

Pleading Positive Reform: An analysis of suicide risk, self-harm, and reputational peril impacting serving Australian Defence Force (ADF) members.

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ENCLOSURE B: Case Study 1—ADF Affected Member

(Information submitted by the ADF affected member)

This case study provides a typical example of how individuals in the Chain of Command can utilise their status and power to create significant and unnecessary detriments to ADF members and their families. This abuse of power has the potential to put ADF members at increased risk of suicide and self-harm and reputational harm. All of the inequities outlined in Enclosure A—Defence Inquiry Failings were present in this case study.

A brief note on ADF Procedural Fairness

Procedural fairness is an administrative law principle that traditionally involves two requirements: the fair hearing rule and the rule against bias. The hearing rule requires a decision maker to afford a person an opportunity to be heard before making a decision affecting their interests. The rule against bias ensures that the decision maker can be objectively considered to be impartial and not to have pre-judged a decision. Australia is a party to seven core international human rights treaties. Fair trial and fair hearing rights are contained in article 14 of the International Covenant on Civil and Political Rights.¹

ADF decision-makers must provide ADF members a fair and equal opportunity to present their case in writing BEFORE any decision is made that will negatively affect the member, regardless of whether it is relied upon in the final decision-making process. That decision-maker must not be biased and must not be seen to be making a unfair or unprofessional decision based on something other than the rights of the member and the merits of the case (Bias Rule). The ADF has policy to correct common defects in procedural fairness.²

ADF Performance Appraisal Report (PAR):

Relevant to this case study is the Performance Appraisal Report (PAR) and is a vital component of the Career Management System or Performance Management Framework in the ADF. The data from a PAR is used to develop career plans, identify potential for promotion, postings and courses, as well as manage underperformance where identified. Annual reporting is mandatory according to Defence Policy (DI (A) PERS 116-16).

ADF policies do not permit Commanders to included ADF spouses into PARs.

¹ Australian Government, 1980. 'International Civil and Political Rights' August 13, 1980.

<https://www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/8B8C6AF11AFB4971CA256B6E0075FE1E>.

² Angus Houston, 'Guide to Administrative Decision-Making.' Executive Series. ADFP 06.1.3. January 25, 2010.

<https://defence.gov.au/adfwc/Documents/DoctrineLibrary/ADFP/ADFP%2006.1.3.pdf>.

Privacy

Every effort has been made to de-identify persons mentioned in this case study, in accordance with the Privacy Act 1988 (Cth) (Privacy Act) and to minimise legal liability.

SUMMARY OF COMPLAINT

Beginning in 2012, I suffered significant damage to my career as a result of defective administration. Senior Army officers did not comply with mandatory administrative procedures which resulted in significant personal, mental and economic detriments to me.

In 2012, I was appointed to undertake a highly competitive senior role at a diplomatic military posting overseas. Defence representational postings are considered to be prestigious and most, as in this case, require the member holds high security vetting clearance (Top Secret or Top Secret Positive Vetting). Throughout the majority of my career spanning over four decades, I have held Top Secret and Top Secret Positive Vetting Security Clearances.

In early 2014, while on posting overseas, I had cause to raise an ‘Unacceptable Behaviour’ complaint against a senior Army officer with whom I worked.³ Among other things, I complained that the senior Army officer deliberately failed to complete and submit my Performance Appraisal Reports (PARs) for the 2012 and 2013 years, and this adversely impacted me.

As it is known, PARs are a vital component of the Career Management System in the ADF and critical for developing career plans, identifying potential for promotion, postings and courses. Annual reporting is mandatory according to Defence Policy (DI (A) PERS 116-16).

The senior Army officer knew that it was *mandatory* to write the PARs so that I could remain competitive in the workplace. He admitted to deliberately strategising to avoid writing my PARs, a claim substantiated by the findings of an official inquiry into the Redress of Grievance I submitted to Army. His actions caused me to be taken to a Senior Warrant Officer Personnel Advisory Committee (SWOPAC) without a complete reporting history. That action alone guaranteed that I would not be competitive among my peers for career progression.

After the SWOPAC met, I was relegated from the top 1/3 of my cohort to the bottom 1/3 and informed that I would be issued a notification of a Mandatory Initiated Early Retirement (MIER), which would result in my premature and involuntary discharge from the ADF.

To be clear:

BEFORE the SWOPAC assembled, I was deemed by the Directorate of Soldier Career Management-Army (DSCM-A) to be one of the most suitably qualified candidates for one of the most senior command positions in the entire Special Operations Command.

AFTER the SWOPAC assembled, I was told that I was no longer fit for service in the entire ADF!

This single example alone shows a complete failing of Defence policy and procedure!

