Improvements to disciplinary AAT systems

Witnesses	Witness	Description
10:00am-11:00am	Douglas Humphreys CSC OAM <i>Federal Circuit and Family Court of Australia (Division 2)</i>	Professional Witness
11:00am-11:15am	Short Adjournment	
11:15am-1:15pm	Reverend Dr. Nikki Coleman Former RAAF Chaplain	Witness
1:15pm-2:15pm	Lunch Adjournment	
2:15pm-3:15pm	MB2 Pseudonym	Witness

CONTENT WARNING

Evidence may refer to suicide, suicide behaviours, bullying, assault and sexual misconduct.

10:00am-11:00am – Douglas Humphreys CSC OAM

Evidence Tendered	
Type	Body / Comment
Verbal	I have had a claim pending for twelve months due to injuries acquired during service. DVA has not provided an update, nor avenues to suggest whether my claim will be rejected or accepted.
Verbal	The administrative system runs in parallel with the disciplinary system. It enables a series of sanctions to be imposed, such as a formal warning, the capacity to involve a censure, or termination.
Verbal	The AAT include decisions up to decisions personally made by Ministers. There is limited availability for merits review for members of defence in relation to adverse administrative action(s). Those terminated by administrative action is redress of review by Inspector-General who can investigate and make recommendations, but can be ignored by Commanders. Judicial Review can be sought in the Federal Court.
Verbal	There needs to be a fair, just, quick and economical avenue for review especially in terms of termination – it is expected by contemporary Australians – that defence members have fair legal access. - (see: <i>Section 2A of the Administrative Appeals Tribunal Act 1975</i>).
Verbal	I would be hesitant to ever suggest that low rank soldiers, such as Privates, to attempt to seek resolution through the Federal Court where their success would be quite reasonable, because adverse cost findings may further adversely impact those seeking that resolution.
Verbal	Discipline is necessary in the defence force – the balance must be struck between having a termination power – however, from my point of view, the termination power is difficult to tighten. It might be possible, however, merits review is required to highlight why termination may be necessary. The review process is better than removing the termination power from defence.
Verbal	It was difficult for the CO to keep the abuser away from multiple people because so many female Chaplains had made claims and allegations of abuse. Being at my desk, I was trembling and really upset because I was always in fear of running into my abuser. I saw the psych at Duntroon and my supervisor told me that I should go home and he drove me home to ensure I arrived safely.
Verbal	I truly want our leaders to show moral courage and prevent the abuse and bullying that is rife in the ADF. If they do not want to prevent this, then they should be focusing on ending this to improve the protection and capabilities of Australia. You lack moral courage to prevent sexual perverts – you are cowards for failing to protect those who sign up to protect Australia, and allow abusers to continue to serve.
Verbal	I received a pamphlet from the Coroners' Office which had few contact numbers where I could find help.

Questions by Counsel		
Party	Response	Comments
Commissioner Douglas	Fair, just and economical review. Is there anything else that would come under this for merits review?	It particularly relates to terminations – may also include reductions in rank, censures, however, most serious matters are terminations.
Commissioner Douglas	Madame Justice Arbour from Canada argued that sexual offences in the defence force should be focused in the civilian courts – provincial courts may not be keen to undertake this so I'm unaware how this has been introduced in Canada	The benefits of a military court is that they are not delayed and often heard and resolved within six-to-twelve months. Civilian courts often face delays. Replication of a civilian system in a military context may be the best approach in the military justice system(s).
Commissioner Douglas	The American system sees that military issues are dealt with by military courts.	Protections need to be increased. There must be a service connection for defence force courts to see those service-related matters. Defence members should be seen as citizens where there is no service connection.
Commissioner Kaldas	Is there any other sphere that you are aware of where that merits review does not exist currently?	NSW Commissioner for Police retains similar powers for termination where the Force has lost confidence in a member. It may not be seen as appropriate in the Defence Force context.

CONTENT WARNING

Evidence may refer to suicide, suicide behaviours, bullying, assault and sexual misconduct.

Evidence Tendered	
Paragraphs 127, 162-63 and 185	[redacted]
Verbal	The abuse has had a profound impact on my mental health. Intervention and seeking help only made this worse.
Verbal	The Chaplaincy Branch was very dysfunctional and had a toxic culture and impacted most prominently, the female and LGBTQ+ chaplains. The Air Force Chaplaincy Review found the same things, with recommendations made, however upheld my concerns about the branch.
Verbal	There was never any supervision, intervention or prevention of the abuse. The Senior Chaplain had the opportunity to stop the abuse, but never took those opportunities to do so. Toward the end of 2019 [feed censored]
Verbal	I was told to stay away from my abuser, however we were co-located in Canberra.
Verbal	Many contexts, there were connections between the abuser and those who received complaints – I do not know how to further answer this question without the Commonwealth raising concerns regarding privacy.
Verbal	The Church was told about the outcome of the investigation, but not the Branch that I was attached.
Verbal	My husband wrote to Ministers, the local MP, Shadow Ministers, Assistant Ministers to explain my situation, however, I've only recently received responses ten months after-the-fact.
Verbal	SEMPRO does not seem to have policies or processes to integrate the victim back into the workplace. It seems that it is expected for victims to leave instead of reintegrating back into teams and sets SEMPRO up for failure.
Verbal	I did not go to Defence Ombudsman because their website says they do not look at abuse claims. Post-2014, they claim that assault no longer occurs in Defence – it has since been taken off their website. I had no faith in talking to the Ombudsman.
Verbal	I left the ADF because I was ordered to not speak to the Royal Commission.
Verbal	I do not believe that the IGDAF is entirely independent. The ADF needs an independent body for which members can complain to and have a resolution provided in a swift and timely manner.

