

**AFGHANISTAN INQUIRY IMPLEMENTATION OVERSIGHT PANEL****REPORT NUMBER 1: INITIAL REPORT TO THE MINISTER FOR DEFENCE****1. Appointment**

The three members of the Implementation Oversight Panel were appointed in November 2020 shortly before the release of the IGADF Afghanistan Inquiry Report.

The period leading up to the end of the year was largely taken up with: first, completing current work commitments; second, dealing with Defence administrative matters (access passes, computer access and basic instruction, security clearance, individual working arrangements and so on); and, third, initial consideration of the public version of the Report.

**2. Initial briefings**

The Panel had initial videoconference briefings and discussion with the Minister on 26 November and 22 December 2020 and the IGADF on 10 December 2020.

The briefing material progressively supplied by Defence before the end of the year included:

- a large Panel Resources Pack in early December comprising the Cromptoets reports; the 2018 and 2020 Irvine Reports; the Defence Transformation Strategy; and extensive background information relevant or leading up to the Brereton Inquiry including the Four Corners program and other media commentary
- Joint Directive 30/2020 of 16 December 2020
- the identity protected version of the Inquiry Report on 18 December 2020, and
- Defence's draft Implementation Plan on 19 December 2020 which provides a framework for the development of specific responses to the Report's recommendations.

This material is extensive and is receiving thorough and careful consideration by the Panel.

**3. The Panel's approach**

The Panel intends to work collaboratively with Defence. Given the complexity of the proposed reforms the implementation process is expected to be iterative over an extended period of time. The Panel has requested Accountable Officers to engage proactively on an ongoing basis to enable the Panel to provide feedback and identify any concerns as individual initiatives are developed. The members of the Defence Committee have agreed that monthly consultation would be appropriate.

The Panel's first task is to become fully familiar with the protected Inquiry Report and the documents and briefings it has received to date or will receive over the next few weeks.

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The Panel will then be in a position to make decisions about detailed lines of enquiry taking account of:

- the Panel's terms of reference
- the terms of reference for the Afghanistan Inquiry and the Report's recommendations and other responses to meet those terms of reference
- the outcomes anticipated or achieved through the Defence Implementation Plan
- the compatibility between the likely outcomes of the Inquiry recommendations and the other Defence reform programs such as the Transformation Strategy, and other Special Forces reforms since 2015 and
- any other matters of concern that arise during the Panel's enquiries and investigations.

#### **4. Briefings**



The Panel intends to meet in person with as many stakeholders as practicable to establish trust and productive working relationships. The Panel convened in Canberra from 19 to 21 January 2021 and met with the following:

- Mr Chris Moraitis PSM and other officers from the Office of the Special Investigator (OSI)
- Head, People Capability and Director General Sensitive Issues Management - Army
- The Secretary and the Chief of the Defence Force
- Chief of Army
- The Defence Committee
- Special Operations Commander Australia and Special Operations Incident Manager
- Defence Chief Counsel
- Dr Samantha Crompvoets
- Mr David Irvine AO.

These briefings provided information about reforms since 2015 as well as insights about Defence's approach to the implementation of the Brereton recommendations.

#### **5. Future briefings and meetings**

Further introductory briefings are being arranged with:

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- Advisor, Special Forces
- Special Air Services Regiment
- Joint Operations Command
- 2nd Commando Regiment Sydney
- Joint Military Police Unit (formerly the ADF Investigative Service)
- Relevant ex-service organisations including Australian Special Air Service Association, the Commando Association and The Bravery Trust.
- Other stakeholders named in paragraph 27 of the Panel's terms of reference.

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It was clear from discussions with OSI that the Panel will need to be diligent in ensuring that it does not compromise the investigation or prosecution activities by the inappropriate handling of information. The Panel will discuss these issues further with OSI and will not meet with individuals who might have information relevant to any criminal investigation until these legal matters are resolved.

**6. Does the draft Implementation Plan meet the Minister's overall objective?**

The Panel notes the Minister's overall objective is to ensure that Defence's total response to the Brereton Report gets to the root causes of the culture and behaviour that resulted in the need for the Afghanistan Inquiry.<sup>1</sup> All parties involved in implementing responses to the Report may be called on to demonstrate how their work contributes to that outcome.

The essential task of the Brereton Inquiry was to ascertain whether there was any substance to rumours and reports of breaches of the Law of Armed Conflict by elements of the Special Operations Task Group in Afghanistan between 2005 and 2016. The recommendations of the inquiry necessarily reflect that objective and may not fully address the broader cultural and behavioural issues. The draft Implementation Plan is a high-level framework and is currently limited to responses to the Brereton recommendations. The Panel acknowledges that this is the first draft of an iterative process and does not assume that the fully developed Defence response will be limited in this way.

Since 2015, and during the course of the Brereton Inquiry, there has also been a significant Special Operations Command reform program underway. These reforms were initiated by Major General Sengelman and pursued by subsequent SOCAUSTs. The reforms include an external review by Dr Crompvoets in 2016 and two reviews conducted by Mr David Irvine AO in 2018 and 2020. Chief of Army accepted the recommendations of the most recent Irvine Review in October 2020.

The Panel was provided with information about the implementation of the Irvine recommendations and formed the view that the Special Forces and Irvine reforms since 2015 complement the Brereton recommendations. While it was clear in oral briefings with senior Defence officials that Defence considered the Irvine reforms to be an essential part of the response to the Brereton Inquiry, this is not necessarily apparent from the draft Implementation Plan.

The Panel suggests that future versions of the Implementation Plan should explicitly reference the Special Forces and Irvine reforms, with a view to integration of the respective implementation plans.

The Panel also intends to consider further the approach taken by the Brereton report to the responsibilities and accountabilities of the chain of command, and whether Defence's response on this matter is appropriate and sufficient.

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<sup>1</sup> See the Panel's terms of reference, paragraph 30

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## **7. Advice**

It will be a complicated process to implement the 143 Brereton recommendations and integrate them with other ongoing Defence reforms resulting in a coherent and unified outcome which addresses the root causes for the misconduct and failures uncovered in Special Forces Command. The Implementation Plan sets out an acceptable initial framework to tackle the Brereton recommendations but it should be expanded to include an express acknowledgement that, first, the Plan outcomes must be integrated with other recent and ongoing Defence reforms and second, that the Plan will be subject to modification and further iterations to achieve those outcomes as investigations and implementation proceed.

## **8. Further reports**

The Panel will report to the Minister quarterly in accordance with its terms of reference and when dictated by particular circumstances or concerns.

