

**REPORT OF THE COMMISSION OF INQUIRY  
INTO THE DEATH OF [REDACTED] PTE STEPHEN ANDREW WILSON**

**13 SEPTEMBER 2010**

## **TABLE OF CONTENTS**

- 1. Appointment**
- 2. Terms of Reference**
- 3. Identification of Potentially Affected Persons**
- 4. Course of the Inquiry**
- 5. Consideration of the Evidence**
  - a. Home Life, Schooling and Enlistment**
  - b. Addressing the Terms of Reference**
    - i. Circumstances surrounding the death of Private Wilson**
      - (1) AFP/Coroners Investigation**
    - ii. Sufficiency of actions and decisions taken by Defence personnel**
      - (1) Incident 1 – Absence without leave April 2007**
      - (2) Incident 2 – Suicide Gesture not intended to result in death - 14/15 February 2008**
      - (3) Incident 3 – Suicide Gesture not intended to result in death-07 June 2008**
      - (4) Incident 4 – Suicide Gesture intended to result in death – 20 June 2008**
      - (5) Incident 5 – Suicide – 11 January 2009**
    - iii. Substantial weaknesses or deficiencies in Defence policies, procedures etc**
      - (1) After death arrangements**
      - (2) Complaints of Graham and Sharon Wilson**
      - (3) Submissions**

**(4) Relevant Defence Policies and legislation**

**6. Annex-Findings and Recommendations**

**7. Enclosures**

**a. (1) Witness List**

**b. (2) Exhibit List**

**c. (3) Statement of Rhiannon Wilson dated 09 Jul 10**

## **APPOINTMENT OF THE COMMISSION OF INQUIRY**

1. On 17 January 2010, Air Chief Marshall A.G. Houston AO AFC, Chief of the Defence Force (CDF) by Instrument of Appointment (Exhibit 1) appointed a Commission of Inquiry (COI) constituted by me to inquire into the circumstances surrounding the death of [REDACTED] PTE Stephen Andrew Wilson (“the deceased and or PTE Wilson”). WGCDR Christopher Taylor and LCDR Paul Kerr were appointed as Counsel Assisting the COI. Due to WGCDR Taylor being unavailable, CMDR Fiona Sneath was appointed to act in his place (Exhibit 2).

## **TERMS OF REFERENCE**

2. By Terms of Reference (TOR) dated 17 January 2010 (Exhibit 7), the COI was required to obtain evidence and report to the CDF with reasons, findings as to:

- a. the circumstances surrounding the death of PTE Wilson
- b. the sufficiency of any actions and decisions taken by Defence personnel which are materially relevant to PTE Wilson’s death, both prior and immediately subsequent thereto, and
- c. any substantial weaknesses or deficiencies (isolated or systemic) in Defence systems, policies, equipment, practices, procedures and training proximately associated with PTE Wilson’s death.

3. At paragraph 6 of the TOR, the COI was invited to make recommendations with respect to any substantial weaknesses or deficiencies (isolated or systemic) in Defence systems, policies, equipment, practices, procedures and training which are found to have materially contributed to the death of PTE Wilson, with a view to reducing the chance of similar recurrence.

## **IDENTIFICATION OF POTENTIALLY AFFECTED PERSONS**

4. As PTE Wilson was identified as a person to whom regulation 121(2) of the *Defence (Inquiry) Regulations* 1985 applied, pursuant to that regulation, PTE Wilson’s father, Graham Wilson, was authorised to appear before the Commission as PTE Wilson’s “single representative”. LEUT R. Clutterbuck RANR, a Navy Reserve legal officer, was appointed to appear for PTE Wilson and his representative.

5. MAJ A. Johnstone, the Officer Commanding Australia’s Federation Guard (the AFG) during the period of PTE Wilson’s service there, was identified as a potentially affected person, pursuant to regulation 121(1) of the *Defence (Inquiry) Regulations*, MAJ Johnstone was represented by MAJ Nigel Gabbedy, an Army Reserve legal officer.

6. No adverse findings have been made against any person.

## **COURSE OF THE INQUIRY**

7. A Practice Note was issued concerning procedure to be adopted in cross examination of witnesses before the COI on 2 June 2010 and marked as Exhibit 8.
8. The COI sat in open session at Fairbairn, Canberra on 2-4 June 2010 after which there was a regime put in place in regard to the delivery of submissions. Evidence was received both orally, by affidavit or statement from numerous witnesses.
9. The following Defence members and civilian personnel were called as witnesses, either in person, or via telephone conferencing facilities:
  - a. Dr. Peter John Manns (General Practitioner);
  - b. LTCOL Jonathan Hodge;
  - c. LEUT Elisabeth Quinn RAN;
  - d. Mr. Graham Wilson;
  - e. CAPT Mark Cole;
  - f. FLTLT W. A. Donchi;
  - g. CPL Raymond Wilson (telephone); and
  - h. AB Kacee Paul (telephone).
10. Statements of the following personnel were tendered without objection:
  - a. Chaplain Barry Porter RAN;
  - b. MAJ Aleks Kostenovic;
  - c. WO2 Graham Roberts;
  - d. SGT Lee Nolan;
  - e. SGT Denis Oldenhove;
  - f. Dr. Brian White (psychiatrist);
  - g. Ms. Jane Drinkwater (psychologist); and
  - h. Ms. Danielle Coleman (Dysaran Rehabilitation Services).
11. A list of witnesses is at Enclosure 1.
12. A number of exhibits were received into evidence. All relevant documents were searched for and located. A list of exhibits is at Enclosure 2.
13. MAJ Johnstone was summoned to appear and give evidence to the Commission pursuant to regulation 118 of the *Defence (Inquiry) Regulations 1985*. He was excused by the President from giving evidence pursuant to regulation 120 (4) of those Regulations on the basis of a medical condition. A medical certificate signed by Dr. Langtry was tendered and appears as Exhibit 20.

## **CONSIDERATION OF THE EVIDENCE**

14. The COI is not bound by the rules of evidence. The findings are based upon the “balance of probabilities”. Where appropriate, the principles laid down by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR have been adopted.

15. As is to be expected there are unsurprising variations in regard to the observations and facts deposed to by the various witnesses. COI has accepted on the balance of probabilities evidence of the deceased’s character, attitudes to life, appearance, temperament, actions, reactions and general behaviour.

16. By consent and in order to minimise expense and avoid reconvening the COI on 7 June 2010 and thereafter, an order was made in relation to submissions being made in writing. The original order required Counsel Assisting and Counsel Representing the deceased and MAJ Johnstone to deliver their submissions on 16 July 2010 and 23 July 2010 respectively. As a consequence of a request for an extension from Counsel Assisting to which all counsel consented, those dates were changed to 23 July 2010 and 30 July 2010 respectively. The required submissions were duly delivered and have been of immense assistance in compiling this report.

### **The Deceased’s Home Life, schooling and enlistment in the Army**

17. The deceased was born on 14 July 86 and had two siblings being an older brother [REDACTED] and a younger sister. The relationships between the deceased and his siblings have varied in nature, but nothing remarkable has revealed itself. He attended a number of different schools achieving a pass of Year 10 and after attempting Year 11, left school in 2003.

18. Earlier PTE Wilson’s mother had died. It was asserted that he had endured abusive treatment at her hands over much of his life, but was nevertheless traumatised by her death. At school he participated in several sporting activities including Rugby League and Rugby Union. He had some medical problems, but all were treated successfully and at the time of leaving school his health was good. His father and grandfather both served in the armed forces in the Army and Navy respectively.

19. [REDACTED] PTE Wilson joined the Australian Regular Army (ARA) on 20 September 2005. Following his initial recruit training, PTE Wilson marched into the School of Infantry at Singleton on 25 January 2006 where he undertook professional trade training. His father, [REDACTED] From Singleton, PTE Wilson was posted to Townsville and on 5 May 2006 he marched into the 2<sup>nd</sup> Battalion, Royal Australian Regiment, also referred to as 2RAR.

20. Between 26 May 2006 and July 2006, PTE Wilson was deployed on Operation Astute, an Australian-led military deployment to East Timor following the 2006 East Timor crisis. At the end of the deployment he returned to Townsville and to a period of leave. PTE Wilson received the mandatory psychological screening that all Defence personnel receive when returning from operational deployments. There were no immediate warning signs of what was to come.