³ Department of Defence, 2021. ‘Unacceptable Behaviour.’ <https://www1.defence.gov.au/about/complaints-incident-reporting/unacceptable-behaviour#what-is-unacceptable-behaviour>.

The senior Army officer was absolutely at fault according to Defence policy. But DSCM-A was also at fault because they failed to investigate the matter when I first made them aware that the senior Army Officer had not written my PARs and that inaction would adversely affect my career.

In both instances, the senior Army officer and DSCM-A did not comply with mandatory administrative procedures which resulted in significant personal, mental and economic detriments to me.

I submitted a Redress of Grievance to the Chief of Army fully expecting a swift resolution of my matters, despite the fact that a ROG is a complex legal undertaking that requires a solid understanding of the Defence Regulation 2016 (Cth).

Instead, the Chief of Defence Force (CDF) appointed an Inquiry Officer to conduct a Defence Inquiry under *Defence (Inquiry) Regulations 2018*. This is where a relatively simple administrative matter that should have been dealt with at the lowest level transformed into a highly complex inquiry conducted across multiple Defence departments, involved numerous senior ranking officers, and was drawn out over a FIVE YEAR period. Moreover, due to the number of decision-makers involved, at varying stages, I was forced to submit subsequent ROGs in an attempt to counter some of those decisions that compounded new career detriments.

Judgements were made throughout the process that were based on inaccurate information, and as the inquiry unfolded it became known to me that seriously false information had been given to decision-makers that compounded existing detriments to me.

After it was found that the senior Army officer had admitted to having deliberately strategised to avoid writing my PARs, I should have received an apology and Defence should have made reparations to restore my career and reputation. Instead, the CDF ordered the senior Army officer to write the PARs four years 'out of time.' He did so without any communication with me (as is required), and nor did he provide any mandatory counselling (as is required) by Defence regulations, to counter any intended adverse comments that could create further detriment to me.

Defence policy maintains that if adverse comments are to be made on a soldier's employment record then it is <i>mandatory</i> that the member has an opportunity to defend themselves against any detriment those comments may result. I was not consulted at any time before, during or after, adverse comments were made on my PARs, and those adverse comments were false and unsubstantiated.

False comments were also made about **MY SPOUSE** (*See* Enclosure C: Case Study 2—Affected ADF Spouse) who submitted a complaint to the Chief of Army that did not succeed in having the false information retracted. My spouse, an Order of Australia recipient and upstanding member of the community, elevated her complaint to the Minister of Defence (*See* Enclosure C: Case Study 2—Affected ADF Spouse). Again, the response defaulted to Defence and the false information was not retracted.

The Inquiry Officer findings concluded with no adverse findings against the senior Army Officer despite him deliberately strategising to harm my career and making false claims against my spouse.

I managed to stave off the Notification of Management Initiated Early Retirement (MIER) but the harm inflicted on my career and reputation was irrevocable. I was downgraded to a non-designated position for three years, pending my reaching Compulsory Retirement Age in 2018.

EVIDENCE OF DEFENCE FAILINGS

Not fully understanding how the Inquiry Officer could have concluded that no harm had been done to me, I submitted a request for information under *Freedom of Information Act* (FOI).

To my dismay, I discovered that my complaint against the senior Army officer was not the only issue that had a created a significant detriment to my career and reputation.

The FOI revealed that a Senior Non-Commissioned Officer (SNCO) who had been a member of the SWO PAC and held a prominent position in SOCOMD, had also corrupted the career selection process by making a number of his own false allegations about me (See EXAMPLES OF SNCO FALSE CLAIMS). He claimed that in the early 1990s several Commanding Officers collaborated to cover-up criminal activity that I was alleged to have committed while being a member of the SASR. The SNCO claimed that I was secretly punished as a consequence (See EXAMPLES OF SNCO FALSE CLAIMS).

“The ADF member was reprimanded by a previous SOCAUST over raising money for a fledging SAS Resources Trust through direct approaches to industry and State Government officials that gave the impression this was a sanctioned approach. A significant amount of money was raised (in the order of \$7,000,000 to \$10,000,000) with limited oversight by the HQ. When this was realised, a constitution and appropriate funds management was commenced, and large discrepancies in accounting for the donated funds was found. Disciplinary action against the ADF member was not taken as it would have led to reputational damage to the SASR and hurt a number of the ADF member’s followers who assisted him in the fundraising. The ADF member was counselled and moved to Canungra.”