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Dr Vivienne Thom AM  
Lead, Afghanistan Inquiry Implementation Oversight Panel  
1 February 2021

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## AFGHANISTAN INQUIRY IMPLEMENTATION OVERSIGHT PANEL

### REPORT NUMBER 2: QUARTERLY REPORT TO THE MINISTER FOR DEFENCE February – April 2021

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#### 1. Key points

1. The Panel has worked cooperatively with Defence in the development of the Reform Plan (the Plan). The Plan has two clear objectives (to address the past and prevent recurrence) and a comprehensive integrated framework for the management of a large number of disparate but related matters and programs. The intended outcome is to provide the Government with the Special Operations Forces it needs for the future.
2. The Panel's stated views about the Meritorious Unit Citation align with the Minister's recent decision to reverse Defence's intention to revoke the MUC.

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5. The Panel has provided Defence with its views on the need for senior level organisational accountability for the events in Afghanistan coupled with advice on the broader causes of alleged war crimes. These views have been taken into account in the Reform Plan.

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7. The Panel supports and has contributed input to reforms to ethics education and training.

## 2. Background

Dr Vivienne Thom AM, Mr Robert Cornall AO and Professor Rufus Black were appointed as members of the Afghanistan Inquiry Implementation Oversight Panel (the Panel) in November 2020 shortly before the release of the IGADF Afghanistan Inquiry Report.

The Panel provides independent oversight and assurance relating to Defence's response to the Afghanistan Inquiry and reports directly to the Minister for Defence.

The Panel is working collaboratively with Defence engaging with Accountable Officers on an ongoing basis to enable the Panel to provide feedback and identify any concerns as individual initiatives are developed. Given the complexity of the proposed reforms the implementation process is expected to be iterative over an extended period of time.

The Panel has provided the previous reporting and advice to the then Minister for Defence or Acting Minister:

1. *First Quarterly Report to the Minister*, 1 February 2021 (Attachment A)

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3. *Organisational accountability and broader causes of alleged war crimes*, 12 March 2021, including discussion papers on *Defence's organisational responsibility* and *Broader causes of alleged war crimes* (Attachment C).

## 3. The Meritorious Unit Citation

The Brereton Inquiry Report recommended that the award of the Meritorious Unit Citation (MUC) to SOTG (Task Force 66) should be revoked. The report explained that the revocation of the award would be 'an effective demonstration of the collective responsibility and accountability of the Special Operations Task Group as a whole for those events'.

The Panel understands that the Minister for Defence announced on 19 April 2021 that the government would not be accepting this recommendation. Notwithstanding this announcement, the Panel thought it still appropriate to place the Panel's own considerations on this issue on the record in this report.

Following briefings by the Chief of the Defence Force, as well as discussions with focus groups at Defence Special Operations Training and Education Centre, and 2nd Commando Regiment, the Panel framed the following principles:

- Families of soldiers who have been killed, or who have taken their own lives, should not be subjected to further trauma by the revocation of the MUC.
- The majority of individuals did not participate in misconduct. Revocation seems disproportionate and unfair.
- In particular, support personnel were not in a position to prevent or report misconduct.

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- A unit revocation action would appear to target operational personnel. (At this stage, it is still not clear what action is being taken in respect of more senior officers and Defence senior leaders.)
- Revocation that would affect individuals should not occur without some level of procedural fairness for those individuals.
- The withdrawal of the citation on a case-by-case basis for individuals who are found guilty of criminal acts is reasonable.

The Panel's advice to Defence aligns with the Minister's recent decision about the Meritorious Unit Citation.

#### 4. Support for current and former service personnel and their families

Clause 15c of the Oversight Panel's terms of reference require the Panel to report on 'Whether appropriate welfare and legal support is being provided to persons affected by the Inquiry...'.

##### Welfare support

The Panel's discussions with stakeholders including currently serving personnel have highlighted that there is a reluctance to access existing support services. This issue was discussed openly in focus groups. The Panel has raised this matter with Defence and will continue to monitor Defence's response to this issue.

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## 5. The Afghanistan Inquiry Reform Plan

In accordance with its terms of reference, the Panel is required to report to the Minister on the thoroughness and effectiveness of the Implementation Plan and may recommend additional actions not contemplated in the Inquiry's recommendations or subsequently initiated by the Secretary of Defence or the Chief of the Defence Force.

The Panel believes that the overall objective of Defence's Reform Program should be to ensure that Defence's total response to the Brereton Report gets to the root causes of the culture and behaviour that resulted in the need for the Afghanistan Inquiry and to ensure that the risk of crimes in the future is minimised and if they occur, they are quickly detected. This will help ensure the Government is provided with the Special Operations Forces it needs for the future.

### General observations on the Reform Plan

The Panel has been provided with a draft copy of Defence's Afghanistan Inquiry Reform Plan dated 5 May 2021. The Plan represents the framework that Defence will follow to respond to the IGADF Afghanistan Inquiry recommendations.

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The Plan aims to implement all the Brereton Report's recommendations, conduct further root cause analysis to determine what else needs to be done, and tie in other reform work in the Transformation Program and in the Special Forces organisation that is already underway.

The Panel is pleased to note that Defence has taken on board in a very constructive way the feedback that the Panel has provided. For example it is clear that Defence acknowledges that:

- Serious and systemic organisational and cultural failures, coupled with failures in command accountability, are ultimately the explanation for Defence's failure to prevent, detect or respond to misconduct as serious as that identified and alleged by the Inquiry.
- There is a need to address profound command, leadership and cultural failures.

The Panel's initial comment about the draft implementation plan provided in late 2020 was that it appeared to be 'a plan for a plan'. By way of contrast, the current Plan has two clear objectives (to address the past and prevent recurrence) and a comprehensive integrated framework for the management of a large number of disparate but related matters and programs. The Plan has come a long way as a result of Defence's thinking and the Panel's input and that gives the Panel a degree of confidence as Defence prepares to move forward with its implementation.

The overall structure of the Plan is coherent and does the job well of folding the Brereton Report into a broader program. The structure around the two objectives works well as do the packages of work. The design ensures there is line of sight to the Brereton work and alignment with the broader transformation effort.

- While much lies in execution, the overall approach provides a sound basis for starting the big task of implementation. Defence leadership and the Panel will now need to monitor the outcomes carefully to ensure they match the intent.

#### Organisational accountability and broader causes of alleged war crimes

Senator the Hon Linda Reynolds CSC requested the Panel to provide advice about the particular issues of whether Defence's proposed response to the responsibilities and accountabilities of the chain of command is appropriate and sufficient, and whether the Brereton recommendations fully address the broader cultural and behavioural issues.

The essential task of the Brereton Inquiry was to ascertain whether there was any substance to rumours and reports of breaches of the Law of Armed Conflict by elements of the Special Operations Task Group in Afghanistan between 2005 and 2016. The recommendations of the inquiry necessarily reflect that objective but may not fully address the broader cultural and behavioural issues.

