



Royal Commission Melbourne Hearing Block – 05 September 2023 [Day 7]

RSL References:

Positive:

Negative:

General:

Air Commodore: There should be an opportunity for involvement for ESOs – but in a way that ensures mechanisms do not pit them against one another. There needs to be a harmonisation across the ESO sector to ensure that veterans are at the forefront of services delivered.

Opening Remarks by Counsel:

Timeline:

8:34am – Session commenced
 8:35am – Witness affirmed
 8:38am – Session began
 9:45am – Short adjournment
 10:01am – Session recommenced
 11:58am – Short Adjournment
 12:53pm – Commonwealth objection
 1:30pm – Lunch Adjournment
 2:04pm – Session recommenced
 3:21pm – Short Adjournment
 3:40pm – Session recommenced
 3:46pm – Objection by the Commonwealth (leading question)
 3:48pm – Objection by the Commonwealth (Senate hearings)
 3:50pm - Objection by the Commonwealth (Treasury processes)
 3:52pm – Objection by the Commonwealth (request for question in writing, or withdrawal)
 3:53pm – Overturned, Commissioner Douglas
 5:16pm – Commonwealth objection
 5:17pm – Overturned by Commissioner Douglas
 5:22pm – Adjourned until 10:45am, 06 September 2023.

Witnesses	Witness	Description
8:30-9:30am	Captain Mona Shindy	Witness
9:30-9:45am	Short Adjournment	
9:45-11:45am	Group Captain Catherine Wallis <i>Director, Enquiries and Investigation</i>	Commonwealth Witness
11:45-12:00pm	Short Adjournment	
12:00-1:00pm	Group Captain Catherine Wallis continued	Commonwealth Witnesses
1:00-2:00pm	Lunch Adjournment	
2:00-3:20pm	Air Commodore Kaarin Kooij <i>Director-General of the Joint Transition Authority</i>	Commonwealth Witness
3:20-3:35pm	Short Adjournment	
3:35-5:00PM	Air Commodore Kaarin Kooij continued	

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Topics canvassed:

- Experience with IGADF
- Views on a body for IGADF and body outside the Chain-of-Command
- Emotional impact it had on Ms. Shidy during this period

8:30-9:30am – Mona Shidy

Evidence Tendered

Type	Body / Comment
Verbal	The Chain-of-Command, is a wonderful institution in terms of the positive that happen – camaraderie, loyalty, lifelong friendships – that occur in the defence environment, and a strong desire to care for each other. However, there’s practical implications especially when it comes to protecting the reputation of Senior Officers, and Defence, which comes at the expense of aggrieved individuals. An independent body needs to be ADF-literate, scrutinise, contest, look at existing policy deficiencies, and contemporary standards that occur and are present in modern Australian society, and what is appropriate in terms what is acceptable.
Verbal	I was told by IGADF that they do not look at promotion systems, transparency, proper record keeping, and structural aspects. They said they will only look at things against existing policy and process.
Verbal	The ADF cannot be a productive national institution if it does not address these ongoing and systemic issues.
Verbal	When I became the problem because of my appointment – I was an Islamic Cultural Advisor – the reputation came first. I was not once considered. My reputation was trashed, I was made to look at as if I had some devious agenda.
Verbal	I was the first and the last appointment for the Islamic Cultural Advisor. There were things that were established, that were then subsequently removed afterward. These things were suggested or requested. I was met with backlash, and my appointment saw intense political backlash. I was feared, especially in 2015, and the Chief tried to fix this problem with my appointment. The Chief had a go, got the backlash, and then did the pilgrimage to Saudi Arabi to live more openly and fully. I wasn’t wearing the hijab at the time.
Verbal	I don’t know if RAN anticipated that – a risk assessment – but I’m not sure what they expected. I requested media training, and I supposed for support and I liaised with many people, I wrote briefs and engaged with it to ensure that there was going to be support.
Verbal	The risk is too great to continue to not do anything because suicide is not an issue that can be considered too hard to not do anything. Defence needs to consider their reputation because they consider it with organisational structure and senate estimates, but how can they consider suicide an issue that is too difficult to address?

