



**Australian Government**  
**Department of Defence**

**Submission**

For decision  
MB21-000469  
Date of Clearance:

**To** Minister for Defence

**Subject** Honours and Awards – IGADF Afghanistan Report Implementation - MUC

**Timing** Routine

**Recommendations**

That you:

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**Minister for Defence**

**Signature**.....

**Date**:...../...../2021

Minister's Comments				
<b>Rejected</b> Yes/No	<b>Timely</b> Yes/No	<b>Relevance</b> <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	<b>Length</b> <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	<b>Quality</b> Poor 1.....2.....3.....4.....5 Excellent <b>Comments:</b>

### Key Issues

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s22 The Inspector-General made three recommendations in relation to honours and awards, including:

- the cancellation of the Meritorious Unit Citation awarded to the Special Operations Task Group IV – XX for their service in Afghanistan between 2007 and 2013;

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- This brief provides options for addressing the Meritorious Unit Citation recommendation within the wider context of all Honours recommendations. The preferred approach for the Meritorious Unit Citations takes into regard the principles of respect for the families of the alleged victims, ensuring the moral authority of the force going forward, minimising further harm and sustaining the standing of the Meritorious Unit Citation within the Australian Honours and Awards system.

### Background

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- The report recommends cancelling the Meritorious Unit Citation awarded to Task Force 66 Special Operations Task Groups IV – XX for sustained and outstanding warlike operational service in Afghanistan from 30 April 2007 to 31 December 2013, through the conduct of counter insurgency operations in support of the International Security Assistance Force. The citation notes the Taskforce's outstanding performance was achieved through the collective efforts of every member of the contingent over the duration of the commitment. s22

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- There are 3,408 individuals authorised to wear the Insignia of which:
  - 2197 are current serving members from the rank of Private to Major General;

- 1154 are ex-serving members;
- 33 are deceased; and
- 24 are civilians

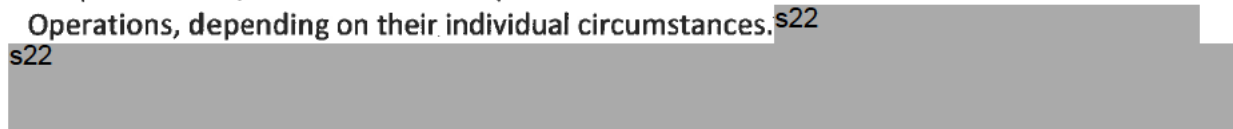
6. Of the 3,408 authorised members, approximately 600 are officers, 900 are non-commissioned officers and 1900 are soldiers.

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13. It is important to note that in addition to individual awards and the Meritorious Unit Citation all of which recognise exceptional service or gallant acts, individuals who served in Afghanistan also receive the Afghanistan Medal, the Australian Active Service Medal with Clasp 'ICAT' and/or the Australian Operational Service Medal – Greater Middle East Operations, depending on their individual circumstances.

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#### Implementation

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14.

s22 How the Meritorious Unit Citation recommendation is managed has implications for the review of individual awards and for the wider findings of the report.

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18. **Meritorious Unit Citation.** The decision in relation to the Meritorious Unit Citation has consequences for the review of individual decorations, holding commanders at all levels to account, and the integrity of the force as a values based, ethically led organisation. It is complex to distinguish between those who have, and those who have not, served with merit in regard to unit awards, whilst also ensuring that commanders are held to the highest level of account in acknowledging the failures of the unit found by the Inquiry.
19. The moral authority to remove individual decorations is challenged if those recipients of the Meritorious Unit Citation who hid or failed to provide information to their commanders are continued to be held up as 'meritorious'. If ongoing investigations find an increasing number of soldiers were aware of the allegations and that these were not reported through the chain of command, then the moral justification to retain the Meritorious Unit Citation and to hold commanders to account is further challenged. Noting a large number of soldiers (more than 200) were aware of the rumours with few soldiers admitting to having informed their chain of command, the numbers may indeed grow.

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21. A preferred way ahead in regard to the Meritorious Unit Citation must have regard to clear principles.
- respect for the alleged victims in Afghanistan and their families;
  - the moral authority of the Australian Defence Force for the future, by demonstrating accountability of the Unit in an effort to rebuild the trust of the community that Defence's actions are conscientious and moral;
  - minimise any further harm to members, veterans and their families noting that many served during this period with honour; and
  - sustain the standing of the Meritorious Unit Citation within the Australian Honours and Awards system.
22. There are a number of options available, to be balanced against this context.