21. The first witness called was [REDACTED] CAPT Mark Anthony Cole, ARA. His statement dated 14 May 2010 was received into evidence and marked Exhibit 9. He was questioned by LCDR Kerr of counsel. With leave he was cross-examined by LEUT Clutterbuck RANR and MAJ Nigel Gabbedy.

22. In his evidence CAPT Cole said that during 2008 he was the Divisional Officer for 2<sup>nd</sup> Division, the Army element within the Australian Federal Guard, and PTE Wilson was under his command. He stated that he was closely involved in the management of PTE Wilson during the first half of 2008 and the issues arising from his self-harm attempt in February 2008. A NOTICAS signal was raised on 19 February 2008 as was required. This is the signal that the father and stepmother of PTE Wilson asserted had not been raised. That allegation is unfounded. CAPT Cole said that his Officer Commanding required him to maintain weekly contact with PTE Wilson, which he did. The actual dates of contact are set out in Attachment A to his statement.

23. CAPT Cole stated he conducted an interview with PTE Wilson on 1 April 2008, essentially to ascertain his intention in regard to his future in the army. The thrust of PTE Wilson's intentions was to attain a reserve posting and in the interim to serve in a part time basis. On 5 May 2008, a further interview was conducted to ascertain whether PTE Wilson was satisfied with the level of support he received from AFG and associated support services accessed during his rehabilitation. PTE Wilson told CAPT Cole that he had been fairly treated by Divisional Staff and had not been required to act against his will. He complained about having to bring in a chit basic to the grant of his convalescent leave, but it caused him no distress. He denied ever having been subjected to an attempt to arrest or detain him. He also referred to having to be ordered to call on CAPT Cole, but denied he had been obliged to "sit in a room all day by [himself] without access to anyone". PTE Wilson had also said that he had never been accused of being AWOL while on convalescent leave nor denied access to Defence Community Organisation (DCO) although with them "... it hasn't gone anywhere".

24. CAPT Cole said that PTE Wilson had denied that any member of his chain of command had prevented him from interacting with other members of his unit, and denied anyone had tried to force him to contribute to the unauthorised cost of his unit's end of year ball. He acknowledged that he had been adequately informed of the decisions made by the Soldier Career Management Agency (SCMA) and the AFG chain of command and the options available to him. He complained about the Medical Officer in relation to getting a medical upgrade. PTE Wilson also denied to CAPT Cole the suggestion that he "stood in the middle of the AFG compound and threatened to commit suicide". He also made further complaints

about DCO failing to assist with his desired transfer to Nowra. Finally he declined the option of further time to consider his future in the army and wanted a discharge so that he could pursue a trade. CAPT Cole stated that he told PTE Wilson that everything that could be done would be done and the Officer Commanding was supportive of his desired course of action.

25. LEUT Clutterbuck's submissions assert first that before such an interview took place, PTE Wilson should have been invited to consult or provided with the services of Counsel. Further, that in any event an Equity Officer ought to have been in attendance at any interview. Neither of these requirements was put to CAPT Cole in cross-examination. No evidence has been adduced of the validity of such a submission. It is rejected as being without foundation.

26. CAPT Cole next addressed the procedures implemented after an episode of self-harm by PTE Wilson on 7 June 2008. A NOTICAS was raised on 7 June and dispatched in accordance with normal procedure. A Crisis Management Plan was raised on 19 June 2008 and a Risk Assessment was conducted by Dr. Peter Manns on 10 June 2008. A quick assessment (QA) was conducted by LEUT Elisabeth Quinn. PTE Wilson was referred to Dr. Peter Manns and AFG Chaplain. Referrals were as dictated by DI (G) PERS 16-26. The Officer Commanding and RSM Ceremonial ADF consulted with SCMA. CAPT Cole stated that it was his view that everything that could be done and should have been done was done, both medically and otherwise to endeavour to rehabilitate PTE Wilson. He opined that the Officer Commanding had acted in an exemplary manner in assisting and dealing with the issue, and he agreed and supported the course taken by the Officer Commanding AFG in refusing to allow transfer to another unit until PTE Wilson was well. CAPT Cole said that to do so would have been an abrogation of MAJ Johnstone's obligations, namely he being responsible for the wellbeing and rehabilitation of PTE Wilson. COI agrees with these observations.

27. The next witness was [REDACTED] LTCOL Jonathan [REDACTED] Hodge who gave a detailed explanation of the role of MECRB (Medical Employment Classification Review Board) and referred to the relevant Health Directives. The MECRB's primary philosophy, said LTCOL Hodge, was to retain in the armed forces as many service people as was possible and he gave an extensive exposition of the MECRB process in relation to the discharge or otherwise of any member whose issues were before it. For the purpose of the COI, the relevant classification of PTE Wilson in regard to the Board was MEC 4 and he was made such on 17 June 2008, which was confirmed by the medical authority on 25 June 2008. On 22 June 2008, PTE Wilson signed a member's health statement recording his desire to be medically discharged. Thereafter, all the relevant documents were executed. The material needed by MECRB was received on 2 October 2008. Having been marked as a priority, the matter was considered by the Board on 29 October 2008 culminating in the Termination Notice being signed on 5 November 2008 and forwarded to PTE Wilson; the ultimate termination date being 19 February 2009. When questioned by COI, LTCOL Hodge conceded the matter could have been processed more expeditiously, but the termination would have been no more than a month earlier. There was evidence subsequently that PTE Wilson could have been

discharged about the end of June 2008, but because of an ill founded belief about preservation of entitlements, such an option was not acceptable to PTE Wilson or his parents.

28. The next witness was Dr. Peter Manns, who at all relevant times was working for the ADF as a civilian contracted medical practitioner and at all such times was PTE Wilson's treating doctor. A statement of his evidence is Exhibit 11. Dr. Manns said that he first consulted with PTE Wilson on 18 February 2008. PTE Wilson denied having wanted to kill himself and had no suicidal thoughts at the time of the consultation. Because of the deceased's reluctance to being admitted to the ward at Duntroon, he was allowed to return to the care of his parents and then referred to a psychiatrist and psychologist in whose joint care he subsequently remained. PTE Wilson saw Dr. Manns again on 25 February and 11 March 2008 during which time PTE Wilson was perceived to be improving. On the 11 March 2008, the treating psychiatrist opined that returning to AFG was not a good option, a view shared by his treating psychologist and his MECR classification was assessed as MEC 301, which meant he might take 12 months to recover.

29. The next consultation with Dr. Manns was on 25 March 2008 at which PTE Wilson, having expressed being bored at home, was amenable to trying an offer by Commanding Officer AFG to become his driver, which would divorce him from his regular dealings with his unit. Despite the opinion of the treating psychiatrist and psychologist that PTE Wilson should not go back to AFG, PTE Wilson had said that he did not want to remain on convalescent leave and that he was keen to take up the offer. He retained the option of returning to convalescent leave if he did not want to continue the arrangement at any time. Dr. Manns supported this choice. Criticism of ADF in co-operating is rejected as invalid.

30. Dr. Manns saw PTE Wilson next on 11 April 2008 and he said that he was doing well at work and raised no particular issue about his work or the workplace. The next consultation was 30 April 2008 when he appeared to have good mood and affect, stated that he was doing well and that his girlfriend's transfer to Nowra meant that he had not the same issues with AFG, and was happy in his current role there, albeit a little bored. He still wanted to transfer to the reserves and wanted to be upgraded to MEC 1 or 2 so that he could do this. Dr. Manns said in his oral evidence that it would have taken nine months or longer to have any chance of upgrading PTE Wilson's medical rating in accordance with his wishes. Dr. Manns said that he raised with PTE Wilson the complaints by his parents in relation to his treatment by the ADF in Townsville and at AFG and PTE Wilson replied that this was without his knowledge or authority and that he was embarrassed. His discharge was discussed and PTE Wilson was told that it could not occur before the end of the year. On 14 May 2008, Dr. Manns raised Section 2 of the Crisis Management Plan,

31. On 7 May 2008, [REDACTED], (also referred to as [REDACTED]) PTE Wilson's stepmother, advised that PTE Wilson had stabbed himself in the neck and was on his way to see Dr. Manns. Dr. Manns expressed surprise at this action of self-harm. PTE Wilson told Dr. Manns that he had done this after an argument with his girlfriend. After attending the Shoalhaven hospital, PTE Wilson was returned home into the care of his parents. Dr. Manns

expressed concern that PTE Wilson was not admitted for observation, but the treating psychiatrist advised that PTE Wilson returning home was in order. Dr. Manns then classified PTE Wilson as MEC304 (unable to work for 12 months). On 10 June 2008, Dr. Manns raised a second Crisis Management Plan and at a consultation on 17 June 2008, PTE Wilson announced that he was keen to discharge as he had been advised that this was the appropriate course by the Psychiatrist, but he was then classified as MEC 403; i.e. his condition would be no better in 12 months time.

