



Royal Commission Melbourne Hearing Block – 01 September 2023 [Day 5]

RSL References:

Positive:

Negative:

General:

Timeline:

9:45am – Session opened
9:46am – Declaration of Section 6(D) – Right of Witness(es), *Royal Commissions Act 1902 – Non-Publication Order*; Witness Affirmed.
9:51am – Questioning began.
10:09am – Hearing muted to maintain privacy and confidentiality.
11:16am – Hearing muted to maintain privacy and confidentiality.
11:26am – Hearing muted to maintain privacy and confidentiality.
11:27am – *Non-Publication Order* issued by Commissioner Kaldas.
11:49am – Hearing muted to maintain privacy and confidentiality.
12:00pm – ‘The Commonwealth is not in a position to cross-examine the witness.’
12:02pm – Short Adjournment.
12:27pm – Recommended.
12:58pm – Hearing muted to maintain privacy.
12:59pm – *Non-Publication Order* issued by Commissioner Kaldas.
1:37pm – *Non-Publication Order* issued by Commissioner Kaldas.
1:46pm – Lunch adjournment
2:24pm – Recommended
2:25pm – Section 6D(3), 1st September – Subsection 6D(3) *Royal Commission Act (Cth)*, Non-Publication Order
3:30-4:10 – no observations.
4:46pm – *Objection by the Commonwealth*, Non-Publication Order issued by Commissioner Kaldas.
4:50pm – Objection clarified – documents redacted appropriately.
5:00pm – Adjourned until 8:30am, 04 September 2023

Topics:

Witnesses	Witness	Description
9:30-11:30am	MB1 <i>Content Warning: Evidence may contain graphic language and refer to distressing and traumatic experiences including suicide and suicidal behaviours, interpersonal violence including sexual assault and racial vilification</i>	Witness
11:30-11:45am	Short Adjournment	
11:45am-12:45pm	Andrew Snashall PSM <i>Director, Military Redress and Review</i>	Commonwealth Witness
12:45-1:45pm	Lunch Adjournment	
1:45-3:45pm	Andrew Snashall PSM continued	Commonwealth Witness

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9:30-11:30am: MB1 – Content Warning: *Evidence may contain graphic language and refer to distressing and traumatic experiences including suicide and suicidal behaviour, interpersonal violence including sexual assault and racial vilification.*

- No statements will be made available to maintain confidentiality and privacy.

Evidence Tendered	
Type	Body / Comment
Section 101(D), Defence Force Discipline Act.	
Verbal	During room searches, I could hear ADF staff making derogatory comments – the language used a lot of profanity, it was very offensive and I never once thought it was appropriate.
Verbal	“You are all worthless, and none of you deserve to be Officers. We own you, we can do whatever [censored] we want with you” – it goes above the Army’s constituted notion of ‘tough training’ and should be classed as ‘unacceptable behaviour.’
Verbal	I had allegations of ‘unacceptable behaviour’ lodged against me which resulted in my rifle being confiscated. I was never able to make a Right of Reply to their decision, and nobody asked if I was okay, there was no information in the minute detailing the circumstances.
Verbal	I was issued a termination notice under the <i>Defence Force Discipline Act</i> , and had to show cause for my retention. My removal from the course was, in my opinion, unfair, and given the comments by Warrant Officer Class 1, there was a determination of guilt made prior as they hadn’t conducted interviews. It was conducted in an unfair manner, I sought legal advice from a Defence Legal Officer. There was no procedural fairness in the course.
Verbal	I was concerned about my health – I was being yelled at, saliva was being sprayed on me, I was told that if I ‘want to lodge a ROG, to do it in my own f*cking time, of which you have none.’
Verbal	Warrant Officer Class 1 requested information about a survey where a person had made claims that they had been sexually harassed in a training block by Warrant Officer Class 2 and made comments sexual in nature toward them. Infringement Notices were issued for small infractions such as water droplets on shower screens, alcohol despite being permitted to have it at this time, shampoo bottles not being stored neatly and for having sweaty bedsheets.
Verbal	A cadet had been [sexually assaulted] earlier in the course and requested that her underwear drawer be kept private, and she felt distressed and teary. I had a conversation with her to check on her welfare and she informed me that all of her private clothing had been moved, she felt vulnerable and it was exacerbated by having two male training staff undertake room checks with no women present at the time.
Verbal	When I returned to Holsworthy, many were shocked and upset about the way I was treated, my peers hadn’t treated me any differently at that point. After returning to Holsworthy, many of my team mates had to conduct training with other Officers, and I was informed that I was attempting to harm the reputation of another Commissioned Officer. A large portion of those people who were ordered to cease communication with me were too scared to disobey that Order and they didn’t communicate with me in anyway.
Verbal	I wasn’t meaningfully employed, and I was isolated from everybody else. I ended up drinking due to boredom and being unable to have contact with anybody. I’ve never had a problem with alcohol previously. I was provided a Support Officer from the Colonel, however, he described himself as a ‘puppet for the Colonel’ and nothing could be done for me unless he [the Colonel] had approved it.
Verbal	CommCare have been made aware of potential psychological abuse occurring at some training centres, and was only made aware through media reports. They’ve launched investigations to determine these allegations.
Section 20, Public Interest Disclosure Act 1994 (NSW)	(1A) In any proceedings for an offence against this section, it lies on the defendant to prove that detrimental action shown to be taken against a person was not substantially in reprisal for the person making a public interest disclosure.
Verbal	I had grievances in relation to the procedural fairness of the matter. I had ROG 1 which received correspondence, I haven’t had correspondence for ROG 2 which was submitted in November 2021.
Verbal	I met with the Chiefs of Staff for a Senator and the Minister for Defence and they [the Chiefs] were concerned that they were not being provided full and frank disclosure from the ADF.