Not only was this statement entirely false and intended to harm my career progression, there was no evidence to substantiate the claim. Moreover;

- I had never been reprimanded at any time for any incidents throughout my entire service with the ADF. If it were otherwise, there would have been a disciplinary or counselling record to that effect. My service history throughout my entire career with the ADF was exemplary, and hence why I was competitive for promotions and representational postings,
- I was never "counselled and moved to Canungra" as my employment record shows. From 1993 to 1995 I was on a promotional posting to Canungra.
- The SASR Resources Trust was not established until after the Blackhawk accident in Townsville on 12 June 1996. I did not return from posting to SASR until 1996 and was promoted to a position in charge of a Squadron. In 1997, I was deployed on operations overseas,
- It is inconceivable that the SASR CO, the board of Trustees, the CDF, and the Australian Tax Office would cover up financial discrepancies of any amount, let alone \$7-10 million dollars. After my spouse read the false claims against me she wrote to the SASR Resources Trust. That response is provided below:



8th July 2019

Mrs [REDACTED]
[REDACTED]@gmail.com

Dear [REDACTED]

Your email came as a significant surprise to the SAS Resources Trust, because we have never heard anything at all about any of the matters to which you refer.

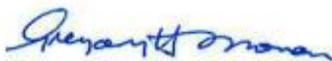
Further, the SAS Resources Trust has never lost any money that had been received by it, whether due to misappropriation or any other cause (let alone between AUD\$7-\$10 million dollars) since we were established in October 1996.

Additionally, since 1996 our accounts have been audited on an annual basis by Ernst & Young, and having been both the original Trust lawyer for 15 years and a Trustee since inception, I can say with confidence that no such issue has ever been raised in their annual audit.

As to whether or not any money that was intended to be donated to the SAS Resources Trust by any group or individual, was not paid to and received by us as intended, is concerned, we have similarly never heard of any such event and cannot comment on any such a matter.

Beyond that there is really nothing more I can add.

Yours sincerely



Greg Solomon,
Chairman of Trustees of the SAS Resources Trust

Peace of mind for our SAS and their families
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Clearly the statement provided by the ADF member to the Inquiry Officer was false, and yet it remained detailed within the final findings presented by the Inquiry Officer to create a false impression of my integrity and professional standing. In any court of law, such false and malicious allegations would constitute defamation proceedings. Incredulously, the Inquiry Officer did not ever see fit to inform me of these falsehoods which was surely a dereliction of their duty. As a result, I was denied any opportunity to defend my reputation against false and secretive allegations that remained within the Inquiry Officer's final findings.

- Up until my retirement from the ADF, I held a Top Secret Positive Vetting Security Clearance for the majority of my service. I would not have held such a high security clearance if there were any truth to the allegations,

In this case, the Inquiry Officer did not even bother to undertake a simple check of the evidence because the person who provided that evidence was deemed by the Inquiry Officer to be a ‘highly credible witness’ because of the position they held in SOCOMD. Their evidence was not only grossly inaccurate, it was deliberately and dishonestly provided to discredit me. A simple phone call or an email to the SASR Resources Trust could have easily shown that the evidence that the Inquiry Officer had relied upon was false, and could have prevented a significant detriment to my career and reputation.

Among other falsehoods, the SNCO also falsely claimed:

“A subsequent investigation found that the ADF member had told the soldiers he could get them qualified or get recognition of current competency that would allow them to deploy on operations, when he did not have the authority to do either of these things. Many of the soldiers dropped the issue after it was explained to them that the ADF member did not have the authority to assure them they could deploy, however one member was still pursuing compensation about this matter at the end of [date redacted], and the matter has been brought to the attention of CA and CDF.”

Again, this statement is entirely false AND unsubstantiated by any evidence. Moreover, it was intended to harm my career progression. Had the Inquiry Officer asked me if there was any substance to such accusation, I could have easily provided evidence to counter those false allegations. Again, the Inquiry Officer did not even bother to undertake a simple check of the evidence because the person who provided that evidence was deemed by the Inquiry Officer to be a ‘highly credible witness’ because of the position they held in SOCOMD. Their oral evidence was not only grossly inaccurate, it was deliberately and dishonestly provided to discredit me.

Of note:

- The Defence Inquiry Officer hid this information from me. I was never made aware of any ‘subsequent investigation’ which is contrary to Defence Policy that affords me the right to know of any proceedings that would involve me, as a member of the ADF, and that could result in adverse findings,
- Qualifications and trade recognition follow a strict process and are administered by the Directorate of Soldier Career Management Authority (DSCMA) and respective trade managers as the approving authorities, of which I had no role and nor was I part of that process,
- I have held both Top Secret and Top Secret with Positive Vetting security clearances for the majority of my career. Had the allegations been true, I would not have maintained those security clearances.