Questions by Counsel

Party	Question	Comments
Sophie Molyneux, Counsel Assisting	Can you please tell the Commissioners the impact this had on you – the emotional impact – when you attempted to find redress?	<p>I went to many Senior Officers in my Chain-of-Command, explaining why things needed to change, to improve fairness for all. I went to the Australian Information Commissioner to get redress. I was told by my Senior Officers that it was my responsibility to go to the ADF to seek help and for the threats and vitriol I received.</p> <p>The Ombudsman did not have the literacy to understand the ADF, and did not know what to do. The systems are there in place, and are document that they have long-standing systems of appeal, but they do not work in terms of getting an appropriate outcome that supports the person that has made that complaint.</p> <p>The effect on me personally was huge. I suffered a psychological injury through this process. I struggled with anxiety, and I felt isolated. I have seen many psychiatrists and psychologists since it began around 2015. I have a permanent impairment, accepted by DVA, in terms of that psychological impact, seeking redress. It has impacted me in terms of that love and loyalty I once had for the ADF – I still have respect for those in, and for, the ADF.</p> <p>The system really inhibits that goodness to come out and really come to the fore because of the pressures that want problems to go away. They need to be genuinely addressed. I’m not as active as I once was, I haven’t marched in ANZAC Day since 2015. I don’t like to see the uniform anymore, I now spend a lot of time trying to heal, and ruminating and going over support people.</p> <p>It’s impacted my family a lot, they’re over it.</p>
Sophie Molyneux, Counsel Assisting	What are you hoping that comes out of this?	I’m hoping that there’s defence starts acting like their people are everything. It’s a throwaway line. Most of defence is full of good people. I feel privileged that I have served with those I have. I’m hoping for real change. Getting ahead in the defence force requires you to be on the good side of the fence with your leaders and peers.
Commissioner Brown	After the storm on social media, you felt that the response from your Chain-of-Command, and Chief of Navy, was shutting it down, and not looking at the issues, what would you have preferred to have seen?	<p>I was asked to do a job. I wrote briefs regularly for Chain-of-Command advising on policy and what I was doing. I was following a Letter of Appointment. I was transparent and open in sending briefs, monthly. I felt that the Senior Officers were in panic-mode, and seeing how they could get out of things, and I was no longer part of the team. I became the problem because of my appointment. On the record-statement, I was “counselled”, I wasn’t spoken to. I was left on my own and the problem was being dealt with, without my involvement.</p> <p>There was a recommendation that a Twitter account be established for me, that I set it out, that it was connected with RAN. I was of the understanding that I would have assistance in running this account. The account saw racist comments, re-tweets...</p>
Commissioner Brown	Can you expand on RAN and ADF not being in line with contemporary Australian standards?	To have Senior Officers not have consistency in terms of promotions, accountability, reliability, having structures, systems and processes, having clear communication and transparency. Many things would be “before my time” and was often used by Senior Officers, so there was no consistency in terms of posting and promotions.
Commissioner Douglas	Do you know how to maintain independence? You raised that those without ADF connection may be illiterate to understand how to resolve problems. Are there any suggestions you have?	There needs to be somebody so far removed through disconnection from service, who still understands the process, to be able to make decisions, criticise and consider current policy processes to understand how they can best improve those systemic issues.

