



Royal Commission Melbourne Hearing Block – 07 September 2023 [Day 9]

RSL References:

Positive:

Negative:

General:

Timeline:

8:35am – Session opened
 8:36am – Witnesses affirmed
 8:38am – Session commenced
 9:37am – Hearing muted for privacy reasons
 10:32am – Short adjournment
 10:46am – Session recommenced
 11:22am - Short adjournment
 11:40am – Session recommenced
 12:41pm – Short adjournment
 12:46pm – Session recommenced
 1:39pm – Lunch adjournment
 2:19pm – Session recommenced
 2:52pm – Short adjournment
 3:06pm – Session recommenced
 3:09pm – Confidentiality claims by the Commonwealth
 3:10pm – Public Interest claims by the Commonwealth
 4:56pm – Session adjourned until 8:30am, 08 September 2023

Witnesses	Witness	Description
8:30-10:30am	ADF Headquarters Major General Wade Stothart DSC AM CSC <i>Commissioner on the Military Repatriation and Compensation Commission</i> Air Commodore Patrick Keane AM CSC <i>Director-General of the Military Legal Service</i> Group Captain Angeline Lewis CSC <i>Director Military Administrative and Discipline Law, and Director of Air Force Legal Service</i> Commodore Richard Caton PSM RAN <i>Chief of Staff ADF Headquarters</i> Alastair MacIntyre <i>Director of Business Integration for the Case Management Stream in the Defence Enterprise Resource Planning Programme</i>	Commonwealth Witnesses
10:30-10:45am	Short Adjournment	
10:45am-12:45pm	Australian Defence Force Headquarters Commodore Richard Caton PSM RAN <i>Chief of Staff, ADF Headquarters</i> Air Commodore Lara Gunn <i>Director General Health Business and Plans</i>	Commonwealth Witness
12:45-1:45pm	Lunch Adjournment	
1:45-2:45pm	Panel Continued	Commonwealth Witnesses
2:45-3:00pm	Short Adjournment	
3:00-5:00pm	James Gaynor <i>Inspector-General of the Australian Defence Force</i>	Commonwealth Witnesses

8:30am-10:30am – ADF Headquarters, Counsel Assisting Leonid Sheptooha

Evidence Tendered

Type	Body / Comment
Major General Stothart (Verbal)	A health policy needs to be developed – I've written to the Surgeon-General to help develop that policy. We are currently exploring that gap, and develop the policy navigate these competing tensions. This policy development is ongoing and a conversation that requires ongoing advice to improve those policies.
Air Commodore Keane (Verbal)	There is a dedicated person for a dedicated function, however, we do not have the capability for an Enquiry Officer because it is a secondary role. We do not have
IGD.0007.0005.	<p>Item 3a. Overview: Discussion and Options Paper on Military Justice System Governance</p> <p>[3]. Part of the problem that is articulated in the discussion paper is that there is no clear home for military justice assurance that is appropriately resourced.</p> <p>[4]. DGMLB noted that the gap is at the second level of assurance. IGADF performs the third line of assurance, and individual cases and training is the first line of assurance. The second level is a bird's eye view of the system, which is difficult to achieve if there is no ongoing business area responsible.</p>
[REDACTED]	[3]. Under Tranche [2] of the Defence Enterprise Resource Planning Programme, Tranche [2] Case Management System (CMS) will be the foundational tool for capturing the data necessary to conduct Military Justice System Assurance (MJSA). CMS design workshops are currently underway, providing impetus for the MSJA work to be accelerated. In order to inform the development and validation of the associated Business Intelligence, reporting and analytics component of CMS, the initial data-points and associated Key Performances Measures (KPM) for MJSA must be determined as a priority.
IGD.0007.0012.0008	<p>Issues identified in IGADF Inquiries concerning the conduct of Inquiries: 2020-2022</p> <ol style="list-style-type: none"> 1. Findings not supported by evidence 2. Insufficient analysis of credibility and reliability of witnesses 3. Incorrect characterization of complaints 4. Manifest unfairness in outcomes 5. Leading questions
	[14]. DGMLB provided a history of the mental health discussion. In 2020, MJSG was in the process of developing draft amendments to the DFDA, the existing provisions of which addressing mental health are archaic.
Air Commodore Keane (Verbal)	Section 145 of DFDA needs to be replaced. We need to ensure there are mechanisms that allow transparency for decisions, and allowing for flexibility between disciplinary action, or aiming to understand, through a health paradigm, to deal with those health issues that may be leading to behavioural issues.
[REDACTED] DEF.1234.0001.0026	<p>[18]. DADFCMH highlighted another important aspect to be considered when employing the military justice system is that the process be 'trauma-informed.' Trauma-informed practices are those which centralise story-telling and give agency to complainants. By way of example, consideration should be given to the impact of requiring a victim to recount their evidence more often or to more people than is necessary. [REDACTED] mentioned there are currently aps in policy and therefore the health profession applies 'best practice' model and not policy.</p> <p>[20]. HPC noted that while they are currently discussing how mental health is applied in the discipline context, military justice is disciplinary and administrative processes combined. HC then put forward the question for the members to consider. HPC questioned what success looks like in this context, and whether there was a method of holding people accountable for their actions in a manner that does not unduly harm them. Would it be reasonable to require a competency and health assessment prior to the initiation of any military justice process?</p> <p>[25]. HPC raised the applicability of mental health to dual mode transition. DDHP shared the current Navy system of dual mode separation when member is subject to disciplinary action, they are referred straight to medical to determine whether they are fit-for-service.</p>
Major General Stothart	There's ongoing evolving policy for health, and military justice. They're now developing, and can be seen in the Minutes.
Major General Stothart	[9] IGADF noted this is an area that the Royal Commission is very interested in, in terms of witnesses stating that the ADF has weaponised the military justice system against members. While this had not been something the IGADF had identified in their focus group responses during unit level military justice audits as a systemic issue, IGADF understands that the RC HAD a series of witnesses saying they were poorly dealt with by the discipline system and that it had exacerbated mental health issues for them.