Another falsehood was presented during the SWO PAC by the SNCO:

“During a PAC when the ADF member was being considered for a position, one of the PAC members stated he did not believe the ADF member was appropriate for the particular appointment due to his previous interactions. The PAC member then described matters from the 1990s in which the ADF member used range refurbishment stores and funds, and then requested components from other Services or units, to make three-dimensional mock-ups for the [name redacted] Mess area at Canungra. The ADF member convinced other members to assist him in breaching governance rules to reallocate resources, make official requests for an unsanctioned project, and compile requests to appear as though the resources would be used for military training activities when the activity was more in support of his role as the supervisor/assistant to the Mess.”

- This was an outrageous accusation that could have easily been refuted had I known that it was being articulated to the career panel. I was never at any time a supervisor/assistant to this Mess or any other. I was not ever a member of the Mess committee or a member of the Mess. I was posted to Canungra as an instructor at the Jungle Warfare Centre at Battle Wing.
- In my off-duty hours, I used my own personal funds to transform the soldier’s Mess into a learning centre for soldiers. I was not reimbursed by Army and nor did I seek any reimbursement. I was awarded a Land Commander’s Commendation in 1994 for this project.
- Had I known that I was being accused of fraud and misconduct in secret, I would have easily been able to refute such scandalous LIES with supporting witness testimony.

DEFENCE INQUIRY OFFICER FAILINGS

What the above information demonstrates is that lies were told about me, at a critical time, when I was being considered for one of THE MOST senior positions in the Special Operations Command.

The Defence Inquiry Officer kept that critical information a secret from me.

Had the Defence Inquiry Officer believed the information to be true, that I had committed fraud, theft and/or embezzlement, then they should have reported this activity to the lawful authorities, in accordance with Defence Policy. At no time did they report the matter.

The Defence Administrative Inquiries Manual (2017) and the Defence Force Discipline Act 1982 advise that Inquiries conducted under the Defence (Inquiry) Regulations cannot make findings where a criminal offence may have been committed, and in such circumstances the Inquiry Officer must suspend the Inquiry and report the matter to the appropriate ADF Investigative Service, Service Police, or civilian police, as relevant.

Similarly, had the Defence Inquiry Officer thought the information to be untrue, they should not have allowed the claims to inform their findings. Such had been shared broadly with my superiors and other members of the ADF. Those falsehoods remain permanently affixed to my military employment record.

Unfortunately, by the time I discovered this the Defence Inquiry had been concluded.

EXTERNAL REVIEW

I submitted a complaint about these matters and my concerns to my Chain of Command. I also sought an external and independent review:

- Chief of Army,
- Chief of Defence Force,
- Inspector-General of the ADF,
- Australian Attorney-General, and
- Commonwealth Ombudsman.

Each of these departments concluded as follows:

Chief of Army and Chief of Defence Force both concluded that “the Inquiry Officer Inquiry was conducted in an appropriate and transparent manner and there was sufficient evidence to support the findings” which essentially found that my complaint was not upheld.

IGADF Response: “A thorough assessment has been undertaken of your submission and other relevant material, particularly the report of the XXXX inquiry. Having carefully considered the matter, the IGADF is satisfied the inquiry was comprehensive and the inquiry report legally reviewed and validated. Accordingly, he has determined not to inquire into the matters you have raised or to refer them for a Senate inquiry.”

Response from Australian Attorney -General: “The matters you raise do not fall within the Attorney-General’s portfolio responsibilities so your correspondence has been referred to the Commonwealth Ombudsman for their information and response as appropriate.”

Response from the Commonwealth Ombudsman: “I am of the opinion that no investigation is warranted in all circumstances in relation to this. I note that the IGADF assessment stated that it would be open for you to approach the Directorate of Special Financial Claims in relation to a claim for compensation in relation to any financial detriment that may have been suffered by you or your wife. Your best option is to lodge a claim via the Scheme for Compensation for Detriment caused by Defective Administration (CDDA).”

I did not pursue a CDDA claim because by this stage I was too traumatised.

In all my endeavours to engage a fair hearing of my matters, the actions of the Inquiry Officer did not adhere to Defence Policy. Specifically, that policy instructs Inquiry Officers to ensure they do not “*make an administrative decision without first affording the affected member(s) procedural fairness*” (ADFP 06.1.3 Guide for Administrative Decision-Making Chapter 2).

Throughout what was a long-running dispute with Defence, I was:

- denied natural justice in the absence of good governance and accountability,
- subjected to having Army Regulations misused against me,
- maliciously portrayed by false statements alleging I mishandled many millions of dollars,
- refused the opportunity to correct misinformation about me,
- suffered the consequences of a flawed legal system in Defence,
- subjected to a psychological assessment at the instruction of my superior Officer who sought to use that to justify my removal from my current location (a representational overseas posting),
- issued a Mandatory Initiated Early Retirement Notification Letter to prematurely end my career,

- ignored by those in superior positions, all the way up to Ministerial level,
- deprived the opportunity for well-established legal principles to operate in my favour,
- subjected to slanderous comments about my spouse, included in my employment record. (*See* Enclosure C: Case Study 2—Affected ADF Spouse).