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Evidence Tendered	
Type	Body / Comment
Part VIII B – Inspector-General of the Australian Defence Force	<p>Section 110C Functions of the Inspector-General ADF</p> <p>(1) The Inspector-General ADF has the following functions:</p> <p>a. To enquire or investigate matters concerning the military justice system</p> <p>An effective military justice system will balance the approach to maintaining discipline against the protection of member’s individual rights.</p> <p>Four main components:</p> <p>a. Disciplinary investigations, prosecutions and proceedings (inc. Discipline Officer infringements, charges, subordinate and superior summary proceedings) under the <i>Defence Force Discipline Act 1982</i></p> <p>b. Adverse administrative action, including administrative sanction (e.g. censures and formal warnings) and involuntary separation from the ADF</p> <p>c. The conduct of administrative enquiries, including fact-finding and Inquiry Officer Inquiries;</p> <p>d. Review and complaint mechanisms available to ADF members</p>
Section 8-10, Inspector-General of the ADF, Division 1.	<p>The Role of an enquiry officer is a role that we do not use, but they can be appointed to conduct an enquiry and make findings and recommendations as an enquiry officer.</p> <p>Our staff come from a variety of backgrounds, with different qualifications.</p>
Verbal	<p>On our website, there is a section titling how to make a complaint, and explaining the jurisdiction of the IGADF. Generally speaking, we don’t turn people away, but we redirect them to the people or the Office that has jurisdiction to listen to their matters. We don’t have powers to compel evidence to be provided, we rely on the willingness and cooperation of parties involved.</p>
MSH.0000.0001.0004, Statement from Captain Shindy.	<p>[22]. In my view, the IGADF enquiry was ultimately ineffective in achieving outcomes as a result of the following factors:</p> <p>a. The Terms of Reference (ToR) guiding the investigation were too tightly constrained, which meant that much of the evidence provided was omitted from consideration, as it was seen as not relevant to the TOR. In particular, I formed the view that the IGADF was not trying to identify or address the systemic structural issues that I had identified. The enquiry only made assessments and recommendations about compliance with existing policies and processes, without exploring the adequacy and contextual and cultural relevance of those rules.</p>
MSH.0000.0001.0005	<p>[26]. I found that the terms of reference of this second inquiry were quite narrowly drafted once again and did not capture all the issues I had sought to raise [...] The feeling I had was that the IGADF was trying to contain the systemic issues I raised into something more manageable rather than sincerely trying to get to the bottom of a genuine complaint.</p> <p>[24]. This along with issuing of suppression orders, creates barriers to complainants in truly engaging with the report’s findings. When I eventually received a redacted version of the report, significant portions of it including all recommendations were redacted.</p> <p>[28]. Prior to the publication of this second report, the investigating officer phoned me to inform me that the report was complete, but a number of sections were being changed by the IGADF before it was being published. As I understood it, the report had been going to recognise that some bullying, harassment or mismanagement had occurred. The investigating officer said that adjustment of the recommendations was up to the IGADF to resolve. He apologised to me.</p>
Section 21	<p>Directions regarding disclosure of evidence: 21(c) – information contained in a report about the inquiry that is given to a person under S27.</p>
Issues identified in IGADF Enquiries concerning the conduct of Enquiries: 2020-2022	<ul style="list-style-type: none"> - Findings not supported by evidence; - Insufficient analysis of credibility and reliability of witnesses - Incorrect characterization of complaints - Manifest unfairness in outcomes - Leading questions - Lack of procedural fairness - Labelling of complaints eg: “vexatious litigant, “sense of entitlement” - Findings out of scope - Selective interview of witnesses - Application of policy definitions
Verbal	<p>The current workload means that there is a lot less significant analysis, and there is desirable to do more work and analysis especially on the military justice system. Resourcing is a principle barrier.</p>
CSBA: The Customer Experience Experts [Consultancy Firm] – Complainant Feedback Survey, August 2021	<p>Aimed to guide improvement of policies and development to better improve complainant resolution. They provided implementable and sensible solutions. Almost one third of complainants were satisfied with the way IGADF handled their complaint and inquiry. Complainants were asked on a 1-5 point scale how much they agreed with the statement: <i>“Overall, you were satisfied with the way IGADF handled your complaint.”</i></p>
DII Handbook	<p>The DII Handbook is guidance only, designed to assist with conducting business in the OIGADF.</p> <ul style="list-style-type: none"> - When a new version is released, amendments need to be added to the table after each review.
Verbal	<p>We attempt to minimise personal bias by training, and encouraging people to actively think about those biases, and the assumptions that they may have and come from a position where they are neutral. It is something that is difficult to do completely well, but to be very conscious and very aware of the preferences and biases that they have. There’s unconscious bias training for everybody in Defence and it is encouraged to be undertaken.</p>

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Verbal	Justice Brereton is disconnected from the IGADF as he is not subject to the directives made from the IGADF.