32. On 25 June 2008, following the admission of Private Wilson to a private psychiatric ward, a meeting took place involving Dr. Manns, LTCOL [REDACTED] (Private Wilson's rehabilitation manager) and Dr. [REDACTED]. Following this, PTE Wilson undertook not to drink alcohol and his parents undertook to be responsible for him. Dr. Manns said that he believed also that responsibility for PTE Wilson's medical management was taken over by Duntroon Health Centre, placing PTE Wilson under the supervision of another officer and that all contact with the AFG had ended. Dr. Manns said that he believed that steps were or could have been taken to achieve PTE Wilson's discharge within two weeks, but to his surprise, PTE Wilson and his parents rejected an early discharge for reason of a need to preserve his entitlements. It seems that as a consequence of such attitude, the ADF did not pursue the discharge. The rejection of the early discharge for those reasons, as already stated, seems to have been ill founded.

33. On 15 July 2008, Dr. Manns saw PTE Wilson again and agreed to weekly reviews, but only saw him once more, on 22 July 2008. A number of documents including a record of medical fitness were identified and tendered as Exhibit 12.

34. Dr. Manns was examined by Counsel Assisting and cross examined by LEUT Russell Clutterbuck and MAJ Nigel Gabbedy, but nothing of any radical or novel nature emerged from that; save that in his opinion PTE Wilson had received a level of care that was exceptional and would not have been available to a non-military person with similar problems. His parents, through LEUT Clutterbuck, acknowledge the excellent level of care and concern exhibited by Dr. Manns.

35. Evidence elsewhere was that PTE Wilson had 44 medical appointments between February 2008 and his death, of which he attended 40 and had himself cancelled four. He was in addition placed on a rehabilitation programme with Dysaran Rehabilitation Service (see Statement Danielle Coleman, Document 3 of Exhibit 6).

36. Dr. Manns said there was nothing further of a medical nature in his view that could have been done in addition to what was done. The alcohol consumption was a trigger for impulsive behaviour, but PTE Wilson was not an alcoholic and could not be treated as such. Dr. Manns thought that although the treating psychologist and psychiatrist had said PTE Wilson should not be returned to AFG, the Officer Commanding at AFG had offered PTE Wilson a position as his driver. This task separated PTE Wilson from regular contact with AFG members, but much more importantly, since there was not likely to be another posting

available in Canberra and PTE Wilson was keen to give it a try; he saw it as a sensible course of action. PTE Wilson said, on several occasions, that he was content and happy in the main to continue in this way. This was, as has already been stated, in contradiction of the views of his treating psychiatrist and psychologist, whose diagnosis, observations and advice were severely limited in disclosure even to Dr. Manns.

37. LEUT Elisabeth Quinn next gave evidence and her statement is Exhibit 13. On Saturday 7 June 2008, she was appointed by the Officer Commanding, AFG to undertake a QA of a further incident of self-harm by PTE Wilson on 7 June 2008 which she did. The QA was handed to CAPT Cole and FLTLT Donchi. LEUT Quinn said she believed that PTE Wilson was being well managed by CAPT Cole, who was frustrated by the fact that although he thought AFG was the best place for PTE Wilson, was aware that his treating medical specialists had an antithetical view. CAPT Cole had also told LEUT Quinn that PTE Wilson's parents were asserting the AFG was part of the problem, whereas PTE Wilson had told him that this was not the case and that he himself was frustrated with his parents.

38. LEUT Quinn concluded that the parents were not aware of the full picture. She was aware of PTE Wilson's relationship with AB Kacee Paul, who had since transferred to HMAS Albatross. She knew that PTE Wilson also wanted to transfer to the Nowra area, but that there were no postings and the medical personnel advised such a course was contra indicated. Most importantly she said that it was her opinion that the Command Team at AFG, particularly CAPT Cole, had done everything in their power to support and assist Private Wilson and that nothing further could have been done. It was her view, she said, that PTE Wilson was intent on suicide.

39. FLTLT Wayne Alfred Donchi gave evidence and his statement of evidence is Exhibit 14. He said that he was aware of PTE Wilson's self harm attempt in February 2008 and his management by CAPT Cole and the Duntroon Health Centre. He said that he became personally involved on 7 June 2008 following that attempt at suicide/self-harm. He raised the required NOTICAS and was involved in the development of the Risk and Crisis Management plan. This was formalised by Duntroon Health Centre (DHC) granting a period of extended convalescence, but a structured discharge path was formulated although superseded prior to the grant of discharge in February 2010.

40. FLTLT Donchi said he was the duty officer on 21 June 2008 when advised of PTE Wilson's third attempt at suicide/self harm, and was directed by Officer Commanding, AFG to deal with the matter as a priority. (His detailed actions appear in the Information Brief being document 191 in Exhibit 4). In January 2010, after PTE Wilson had taken his own life, FLTLT Donchi was involved in the required notification to the chain of command.

41. Mr. Graham Wilson, the father of the deceased, made a written statement, Exhibit 24, which due to consideration for his emotional state, COI received into evidence without demur. The statement is extensive and his complaints about ADF procedures and personnel, intense. The terms of reference exclude COI addressing many issues raised by him and

further the evidence contained in the document suffers extensively from hearsay and second-hand hearsay. It also emerged from his statement that at some time prior to the first attempt at suicide/self harm in February 2008, PTE Wilson had cut his wrists after an argument with his de facto, and although reported to the ADF Chaplains, was never reported to the ADF formally and consequently there is no ADF record of this incident.

42. Graham Wilson said in his oral evidence after hearing the evidence of Dr. Manns, CAPT Cole, LEUT Quinn and FLTLT Donchi, he now held a different view of much of what he had written in his statement. He said he now realised that his son had been telling him and his wife one thing and other people another, and it seemed his son had not at all times been truthful. In cross-examination by Counsel Assisting it emerged that, having been present during all of the proceedings of the COI, both Graham Wilson and [REDACTED] now considered that much of the “evil” they attributed to the ADF or the AFG chain of command towards his son, , was incorrect and was no longer part of their perception.

43. Graham Wilson said that apart from the “flaw”, (sic)(T124/17) being the lack of medical information from the ADF, neither he nor his wife now contended that there were any shortcomings in ADF treatment of his son. Graham Wilson also conceded that in respect to the interview with MAJ Johnston he and his wife had on 5 May 08, Document 88 in Exhibit 4 accurately recorded what had occurred. He did, however, complain that there were other matters referred to which were not recorded. Graham Wilson withdrew and apologised for critical comments about CAPT Johnstone made during his evidence.

44. CPL Raymond Alexander Wilson made a statement in writing dated 5 May 2010, which is Exhibit 23. He also gave oral evidence via telephone. He did not have the benefit of having heard the evidence to COI and his evidence was in the same mould as had been the case with his father and stepmother’s initial stance. Much of CLP Wilson’s evidence is not accepted by COI, as it was outside the TOR, was otherwise inadmissible or was refuted by other evidence.

45. AB Kacee Paul made a statement, Exhibit 25, and also gave oral evidence. The COI considered that she appeared somewhat disingenuous in her answers and during her oral evidence departed from her statement in several respects. More relevantly, almost all of her evidence was either outside TOR or largely irrelevant in that all relevant facts were comfortably proven by other evidence.

46. Counsel assisting tendered statements by Jane Drinkwater, the treating psychologist, document number 2 of Exhibit 4 in relation to which COI makes no comment other than to say it demonstrates a consistent pattern of treatment and advice.