ASSESSMENT BY A FORMER STATE POLICE INVESTIGATOR

The circumstances, process and outcome for a Defence grievance often involve a denial of natural justice, a sloppy, unprofessional (or deliberate maladministration/official misconduct) Inquiry that is allegedly independent but clearly not.

The complainant suffers various forms of detriment, including career and financial, reputational damage and worst of all, mental health stresses that then flow to the family.

As a former police officer who responded to thousands of grievances, I can say that every complainant needs to be:

1. Heard (through some form of mechanism to complain),
2. The complaint to be independently reviewed (Independence needs to be real and perceived),
3. The review needs to be transparent and provide natural justice for all parties. Noting that not all disputes/complaints will be resolved to the satisfaction of all parties but transparency, professionalism and natural justice can do wonders for expectation management, and
4. Redress the wrongs. Noting that not all complainants actually want to go this far. For many people, being heard and receiving sincere acknowledgement of wrong doing is all they want.

What is underestimated is the dedication, commitment and trust that serving members (and families) put in to the ADF. When they are wronged, they need a genuine mechanism for independent review, and that should result in reparation, to acknowledge and repair the harm caused to the person, and to identify the root causes of that harm—to prevent them from occurring again in the future.

The mental trauma that is caused by the organisation, by failing to put in place a genuine mechanism for independent review, cannot be underestimated.

ONGOING DEFECTIVE ADMINISTRATION

The Inquiries into the matters failed to provide me any opportunity to challenge false allegations about me, particularly in the final Inquiry report BEFORE it was released to third parties. This constitutes breaches of procedural fairness. I was DENIED my common law rights to;

- receive all relevant information before preparing my reply to support my complaint,
- an opportunity to reply to any proposed findings, in a way that would be appropriate for the circumstances,
- to be notified of any negative information about me and to disclose that to me in order to raise a defence, BEFORE any decisions were made.

No adverse findings were made against any ADF members, despite the fact their actions caused significant detriments to my career and were harmful to my emotional well-being, my reputation and the reputation of my spouse.

Evidence of detriments are contained in the following statements made by senior commanders:

1. “On 24 September 2015, MAJGEN [name redacted] found that [my name redacted] career was adversely affected by the failure to receive PARs for the 2012 and 2013 period. To redress this grievance, [my name redacted] would be presented to the 2016 SWO PAC for consideration for promotion”;
2. “On 16 December 2016, it was found that at the 2016 SWO PAC, [my name redacted] was “excluded from consideration for this appointment due to comments that were made by individuals that were not supported by any factors or documented evidence.” To redress this grievance, BRIG S sought to remove adverse comments from [my name redacted] record.” He wrote: “While ROG decisions have been found in [my name redacted] favour, it is apparent that he has not been provided with any real redress, rather recommendations were made to improve the administrative processes for future. Those recommendations are of no benefit to [my name redacted] as the damage has already been done.”
3. In his response to me on 23 November 2016, the Chief of Defence Force wrote: “I note that one of the primary reasons underlying your grievance is that you did not receive and performance reports for the period 2012-13. It is unfortunate that the failure to provide you with performance reports for the period 2012-13 has led to this chain of events. I apologise for these reporting deficiencies and the effect it has had on your subsequent career management.”

My grievance was not simply a matter of not receiving PARs for two consecutive years as the CDF stated in his letter to me on 23 November 2016. Moreover, his apology trivialised the injustice I had experienced. The CDF’s apology offered no corrective action or reparation to restore my career and reputation as he and other commanders had acknowledged had been harmed. His apology did nothing to heal the moral trauma inflicted on me having felt betrayed by the system I had given over four decades of service to. Least of all the realisation that the detriment to my career had also resulted in significant financial losses (\$1.5 million in salary/pension calculated over my life expectancy (rate determined by DVA). Neither did the CDF apology extend to my spouse who continues to suffer significant emotional trauma and continued anxiety as a result of these events.

My complaint was solid and straight forward. I had articulated my complaint according to the advice from eminent Defence Legal Officer (DLO Barrister) and Commander, [name redacted], whom I consulted when preparing my complaint. The DLO Barrister insights are compelling:

There were, as you referred to in the documents, significant adverse allegations made as to you to the Inquiry Officer (IO), which were not put to you in any way and as to which you did not have an opportunity to respond. Those significant adverse allegations were then included within the evidence before the IO and were included with the IO report in the evidence. Those allegations appear from the IO report to have been material to findings made by the IO, having regard to statements by the IO in the report. That significant adverse evidence was not within your knowledge at all until after you received it by an FOI request. Those specific circumstances are a denial of procedural fairness to you.