Questions by Counsel		
Party	Question	Comments
Leonid Sheptooha, Counsel Assisting	Is there any measures to understand the performance of the steering group?	Major General Stothart DSC AM CSC: No, there's no formal routine of assessment, but we do review the Charter and Terms of Reference regularly, and take taskings from CDF. No formal review, similarly to a Board, we do not have KPIs and are a non-executive body which ensures there is awareness of weaknesses and best practice, and seek to ensure policy reform continues to support Command Authority in the military justice system.
Leonid Sheptooha, Counsel Assisting	One of the military justice system reforms was considering the improvement of mental health provisions?	Air Commodore Keane: It was aiming to improve mechanisms for Section 145 of the DFDA, relating to acquittals, fitness to stand trial, and it is disappointing that we have not been able to have a Bill to consider replacement. DEFENCE FORCE DISCIPLINE ACT 1982 - SECT 145 Unsoundness of mind (austlii.edu.au)
Commissioner Kaldas	Will these new systems have audit trails? Will this system provide reminders to Commanders every [X] days noting when things are overdue?	These systems are very robust, and have levels and layers of security. Data custodians within certain parts of the Department who can see the audit trail and the case times. There will be opportunities to change and add to the existing data. KPIs will also be introduced and a real-time management system will show the case-times and attempt to minimise delays.
Commissioner Brown	Could you help me understand why it's Command-led and why lawyers won't be involved or engaged with?	Major General Stothart: Command is a military principle of total responsibility to coordinate the welfare, allocation of resources, of our forces, in often dangerous situations. We need lawful commands to be retained with Command and how we conduct those administrative sanctions, if needed, and the disciplinary system is around the specific behaviour/s of individuals in certain circumstances.
Commissioner Brown	How do you know whether a sanction has been imposed, has been recorded? We've had evidence of somebody being subject to charges, would small infractions make the system?	Air Commodore Keane If it was dealt with under the disciplinary system then it would be recorded. Data quality would be better in the disciplinary system because it has been refined. In the administrative system, there's concerns about entries being made into the system, and follow-ups in relation to things that have been done.
Commissioner Brown	Has the Justice Disciplinary Steering Committee ever considered the events leading to suicide, suicidality or suicide behaviours? The US has noted that there's a nexus between some suicide deaths, and their military justice system. Has that been identified?	Air Commodore Keane: No, the treatment of respondents and the justice system, and those respondents impacted by the military justice system. Noting the 57 deaths in Hearing Block 9, two large factors identified by AIHW noted that there is a significant relation between ADF suicide deaths and relationship breakdown and; mental health concerns. There is an understanding that there is an impact, and we have measured it from a small data set that we have, but what we do not understand is those who have gone through the military justice system, and the longer term impact on those who have died by suicide because we do not have visibility on that long-term data post-separation or discharge.

11:40am – Commodore Caton, Air Commodore Gunn, Counsel Assisting Gabriella Rubagotti