47. The Australian Federal Police Chambers Inquest Brief is contained within exhibit 6.

48. The Coroner’s Report dated 1 Jun 2009 is Exhibit 5.

## **ADDRESSING THE TERMS OF REFERENCE**

49. As stated, the TOR requires the Commission to consider:
- a. The circumstances surrounding the death of PTE Wilson;
  - b. The sufficiency of any actions and decisions taken by Defence personnel, which are materially relevant to PTE Wilson's death, both prior and immediately subsequent thereto; and
  - c. Any substantial weaknesses or deficiencies (isolated or systemic) in Defence Systems, policies, equipment, practices, procedures and training proximately associated with PTE Wilson's death.

### **TOR 5(a) – The circumstances surrounding the death of PTE Wilson**

50. The circumstances surrounding the death of PTE Wilson are recorded in the detailed statement of Detective Senior Constable Craig Bruce of the Australian Federal Police, and the "ACT Policing – Report of death". This document appears in Exhibit 6, entitled "AFP – Chambers Inquest Brief".

51. The cause of death, by hanging, is formally recorded in the document entitled "Order and Certificate in Respect of an Inquest and Dispensing with a Hearing" dated 23 June 2009, signed by Karen Margaret Fryar, a Coroner for the Australian Capital Territory. This document appears at page 3 of Exhibit 5.

52. It is submitted that the AFP – Chambers Inquest Brief and the Coroner's Report should be accepted as satisfying the terms of TOR (a). On that basis, no further submissions are made on this topic.

**FINDING: That the circumstances surrounding the death of PTE Wilson are sufficiently addressed in the AFP Chambers Inquest Brief and Coroners Report.**

### **TOR 5(b) – The Sufficiency of actions and decisions taken by Defence personnel, which are materially relevant to PTE Wilson's death, both prior and immediately subsequent thereto**

53. The most practical method of measuring the sufficiency of those actions and decisions taken and made by Defence personnel that were materially relevant to PTE Wilson's death is by comparing those actions taken and decisions with the procedures, mandatory and discretionary, that are contained in the relevant and applicable Defence Instructions, policies and directives.

54. The sufficiency of *actions* taken by Defence personnel can, objectively, be assessed by measuring the level of compliance with Defence policies, practices and procedures that are required to be followed in the event of a self-harm or suicidal gesture by a Defence member.

55. The sufficiency of *decisions* made or taken by Defence personnel is more speculative, but again, primarily rests upon a relationship between the relevant prescriptive Defence policies, practices and procedures, and the level of compliance with those documents.

56. Matters *materially relevant* immediately subsequent to PTE Wilson's death can be confined to the compliance with reporting procedures that are required to be followed upon the death by suspected suicide of a Defence member. Matters relating to the discovery and removal of his body, and the police and Coroner's investigations and inquiries are not relevant, as they were not performed by, nor did they involve, Defence personnel.

57. Matters *materially relevant* prior to PTE Wilson's death include the circumstances surrounding PTE Wilson absenting himself without leave from his unit in Tully, Queensland, and the circumstances of the two incidents of self-harm/suicidal gesture and one attempted suicide that occurred during the 12 months prior to his death.

58. There were essentially five incidents that required consideration. They are discussed below, together with the actions and decisions made by Defence personnel as a result of those incidents.

#### **Incident 1 – Absence without leave – April 2007**

59. In early 2007, while undertaking training at Battle School at Tully, in tropical Queensland, PTE Wilson, dressed only in his physical training kit, walked out of the barracks and made for home, Canberra. About nine days later, his stepmother encountered him walking the road while she was driving from Canberra to Nowra. His service record records a period of non-effective service of nine days between 18 and 27 April 2007. Non-effective service is service for which no entitlements flow.

60. There is no record of PTE Wilson having suffered any substantial or lasting physical injuries as a result of his ordeal in travelling on foot from Queensland to Canberra,

61. On 1 May 2007, PTE Wilson was seen by a Service psychologist, MAJ [REDACTED] who formed the opinion that PTE Wilson was 'a young man struggling to reconcile his unresolved grief and overwhelmed by his inability to cope with the demands of high tempo operational unit'.(Exhibit 3, page 45)

62. PTE Wilson had, said MAJ [REDACTED], 'experienced an acute stress reaction which he was ill prepared to manage'. (Exhibit 3, page 45) MAJ [REDACTED] made four recommendations (Exhibit 3, page 46):

- a. PTE Wilson should remain in Canberra where he could access family support;
- b. PTE Wilson be referred for ongoing psychological assistance'
- c. PTE Wilson be posted from 2RAR to a position with less demanding tempo; and
- d. Continual monitoring of PTE Wilson's attitudes should occur, with immediate treatment to commence should the need arise.

63. MAJ ██████ saw PTE Wilson again on 9, 15, 22 and 30 May 2007. As his condition continued to improve, on 30 May 2007 he determined that no further consultations were necessary.

64. On 18 June 2007, PTE Wilson was posted to a position with 'less demanding tempo', in Australia's Federation Guard, in Canberra. On 6 July 2007, the acting CO of the AFG, CAPT ██████, completed a PM008, a 'Report on a Case Referred for Psychiatric or Psychological Examination'. (Exhibit 3, page 571)

65. PTE Wilson was seen by a civilian psychologist on 09 July 2007, who assessed him as fit to carry out the full range of duties at the AFG. (Exhibit 3, pages 59-61)

66. Thus, the three actionable recommendations made by MAJ ██████ had been implemented.

67. It is considered that the actions and decisions of MAJ ██████ were appropriate and sufficient, in the circumstances, and having regard to the response to the treatment of PTE Wilson. Further, the implementation of three actionable recommendations made by MAJ ██████ demonstrates that an appropriate level of care and management of PTE Wilson's mental health had been implemented.

**FINDING: That the actions and decisions of MAJ ██████ were, having regard to all of the circumstances, adequate and sufficient.**

68. PTE Wilson's personal life and military service appears to have been uneventful between June 2007 and February 2008. (Exhibit 4, page 3)

#### **Incident 2 – First “suicide gesture not intended to result in death” – February 2008**

69. In July 2007, PTE Wilson began a relationship with AB Kacee Paul, another member of the AFG. They successfully applied to have their relationship recognised by Defence as a 'defacto relationship' on 11 February 2008. This recognition permitted them to receive allowances and entitlements as if they were married members.

70. Late on 14 February 2008, or in the early hours of the next day, PTE Wilson, while heavily intoxicated, consumed prescription and non-prescription drugs belonging to Kacee

Paul, in her presence. No immediate medical assistance was required, and Kacee Paul brought the incident to the attention of AFG command on 18 February.

71. Dr. Peter Manns, the Defence employed Medical Practitioner who assumed the responsibility of managing the medical treatment of PTE Wilson, stated in an 'Outpatient Clinical Record' dated 18 February 2008, that the incident was a 'suicide gesture' and that PTE Wilson was 'drunk at the time' and was 'not actively suicidal'. (Exhibit 3, page 67)

72. In his evidence to the Commission, Dr. Manns said that by using the term 'suicide gesture'; in his notes, his intention was to:

*...convey that PTE Wilson did not have a formed plan at the time where he'd actually taken the time to think about killing himself, how he was going to do it. What he's actually done was an impulsive thing at the time where he's taken a handful of pills whilst he was intoxicated and after he's had an argument with his girlfriend. I don't believe at the time he was actively trying to kill himself, but he's done something which was an impulsive act, to impress upon his girlfriend his dissatisfaction with her. (T54).*

73. Dr. Manns' evidence was that he did not believe that PTE Wilson was 'actively suicidal', nor was he in danger of committing any further acts of self harm. (Exhibit 3, pages 67-68)

74. In those circumstances, a strict reading of DI(G) PERS 16-26 would mean that it had no application, and this incident was only required to be managed in accordance with DI(G) PERS 11-2 – *Notification of Australian Defence Force and non Australian Defence Force casualties*. However, it appears that the procedures mandated by DI (G) PERS 16-26 were followed. No criticism is made of this decision. It is clearly preferable to invoke a regime that involves greater professional care than less. However, there does not appear to be clarity with respect to what the correct procedure is in circumstances where what might, at first, appear to be an attempted suicide, but is not considered to fall within that definition by a medical professional. COI concludes a recommendation be made that the definitions and subsequent mandatory actions contained in DI(G) PERS 16-26 be reviewed in an attempt to provide greater clarity in such circumstance.