Further to your email below, attached is a draft of a minute to IGADF and a draft submission to be enclosed with that minute, for your careful consideration.

DLO Barrister
CMDR, RANR

This statement alone should have caused someone in Defence to question the validity of the Defence Inquiry.

Sadly, it did not.

MINISTERIAL JUSTICE DENIED

The only remaining option available to me as a serving member was to elevate my complaint to the Minister of Defence. I particularly drew his attention to the false allegations concerning the SAS Resources Trust.

The Minister's response, however, confirmed that no action would be taken against the ADF because the allegations were not within the "*Terms of Reference of the Inquiry Officer Inquiry*" and "*The Inquiry Officer was not required to seek [my] comment on alleged past matters or the witness statement about the SAS Resources Trust, and they had no impact on the outcome of the Inquiry Officer Inquiry.*"

AND the Minister said of me

"He [My name redacted] was unable to provide any evidence that substantiated his claim that his superior officer had adversely impacted the considerations of his suitability for career advancement."

The Minister's statements were entirely false on the basis that Defence policy stipulates that if adverse comments are to be made against any ADF member that they are to be informed before those comments are formalised in any employment documentation (ADFP 06.1.3 Guide for Administrative Decision-Making Chapter 2).

I was not consulted at any time before, during or after, adverse comments were made on my PARs or to the SWO PACs, and those adverse comments that were false and unsubstantiated remain as a permanent stain on my otherwise exemplary, military employment record.

Moreover, the Minister failed to address the fact that not only was I not informed that adverse comments were made against me but they were deliberately kept secret and I only learned of them through a FOI request. Had I known what had been falsely reported to the Defence Inquiry Officer I would have been able to submit a counter response to protect my reputation and that of my spouse. On that basis, the Minister failed to consider the evidence before him that substantiated the fact that my spouse and I were both clearly denied procedural fairness.

CIVIL REDRESS

Having failed to engage any support from the Minister of Defence, I instructed my lawyer to write to the Chief of Defence Force. Having reviewed the redacted Inquiry Officer's report, my lawyer wrote that I had been denied natural justice/procedural fairness, combined with some errors actionable as a matter of administrative law. My lawyer articulated that the redacted Inquiry Officer's report contained numerous false allegations about me (both in respect of bias and the absence of procedural fairness.) Those false allegations had an adverse impact on my reputation and career. My lawyer further described that the actions of the SWO PAC had not only been affected by bias but by a lack of procedural fairness, and that the outcome for me was predetermined. He determined that process was "*misconceived and perpetuated the defective administration of your career*" and that it had caused significant damage to my career "*as a result of a series of inappropriate conduct by other Army personnel*" and "*that damage has only been exacerbated as a result of defence administration where those internal processes have miscarried, by infection of error, mishandling and/or bias (ostensible or actual).*"

The Australian Government solicitor responded on behalf of the Chief of Defence Force, stating that they had:

reviewed the material relating to your client and have been unable to identify any basis for a cause of action that your client might have against the Commonwealth in respect of the issues you address in your xxxx letter. However, against the possibility that you are able to identify a cause of action, we have instructions to meet the cost of the preparation by you of a statement of claim to be filed in the Federal Court, identifying in the form of a pleading the:

- a. factual matters relied on by XXXX*
- b. cause of action asserted to exist; and*
- c. any damage said to have suffered.*

The Commonwealth will meet the reasonable cost of the preparation of the proposed Statement of Claim, such costs to be assessed (in the absence of agreement) by reference to Schedule 3 of the Federal Court Rules 2011 and up to a maximum of \$5,000.

I did not pursue their offer because I could not afford to be embroiled in a protracted legal debate which is what would have resulted, since Defence were unwilling to even acknowledge the cause of the detriments were as a result of Defence members failing to comply with mandatory administrative procedures which resulted in significant personal, mental and economic detriments to me. Moreover, that Defence has unlimited financial resources, whereas I do not.

At the conclusion of these matters, I was so traumatised that I could not even attend my own farewell. The decision not to attend was supported by an Army psychiatrist. In response to his advice, the Headquarters sent correspondence to me that the Commander was disappointed and that I was “making a big mistake.” Days later, they also wrote to my wife instructing her to attend my farewell. This was after I requested they not contact my wife. When neither of us attended their function, the Commander stripped me of a Commendation that I was told would be presented to me at my farewell for my outstanding commitment to Operations and Training over the course of my career, and particularly for my service in Afghanistan.