While the Report's recommendations indicate areas of enquiry requiring further attention, they do not comprehensively deal with either the organisational responsibility and accountability for, or the wider causes that underpinned, the alleged criminal offences and other significant misconduct. The Panel has heard disagreement with the Inquiry Report's virtually blanket exemption of the most senior levels of the Defence hierarchy from that responsibility.

The Panel considered the draft Implementation Plan provided in December 2020 as well as information received through briefings and on 12 March 2021 provided the Acting Minister with two discussion papers that set out the Panel's preliminary views on organisational accountability and the broader causes of alleged war crimes (these papers are included in Attachment C). In summary, the Panel questioned whether the draft Implementation Plan was sufficient to address these broader issues and suggested that Defence should consider what occurred in Afghanistan from a top-down

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perspective and assess the extent to which organisational and governance policies and structures were contributing factors.

The main purpose of such enquiry would not be to apportion responsibility and accountability to specific officers (although that could happen) but to:

- determine if Defence's organisational and governance policies and structures contributed to the alleged crimes and other misconduct over a period of years including failing in its fundamental obligation to enforce strict compliance with the Law of Armed Conflict and all the supporting standard operating procedures, regulations, and protocols, and
- if so, recommend the development of a remediation plan to redress those organisational and governance issues.

The Panel did not propose a further extensive external review. It suggested to Defence that it would be appropriate for such a broad top-down analysis to be conducted as a 'lessons learnt' exercise led by a very senior official in Defence who is sufficiently removed from the events in the Report. This exercise would not seek to apportion individual responsibility. There is no expectation that it would involve extensive procedural fairness steps.

Reflecting these discussions, the Reform Plan states that it will:

*Identify, design and implement the transformational reform necessary to address what went wrong and prevent (or promptly detect and respond to) any future issues.*

This will require the identification and analysis of the underlying root causes relating to organisational accountability and the broader causes of alleged war crimes. The Panel will closely monitor this work to ensure it addresses these issues.

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## 7. Ethics education and training

The Panel held preliminary discussions with staff at Defence Special Operations Training and Education Centre and at the Australian Defence College about education and training in military ethics. The Panel will further consider the draft Military Ethics Doctrine. The Panel noted the need for any approach and methodology to be taught and reinforced in a consistent manner throughout Defence. Ongoing quality assurance will be required if the delivery is to be provided in a distributed way and integrated broadly into diverse training exercises.

The Panel has observed that questions of military ethics and law are likely to become more complex in the near-future operating environment any discussion about operating in the Grey Zone necessarily introduces ambiguities that were not apparent in, for example, operations in Afghanistan. Any future approach must be flexible and robust to contemplate such a changed

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environment and will likely require a whole of government approach. The Panel will monitor these developments.

## 8. Engagement with stakeholders

The Panel continues to meet with as many with current and former Defence personnel, external government agencies and non-government stakeholders as practicable. In February to May 2021 the Panel met with a wide range of Defence and other personnel including:

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- HQ, Joint Operations Command (11 March 2021)
- Dr Tom Frame (11 March 2021)
- Defence Special Operations Training and Education Centre, Holsworthy (17 March 2021)
- 2nd Commando Regiment Holsworthy (18 March 2021)
- Australian Defence College (16 April 2021)

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Further discussions are being arranged with:

- Special Air Services Regiment Perth
- Joint Military Police Unit (formerly the ADF Investigative Service)
- Relevant ex-service organisations including Australian Special Air Service Association, the Commando Association and The Bravery Trust.
- Other stakeholders named in paragraph 27 of the Panel's terms of reference.

## 9. Future reports

The Panel will continue to report to the Minister quarterly in accordance with its terms of reference and raise other matters when dictated by circumstances or concerns.

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Dr Vivienne Thom AM  
Lead, Afghanistan Inquiry Implementation Oversight Panel  
12 May 2021

## Attachments

A. *First Quarterly Report to the Minister*, 1 February 2021.

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C. *Organisational accountability and broader causes of alleged war crimes*, 12 March 2021, including discussion papers on *Defence's organisational responsibility* and *Broader causes of alleged war crimes*.

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MS 21-000001

Senator The Hon Linda Reynolds CSC  
Minister for Defence  
Parliament House  
CANBERRA ACT 2600

Dear Minister

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Clause 15c of the Oversight Panel's terms of reference require the Panel to report on 'Whether appropriate welfare and legal support is being provided to persons affected by the Inquiry...'.

The Panel has held initial discussions with the National Chair of the ASAS Association and with Defence. These initial discussions raised issues relating to s34

s34 A copy of a discussion paper on these matters provided to Defence on 10 February 2021 is at **Attachment A**.

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The Panel would be pleased to meet with you to discuss these matters at your convenience.

Yours sincerely

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**Dr Vivienne Thom AM**  
**26 February 2021**

**Attachments:**

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## AFGHANISTAN INQUIRY IMPLEMENTATION OVERSIGHT PANEL

### DISCUSSION PAPER 1

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#### 1. Background

Clause 15c of the Panel's terms of reference require the Panel to report on:

Whether appropriate welfare and legal support is being provided to persons affected by the Inquiry...

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While s47F comments related to past and present members of the SASR, all persons caught up in the response to the Afghanistan Inquiry Report are in a similar situation.

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### 3. Legal assistance

So far, Defence Legal is providing assistance through Defence appointed lawyers on a case by case basis. The assistance is being granted in accordance with the Attorney-General's Legal Services Directions 2017 Appendix E – Assistance to Commonwealth Employees for Legal Proceedings.

The general policy underlying the provision of Appendix E legal assistance is the prospect of some benefit for the Commonwealth's financial interests or its general interests including, in particular, to act properly as an employer in supporting employees who have acted reasonably and responsibly in circumstances where the Commonwealth may not be vicariously liable for their actions (paragraph 4).

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MS 21-000002

Senator the Hon Marise Payne  
Acting Minister for Defence  
Parliament House  
CANBERRA ACT 2600

Dear Minister

**Organisational accountability and broader causes of alleged war crimes**

In accordance with its terms of reference, the Afghanistan Inquiry Implementation Panel (the Panel) is to provide independent oversight and assurance to the Minister for Defence relating to the Department of Defence's response to the Afghanistan Inquiry (the Brereton Report). The Panel is required to report to the Minister on the thoroughness and effectiveness of the Implementation Plan and may recommend additional actions not contemplated in the Inquiry's recommendations or subsequently initiated by the Secretary of Defence or the Chief of the Defence Force.

Senator the Hon Linda Reynolds CSC requested the Panel to provide advice about the particular issues of whether Defence's proposed response to the responsibilities and accountabilities of the chain of command is appropriate and sufficient, and whether the Brereton recommendations fully address the broader cultural and behavioural issues.