75. PTE Wilson was referred to mental health professionals and released from duties with the AFG and into the care of his father. He was diagnosed as having an adjustment disorder and depression.

76. On 18 February 2008, MAJ Johnstone raised a Form PM 008, a "Report on a Case referred for a Psychiatric or Psychological Examination". (Exhibit 4, page 55).

77. A Crisis Management Plan was also raised on 18 February (Exhibit 3, pages 69-71) and a Quick Assessment conducted at a later date. (Exhibit 4, page 53-54)

78. On 19 February 2008, psychologist Jane Drinkwater expressed the view that if PTE Wilson was to return to the AFG (72), he was at risk of going absent without leave again. (Exhibit 3, page 72) She repeated this opinion on 29 March 2008 stating, 'I support Stephen in not returning to the Federation Guard given his current vulnerable state'. (Exhibit 3, page 81) The terms of Ms. Drinkwater's correspondence implies that PTE Wilson had expressed to her that he himself did not wish to return to the AFG.

79. Ms. Drinkwater's view was shared by PTE Wilson's treating psychiatrist, Dr. Brian White. (Exhibit 3, page 75)

80. Some time prior to 25 March 2008, AB Paul had been posted to HMAS ALBATROSS in Nowra, while PTE Wilson remained in Canberra. It was believed by Dr Manns and others that because AB Paul was no longer at the AFG, PTE Wilson would be better able to cope with returning to work there.

81. On 25 March PTE Wilson told Dr Manns that he had discussed his return to the AFG with his CO, MAJ Johnstone, and that he was happy to return to the AFG in the role of CO's driver. (Exhibit 3, page 82)

82. Thus, in the face of two professional opinions to the contrary, PTE Wilson, after a period of convalescent leave, returned to the AFG, it being emphasised that this was his own choice sanctioned by his treating doctor with full knowledge of the caveat that he could return to convalescent leave at any time he chose.

83. On 24 April 2008, MAJ Johnstone spoke to Dr. Manns by telephone, seeking specific information relating to PTE Wilson's medical condition. (Exhibit 4, page 42) The same day, he wrote to Dr. Manns seeking his written advice. (Exhibit 3, page 93, Exhibit 4, page 43) On 2 May 2008, Dr. Manns responded in writing, providing a brief outline of PTE Wilson's progress. (Exhibit 3, page 95)

84. PTE Wilson appeared to enjoy returning to the AFG, albeit in a different role. He told Dr. Manns this on 30 April 2008. (Exhibit 3, page 94)

85. On 1 May 2008, Dr. Manns completed a 'Request for Rehabilitation Assessment', which included a 'Member Interview', 'Vocational Options' and a 'Rehabilitation Plan'. (Exhibit 3, pages 98 – 105) On 12 May 2008 PTE Wilson commenced rehabilitative treatment with a Defence contracted specialist rehabilitation organisation, Dysaran, now known as Effective Australia. He was managed by Danielle Coleman. (Her statement dated 20 May 2010 is contained in Exhibit 6).

86. On 1 April, 5 May and 29 May, PTE Wilson's Divisional Officer, CAPT Mark Cole, conducted face-to-face interviews with PTE Wilson during which he attempted to manage the issues facing PTE Wilson. These included managing his medical appointments as well as his

military obligations. It is considered that the actions and decisions of CAPT Cole were adequate and sufficient, and that he demonstrated a level of commitment to PTE Wilson's circumstances appropriate to his position as a Divisional Officer. The critical submissions of LEUT Clutterbuck of the interviews are rejected.

87. Between 18 February and 01 June 2008, PTE Wilson attended 20 appointments with general and mental health professionals. He was provided with convalescent leave, during which he stayed in the home of his parents in [REDACTED] (Exhibit 3)

**FINDING: That the actions and decisions of CAPT Mark Cole, in dealing with the issues faced by PTE Wilson, were, having regard to all of the circumstances, adequate and sufficient.**

**FINDING: That the actions and decisions of Dr. Manns in dealing with the first self-harm attempt by PTE Wilson were, having regard to all of the circumstances, adequate and sufficient.**

**FINDING: That the actions and decisions of MAJ Johnstone in dealing with the first self-harm attempt by PGTE Wilson were, having regard to all of the circumstances, adequate and sufficient.**

### **Incident 3 – Second “suicide gesture not intended to result in death” – 7 June 2008**

88. Having travelled to Nowra to see AB Paul on 7 June 2008, again after having consumed alcohol, PTE Wilson stabbed himself in the neck with a knife after an argument with his own estranged defacto partner. He was taken to Shoalhaven Hospital in Nowra NSW, before being released into the care of his father and stepmother.

89. A second Crisis Management Plan was raised on 10 June 2008, (Exhibit 3, pages 114 - 122) and a further Quick Assessment was also conducted. (Exhibit 3, pages 97-99)

90. PTE Wilson was assessed as being unfit for duty, and was sent on continuous sick leave, authorised by Dr. Manns. (Exhibit 12, page 8) His professional medical treatment continued, and between 8 June and 20 June, PTE Wilson attended further appointments with both Dr. White and Jane Drinkwater. (Exhibit 3)

**FINDING: That the actions and decisions of Dr. Manns in dealing with the second self-harm attempted by PTE Wilson, were, having regard to all of the circumstances, adequate and sufficient.**

**FINDING: That the actions and decisions of MAJ Johnstone in dealing with the second self-harm attempt by PTE Wilson, were, having regard to all of the circumstances, adequate and sufficient.**

#### **Incident 4 – First “non-fatal suicide gesture, intended to result in death” – 20 June 2008**

91. On 20 June 2008 PTE Wilson took an overdose of prescription and non-prescription drugs, again while heavily intoxicated, at his father’s home. He was taken by ambulance to Canberra Hospital. What can only be described as a “suicide note” was found in PTE Wilson’s room. (Exhibit 16, page 9)

92. PTE Wilson was taken by ambulance to Canberra Hospital. On 21 June 2008 he self admitted himself to Hyson Green, a mental health facility within Calvary Private Hospital. (Exhibit 16, page 9) He discharged on 23 June 2008.

93. This third incident clearly appears to fall within the definition of an ‘attempted suicide’, whereas the prior two incidents could be described as attention seeking attempts at self-harm, not intended to cause death.

94. After this PTE Wilson was made MEC 403 and placed on convalescent leave while arrangements were made for his discharge on medical grounds to be considered. No Crisis Management Plan or Quick Assessment appears to have been conducted. No criticism of this omission is made.

**FINDING: That the actions and decisions of Dr. Manns in dealing with the third attempted suicide attempt by PTE Wilson, were, having regard to all of the circumstances, adequate and sufficient.**

**FINDING: That the actions and decisions of MAJ Johnstone in dealing with the third attempted suicide attempt by PTE Wilson, were, having regard to all of the circumstances, adequate and sufficient.**

#### **Incident 5- Suicide – 11 January 2009**

95. On 11 January 2009, after returning from a barbeque with friends to his father’s house in [REDACTED] PTE Wilson consumed a large amount of alcohol and hanged himself from the rear porch while dressed in his DPCUs. He left a note. (AFP Chambers Inquest Brief, PP46 – 53 in Exhibit 6)

96. Following the formal notification to Defence of PTE Wilson’s death, the appropriate and necessary documentation recording his death was completed. There have been no criticisms of the process that followed the location of PTE Wilson’s body.

**TOR 5(c) – Were there any substantial weaknesses or deficiencies (isolated or systemic) in Defence systems, policies, equipment, practices, procedures and training proximately associated with PTE Wilson’s death**

97. Aside from clarity concerning sharing medical and health information between medical authorities and Command, it is not considered that there were any substantial weaknesses or deficiencies (isolated or systemic) in Defence systems, policies, equipment, practices, procedures and training proximately associated with PTE Wilson's death.