EXAMPLES OF SNCO FALSE CLAIMS

Army Officer's Vexatious Allegation (1)	Counter Claim by ADF member (1)
<p>The Inquiry officer argued that I had been 'counselled' and 'reprimanded' for a number of 'misdemeanours' throughout my career by commanders.</p>	<p>False and vexatious. Defence policy states that “Commanders must maintain complete and accurate records on the member under their command. These records should contain, but are not limited to, information on personnel profiles, lapses in professional conduct, potential disciplinary issues, records of conversation, unacceptable behaviour issues, career courses and other information the Commander deems necessary.” My Performance Appraisal Report (PAR) history and Defence Conduct Record evidence that I served with distinction and prior to these events recommended for promotion. No reprimands, no misdemeanours, no charges, no unbecoming conduct of any kind, and no record of counselling for an offence has ever been recorded on my file since joining the ADF (1976).</p>
Army Officer's Vexatious Allegation (2):	Counter Claim by ADF member (2)
<p>The accumulation of misdemeanours has 'led to many commanders (and peers) not trusting his judgment.'</p>	<p>Outrageous slander. I have consistently scored the highest categories in all PARS provided from 2006 to present. My service history is exemplary. I have been recognised by Honours and Awards. I have a Medal for Conspicuous Service, combined with other Meritorious Commendations, accumulating in an overseas Representational (hardship) posting which is highly competitive. I have held both Top Secret and Top Secret with Positive Vetting security clearances for the majority of my career.</p>
Army Officer's Vexatious Allegation (3):	Counter Claim by ADF member (3)
<p>“These events have come to light in the years after the member left the role, and therefore they have not been reflected in his annual performance reporting.”</p>	<p>FALSE. As above (1-3). I have held both Top Secret and Top Secret with Positive Vetting security clearances for the majority of my career. I was never made aware of these allegations at any time throughout any Inquiry or my career. The Army Officer appears to suggest that the ADF reporting system is deliberately manipulated to reflect a particular narrative.</p>
Army Officer's Vexatious Allegation (4):	Counter Claim by ADF member (4)
<p>“Many of these events have led to formal investigation or administrative inquiry and some are still ongoing.”</p>	<p>Throughout my career, I have had cause to utilise informal and formal complaint mechanisms available to me, to address grievances. This is not uncommon for ADF members who have over four decades of service. As a member of the ADF I have the right to access Defence Policy to seek a resolution of a complaint. As the records show, each of my complaints have been upheld, however, the ADF does not have a reparation policy so in those situations it has been necessary to escalate my complaint. By his own admission, the Army Officer</p>

	is implying that to have matters under investigation or administrative inquiry implies guilt. This mindset is at the core of the failings of the redress process, where complaints are met with an adversarial response.
Army Officer's Vexatious Allegation (5):	Counter Claim by ADF member (5)
“A subsequent investigation found that the ADF member had told the soldiers he could get them qualified or get recognition of current competency that would allow them to deploy on operations, when he did not have the authority to do either of these things. Many of the soldiers dropped the issue after it was explained to them that the ADF member did not have the authority to assure them they could deploy, however one member was still pursuing compensation about this matter at the end of xxxx, and the matter has been brought to the attention of CA and CDF.”	<p>SLANDER. Not only did the Inquiry Officer keep this information hidden from me, no evidence exists to substantiate the claims.</p> <p>I have never been provided with any documentation that evidences any investigation into my service, other than my own requests to access informal and formal complaint mechanisms available to me to address grievances. The Army Officer is suggesting a secret investigation took place that found I acted inappropriately in my management of others. If that was the case, why was I never informed?</p>
Army Officer's Vexatious Allegation (6):	Counter Claim by ADF member (6)
“The ADF member was reprimanded by a previous XXXX over raising money for a fledging XXX trust through direct approaches to industry and State Government officials that gave the impression this was a sanctioned approach. A significant amount of money was raised (in the order of \$7,000,000 to \$10,000,000) with limited oversight by the HQ. When this was realised, a constitution and appropriate funds management was commenced, and large discrepancies in accounting for the donated funds was found. Disciplinary action against the ADF member was not taken as it would have led to reputational damage to XXX and hurt a number of the ADF member’s followers who assisted him in the	<p>False and vexatious. I first learnt of these slanderous allegations AFTER I had applied under <i>Freedom of Information Act</i> for a copy of the Inquiry findings. I immediately wrote to the Trustee of the Trust (which is far from ‘fledging’) and was given a letter that proved the allegations were entirely false. I was unable to submit that evidence to the Inquiry Officer because the matters had been closed.</p> <p>Why did the Senior ADF Leadership accept what were clearly vexatious claims that had not only misinformed a Defence Inquiry, but had deliberately misled the Defence Minister, the Defence Ombudsman and Inspector General of the ADF into accepting those fabricated findings? It is inconceivable that the Unit CO and the CDF would cover up suspected fraud and misconduct, both reportable offences. This seriousness of these allegations alone should have resulted in the Army Inquiry officer bringing these matters to my attention to ensure procedural fairness, and beyond that an investigation by lawful authorities. There was never any "discrepancies in accounting for the donated funds" as alleged by the Army officer. The Australian Taxation Office (ATO) kept meticulous auditing records, as did the entities involved in managing donations. Those records were provided to the Unit CO as Minutes to provide him with an accurate recorded all meetings, including business activity.</p>