The Panel has considered the draft Implementation Plan provided in December 2020 as well as information received through briefings. We have provided Defence with two discussion papers (attached) that set out our preliminary views on these matters. In summary, we question whether the draft Implementation Plan is sufficient to address these broader issues and suggest that Defence should consider how these matters can be adequately addressed.

The Panel will continue to engage with Defence on these issues as the Afghanistan Inquiry Reform Plan is developed.

The Panel looks forward to meeting with you to discuss these matters.

Yours sincerely

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**Dr Vivienne Thom AM**  
**12 March 2021**

**Encl: Discussion Paper 2: Defence's organisational responsibility**  
**Discussion Paper 3: Broader causes of alleged war crimes**



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## AFGHANISTAN INQUIRY IMPLEMENTATION OVERSIGHT PANEL

### DISCUSSION PAPER NO 2: DEFENCE'S ORGANISATIONAL RESPONSIBILITY

In accordance with its terms of reference, the Panel is to report to the Minister on the thoroughness and effectiveness of the Implementation Plan and may recommend additional actions which are not contemplated in the Inquiry's recommendations or subsequently initiated by the Secretary of Defence or the Chief of the Defence Force. The Minister emphasised this point in her initial briefing with the Panel.

The circumstances uncovered by the Afghanistan Inquiry constitute a catastrophic organisational and governance failure by Defence that is not fully addressed in Part 3 of the Inquiry's Report.

This discussion paper sets out the Panel's initial thoughts on Defence's organisational responsibility and accountability for the events that occurred in Afghanistan.

#### **1. Bottom up allocation of command responsibility and accountability**

The essential task of the Brereton Inquiry was to ascertain whether there was any substance to rumours and reports of breaches of the Law of Armed Conflict by elements of the Special Operations Task Group in Afghanistan between 2005 and 2016. The Inquiry's recommendations necessarily reflect that objective.

The Inquiry investigated allegations of war crimes committed outside the wire by troopers and NCOs and then looked from the bottom up to see if any more senior officers had any potential criminal responsibility for their actions.

The Inquiry's findings about command and collective responsibility for the events under investigation are set out in Chapter 3.03 of the public version of the Report. Brereton found:<sup>1</sup>

- the criminal behaviour was conceived, committed, continued, and concealed at patrol commander level, and it is overwhelmingly at that level that responsibility resides
- there is no credible evidence that any troop/platoon, squadron/company or SOTG commander knew that, or was recklessly indifferent as to whether, subordinates were committing war crimes

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<sup>1</sup>Pages 470-472


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- there is no credible evidence of failure by more senior officers up to troop/platoon, squadron/company or SOTG commander to take reasonable and practical steps that would have prevented or discovered the war crimes, and
- command responsibility and accountability does not extend to higher headquarters, including HQ JTF 633 and HQ JOC as they did not have a sufficient degree of command and control to attract the principle of command responsibility.

In this regard, the Inquiry noted that theatre command of HQ JTF 633 was assigned under the operational command of ISAF Special Operations Forces. While HQ JOC sought to exercise national command over SOTG, Headquarters JTF 633 and JTF 633-A sat outside the operational command chain and it did not have effective oversight of or influence on day-to-day SOTG planning and operations<sup>2</sup> or SOTG's interaction with ISAF SOF (including US Special Forces).

The Report also found that:

- SOTG troop, squadron and task group Commanders bear moral command responsibility and accountability for what happened under their command and control
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- that responsibility is to some extent shared by those who have not been prepared to call out criminal conduct or decline to accept that it occurred.

It is not clear from the Inquiry's public report what actions should or could result from these findings about command responsibility as much of Chapter 3.03 has been redacted. The three (out of four) recommendations which have not been redacted deal only with the review of decorations and revocation of the Meritorious Unit Citation.

While the Report's recommendations in Chapter 3 indicate areas of enquiry requiring further attention, they do not comprehensively deal with either the organisational responsibility and accountability for, or the wider causes that underpinned, the alleged criminal offences and other significant misconduct.

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<sup>2</sup> See Strategic and Operational Factors, page 333, paragraph 20

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## **2. Implementation plan and other reforms**

The Implementation Plan and other ongoing reforms follow on from that starting point of bottom up allocation of responsibility and accountability. They are focused primarily at the operational and not Defence's most senior governance level.

As a result, the reforms are contained in a reasonably narrow compass focused mainly on the middle and lower ranks. Examples of those reforms include: improved selection processes; recruitment into Special Forces not regiments; better ethics training; periods of service outside Special Forces Command; and so on.

By framing Defence's response to the Report in that way, the Panel considers the Plan does not pay appropriate attention to Defence's corporate responsibility as an organisation. The Panel has already sensed or directly noted disagreement with the Inquiry Report's virtually blanket exemption of the most senior levels of the Defence hierarchy from that responsibility.

## **3. Top down allocation of responsibility and accountability**

In the private sector, major corporate failures result in both organisational and individual responsibility. A common first step in responding to such a governance failure is for the leaders to accept organisational responsibility and announce plans to address the issues raised and improve governance arrangements to prevent it happening again.

As part of its collective accountability, the organisation may: face criminal charges or regulatory sanction; meet compensation claims; incur reputational damage; lose market share; and suffer significant falls in its share price.

As part of individual responsibility, senior officers who held office when the corporate failure took place may suffer the following outcomes: the Chair of the Board and the Chief Executive Officer may resign or be dismissed; other officers may be dismissed or demoted; and some officers with direct involvement in the circumstances of the failure may be the subject of disciplinary proceedings or criminal charges.

Personal knowledge or direct involvement of the senior officers in the causes or behaviour that led to the corporate failure are not required. The responsibility and accountability arises not from the directors' or senior officers' direct acts or omissions but the corporate failure to identify and prevent unacceptable behaviour and, in some cases, unlawful conduct over which they presided. In short, their responsibility arises from the fact that the failure occurred on their watch.

Some recent examples include:

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- National Australia Bank following the findings of the Hayne Royal Commission (resignation of Chair and Chief Executive Officer)
- Australian Mutual Provident Society following the findings of the Hayne Royal Commission (resignation of Chair and Chief Executive Officer)
- Rio Tinto following the destruction of the Juukan caves (resignation of Chief Executive Officer), and
- Crown Casino following the Bergin Inquiry findings of money laundering (leading to the resignation of several directors and the loss of the Casino's New South Wales licence to operate).