#### **After Death Arrangements and ADF Investigations**

98. At the request of the parents of the deceased, at his funeral no presence of anything or any person connected with the AFG was made available. Their wishes were respected and the Guard of Honour was sourced from other units. The funeral was conducted with sensitivity and respect, testimony to which is the highly complementary letter from the deceased's paternal grandfather; [REDACTED] addressed to GEN Gillespie on 27 January 2009. Formal notification to chain of Command of his death was attended to by FLTLT Donchi.

#### **Complaints by Graham Wilson and [REDACTED]**

99. PTE Wilson's father, Graham Wilson, himself [REDACTED] had been critical at what he perceived to be a lack of divisional and medical support for his son.

100. On 23 April 2008, he emailed the Chief of Army expressing his concerns. (Exhibit 4, page 29) His wife, PTE Wilson's step-mother, [REDACTED] had also reduced her concerns to writing to the Warrant Officer of the Army, Warrant Officer Class 1 [REDACTED] on 29 April 2008, 14 May 2008 and 19 June 2008 (Exhibit4, pages 136, 134 and 132) and the OC of the AFG, MAJ Johnstone on 11 June 2008. (Exhibit 4, page 175)

101. Fundamentally, the focus of the complaints was a perception that PTE Wilson was:

- a. Not receiving adequate or appropriate medical support;
- b. Not receiving adequate or appropriate divisional support; and
- c. Being forced, against his will, to continue to work at the AFG.

102. Evidence adduced during the Commission did not support those contentions.

103. Graham Wilson gave evidence on the third day of hearings, after he had been present to hear the evidence of CAPT Mark Cole, PTE Wilson's Divisional Officer and Dr. Manns. Additionally, all relevant and available documentary evidence had been provided to Mr. Wilson through his counsel, LEUT Clutterbuck.

104. Graham Wilson conceded that it appeared that his son had not been giving him the full facts, and that he had effectively been telling him one thing and his Divisional Officer, CAPT Cole, another. (T118/37) He also conceded that one of his major concerns, that no NOTICAS had been raised after his son's self-harm episode in February 2008, was misguided. (T119/9)

He blamed this on what he asserted was the failure of MAJ Johnstone to properly inform him. (T119/31-39). There is no evidence he asked about it and the conclusion he and [REDACTED] [REDACTED] reached, that it had not, is not understood.

105. It is considered that the exposure, during the Commission of Inquiry of the full range and number of medical appointments and divisional treatment provided to PTE Wilson satisfied Graham Wilson and his wife that appropriate treatment had been provided, (T121/33-40) and that 'the system', to use Graham Wilson's own words, had 'worked to a major degree'. (T123/22-24)

106. Graham Wilson's only remaining concern related to the non-disclosure of medical in confidence material between his son's treating medical professionals and Command. He perceived that this caused unnecessary delays, as well as impeding his own ability to assist in his son's health management. (T123/29-35). He did not refer to the possibly more serious issue of the treating doctor being "quarantined" in regard to relevant medical conclusions and diagnoses.

**FINDING: That the belief by Graham Wilson and [REDACTED] that PTE Wilson was not receiving an appropriate level of divisional and medical care was erroneous and unsubstantiated.**

**FINDING: That the belief by Graham Wilson, that Defence policies, processes and procedures applicable to PTE Wilson's medical condition were not being followed was erroneous and unsubstantiated.**

### **Submissions**

107. Written submissions were requested and received by Counsel Assisting and Counsels Representing. All have been of immense assistance in compiling this report. Where the contents of these submissions are outside TOR, are not relevant to TOR findings or are unremarkable, no comment is necessarily made on them. Where they are pedantically outside TOR, but dealing with them may be conducive to peace of mind, they are sometimes dealt with.

108. The lucidity, relevance and composition of submissions by Counsel Assisting are excellent. Almost all of the contents of those submissions have been embraced and set out as part of the President's Report.

109. With his submissions, LEUT Clutterbuck for PTE Wilson, tendered a statement by PTE Wilson's sister, [REDACTED] dated 9 July 2010. Pedantically there is no procedural mechanism to receive it into evidence, but as there have been no objections to its tender by Counsel, COI will receive the statements. It is at Enclosure 3 to this report.

110. In paragraphs 35 and 36 of LEUT Clutterbuck's submissions, the alleged dissatisfaction of PTE Wilson is recited, but there is no evidence that if it existed, it was ever made know to ADF. At page 55 and thereafter of the COI transcript, Dr. Peter Manns states no such issues were raised with him. Further, PTE Wilson was keen to take up the offer (page 56 line 45 and after of transcript). In the interviews PTE Wilson had with MAJ Johnstone, Exhibit 4, and CAPT Cole, Exhibit 4, he never himself raised these issues and consequently they are disregarded in this report. See further T65/39. Dr. Manns did not tell MAJ Johnstone of PTE Wilson's alleged sometime boredom. At T68/15 "he said that he was feeling much better back at work".

111. At paragraph 39 and following, LEUT Clutterbuck recites that the ADF or Chain of Command ought to have ensured, in interviews with any member of the Chain of Command, they ought to have only taken place after advice from legal Counsel and in any event with an Equity Officer present. There is no evidence of such a procedure being dictated by propriety or otherwise and it was never suggested to any of the witnesses that either of such courses was dictated. Quite how anyone in the Chain of Command ought to have become possessed of the knowledge and perceptions recited is beyond comprehension and alternatively remain not proven.

112. The negative, subjective perceptions of MAJ Johnstone are not supported by the evidence and, as he was not medically fit to refute such suggestions, they are not found valid or proven. The fact that medical reports, the contents of which were at the relevant time never made available to Chain of Command, may now afford corroboration of anything at all, is a complete non sequitur. The actions of Graham Wilson and ██████████ in complaining to high ranking ADF Officers outside the Chain of Command was hardly conducive to engendering goodwill and co-operation however well intentioned those actions may have been. For example, the fallacious accusation of some penal treatment to PTE Wilson involving the painting of rocks raised for the very first time in the COI hearing is some indication of a lack of objectivity. Such an event, on the evidence, never took place.

113. In paragraph 65 of LEUT Clutterbuck's submissions there is a complaint that there is a lack of evidence concerning a follow up by Psych Corps. This is an issue never ventilated in cross examination and the lack of evidence of it being or not being the case, simply does not prove it did not happen. The same comments apply to the contents of paragraph 67 to 69 in general terms to the issue of debriefing.

114. In paragraph 74 of LEUT Clutterbuck's submissions, the actions of MAJ Johnstone, following the first gesture not intending to result in death in February 2008 are recited and although no comment follows, COI regard these actions as appropriate.

115. In paragraph 78 of LEUT Clutterbuck's submissions, the return of PTE Wilson to light duties at AFG is again revisited, but despite what is set out, the fact of the matter is that PTE Wilson was keen to take up MAJ Johnstone's offer and it was encouraged as appropriate by Dr. Manns.

116. Those paragraphs from paragraph 85 of LEUT Clutterbuck's submissions dealing with the sharing of information raise issues that are visited by COI elsewhere, but the withholding of medical information, even from Dr. Manns (Transcript 61.1/23 – 32) highlights the current strictures on the provision of relevant medical information which may have had some possible impact on the treatment of PTE Wilson and paragraphs 91 and 92 of the submissions amplify these shortcomings all of which are of concern to COI and the subject of recommendations that follow in this report.

117. In paragraphs 93 to 98 of LEUT Clutterbuck's submissions, there are many allegations regarding Post Traumatic Stress Disorder, but none of these allegations were ever put to Dr. Manns or anyone else. There is no evidence elsewhere about their validity and they are totally outside TOR as a consequence of which no further comment is made.

118. Paragraphs 106 – 109 are critical of CAPT Cole's conduct, but the alleged shortcomings in the interview processes as has already been recited, were never the subject of cross-examination or any evidence and their rejection is repeated.

119. Paragraph 112 of LEUT Clutterbuck's submissions revisit a denigration of MAJ Johnstone already refuted and in any event the decision alleged to be based on the cited authority is simply not supported by that authority. The case is no basis for suggesting that uncontradicted evidence necessarily indicates it must be accepted, it being rather a caveat against accepting evidence even on a balance of probabilities in circumstances that in general terms involve a severe penalty to the person accused.