Evidence Tendered	
Type	Body / Comment
[REDACTED]	(f) any additional considerations or contributions that occur to develop any implementation plans: <i>previous or current similar cases will be considered to determine if there is a linkage between cases and if Defence action or similar actions is already underway (or already completed). Additional recommendations that have not been provided by IGADF (i.e. Defence own-motion recommendations) may also be developed and included in the SSIIP based on professional judgment and circumstances detailed in the enquiry report.</i>
Commodore Caton	There's regular dialogue between the Director and her counterparts, and between myself and the Chief of Staff – the standard of actions can be reinforced. Our standard, daily business is engagement across the enterprise, follow issues through completion and to aim toward consistency.
Commodore Caton	The first recommendation for us to pursue is to routinely communicate, understand that the service member has died, refer the death to IGADF, and record the relevant details pertaining to that death.
Recommendations, DEF.1063.0001.0039	[43] It is recommended that: <ol style="list-style-type: none"> this report be provided to JHC to consider conducting technical and SME analysis to verify and further understand the trends and identify possible gaps and areas of opportunity. JHC consider conducting further analyses into deceased members' mental health care and mental health including diagnoses, history of mental illness, access to treatment support (including treatment/support received and the member's receptiveness to treatment/support) and suicide attempts, instances of suicidal ideation, to see if there are any trends or areas of commonality. <p>If there are common data sets that CDF would like IGADF to include (eg. SERCAT, relationship status, military justice history), it is recommended that CDF request the IGADF to specifically address these in future reports. (SSIM-ADFHQ) Open Q1-2023.</p>
[REDACTED]	Question 10 – Planned future Assurance Checks: [36]. No further assurance Checks are planned, however, Assurance Checks may be scheduled in the future.

[REDACTED]	Creation of an External Entity: Question 11 – External entity and assurance checks on Assurance Work Program Task 22-04 The Commission heard evidence from General Angus CAMPBELL, THAT THE Assurance Work Program Task 22-04 will be the 'first task' in the analysis of IGADF reports in ADF member suicides and indicated that he 'aspires to build a relationship with an external entity that will do this.'
Commodore Caton	I cannot offer an explanation as to why there are delays. There are touch points to monitor progress, but I would need to request information to determine if there are reasons due to the delays experienced. I would be speculating if I provided an answer, and I don't wish to do that. Those touch points include meetings across the enterprise fortnightly, and daily dialogue with counterparts within the SIIN team.
Commodore Caton	The IGADF gives a sense of individuality and humanity to each individual case; understanding how the deceased communicated and lived with their peers, their Commanders, their friends and family – the regular interaction is positive at the working-level and cannot talk about the resource-constraints within the IGADF, which may restrict their flow. The regular dialogue at the Director level, I have a weekly, fortnightly, monthly and as-needed meetings to discuss issues around engagement with families, case referral, matters requiring further consideration. In general, I do not feel that there are any issues with IGADF, and ADF-HQ, and where there are, they could easily be overcome due to the strong relationship these bodies have.

Questions by Counsel		
Party	Question	Comments
Gabriella Rubagotti, Counsel Assisting	To what extent are families engaged? Are they updated frequently involved for deaths suspected to be by suicide, or by suicide?	Commodore Caton: Yes, when we receive those reports, I notify them to let them know that they are aware that I have it. They are able to undertake supervised unredacted readings to understand the recommendations by the IGADF, and a redacted version for their personal use. My contact details are always at the end of correspondence, and I am able to talk to them directly. We allow families to retain contact with us during the process at their discretion. Sometimes the material/s are much too distressing for ongoing contact. It is sometimes arbitrary to provide timeframes such as [sixty days], as things often progress slower or quicker than anticipated. We adjust our approach to the needs of the family.
Commissioner Brown	The recommendations that are dealt with in the SIIM area, within ADF-HQ, that as we've heard considers the enterprise-wide recommendations and the recommendations from death-reviews. Are other report reviews, that might have enterprise-wide review, is there an opportunity to look at similarities between other types of reviews, and what you currently have in your workload?	Air Commodore Caton: We would be aware of the specific subject matter, a lot would flow through Defence Force Personnel Group. We tend to improve upon the additional data teams, and make an assessment about recommendations that may conflict, or compliment each other. We maintain that awareness through ongoing communication and due to strong relationships throughout these bodies.
Commissioner Brown	We heard from a witness from DVA who recommended a Culture of Excellence, requiring ruthless reflection and ongoing optimism. Do you have comments?	Commodore Caton: I would argue that the drive and talent of the people who work with me, bringing that Culture of Excellence with them, to work. They have a deep care and understanding as a singular goal to ensure the wellbeing of our people, across all areas.
Commissioner Kaldas	What isn't clear is two things. Is any action taken to reprimand the person of the poor decision taken, does it take into account what happens to the person who made the adverse decision?	Air Commodore Gunn: There's a multitude of decisions which could have different outcomes. Reports were received that identified these concerns, however there wasn't a recommendation fixing that. Reviewing available evidence, and to consider evidence was required to understand the decision made.
Commissioner Kaldas	Would it be best to identify a system which allows to identify the decisions made by certain people across the enterprise? Tracking those decisions and who made them?	Air Commodore Gunn: I expect those case studies and new information systems will allow for that to an extent.