There are similar examples in the Australian Public Service such as the removal of the Secretary and the most senior officers in the Department of Immigration and Multi-Cultural and Indigenous Affairs as a result of the 2005 Palmer Inquiry into wrongful detention of an Australian citizen, Ms Cornelia Rau.<sup>3</sup>

Given the passage of time and the changes in senior ranks since the incidents uncovered by Brereton took place, those examples do not neatly provide a direct comparison for Defence's situation now. However, they are examples of a top down approach to organisational and collective responsibility and accountability for what has occurred in the past and they indicate the need for Defence to consider:

- the shortcomings in its governance arrangements that caused or allowed this organisational failure to take place
- whether any senior officers who held office at the relevant time bear any personal responsibility for those shortcomings, and
- the steps Defence should take to ensure its future governance arrangements will prevent such failure occurring again.

#### **4. Possible indicators of organisational responsibility and accountability**

The Brereton Report identifies indicators that all was not well within Special Forces. s47C

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<sup>3</sup>The Report contains an interesting analysis of DIMIA leadership shortcomings and adverse cultural issues which resulted in corporate failure and senior managers' accountability for it: see Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau Report, July 2005, Chapter 7, Culture, Structure and Operations, page 160

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- intelligence, surveillance and reconnaissance assets were typically pushed off target once the Force Element was there (paragraph 55)
- a practice evolved of delaying the reporting of engagements until after the Force Element returned to Multi-National Base – Tarin Kowt (paragraph 56)
- the sanitisation of information (apparent for its formulaic presentation) before it came to the notice of commanders at squadron/company level (paragraph 57)
- a consistent presumption on the part of the chain of command and a number of inquiry personnel that complaints by local elders were part of an insurgent strategy or were driven by compensation (paragraphs 64 and 76)
- there may well have been a sense ... not least because of the numbers of enemy killed in action (EKIA), and the number of them who were found to be unarmed, or armed only with a pistol, grenade or ICOM, but to have been manoeuvring tactically against the Force Element, that the ROE were being exploited, and lethal force was being used very readily when perhaps it was not always necessary (paragraph 69)
- ethical leadership was compromised by its toleration, acceptance and participation in widespread disregard for behavioural norms: such as drinking on operations, the Fat Lady's Arms, and lax standards of dress, personal hygiene and behaviour – not only on operations – which would not have been tolerated elsewhere in Army (paragraph 71)
- there was at least an 'abandoned curiosity' in matters which ought to have attracted attention (paragraph 72)
- obfuscation in reports and operational reporting which was bland and stereotyped ... Aspects which might have attracted attention or questions were sanitised, and in many cases the reports bore no real resemblance to actual events (paragraphs 73 and 74)
- there was the embracing of what Professor Whetham calls 'inappropriate metrics of success', or more crudely the EKIA count (paragraph 77), and
- because SOTG was a task group drawn from multiple troop contributing units and multiple rotations, each SOTG Commanding Officer acquired a mix of personnel with which he had typically little prior influence or exposure. There was little opportunity for the Commanding Officer of any SOTG rotation to create a SOTG culture (paragraph 81).

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The Inquiry engaged Professor David Whetham to provide an independent professional assessment of command as distinct from criminal responsibility for the crimes of their subordinates. The assessment is entitled Special Operations Command Leadership and Ethics Review and it is included in Chapter 3.03.<sup>4</sup> Professor Whetham covers much of the same ground but provides some fresh perspectives:

- contributing to this gradual decline in standards was fatigue and a general sense of loss of purpose. Fatigue is an issue that is going to be a factor on any deployment and ... is also recognised as a major ethical risk factor in its own right. Insufficient sleep and fatigue lead to poor judgment, lack of self-control, and impaired creativity as well as increasing the likelihood that people will engage in unethical behaviour (paragraph 26)<sup>5</sup>
- the disenchantment caused by 'catch and release' also added to that sense of fatigue ... One could conclude from this that it is not surprising that a decline in standards of behaviour coincided with a loss of sense of purpose for some in SOCOMB (paragraph 28)
- 'There is a culture of silence and I do think people get ostracised who potentially speak out against it. There's also the people who stay silent and they tend to continue on.' ... Others, including lawyers, who couldn't reconcile what they saw with what they thought should have happened just left the organisation (paragraph 50)
- this environment meant that those with the specific responsibility to sustain the integrity of the chain of command, the link between operations on the ground and the operational and strategic ambition, were unable to perform this task due to physical and cultural separation from operations on the ground (paragraph 51)
- beyond the excessive willingness of so many people to take things at face value when told from those outside of the wire of what had happened, there were also others who played a more active role. Many things were simply not reported upwards or were intentionally hidden by those who were in a position to look after their personnel and possibly believed that shielding subordinates was part of their job requirement (paragraph 58)
- some Joint Operations Command lawyers above the SF Task Group started to try and assert some control over what they increasingly believed were 'sanctioned

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<sup>4</sup> Pages 504-529  
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massacres'. The ROE were tightened up, but there was scepticism about whether this had any actual effect as 'SF just got more creative in how they wrote up incidents'. As the lawyers started to become more 'troublesome', the SF unit started to rely more on their own lawyers, 'with the promise of being inside their elite tent, doing cool stuff in return for legally polishing their version of events and the truth in a way that created enough doubt as to exonerate them ...' ... It was considered normal practice to change the Intelligence Summary that was supposed to drive activity to accord with what actually happened on the ground (paragraph 60)

- complaints made by or through the International Committee of the Red Cross, the Afghan Independent Human Rights Commission, or local elders – a number of which can now be seen to have substance – were routinely passed off as Taliban propaganda or motivated by a desire for compensation (paragraph 61)
- there is also the observation that appropriate scrutiny from higher up may have been avoided in part, due to the SF officers who have proliferated throughout the ADF ... On the other hand, it is notable that the present inquiry was instigated and continued under two Chiefs of Army, both with SF backgrounds (paragraph 64), and
- it is clear that a wider organisational accountability for creating a system that made those failures possible is also required (paragraph 71).

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## 5. Advice

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## AFGHANISTAN INQUIRY IMPLEMENTATION OVERSIGHT PANEL

### DISCUSSION PAPER NO 3: BROADER CAUSES OF ALLEGED WAR CRIMES

In accordance with its terms of reference, the Panel is to report to the Minister on the thoroughness and effectiveness of the Implementation Plan and may recommend additional actions that are not contemplated in the Inquiry's recommendations or subsequently initiated by the Secretary of Defence or the Chief of the Defence Force. The Minister emphasised this point in her initial briefing with the Panel requesting the Panel to advise on whether the Brereton recommendations fully address the causes of the alleged war crimes.

The Panel has set out some preliminary thoughts based on our inquiries to date to assist with further discussion and inquiries. This analysis does not seek to be conclusive or suggest these are the only causes or that they might not helpfully be characterised in different ways. However, it does indicate a thorough analysis of the broader causes and how they are best addressed is important.