## Options

23. **Option One – Preferred option.** Request the Governor-General cancel the Unit Citation whilst allowing individuals to keep and wear the Insignia. Under this option, new Unit Citation Regulation clauses would be prepared for the general scenario in which a unit's claim to meritorious service was subsequently found wanting, for example the finding of the IGADF Afghanistan Inquiry Report. Provisions would be retained for the return of the Insignia as a result of administrative or criminal processes.
24. This approach would:
  - a) Demonstrate to the Afghanistan Government, community and families of the alleged victims that Australia acknowledges the findings of the Inquiry and the unacceptable actions that are alleged to have taken place. It also demonstrates that Defence is willing to take the necessary steps to address the Inquiry recommendations.
  - b) This option acknowledges that the behaviour identified by the Inquiry is out of step with the values and ethics of the Australian Defence Force. This in turn allows Australia to position itself for future operational activities with a clear moral authority.
  - c) Amending the Regulations would afford the many who did serve with honour an opportunity to make a conscience decision about whether they wear the Insignia. This balances the need to make a clear statement that the whole unit did not serve with honour with the need to minimise further harm to those individuals who did. Protecting individuals' right to retain and wear the Insignia through Regulation changes will afford maximum sensitivity to members, veterans and families. It will also ensure those that choose to continue to wear the insignia, for this citation or one of the other 28 Meritorious Unit Citations, will remain compliant and protected from scrutiny by independent organisations such as ANZMI (Australian and New Zealand Military Imposters).
  - d) This option conceptually treats the Unit and the individual as separate, as we do the legal personality of a business company and its employees. The change to the Regulations would enable Defence to correct instances of mal-administration, in particular where information emerges that, if known at the time, would not have led to the award in the first place. Defence may then recommend cancelling the award and invite individuals to continue to wear the insignia if, as an individual decision, they reflect on their service during the period for which the citation was awarded in good conscience. These changes will therefore sustain the standing of the Meritorious Unit Citation for future units who as a whole demonstrate meritorious service.
25. The development of new Regulation clauses would require comprehensive legal drafting. The relationship, for example, with the *Defence Act 1903* would need to be considered noting that it is currently an offence under the Act to wear an honour or award that is cancelled. Consideration can also be given to changes that will provide maximum flexibility for implementation of future Citations. For example, the words 'shall return' could be replaced with 'may return'. The new Regulation clauses would also require approval by Her Majesty, The Queen.
26. While it is unprecedented within the Australian Honours and Awards system to have an award cancelled and maintain the right to wear it, this is a sensitive and considered pathway to address the recommendation.



27. **Option Two** – Request the Governor-General cancel the unit citation and develop a process for the return of the Insignia which provides the maximum sensitivity to members, veterans and families within the requirements of the current Regulations. This may include for example providing a lengthy timeframe for the return of the Insignia.
28. This approach would:
- a) Demonstrate to the Afghanistan Government, community and families of the alleged victims that Australia acknowledges the findings of the Inquiry and the unacceptable actions that are alleged to have taken place. It also demonstrates that Defence is willing to take the necessary steps to address the Inquiry recommendations.
  - b) This option acknowledges that the behaviour identified by the Inquiry is out of step with the values and ethics of the Australian Defence Force. This in turn allows Australia to position itself for future operational activities with a clear moral authority.
  - c) Requiring the return of the Insignia does have the potential to cause significant harm and distress to members, veterans and families, especially for families of those killed in action, and those who died by suicide upon their return (Attachment C). The 'minimise further harm' principle could be further compromised as independent organisations such as ANZMI (Australian and New Zealand Military Imposters) could publically identify and shame any member who wears an award ANZMI considers they are not entitled to. This has previously caused many veterans distress and it is a lengthy civil legal battle to amend any misinformation promulgated by ANZMI. Defence will not be able to ensure or enforce the return of Insignia. For example, the address details of the former personnel, both ADF and APS, are not easily known as Defence only records the last known address at time of transition. State or Federal Police are responsible for investigating any allegations of falsely wearing medals, including the insignia. This may lead to a perception of Defence not taking responsibility for its people or policies.
  - d) Cancelling the Meritorious Unit Citation recognises that the actions of the Task Group as a whole were not meritorious and therefore maintains the integrity of the award.
29. **Option Three** – Request the Governor-General cancel the Unit Citation whilst allowing individuals to keep the Insignia but not wear it. Under this option, minor amendments to the Unit Citation Regulation clauses would be prepared to replace the words 'shall return' with 'may return' enabling individuals to choose if they keep the insignia. Provisions would be retained for the return of the Insignia as a result of administrative or criminal processes.
30. This approach would:
- a) Send a clear message to the Afghanistan Government, community and families of the alleged victims that Australia acknowledges the alleged unacceptable actions of members of our Defence Force. It also demonstrates that Australia is prepared to take action to ensure the behaviour of the whole unit is not recognised as meritorious.
  - b) This option acknowledges that the behaviour identified by the Inquiry is out of step with the values and ethics of the Australian Defence Force. This in turn allows Australia to position itself for future operational activities with a clear moral authority.
  - c) Based on the commentary from veteran's groups at the announcement of the Inquiry's findings and recommendations, this option is unlikely to be supported (by them) due to the perceived, real or potential harm it may cause to veterans. Under this option individuals are not authorised to wear the insignia. Any that continue to do so will be at personal risk of breaching the *Defence Act 1903* and may come to the attention of organisations such as ANZMI. This option creates an unacceptable risk of significant confusion and distress for veterans and their families.

d) Cancelling the Meritorious Unit Citation recognises that the actions of the Task Group as a whole were not meritorious and therefore maintains the integrity of the award. While the integrity of the system is not undermined if Insignia are kept as a simple memento and not worn, traditionalists may argue that this option deviates from the usual expectations of the honours and awards system (whereby cancelled awards are not retained).