CONTENT WARNING

Evidence may contain graphic language and refer to distressing and traumatic experiences including suicide and suicidal behaviours, interpersonal violence including sexual assault and racial vilification

Questions by Counsel

Party	Response	Comments
Madeleine Bridgett, Counsel Assisting	How did this impact your mental health?	I had increased alcohol consumption, I lost about 17 kilos, had breakouts, loss of sleep.
Madeleine Bridgett, Counsel Assisting	What acted as a protective measure to you that aided in not developing suicide behaviours and suicidal tendencies?	I had strong social supports, some Officers also assisted me. The strong support assisted me but without that I think there would have been a very different outcome. Some cadets told me that it was a burden to carry around and some had mentioned that they had attempted suicide.
Madeleine Bridgett, Counsel Assisting	What is your discharge status?	It is considered a voluntary discharge, but it was the only way I could see the reprisals against my ROG's stopping.
Madeleine Bridgett, Counsel Assisting	What would be the most concerning part about the ROG system?	A key principle of justice is to have prompt justice. The ROG system lacks clear and prompt communication and there is a lack of meaningful resolution because my termination also terminated by ROG. Waiting in excess of 650 days just seems too long.
Madeleine Bridgett, Counsel Assisting	Do you have any recommendations for Commissioners?	The OIGADF would benefit from stronger independence. There needs to be removal of any actual or perceived conflicts of interests of individuals charged. There should be legislative timeframes on Redress of Grievances to ensure that there is timely responses.
Commissioner Douglas	Do you know if anything significant has happened to the training staff at the training regiment?	No outcomes have been listed in correspondence, I was only told that it would be passed on to the Assistant IGADF.
Commissioner Douglas	It has been noted that police could be seconded to ADF to understand the enquiry process?	Could be potentially beneficial – some governments use investigators who are not necessarily former ADF or Reserves. Defence Liaison Officers could undertake enquiries, but it would be beneficial for non-ADF members to be undertaking enquiries for the Office of the IGADF, as long as they are not connected to Defence.