#### Context

The Brereton Report had a specific task to identify individuals who may have breached the relevant laws governing war crimes. In reflecting on what he had learnt more broadly Brereton did not see responsibility or accountability for these alleged crimes reaching beyond those directly involved in committing the alleged crimes or their immediate supervisors.

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If Australia wants to reduce the risk of similar events then serious attention needs to be given to what created those conditions and what reforms are needed to prevent those conditions occurring again in future.

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## AFGHANISTAN INQUIRY IMPLEMENTATION OVERSIGHT PANEL

### REPORT NUMBER 3: QUARTERLY REPORT TO THE MINISTER FOR DEFENCE May - July 2021

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#### 1. Key points

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3. The Panel was concerned that the release of the Afghanistan Inquiry Reform Plan should not be delayed because delay could serve to undermine its importance and any sense of urgency in its implementation. The Department's release of the Plan on 30 July 2021 has addressed that concern

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6. The Panel continues to provide input to reforms to ethics doctrine, education and training.

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## 2. Background


Dr Vivienne Thom AM, Mr Robert Cornall AO and Professor Rufus Black were appointed as members of the Afghanistan Inquiry Implementation Oversight Panel (the Panel) in November 2020 shortly before the release of the IGADF Afghanistan Inquiry Report.

The Panel provides independent oversight and assurance relating to Defence's response to the Afghanistan Inquiry and reports directly to the Minister for Defence.

The Panel is required to report quarterly to the Minister. This is the third report and covers the period 1 May to 31 July 2021.

## 3. Support for current and former service personnel and their families

Clause 15c of the Oversight Panel's terms of reference require the Panel to report on 'Whether appropriate welfare and legal support is being provided to persons affected by the Inquiry...'.  
s34



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## 4. The Afghanistan Inquiry Reform Plan

The Panel has been advised that the Afghanistan Inquiry Reform Plan was publicly released on 30 July 2021. This action addresses the Panel's prior concern that release of this Plan should not be delayed beyond the end of that month. Widespread acceptance of the importance of the Reform Plan will be essential to its success. Further delay may have served to undermine its status and any sense of urgency in its implementation.

The Panel will continue to meet regularly with Defence Leadership to monitor the outcomes carefully to ensure they match the intent.

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## 5. Organisational and command accountability

The Panel previously highlighted the requirement of identification and analysis by Defence of root causes relating to organisational accountability along with broader causes of alleged war crimes and suggested a broad top-down analysis as a 'lessons learnt' exercise led by a very senior official in Defence who is sufficiently removed from the events in the Report.

The Panel have also been advised that the Chief of the Defence Force has appointed Major General Hocking as the lead to conduct a lesson learned exercise 'Preparing for the Future: Key organisational Lessons from the Afghanistan Campaign' that will canvas a broad range of inputs including the IGADF Inquiry Report.

The Panel has met with Major General Hocking and will maintain a watching brief on his project.

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## 8. Ethics doctrine, education and training

The Panel has had ongoing discussions about the development of Defence's Military Ethics Doctrine. The Panel understands that this Doctrine is to form the basis of the whole-of-ADF approach to military ethics and will be the foundation for understanding ethics and a guide for ethical training and development to be used across all ranks of the ADF. As such it is essential that the document is coherent and conceptually clear, and that the general principles it articulates will be practically applicable to the broad range of military activities in which the ADF is expected to engage in the future.

The Panel notes that substantial changes have been made to the draft Doctrine in light of feedback from the Panel and others. While the Panel has not yet comprehensively reviewed the current draft, its preliminary view is that the Doctrine does not yet fully satisfy the requirements of such an important foundational document. The Panel will discuss this issue further at a meeting scheduled with the Australian Defence College on Thursday 12 August 2021.

## 9. Engagement with stakeholders

The Panel continues to meet with as many current and former Defence personnel, external government agencies and non-government stakeholders as practicable. In May to July 2021 the Panel met with a wide range of Defence and other personnel including:

- Australian Defence College members (3 May 2021)
- s47F
- 
- Mr Adrian D'Amico, Chief Counsel and AIRCDRE Keane, Director General – Military Legal Services (21 May 2021)
- s47F
- Lieutenant General Rick Burr, Chief Army and Brigadier Jane Spalding, Director General Sensitive Issues Management – Army (4 June 2021)
- Ms Nina Harvey, Defence Assistant Secretary Inquiry Implementation (Reform Plan) and PwC Benefits Realisation Work (4 June 2021)
- Attended SOCOMD Ethical Leader Course (17 June 2021)
- Rear Admiral Jamie Hatcher, acting CJOPS (16 July 2021)
- s47F
- Ms Katherine Jones, Associate Secretary and Mr Adrian D'Amico, Chief Counsel (26 July 2021)
- Major General Andrew Hocking, Project Lead - Preparing for the Future (26 July 2021)
- SASR Command (26 July 2021)

Further discussions are being arranged with:

- Major General Mick Ryan, Commander Australian Defence College
- Special Air Services Regiment Perth (the proposed visit in August has been postponed)
- Joint Military Police Unit (formerly the ADF Investigative Service)
- Relevant ex-service organisations including Australian Special Air Service Association, the Commando Association and The Bravery Trust.

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- Ms Justine Greig, Deputy Secretary Defence People
- Other stakeholders named in paragraph 27 of the Panel's terms of reference.

#### 10. Future reports

The Panel will continue to report to the Minister quarterly in accordance with its terms of reference and raise other matters when dictated by circumstances or concerns.

Dr Vivienne Thom AM  
Lead, Afghanistan Inquiry Implementation Oversight Panel  
3 August 2021

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AFGHANISTAN INQUIRY IMPLEMENTATION OVERSIGHT PANEL

**REPORT NUMBER 4: QUARTERLY REPORT TO THE MINISTER FOR DEFENCE**  
**August – October 2021**

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Key points

- As proposed by the Panel, the Afghanistan Inquiry Legal Assistance Scheme commenced on 30 September 2021.

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- The Panel continued to engage with and influence the development of the Defence Military Ethics Doctrine which has now been finalised.

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## 1. Background


Dr Vivienne Thom AM, Mr Robert Cornall AO and Professor Rufus Black were appointed as members of the Afghanistan Inquiry Implementation Oversight Panel (the Panel) in November 2020 shortly before the release of the IGADF Afghanistan Inquiry Report.

The Panel provides independent oversight and assurance of Defence's response to the Afghanistan Inquiry and reports directly to the Minister for Defence.


The Panel is required to report quarterly to the Minister. This is the fourth report and covers the period 1 August to 31 October 2021.

## 2. Support for current and former service personnel and their families

Clause 15c of the Oversight Panel's terms of reference require the Panel to report on 'Whether appropriate welfare and legal support is being provided to persons affected by the Inquiry...'.  
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The new AILAS scheme commenced on 30 September 2021. We commend the efforts of Defence and the Attorney-General's Department for this achievement.  
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### 3. The Afghanistan Inquiry Reform Plan

During the reporting period the Panel was consulted on reform program documentation for benefits realisation and reform stream activities. The Panel will continue to monitor these matters.