Questions by Counsel		
Party	Question	Comments
Peter Singleton, Counsel Assisting	What was your motivation in joining the ADF as a chaplain?	The two main reasons was to assist the Royal Commission was to initiate systemic change. My academic background could add to that change. Secondly, I have been ordered to not speak about my experiences. My branch was unwilling to listen to my complaints. I had two investigations against me – I want systemic change, but I want my Branch to hear the truth.
Peter Singleton, Counsel Assisting	Four labels you wish to address: <ol style="list-style-type: none"> 1. Sexual assault 2. Reprimands over trivial mistakes 3. Lack of support 4. Bullying 	
Peter Singleton, Counsel Assisting	Were you ever told the circumstances or outcome of the complaints of your abuser?	Air Force has a different interpretation of the <i>Privacy Act</i> and could not be told the outcomes of my abuser.

CONTENT WARNING

Evidence may refer to suicide, suicide behaviours, bullying, assault and sexual misconduct.

Peter Singleton, Counsel Assisting	Can you describe to the Commissioners how important it is to you, to know the outcomes of abusers?	It is fundamentally important, the lack of transparency means that victims are unable to know the full-extent to which the complaint was taken, or how seriously Defence has taken them. It does not provide victims with adequate understanding of what is changing, what has been changed, and provides a curtain for Defence to enable abuse.
	I want to address serious matters: threats to kill, indecent assault, common assault and the like.	My CO kindly said she could no longer sit on those forums and she forwarded them to the Joint Military Police Units in Canberra. I was impressed because they had an exceedingly well-thought out trauma-informed approach – I met plain clothed investigators and they were kind but vigorous in their approach – they did a great job.
	That resulted in a brief being delivered to the Joint Military Police, do you know of the results?	I was notified in November 2022 that there would not be prosecution for two reasons and received a written response. <ol style="list-style-type: none"> 1. Too serious and needed referral to Magistrates Court in ACT 2. Was not in good order and discipline to prosecute somebody separating from Defence.
Commissioner Brown	When you were working at Russell Offices and had to be restricted to one building, with your abuser given reign of other buildings, were you given any excuse as to why that was allowed to occur?	[Feed muted for privacy reasons]
Commissioner Kaldas	Eventually your complaint was investigated, and an outcome with 10/12 matters substantiated or sustained, you weren't told about any actions taken against the abuser. Your reputation was damaged for making the complaint. Your abuser has moved onto another role elsewhere, and wanted his new employer to know about his history. His privacy was breached, your privacy was breached,	
Commonwealth Representative	Why was there an issue regarding your feedback on the article?	The feedback regarding my article on Moral Courage was criticized by General Fox was to tone down or completely remove any conversation around sexual assault because it did not fit Army's narrative.
Commonwealth Representative	Commonwealth capability: what focus of the roles of General Fox place on people as a defence capability?	The roles align with the statement that "people is their best asset" but I'm not seeing actions that affirm that from people lower in rank than her.
Commonwealth Representative	What do you think gender has in terms of promotion and its effect on capability?	This is a big boy's club – we need to promote the best person for the job irrespective of their sexuality, sex or gender.

CONTENT WARNING

Evidence may refer to suicide, suicide behaviours, bullying, assault and sexual misconduct.

2:15pm-3:15pm – MB2, Sophie Molyneux Counsel Assisting

Evidence Tendered	
Type	Body
Non-Publication Order from the Commonwealth. No document provided.	MB2 to be known as a pseudonym
Verbal	Timeframes need to be realistic and adhered to. Time comes and goes without hearing or receiving an update. It's exhausting, it's emotional – if time frames aren't stuck to, then there needs to be communication as to why it's delayed and when it's [information] planned to be updated.
Verbal	Some things, some decisions may have contributed to further decline of his mental health such as separate postings. In my husband's case, I think he wasn't able to contact anybody because he loved his job but was worried about termination or de-ranking.

Questions		
Party	Question	Comment
Sophie Molyneux	You received an email regarding the IGDAF enquiry?	The content in that email said that the IGDAF would investigate the death of [my husband] and had no idea what they were going to do. The only reference I had was to do with the Afghan enquiry and it gave me a fright because I was confused as to what the Afghan enquiry had to do with my husband.
Sophie Molyneux	Did you receive any other support than the psychologist from work?	No. I only had her during the interview process.
Commissioner Brown	What would have felt supportive – what would have you preferred in terms of frequency of contact?	A schedule, such as checking in every two months, knowing something to expect, instead of being surprised by out-of-the-blue correspondence. Needing frequent and predictable communication would have been helpful. There's so many questions when you hear nothing.
Commissioner Brown	Was the IGDAF process supportive?	I have been fairly comfortable with contact. When I've spoken with the investigator, I was quite pleased. I felt he was taking the time to get to know my husband, gained a good sense of him, I had a positive feel that he was trying to understand him [my husband] and what had happened.
Commissioner Douglas	[Hearing muted for privacy reasons]	[Hearing muted for privacy reasons]

CONTENT WARNING

Evidence may refer to suicide, suicide behaviours, bullying, assault and sexual misconduct.