<p>fundraising. The ADF member was counselled and moved to XXX [interstate].”</p>	<p>I was never "counselled and moved to XXX." [Interstate]. From 1993 to 1995 I was on a promotional posting to XXX. I did not return to my Unit until 1996 when the alleged offence was supposed to have occurred which resulted in my posting out of my Unit as punishment.</p> <p>In 1997, I assumed a higher status XXX in my Unit and was subsequently deployed on operations.</p> <p>No action has been taken against the Army Officer who made these vexatious claims and the Minister argued that they did not inform the ‘Terms of Reference’ of the Inquiry, therefore, were not relevant. (See MINISTERIAL JUSTICE DENIED).</p>
<p>Army Officer's Vexatious Allegation (7):</p>	<p>Counter Claim by ADF member (7)</p>
<p>In the Inquiry report it was claimed that: “During a PAC when the ADF member was being considered for a position, one of the PAC members stated he did not believe the ADF member was appropriate for the particular appointment due to his previous interactions. The PAC member then described an incident from the 1990s in which the ADF member used range refurbishment stores and funds, and then requested components from other Services or units, to make three-dimensional mock-ups for the XXXX Mess area at XXX. The ADF member convinced other members to assist him in breaching governance rules to reallocate resources, make official requests for an unsanctioned project, and compile requests to appear as though the resources would be used for military training activities when the activity was more in support of his role as the supervisor/assistant to the Mess.”</p>	<p>False and vexatious. The Army Officer misrepresented me entirely.</p> <p>The PAC were obliged to follow strict administrative processes, in accordance with Defence Policy.⁴ They and the Inquiry officer denied me procedural fairness when they kept the allegations of fraud and misconduct hidden from me. The Inquiry officer accepted hearsay as contemporaneous documentary evidence which was outside the Inquiry officer’s own Terms of Reference. Had I known that I was going to be accused of fraud and misconduct, I could have called on witnesses who were involved in these projects, and who could have refuted the allegations.</p> <p>The Army Officer misrepresented me entirely. As the records would reflect, I was never at any time a supervisor/assistant to any Mess, and never have been in my entire career. I was not even a member of the Mess committee. I was posted to the Unit as an instructor.</p> <p>I used my personal funds to transform the Mess into a learning centre for ADF members. I was not reimbursed by Army and nor did I seek any reimbursement. I could easily have provided a copy of my bank records had I known that I had been accused of financial fraud. I was awarded a Commendation from the ADF for my contribution to this project.</p> <p>I am certain that I would not have retained Top Secret Positive Vetting (TSPV) clearance that I held then if there was any substance to these allegations.</p>

⁴ Jai Wright, ‘Writing your PAC statement- A Warrant Officer’s Perspective.’ *The Cove*. May 16, 2019. <https://cove.army.gov.au/article/writing-your-pac-statement-warrant-officers-perspective>.

Army Officer's Vexatious Allegation (8):	Counter Claim by ADF member (8)
<p>The Army officer "says he is aware of the consolidated list of incidents involving the ADF member because of his roles over the past six years."</p>	<p>False and vexatious. If this were true then there would be a record of misconduct on my Defence Conduct of Duty record or at least a notation on my military record. Immediately when I learned of these scandalous allegations, I put in a request under the <i>Freedom Of Information Act</i>. I was informed that no such list existed.</p> <p>The Army Officer is implying that the ADF keeps secret lists on its members.</p> <p>The Inquiry Officer accepted the allegations as they remained in the final findings of the Inquiry and hid those allegations from me during the conduct of the Inquiry. It was only AFTER the Inquiry concluded and AFTER I obtained information under <i>Freedom of Information Act</i> that I then learned of the allegations.</p> <p>The Army Officer made the claims without documented evidence.</p> <p>At no time was I given an opportunity to respond to the allegations.</p> <p>I was denied natural justice/procedural fairness, combined with some errors actionable as a matter of administrative law. Further, the publication of those false allegations had an adverse impact on my reputation and, therefore, my career.</p>