Questions by Counsel		
Party	Question	Comments
Erin Longbottom KC, Counsel Assisting	When is an issue resolved? Is something resolved even if the complainant is not satisfied?	We look at whether the Department has complied with Departmental policies; whether the decisions were reasonable; and whether they were unfair. They may be considered resolved even where the complainant is unsatisfied. In the majority, this is administrative review – we look at fairness. The Inspector-General has on occasion has reviewed matter where we have provided review correspondence, where compliance has been met, but the outcome has been unsubstantially unfair with recommendations provided.
Erin Longbottom KC, Counsel Assisting	Are any of these criteria and steps recorded anywhere?	The criteria outlined is set out in the handbook, with actions the IGADF can look at and recommendations that can be made.
Erin Longbottom KC, Counsel Assisting	What quality assurance exists in your core function?	Reports are usually quite comprehensive, cited, referenced and hyperlinked for analysis. We do not normally send individuals out to second share any processes, but usually there is nothing beyond phone interviews conducted, but there are records of conversations which I can access to conduct quality assurance measures.
Erin Longbottom KC, Counsel Assisting	Would you accept that the timeliness of the assessment could compound as a stressor to those seeking outcomes? Do you maintain records of average and median time frames?	Absolutely. We do not keep those records, but we keep records of the gaps between times of correspondence, but we have begun to do it. The current gap between correspondence is fifty (50) days, and the wait for a review is 352 days.
Erin Longbottom KC, Counsel Assisting	How effective is the IGADF at mandating recommendations if you cannot have binding decisions?	IGADFs decisions are not binding on the Department or the Directorate. We are similar to Ombudsman jurisdictions. A body like the IGADF, making recommendations, can be seen to be very persuasive in making changes, and certainly in my experience over five years, those recommendations are being implemented. From a legal sense, we are only able to recommend, but my experience has seen solid recommendations implemented.
Commissioner Kaldas	Defence arrangements saw enquiries into sexual misconduct. Apart of that enquiry, were they looking at other areas?	Yes, it was an environmental scan to see how and where else this would be occurring.
Commissioner Kaldas.	The second part troubles me, what decision-making process is there in relation to that? Who decides the issue of a S21?	The IGADF has that power and discretion. It is a matter of discretion as to how we word the Order, and I have to consult before making the Order. There is a fairly standard approach, with all cases, and they require clarification. Section 21 can be challenged by is ultimately decided by the IGADF and I'm unsure as to whether external mechanisms exist to question them.
Commissioner Brown	Sometimes the IGADF redirects people to the organisation who may be better suited to resolve an issue, do you do warm handovers?	We can do, and it depends on the individual case before us – and sometimes we do it both ways, and it depends on the individual complainant and their capacity to refer their complaint themselves. We have done warm handovers to the Inspector General of Intelligence, and the Commonwealth Ombudsman. We get a range of complaints, things like foreign defence forces don't get a warm handover.
Commissioner Brown	How many cases don't get a warm handover?	The percentages are tiny. Where there are cases that do not, they are sometimes anonymous complaints, or where consent is not given. Most complainants give consent to be given a warm handover.
Commissioner Brown	Are there any constraints on what the IGADF can investigate under its Own Initiatives enquiries?	It needs to fit within the jurisdiction under S110(C) and to relate to the military justice system.
Commissioner Brown	I have inferred that from your statements that you think this is an ill-functioning system. Do you agree?	To a degree, I do not think we have matured to the point where we can analyse the system and its functions well enough to improve the way in which we can attempt to better guide the way we do things.
Commissioner Douglas	In relation to MB1: has the IGADF considered additional training and a cultural shift required?	We tend to approach things is by looking at incidents that have occurred, and what they have experienced. The matter is complete and the outcome produced, it is now available to read and discusses the incidents and factors responsible for the experiences. Recommendations were made, and the IGADF has suggested training for that specific Unit.

2:00-5:00pm – Air Commodore, Kaarin Kooji

Evidence Tendered	
Type	Body / Comment
Verbal	Service Chiefs are responsible for the individuals under them an being assured that the transition is smooth. There may be complexities, but those layers are required.