### 4. Organisational and command accountability

The Panel previously highlighted the requirement of identification and analysis by Defence of root causes relating to organisational accountability along with broader causes of alleged war crimes. The Panel suggested a broad top-down analysis as a 'lessons learnt' exercise led by a very senior official in Defence who is sufficiently removed from the events in the Report.

The Chief of the Defence Force appointed Major General Hocking as the lead to conduct a lessons-learnt exercise 'Preparing for the Future: Key organisational Lessons from the Afghanistan Campaign' that will canvas a broad range of inputs including the IGADF Inquiry Report.

The Panel met with Major General Hocking and provided input to his report on 14 September and 8 October 2021. We are satisfied that the report is progressing well and will provide our views to you on the final report when it is published.

However, the lessons learnt report does not address the strong criticisms and sense of unfairness expressed by some present and past member of the Special Forces (particularly the SASR) about the lack of organisational and senior officer accountability for any aspect of the events that occurred in Afghanistan.

s47C



### 6. Ethics doctrine, education and training

In our previous quarterly report, the Panel advised that it was not satisfied that early drafts of Defence's Military Ethics Doctrine were fit for purpose. The Doctrine is to form the basis of the whole-of-ADF approach to military ethics and will be the foundation for understanding ethics and to guide ethical training and development to be used across all ranks of the ADF.

The Panel engaged further with Defence and Professor Black's suggestions influenced the broad shape of the final draft Doctrine subsequently approved by the Chiefs of Staff Committee.

This Doctrine will form the basis of an approach to be used by all ranks and applied in all

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situations – including operational situations that require quick but ethically sound decisions. The Panel will monitor how the Doctrine is rolled out and applied in practice.

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#### 8. Defence support to the Office of the Special Investigator

Defence's response to requests by OSI for information will be critical to ensure that investigations and prosecution briefs will be thorough, effective and timely. In particular, any delays in the provision of information could hamper the work of OSI and cause detriment to individuals who may be the subject of investigation and possible prosecution.

While the work of OSI itself is outside of the Panel's terms of reference, the Panel will monitor Defence's response in supporting the work of OSI.

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#### 10. Engagement with stakeholders

The Panel continues to meet with as many current and former Defence personnel, external government agencies and non-government stakeholders as practicable. In August to October 2021 the Panel met with a wide range of Defence and other personnel including:

- Defence Special Operations Training and Education Centre staff (9 August 2021)
- Major General Mick Ryan, Australian Defence College (12 August 2021)
- Afghanistan Inquiry Response Task Force, Ethics Doctrine stakeholders (20 August 2021)
- s47F
- Special Operations Command staff (30 August 2021)
- Lieutenant General Rick Burr, Chief Army (31 August and 14 September 2021)
- Major General Andrew Hocking, Project Lead – Afghanistan Campaign Lessons (14 September and 8 October 2021)
- Major General Natasha Fox, Defence Personnel Group (24 September 2021)
- Ms Nina Harvey, Assistant Secretary Afghanistan Inquiry Response Task Force (24 September 2021)
- Joint Health Command and Directorate of Army Health staff (8 October 2021)
- Mr Adrian D'Amico, Chief Counsel (22 October 2021)
- s47F

Unfortunately, planned visits to Special Operations Command units were cancelled due to COVID-19 travel restrictions as follows:

- Special Air Services Regiment Perth (9-12 August 2021)
- Commando Selection Course Holsworthy (12-13 October 2021).

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Further discussions are being arranged with:

- Special Operations Command staff (12 or 19 November)
- Chief of Joint Operations (12 or 19 November)
- Special Air Services Regiment Perth (to replace the postponed August visit)
- Relevant ex-service organisations including Australian Special Air Service Association, the Commando Association and The Bravery Trust
- Other stakeholders named in paragraph 27 of the Panel's terms of reference.

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AFGHANISTAN INQUIRY IMPLEMENTATION OVERSIGHT PANEL

REPORT NUMBER 5: QUARTERLY REPORT TO THE MINISTER FOR DEFENCE  
November 2021 – January 2022

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1. Key points

- The work of the Office of the Special Investigator (OSI) is critical. Defence must ensure that its support to OSI is properly resourced as an ongoing function and that the Afghanistan Inquiry Response Task Force receives prompt assistance from other areas in Defence when required.
- The Panel has received further briefing on Special Operations Command reform but has not yet visited Special Air Services Regiment in Perth to assess the situation. This is a priority for the next quarter.

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## 2. Background

Dr Vivienne Thom AM, Mr Robert Cornall AO and Professor Rufus Black were appointed as members of the Afghanistan Inquiry Implementation Oversight Panel (the Panel) in November 2020 shortly before the release of the IGADF Afghanistan Inquiry Report.

The Panel provides independent oversight and assurance relating to Defence's response to the Afghanistan Inquiry and reports directly to the Minister for Defence.

The Panel is required to report quarterly to the Minister. This is the fifth report and covers the period 1 November 2021 to 31 January 2022.

## 3. The Afghanistan Inquiry Reform Plan

During the reporting period the Panel was consulted on reform program documentation for Reform Stream activities being led by Joint Operations Command and Joint Health Command.

Initiatives being led by Joint Operations Command are largely coming to their planned conclusion and the Panel does not have any issues of concern to raise about those matters.

The body of work to be progressed by Joint Health Command in 2022 is, by comparison, much greater. The Panel was briefed on the outcomes of Defence's internal analysis of the adequacy of psychological services and support provided to operationally deployed staff and to Special Operations Command employees, in particular. Significant work is planned for the next six months to remediate gaps and consider opportunities for improvement.

## 4. Defence Support to the Office of the Special Investigator

Clause 15g of the Oversight Panel's terms of reference require the Panel to report on '*whether Defence is adequately positioned, resourced and empowered to appropriately support the response to the Inquiry by other Australian Government entities...*'.

In this quarter, the Panel sought details from the Afghanistan Inquiry Response Task Force (AIRTF) on:

- the administrative framework it is using to conditionally disclose information in response to Requests for Information from the Office of the Special Investigator (OSI), and
- resourcing and information technology approaches being taken by Defence, having regard to the complexity of the ADF's operational record holdings.

The Panel was briefed on the scope and complexity of the task of responding to requests for information from the Royal Commission into Defence and Veteran Suicide, the current defamation case, as well as from the OSI. While recognising these competing priorities, the Panel notes the need for support to OSI to be regarded as important and ongoing work which will require adequate and stable resourcing and prompt assistance from other areas in Defence, in addition to that provided for the Royal Commission and other court cases.