120. MAJ Gabbedy fully supports the suggested findings and recommendations contained in Counsel Assisting's submissions. He refers to the fact that issues concerning medical in confidence philosophies have been raised in an unrelated COI, but investigating the availability and content of any report referred to would inordinately delay delivery of this report and in any event, consideration of similar recommendations in the ADF, in two separate COI reports may assist in the formulation of a course of action.

### **Relevant Defence Policies and Legislation**

121. There are a number of Defence Instructions, directives, policies, practices and procedures applicable in the circumstances surrounding PTE Wilson's death. These include:

- |    |                  |  |
|----|------------------|--|
| a. | DI(G) PERS 16-26 | Management of a suicidal episode in the ADF (05 Feb 07)  |
| b. | DI(G) PERS 11-2  | Notification of ADF and non ADF casualties (20 May 08)   |
| c. | DI(G) PERS 16-15 | ADF Medical Employment Classification System (11 Apr 05) |
| d. | DI(G) PERS 16-20 | Privacy of Health Information in Defence (30 Jul 08)     |

- e. DI(G) PERS 16-24 Mental Health Provision in the ADF (07 Feb 07)
- f. DI(A) PERS 33-6 Welfare Responsibilities within the Army (issued 29 Apr 07)
- g. DI(A) PERS 124-12 Medical Boards Policy and Procedure (24 May 97)
- h. DI(A) PERS 124-29 Medical Employment Classification System in the Australian Army (20 Dec 05)
- i. DI(A) PERS 236 Medical Employment Classification Procedures (21 Nov 05)
- j. Health Directive 236 Medical Employment Classification Procedures (21 Nov 05)
- k. Health Directive 289 Mental Health Case Management in the ADF (22 Apr 09)
- l. Commanders Guide to Mental Health Support (26 Sep 08)

122. It is not necessary to consider in detail every document referred to above. However, there are some that do require specific consideration.

123. The actions required of Command following the receipt of a report of a suicidal episode depend on how that particular episode is categorized. As an overall comment, some of the policies, instructions and directives that may apply could be considered ambiguous and confusing, with the definitions and procedures themselves reliant on a subjective interpretation by a commander or responsible commander with clear direction on exactly what is required when a suicidal episode is reported, initially and in terms of ongoing management and assessment.

#### **DI (G) PERS 16-26 – Management of a suicidal episode in the ADF**

124. The primary Defence Instruction that deals with suicidal episodes, DI(G) PERS 16-26 – *Management of a suicidal episode in the Australian Defence Force* provides the following definition of a ‘suicidal episode’ at paragraph 5:

125. *A suicidal episode may include:*

- a. ***Suicidal ideation.*** *Suicidal ideation is thinking about and making plans to engage in suicidal behaviour. This may include verbal threats that indicate intent to cause injury to one’s self.*
- b. ***Non-fatal suicidal behaviour.*** *Non-fatal suicide behaviour is defined as those actions that do not result in death, but where the person was aware that their action might have potentially caused death. Alternative terminology has included suicide attempts and gestures, and self-harm or self inflicted injury where death was the desired outcome. Engaging in self-harm/self-inflicted injury where the intended outcome is self mutilation, not death, is not a suicidal episode and is not addressed in this instruction.*

126. Where an incident involving a Defence member falls within the definition of a 'suicidal episode' in DI (G) PERS 16-26, responsibility for the management of the "at risk" individual falls to a range of different units and agencies. The specific requirements appear in paragraphs 6 – 15 of the Instruction. They include, but are not limited to:

- a. The conduct of a risk assessment by a mental health professional;
- b. The conduct of a QA by Command (DI (G) ADMIN 67-2 Quick Assessments);
- c. The creation of a Risk Management Team – a multidisciplinary team comprised of a Command representative, mental health professional and medical officer; and
- d. The creation of a Crisis Management Plan by the treating medical officer.

127. In many cases, it is difficult to establish whether the incident is a suicidal episode (non-fatal suicide behaviour) therefore enlivening the requirements of DI (G) PERS 16-26, or one of self-harm. DI(G)PERS 16-26 distinguishes these on the basis of the *intent* of the member involved and provides at subparagraph (b) of the definition of 'non-fatal suicide behaviour', referred to above, that:

*Engaging in self-harm/self inflicted injury where the intended outcome is self-mutilation, not death, is not a suicidal episode and is not addressed in this Instruction.*

128. The distinction may not be immediately clear, especially where the intent of the member is not known, leading to the potential of uncertainty as to the process required.

#### **DI (G) PERS 11-2 – Notification of ADF and non ADF casualties**

129. Irrespective of whether or not the incident in question is a "suicidal episode". DI (G) PERS 11-2 – *Notification of Australian Defence Force and non Australian Defence Force casualties* stipulates the action to be taken if an ADF or non-ADF member becomes a casualty. Notification is required to ensure emergency contacts are advised and receive support, ensure information is recorded accurately, and ensure receiving health units are informed.

130. "Casualty" is defined as:

*A Defence member, members of the Australian Cadets while on an approved activity or a Defence Civilian, who is classified as captured, missing, missing-believed-dead, seriously or Very Seriously Ill (including psychological illness) or deceased.*

131. Apart from deceased or missing members, casualty classifications are determined by a medical authority in accordance with paragraph 8 of DI(G) PERS 11-2. Sub paragraph 8(f) provides that admission to a civilian or military hospital facility for non-elective purposes, including mental health conditions, are to be reported by NOTICAS/MEDICAS. It is required for admission only, not where a member is treated and released from an emergency department. Where non-fatal suicide behaviour results in a casualty classification (such as

admission to hospital for non-elective purpose) paragraph 38 provides that the treating Defence medical authority, or the Defence medical authority in liaison with the civilian treatment facility, are to raise a MEDICAS.

132. With respect to notification of primary emergency contacts (PEC) or next of kin (NOK), this is required for casualty classifications as specified in paragraph 15; Paragraph 33 refers to “Minor Illness/injury requiring hospitalisation” and provides that:

*There is no requirement to notify the PEC/NOK for minor illnesses or injuries, including those requiring hospitalisation. In such circumstances the Defence member is to be encouraged to notify their PEC and/or NOK. Such action can serve to reduce emotional stress on the Defence members' friends and loved ones.*

133. The ramifications of this for non-fatal suicide behaviour/self harm are that PEC/NOK may not be routinely notified.

#### **DI (G) 16-20 – Privacy of Health Information in Defence**

134. Defence is subject to the provisions of the *Privacy Act 1988* concerning the collection and use of personal information. DI (G) PERS 16-20 outlines the requirements for managing the privacy of health information within Defence.

135. Paragraph 7 of DI (G) 16-20 defines the purpose for which health information is collected within Defence as including:

*... to manage, diagnose and treat an individual's health on an ongoing basis, and to provide documentary evidence or preparedness of an individual, from a health perspective, for operations.*

136. This paragraph seems to be predicated on a fairly narrow health/medical treatment purpose. It may be possible to argue that health information is collected and used for a wider purpose, including ensuring continuing fitness to perform roles and functions. If a wider view of the purpose was taken, then more ready provision or access to, more detailed information by Commanders in certain circumstances may be permissible. Paragraph 10 may provide room to disclose health information to certain Commanders, with consent and otherwise, but it is submitted it could be made clearer. Paragraphs 13-17 provide an avenue where information can be released to a Commander or manager, but consideration could be given to whether this could be made clearer, especially in case of mental illness.

137. Paragraph 22 refers to ‘Case conferences’ and the requirement for member consent. Consideration should be given to whether consent is required, especially where a wider purpose of collection and use of information could be made out. It could be considered that

such conferences, when deemed necessary, are part of the primary use of health information and therefore additional consent unnecessary.

138. Paragraph 48 requires consent to release health information to the Medical Employment Classification Review Board (MECRB). This would not be necessary if a wider interpretation of purpose and use of medical information is considered. Requiring such consent potentially delays the MECRB and discharge process,

139. There does not appear to be any mechanism within DI (G) PERS 16-20 that clearly allows for certain information to be shared with those Commander/managers who are entrusted with the day to day management of members with a mental illness or condition, even though Health Policy Directive 289 – *Mental Health Case Management* provides (at paragraph 9) that more detailed health information may be released where a Mental Health professional believes disclosure is necessary to lessen or prevent a serious threat to life, health and safety.