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Verbal	The system was recognised by the Productivity Commission, as being complicated and deleterious, which should be replaced by the Joint Transition Authority to remove those complexities?
JTA Tender Bundle	Military-to-Civilian Cultural Reintegration Report, undertaken by PwC.
DEF.9999.0066.0046	Royal Commission into Defence and Veteran Suicide, Defence Response [64]. Routine emails and phone calls happen on occurrence: <ul style="list-style-type: none"> a. Initial Contact – 25 minutes b. Planning session – 1hr 45m c. Mid-way coaching session – 30 minutes d. Clearance Session – 30 minutes e. Post-transition follow up Session – 20 minutes
AWWW.0000.0001.0697	Transition Taskforce: Improving the Transition Experience (Australian Government, Department of Veterans' Affairs, Department of Defence)
AWWW.0000.0001.0777	Life within the ADF: Extent of agreement in relation to the following statements about Defence: <p>Feeling of camaraderie with my fellow service members: 39%</p> <p>Serving my country: 39%</p> <p>Being part of a team: 33%</p> <p>Air Commodore: I don't think we have consulted families or, if we have, retained data about that – but the past four years has seen the provision of information to inform guidance.</p>
DVS.0011.0001.0268 Veteran Transition Strategy	Australian Government (Australian Government, Department of Veterans' Affairs, Department of Defence, Commonwealth Superannuation Corporation)
DEF.1197.0002.0477 Joint Transition Authority Steering Group	[3]. Government approved an Implementation Plan, specifying the Full Operating Capability (FOC) requirements JTA would need to achieve by Dec 2022. Following the incorporation of the Transition Coaching Services Directorate and Veteran Support Branch into the JTA in September 22, JTA reached FOC and the implementation plan was closed off. [5]. The following achievements and developments supported the implementation plan program of continuous improvement. <ul style="list-style-type: none"> A. Veteran Transition Strategy B. Mapping of the Transition Ecosystem C. JTA Transition Stakeholder Forum
Verbal	There's an escalation process in place, from both CommSuper or Defence, and the member's perspective, where if things such as income security cannot be achieved then there's a trigger for a transition extension date. Paragraph [g](3): Agreed transition timeframes (120 days medical separation, 90 days in/voluntary transitions)
Verbal	(5). Civil Recognition on Transition – up to two qualifications. "We attempt to tailor the qualifications to be able to be used in the civilian field. We have to ensure that these qualifications can adequately transition into civilian fields and it has to be done due to resourcing. Defence force qualifications can be translated into VET courses and certificates. We fund two qualifications, and fund the third if it aligns with career goals post-transition."
DEF.9999.0066.0060	Transition surveys, questionnaires and investigations: [26]. Questionnaires, surveys or like documents administered to transitioning members include: <ul style="list-style-type: none"> a. Transition Preparedness Questionnaires (TPQ1, TPQ2, TPQ3) <ul style="list-style-type: none"> I. TQP1 – offered at point of notification of transition II. TPQ2 – three weeks prior to transition date III. TPQ3 – six months after transition
DEF.1114.0001.0759	The only real consistency proved a lack of consistency, which was also difficult to validate as responses routinely contradicted or varied from one another in the same location. The <i>original intent</i> to develop a spreadsheet of all transition related activities to identify areas of duplication became untenable due to the incapacity to validate data.
Recommendations:	[3]. Services to support MSC cross service engagement activities, noting they all followed the same policy (MILPERSMAN Part 3, Ch 7) but have different experiences. [5]. JTA SG to consider (ADF Transition Manual) standardized timeframes for involuntary medical transition and involuntary separations across the services from decision, with consideration to notification points for all stakeholders.
Verbal	Homelessness funding comes from the Commonwealth government and is then distributed to the States and Territories. We need homelessness strategies to identify veterans as priority cohorts facing homelessness and prevent them from living on the streets, or having unstable accommodation options. Other bodies need to be able to identify and speak directly with DVA for those veterans and service personnel who are at-risk of homelessness to prevent it before it occurs.
Verbal	There needs to be a case-allocation system or triage method which allows individuals to have a single-point of contact and a degree of influence, subject to geographic locations and staffing concerns, and allow them to have direct contact with ADF, APS or contractors – based on their preference. A system where the individual has the influence would be appreciated. A command function would be beneficial to ensure that the three services are

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Questions by Counsel

Party	Question	Comments
Peter Singleton, Counsel Assisting	The system was recognised by the Productivity Commission, as being complicated and deleterious, which should be replaced by the Joint Transition Authority to remove those complexities? Do you agree?	Yes, I agree. From the individual's perspective, the JTA was established to help members navigate the system post-transition however there could be more done to consolidate these plans and systems.
Peter Singleton, Counsel Assisting	Was any planning undertaken to improve resourcing?	Yes, some resourcing studies were done, such as looking at touch-points throughout the journey, not just post-journey. It was sought, and there was some preparatory work, with an ASL focus done, subject on staffing across the group and defence. It is currently seeking consideration. The ASL increase was at the beginning of 2023.
Peter Singleton, Counsel Assisting	Can you define 'Coach' – would you accept that a 'transition coach' follows the definition of 'sports coach' or 'life coach'?	Yes, there has been consideration given to improve the skills and qualifications that 'transition coaches' have, but only in the context that one has a coach that deals with complex matters, and one that deals with more general matters.
Commissioner Brown	We heard about the US system which ensures that there is a 365 day pre- and post-transition system, does the ADF process start 365 days ahead?	We have a slightly different approach to the US. There are parts we can learn from them. The approach we have taken has seen transition modules open up to members throughout their career – employment type modules, but it occurs typically from the moment the individual submits their first form.
Commissioner Brown	How long do you expect the implementation of these policies to begin working?	The intent is by the end of 2023.

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