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Evidence Tendered	
Type	Body / Comment
Verbal	Responsible for Act of Grace payments, Debt Waiver Requests, and other claims, as a Result from Redress of Grievances. Sometimes payments were made at level of recommendations.
Submission Reference: ANON-Z1E7-QZXZ-4.	<p>If a member then exercises the system induced redress of grievance (ROG) process, they quickly find out that the cards are stacked against them. The Rog process is time consuming and laborious and really stands to forewarn the hierarchy of the issues allowing for defence to be robustly designed and build.</p> <p>If taken to the limit, bringing the matter to the IGADF, the inevitable answer is that a grievance took too long to make a submission The IGADF only considers grievances within six months and rarely accepts that there is an extenuating circumstance thereby giving them a reason to not investigate the issue.</p> <p>Mr. Snashall: I reject the suggestion that there is rarely an extenuating circumstance.</p>
Verbal	There is no bias, no protecting Officers. We operate independently.
Verbal	With my complaints, the IGADF did not know that they existed – ROG was not passed on as it should have been, and they were concerned that they hadn't received it.
Verbal	I was accused of having homicidal and suicidal intent, I was detained – I did not have those thoughts. I had two knives on me at the time, however, they were never taken off me even though I was alleged to have those ideations. I had my phone at the time and messaged a member of the Office of the IGADF saying that I was being unlawfully detained and she said that she would notify the Redress and Review team to also address them about concerns that she held.
Defence Regulation 2016 [42]-[43]	<p>[42] Action to consider complaint or redress grievance: A commanding officer or authorized complaint recipient who is given a complaint under this Part may do one or more of the following:</p> <ol style="list-style-type: none"> a. Consider the complaint b. Take action to redress the member's grievance c. Refer the complaint to another person for consideration d. Refer the complaint to another person who is capable of redressing the member's grievance e. Refer the complaint to be dealt with under another complaint handling procedure <p>[43] Referral to Inspector-General ADFR</p> <ol style="list-style-type: none"> 1. A commanding officer or an authorized complaint recipient who is given a complaint under this Part by a member must, within 14 days after <ol style="list-style-type: none"> a. Refer the complaint to the Inspector-General ADF; b. Notify the member, in writing, that the complaint has been referred to the Inspector-General ADF 2. The commanding officer or authorised complaint recipient may also give the Inspector-General ADF any other information or material that the commanding officer or authorised complaint recipient considers relevant 3. If the member is not notified in accordance with paragraph (1)(b), the member may give the complaint to the Inspector-General ADF.
IGD.0020.0001.0025	<p>RAAF Commander's Seminar Redress of Grievance: Mr. Snashall</p> <p><i>[The Commonwealth has not authorised publication of this material]</i></p>
IGD.0020.0001.0027	<p>Military Service is not a contract of employment. ADF members serve at the pleasure of the Crown and do not have termination rights enjoyed by civilians.</p> <p><i>[The Commonwealth has not authorised publication of this material]</i></p>
IGD.0020.0001.0030	<p>Principles/Policy: Defence policy is to address matters at the lowest appropriate level. Ordinarily, the ROG process should only be used after reasonable attempts to address the issue have been made using informal (or less formal) processes.</p> <p>The ROG process provides flexibility to deal with eac individual complaint in the most appropriate way for that individual complaint. The outcome sought is not within my authority to provide. Complaint handling is primarily a function of people management. People management is primarily a function of Command.</p>

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IGD.0020.0001.0032	<p>ROG Process – Initial action</p> <ul style="list-style-type: none"> - On receiving the ROG, the CO should: - Initiate a Defence Incident Report (Service requirement, not an IGADF requirement) - Conduct a Fact Finding (identifying grievance, inform jurisdiction and how that complaint ought be dealt with) <ul style="list-style-type: none"> - (Within 14 days) Refer complaint to IGADF with a <u>proposal</u> of how to deal with that specific complaint - Inform member that their complaint has been referred to IGADF.
EXP.0011.0001.0028	<p>The main categories of the 226 complaints closed in 2021-22 related to:</p> <ul style="list-style-type: none"> - Termination of the complainant’s ADF service (23 per cent of complaints) - Decisions about the complainant’s career (38 per cent of complaints) - Decisions about the complainant’s entitlements (24 per cent of complaints) - Financial security and medical complaints (18 per cent)
IGD.0020.0001.0036	<p>Comparison New ROG system (since 1 October 2016) vs Old ROG system: <i>I attribute the reduction to improved guidance, and improved analysis, early, to get each decision into the appropriate process for it to be considered, and by whom.</i></p>
<i>Fullerton v Commonwealth (No. 1)</i>	
Section 46	<p>Inspector-General ADF may decide not to consider complaint</p> <p>(1) The Inspector-General ADF may decide not to consider the complaint, or to stop considering the complaint, if in the Inspector-General ADF’s opinion:</p> <p>(a) The commanding officer or authorised complaint recipient who received the complaint has satisfactorily resolved the complaint, or will be able to satisfactorily resolve the complaint</p> <p>89.5% of ROGS are stopped under this power.</p>
Verbal	<p>I think that there’s a level of skew in the data. There should only be a well-intended use of Section 46 [above] to stop complaints.</p>

Questions by Counsel		
Party	Question	Response
Erin Longbottom KC, Counsel Assisting	Does the IGADF have a discretion to accept complaints outside of the fourteen days, despite the legislation only allowing for fourteen days?	Yes, in some circumstances, there are ways to work around the fourteen-day period.
Erin Longbottom KC, Counsel Assisting	What safety nets exist in the new system to ensure ROGS are sent to the IGADF?	We’ve introduced new systems which ensures that where members submit the request and use their correct email contact, then we will automatically issue an email back notifying the complainant that their ROG has been received.
Erin Longbottom KC, Counsel Assisting	Section 44: Does the process ever involve merits review?	If a complaint is made by a member under this part, the Inspector-General ADF must consider the complaint. In considering the complaint, the Inspector-General ADF may adopt any procedure that he or she considers appropriate in the circumstances.

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