31. **Option Four** – Request the Governor-General cancel the Meritorious Unit Citation awarded to Task Force 66 Special Operations Task Groups IV – XX from 30 April 2007 to 31 December 2013 and request a new Meritorious Unit Citation is gazetted to recognise those Task Groups or rotations which are not implicated in the Afghanistan Inquiry Report or found to be implicated through subsequent processes.
32. This approach would:
  - a) Demonstrate to the Afghanistan Government, community and families of the victims that Australia is committed to implementing the recommendation by removing the recognition of those who served during the time period of most significant behavioural failing. Retaining the Meritorious Unit Citation for specific Task Groups, however, does not send a decisive message about the accountability Australia is taking for these actions.
  - b) This option demonstrates Australia's commitment to accountability and acknowledges that the behaviour identified by the Inquiry is out of step with the values and ethics of the Australian Defence Force. The option ensures the consequences of the behaviour identified by the Inquiry is appropriately directed at the identified time period but moderated for all those not implicated and who served with honour.
  - c) Harm will be exacerbated for the families of the fallen many of whom died during the rotations likely to have the Meritorious Unit Citation cancelled. As this option includes the cancellation of the existing Meritorious Unit Citation some personnel will still be required to return their Insignia. Any return of the Insignia has the potential to cause significant harm and as noted in Option Two there will be challenges with the administration of the return noting Defence is not an enforcement agency. Members or veterans who continue to wear the Insignia after it is cancelled will breach the *Defence Act 1903* and can be prosecuted. This may create a perception of Defence coercing members to comply and individuals may also be scrutinised by independent organisations such as ANZMI.
  - d) This option upholds the standing of the Meritorious Unit Citation by ensuring the award is retained only by those unit rotations not implicated in the Report. It will nonetheless be divisive as some individuals awarded during the period to be cancelled/removed, may have served honourably. There is also a real risk that further claims of misconduct and command failings may come forward that may then prompt a review of the new award.
33. **Option Five** – Retain the Meritorious Unit Citation except for those either convicted in a court of law, or administratively identified by Defence as implicated and therefore, not deserving of retaining the Honour.
34. This approach would:
  - a) Risk causing significant further harm to the families of those affected by the alleged actions of Australian soldiers and Australia's relationship with Afghanistan. Retaining the Meritorious Unit Citation does not send a decisive message that Australia is holding itself to account for the actions identified in the Inquiry report.
  - b) The retention of the Meritorious Unit Citation poses unacceptable risk to the moral authority of the force and threatens the international and domestic reputation of the Australian Defence Force and its capacity to operate effectively. The action could be

perceived by international counterparts as dismissive and a failure to accept accountability for the actions identified in the Inquiry.

- c) This approach does ensure that the consequences are directed at those convicted in a court of law, or administratively identified by Defence as implicated, and therefore minimises further harm for those not implicated in the report. Once procedural fairness is afforded to individuals, and I [CDF] recommend they should not keep their right to the award, you can request the Governor-General cancel individuals' right to the award on a case by case basis or in groups. In time, if criminal convictions are made, then consideration of the roles of those in the relevant chains of command could be reviewed and similarly progressed to the Governor-General to request their right to the award is cancelled. This would mirror the process currently used when considering cancelling individual honours and awards.
- d) This option risks the integrity of the Meritorious Unit Citation as it does not address the fundamental premise that the award is intended for a Unit that has performed meritoriously.

35. **Option Six** – Retain the Meritorious Unit Citation as it stands.

36. This approach would:

- a) Risk causing significant further harm to the families of those affected by the alleged actions of Australian soldiers and Australia's relationship with Afghanistan. Retaining the Meritorious Unit Citation does not send a decisive message about the accountability Australia is taking for the actions identified in the Inquiry report.
- b) This option also poses significant and unacceptable risk to reputation as it does not comply with the recommendation of the Report, and undermines our values and culture. The Inquiry strongly recommends the cancellation of the Meritorious Unit Citation and notes that what the Report discloses is disgraceful and a profound betrayal of the Australian Defence Force's professional standards and expectations. Retention of the Meritorious Unit Citation would therefore challenge the future moral authority of the force.
- c) On the surface, this option might be justified on the basis of 'causing no further harm'. While this may be true for to some members, veterans and/or their families, this option also has significant potential to cause harm to those who served and feel strongly that individuals should be held to account for unit and individual actions.
- d) This option risks the integrity of the Meritorious Unit Citation as it is contrary to the fundamental premise that a Unit, rather than individuals, must perform meritoriously.

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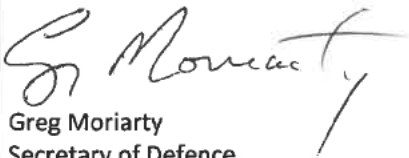



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