### **Privacy Act 1988**

140. The *Privacy Act 1988* applies to personal information collected by Defence. Use and Disclosure of personal information are addressed within Information Privacy Principles (IPP) 10 and 11 respectively. Passage of personal information between persons/agencies within Defence is considered to be a use, not a disclosure of information, disclosure being considered to be passage of information to parties external to Defence.

141. Privacy Principle 10 relevantly provides that a record keeper, who has possession of personal information that has been obtained for a 'particular purpose', shall not use that information for any other purpose unless:

- a. The individual has consented;
- b. Use is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another.
- c. Use for another purpose is required by the law;
- d. Use is necessary for law enforcement purposes. Or
- e. The purpose is directly related to the purpose for which the information was obtained.

142. With respect to health information of ADF members, consideration should be given to whether it would be reasonable for the 'particular purpose' for which health/medical information is obtained to be wider than that implied by the current Defence policies and to include career management of the ADF member. It could be argued that upon entering the ADF a person agrees to certain obligations and responsibilities, one of which includes the provision to them of medical services by Defence. These medical services are provided not

just for the individual members own health and wellbeing, but also for the ADF's own purposes of ensuring that members are fit for duty and deployment.

143. As a necessary adjunct to medical treatment, to manage the individual as a whole and ensure fitness for duty, a supervisor or manager must have some ability to be advised of, and understand some medical conditions/illnesses. This is particularly so with respect to mental illness as a menu of restrictions or limitations in duty tasks may not accurately reflect the true nature of any disability or alert a commander to special care or attention which should be given to a member. A requirement such as that in DI (G) PERS 16-20 – *Mental Health Provision in the ADF* for ADF commanders to monitor and protect health and welfare, cannot adequately be met where relevant information is not freely shared.

144. If it can be established that the collection and use of medical/health information is necessarily wider than the purpose in DI(G) PERS 16-20, then the exception in IPP 10(e) could be more easily made out, and allowing better passage of information between medical and command especially where mental health issues are concerned. Such an interpretation would not open a requirement for all health information to be relayed to non-health professionals, but would assist with the passage of timely and relevant information.

145. Additionally, although internal use within Defence is not generally considered disclosure, IPP11 provides that personal information may be disclosed to another person, body or agency, where, amongst other things, the person is reasonably likely to be aware, or have been made aware under IPP2, that information of that kind is usually passed to that person, body or agency (IPP 11(a)). If it is or was considered desirable to ensure that medical/health information could be legitimately passed to non medical staff, development of an appropriately worded IPP2 Privacy Notice, provided to a member on enlistment and with a copy retained in their medical and personal files, would assist in legitimising the use and meeting obligations under the Privacy Act 1988.

146. There appears to be reluctance or misunderstanding as to what information can legitimately be shared between medical staff and commanders, even though some instructions do provide guidance as to how it can be done. Consideration of expanding the purpose and use of a Privacy Notice on enlistment would assist.

#### **DI (G) PERS 16-24 – Mental Health Provision in the ADF**

147. This instruction provides that ADF commanders have a moral obligation and duty of care to monitor and protect the health and welfare of personnel, including mental health. At paragraph 9 it also provides that in addition to the command responsibility, primary responsibility for mental health rests with ADF members. The instruction is however, largely descriptive of the range of mental health services that are provided under the auspices of Defence health Services and the Mental Health Strategy, rather than prescribing what must be done in certain circumstances.

### **DI (A) PERS 33-6 – Welfare Responsibilities within the Army**

148. This Army instruction provides that a commander has an obligation to maintain, amongst other things, the mental health of a soldier, for the efficient functioning of the unit and outlines unit responsibilities with respect to welfare plans and welfare officers, providing that the responsibility for welfare can be delegated to the Unit Welfare Officer, rather than the commanding officer in certain circumstances.

### **Health Directive 289 – Mental Health Case Management in the ADF**

149. This directive, builds on DI (G) PERS 16-20 and DI (G) PERS 16-26. As stated above, it provides at paragraph 9 that more detailed health information may be released to command where a mental Health professional believes disclosure is necessary to lessen or prevent a serious threat to life, health and safety. It also provides within paragraph 4 that the Medical Officer is to ensure that appropriate authorities, including the CO are kept informed, in accordance with paragraph 9. It also provides, at paragraph 18 for case conferences for 'complex cases' which includes involvement of command preventatives. It may be useful to provide some guidance as to what a 'complex case' is – whether this is a medical determination, command determination or consideration of both. Particularly where the treating medical officer is civilian, and may be unfamiliar with the service requirements and culture, consideration could be given to ensuring that a serving senior ADF medical officer is involved in the decision.

### **Commanders Guide to Mental Health Support**

150. The Commanders Guide to Mental Health Support is an Army publication that aims to provide commanders with what they need to know in order to meet their responsibilities regarding the mental health of their members. At Chapter 3 there is a useful guide on what to do when a non-fatal suicide event occurs which appears to reflect the requirements of the various Defence Instructions. The title of Chapter 3 does not clearly indicate that it contains such a checklist. It would probably be more useful if the title/index more quickly indicated that such a checklist existed also could benefit in having wider dissemination as a tri-service publication, ensuring that it was up to date.

**FINDING: That the application of Defence privacy policies applicable to personal and medical information hampered passage of information between medical authorities and command.**

**FINDING: There is no clear stand-alone guidance for Commanders that provides complete detail on what is required when a member presents post a suicidal episode.**

**RECOMMENDATION: That privacy policy applicable to personal and medical information held by Defence should be reviewed, particularly in the mental health context and should include:**

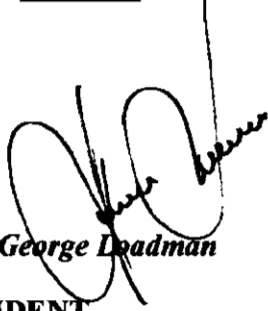
- a. **consideration of whether the purpose of collection and use of medical information can be wider than detailed in DI (G) PERS 16 – 20;**
- b. **consideration of development of a Privacy Notice for use on enlistment advising of the purpose of collection, use and disclosure of personal information;**
- c. **consideration of further education to service and contract medical providers, civilian specialists and members undergoing treatment concerning the use of medical/health information in managing members, particularly those with mental health conditions;**
- d. **review of instructions and policies which refer to privacy and health information be conducted for consistency and consideration as to whether they may be amalgamated; and**
- e. **consideration as to whether disclosure of personal health information to PEC/NOK could be permitted; and further clarification is provided as to what may be a ‘complex case’ within Health Directive 289, and who determines whether a matter meets the criteria for a case conference as a ‘complex case’.**

**RECOMMENDATION: Clearer guidance be provided to Commanders with clear direction on what is required when a suicidal episode is reported, initially and in terms of ongoing management. This could be through review of the ‘Commanders Guide to Mental Health Support’ and giving it wider application throughout the ADF.**

## **ACKNOWLEDGMENTS**

151. COI commends the excellent considerate and helpful assistance of Counsel Assisting CMDR Fiona Sneath and LCDR Paul Kerr. The thorough and extensive preparation, investigation and particularly the extensive involvement of the President in all pre COI activity by LCDR Kerr, upon his appointment as Inquiry Officer and subsequently by both Counsel assisting, via cutting edge technology and conventionally, enabled the President to possess rare insight and become aware of details which were of inestimable assistance in commencing scoping and completing the COI. Their joint efforts as Counsel Assisting enabled COI to complete the Inquiry in an expeditious and orderly manner. Their efforts, combined with the assistance of the CDF COI Cell (to whom COI record sincere appreciation) in the conduct and preparation of the COI was effective in confining the ventilation of the evidence and other procedures to a period of three hearing days and the cooperation of all counsel in agreeing to make final submissions in writing saved two more days of hearing and travel for all involved.

Dated at [REDACTED] Victoria, this day 13 September 2010

A handwritten signature in black ink, appearing to read 'David George Loadman', written over a vertical line that extends upwards from the text below.

*David George Loadman*

**PRESIDENT**