3:10pm – James Gaynor, Inspector-General of the ADF

Evidence Tendered	
Type	Body / Comment
IGD.9999.0002.0003 IGD.9999.0002.0005 OIGD	Mr. Burchett explained the independence of the role and the benefit of it directly reporting to the CDF as follows: <i>"In the course of this Inquiry, I have frequently found that complainants or victims may suffer from a suspicion that the ordinary processes available to them to deal with their problems are lacking in impartiality and independence and are not free from Command influence... Where a general complaint is made through the grievance system ... the complaint may not be easily resolved, even if it is thought I should be upheld, because the resolution will depend upon the response of the Chain-of-Command. Having regard to the large number of matters this Inquiry has examined and the information received, the establishment of a new Office of the Military Inspector-General would fulfil the need for a specific focus on the military justice system in its entirety."</i>
Defence Act 1903 (Cth), Section 110A	DEFENCE ACT 1903 - SECT 110A Object of Part (austlii.edu.au) The position of the Inspector-General of the Australian Defence Force (IGADF) is a statutory appointment under Part VIIIIB of the Defence Act 1903. It was established in 2003 following the recommendations of former Justice James Burchett QC's 2001 review into military justice arrangements in the Australian Defence Force. To ensure independence, the IGADF sits outside the military Chain-of-Command.

EXP.0011.0001.0006	<p>Vision, Mission and Values:</p> <p>Vision – to be trusted and promote fairness in the ADF Mission – provide impartial, fair and independent decisions and oversight of matters concerning the ADF</p> <p>Values <u>Respect</u> – we respect ourselves, our work and everyone we deal with <u>Integrity</u> – we act with integrity in all aspect so f our work <u>Independence</u> – we uphold the independence of the IGADF <u>Impartiality</u> – we are impartial in our work and our decisions</p> <p>Five goals to achieve the IGADF vision:</p> <ul style="list-style-type: none"> - Promote military justice values across the ADF - Improve confidence in IGADF's decisions and products - Ensure complaints are properly managed within the ADF - Recruit staff with appropriate aptitude and attitude to undertake the work of the IGADF - Ensure the IGADF is respected and trusted across the ADF
Verbal	Merits Review considered law, policy concerns, factual matters and reviews a decision. Where the decision is lawful, we attempt to understand whether it is fair, and not unreasonable.
Verbal	There is no issue with underfunding or resourcing, but difficulties finding adequately and appropriately trained Enquiry Officers who have training to undertake enquiries into the deaths of ADF personnel.
Verbal	During the reporting period, two ADF members were required to fill two Directors' positions in an acting capacity, due to the long-term absences of the incumbents, The vacancies were filled mid-way through the reporting period. The two Directorates operated below full staffing for half of the 2021-22 financial year. I have expressed that I will create an EL2 position.
Verbal	The OIGADF is to understand, analyse and recommend on the ways in which the ADF can fix those systemic issues. They also look at generational and trans-generational trauma that some forms of service can ultimately cause. We try to produce reports that address broader issues. We also monitor the themes of causative factors for ADF suicide – my Office has done it once at the start of 2020 – but not formally, the longitudinal analyses is conducted by the Select Incident Management Team at ADF-HQ.
Communication Manual, IGD.0007.0002.0010	<p>[33] There are at least four occasions when it is appropriate to contact the next-of-kin and family:</p> <ol style="list-style-type: none"> a. To provide initial information regarding the IGADF's role and that an inquiry is proposed to occur b. Seeking to interview the next-of-kin as part of an IGADF inquiry into the circumstance of an ADF member's death c. When providing the draft report to the next-of-kin for review and input (usually through a legal officer allocated by Defence Counsel Services) d. To advise the family of the completion of the IGADF assessment or enquiry

Questions by Counsel		
Party	Question	Comments
Erin Longbottom KC, Counsel Assisting	How are you kept accountable?	I report annually to Parliament.
Erin Longbottom KC, Counsel Assisting	Are you aware about the concerns that the IGADF is not independent and what do you do to enhance perceptions that they are not embedded together?	I resigned from all military services. I have no future career aspirations with Defence. The other measures that the Office takes is to ensure that we have a mixture of civilian and defence force personnel within the Office.
Erin Longbottom KC, Counsel Assisting	Are there current arrangements that impede your independence?	No, legally and practically, I am a legally a statutory independent body. However, I can see the perceptions questioning the independence of the OIGADF.
Erin Longbottom KC, Counsel Assisting	Are there people outside of defence who would be apt to undertake that role? Why are defence members being used instead of APS to maintain independence? Does it carry an unconscious bias for favour toward defence?	It is beneficial for ADF members to be involved due to their knowledge into ADF culture and specifics. It is a historical model, but I do not believe there is an unconscious bias for favour toward defence. The people who work in my Office, have often transitioned from the force, or to the Reserves. It is difficult to 'pull the wool over their eyes', and using people with that knowledge and experience outweighs any risk of unconscious bias.