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## 5. Special Operations Command Reform

Clause 15d of the Oversight Panel's terms of reference require the Panel to report on *'the degree to which governance and cultural reform undertaken in Defence, Army and Special Operations Command since 2015 has already addressed elements of the findings and recommendations of the Inquiry; by way of a holistic review of previous reforms and reports on reform that have already been completed, including advice on the efficacy of actions arising from these recommendation, particularly associated with systemic issues, and any outstanding actions from those reforms'*.

Across this quarter, the Panel continued to engage with Special Operations Command on its implementation of recommendations from the 2018 and 2020 Irvine Reviews; especially those intended to instil a whole-of-Command culture and ethos across the organisation. Due to COVID travel restrictions, the Panel has still not been able to visit Special Air Services Regiment in Perth but considers this to be a priority to assess the situation at first hand.

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## 8. Engagement with stakeholders

The Panel continues to meet with as many current and former Defence personnel, external government agencies and non-government stakeholders as practicable. In November 2021 to January 2022 the Panel met with:

- Special Operations Command staff (26 November 2021)
- Lieutenant General Greg Bilton, Chief Joint Operations (26 November 2021)
- Rear Admiral Sarah Sharkey, Surgeon General of the ADF and Commander Joint Health (9 December 2021)
- Brigadier Jocelyn King, Afghanistan Inquiry Response Task Force (9 December 2021).

Unfortunately, planned activities for 12 November 2021 and 19 November 2021 were cancelled due to scheduling conflicts with the Defence Senior Leadership Group, which meant that Action and Accountable Officers under the Afghanistan Inquiry Reform Plan were uniformly unavailable on those days. Similarly, a Defence directive for staff to maximise their leave opportunities over the December to January stand-down period reduced opportunities

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available to the Panel for engagement.

Further discussions are being arranged with:

- The AIRTF Leadership group on their priorities for 2022
- The newly formed Defence Data Division on challenges to data discovery in support of information requests from the Office of Special Investigator
- Special Air Services Regiment Perth (subject to travel restrictions)
- Special Operations Command on ethical armouring for future operations and the outcomes of a commercial survey recently undertaken into retention factors
- Other stakeholders named in paragraph 27 of the Panel's terms of reference.

## 9. Future reports

The Panel will continue to report to the Minister quarterly in accordance with its terms of reference and raise other matters when dictated by circumstances or concerns.

Dr Vivienne Thom AM  
Lead, Afghanistan Inquiry Implementation Oversight Panel  
8 February 2022

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AFGHANISTAN INQUIRY IMPLEMENTATION OVERSIGHT PANEL

**REPORT NUMBER 6: QUARTERLY REPORT TO THE MINISTER FOR DEFENCE**  
**February 2022 – April 2022**

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## Current status of reform: future capability and morale of Australia's Special Forces

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In the 18 months since the publication of the IGADF report, Defence has made good progress in the design and implementation of many aspects of the reform program. s47C

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### 2. Leadership

In March 2021 the Panel questioned whether Defence's response adequately addressed the issue of organisational responsibility and accountability. Since then, the question of senior leadership responsibility has been raised repeatedly in our discussions with ADF members, in the media and by other stakeholders

There are two issues. First, senior Defence officers did not enforce SF's compliance with standard Defence rules and regulations and (in Brereton's words) displayed "wilful blindness" to indicators

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that things were not as they should be. Even where officers were directly aware of breaches, they did nothing or even participated (for example, drinking at the Fat Lady's Arms). At present, the Panel understands that ADF disciplinary procedures deal with actions but not failure to act.

The second issue is that the failure for any accountability to be required from senior officers (as would occur in the Australian Public Service or the private sector) is widely resented in the SF and a factor contributing to lowered morale.

The Panel suggests that, until this issue is directly addressed in some way, the reform program will not be able to satisfy all of the Minister's objectives. Given the passage of time since the Afghanistan events, the only likely solution appears to be to spell out future accountability expectations of senior officers and the consequences of falling short. Failure to address this issue could also seriously compromise the moral authority of current and future Defence leaders.

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## 5. Ethics

Good progress has been made in further developing the ADF's Ethics Doctrine as part of general training. It will be important to ensure that the doctrine is also well-understood by SF members during pre-deployment preparation and re-enforced while on deployment with application to the ethical circumstances of the specific operation.

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## Activities in this quarter

### 1. Visit to SASR

Dr Thom participated in a brief visit to take advantage of a number of key personnel gathering in Perth to attend the SASR Beret Parade on 25 March 2022. She discussed reform objectives with the Regiment's command team and engaged with a small cross-section of personnel about their personal experiences of working within the command. This visit is to be followed up with a visit by all three members of the Panel on 19-21 July 2022.

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### 2. Ethics Armouring for SF Future Operations

The Panel received compartmented security briefings on 9 March 2022 to enable an in-depth discussion on ethical armouring for future operations. The Panel was grateful for this comprehensive briefing which provided essential information in respect of the scope of some future operations.

### 3. Defence Support to the Office of the Special Investigator

Clause 15g of the Oversight Panel's terms of reference require the Panel to report on '*whether Defence is adequately positioned, resourced and empowered to appropriately support the response to the Inquiry by other Australian Government entities...*'.

In this quarter, the Panel met with Mr Chris Moraitis PSM and the Hon Mark Weinberg AO QC from the Office of the Special Investigator (OSI) to request their feedback on the adequacy of the administrative framework being using by Defence to conditionally disclose information. The Panel also questioned the resourcing and systems approaches being taken by Defence, having regard to the complexity of the ADF's operational record holdings.

The OSI reported that it recognised the considerable challenges faced by Defence, but had a very cooperative working relationship to ensure that the current process could be as efficient as possible.

The Panel suggests that the work of OSI should be given the same priority as the current Royal Commission into Defence and Veteran Suicide and the defamation court action to ensure prompt responses to requests for information and enable the prompt progress of any criminal charges in the future.

### 4. Finalisation of Defence Doctrines

Defence has finalised a new doctrine on Military Ethics. The document is a very useful and comprehensive introduction to this complex topic and largely reflects the advice provided by the Panel, in particular Professor Rufus Black. The document highlights the new circumstances (largely driven by technology) that now, or will soon, have to be taken into account in the application of this ethical doctrine s47C

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### Engagement with stakeholders this quarter

The Panel continues to meet with as many current and former Defence personnel, external government agencies and non-government stakeholders as practicable. In February 2022 to April 2022 the Panel met with:

- Head People Capability (4 February 2022)
- Acting Chief Data Integration (4 February 2022)
- First Assistant Secretary People Policy and Culture (18 February 2022)
- AIRTF Leadership Group (18 February 2022)
- Special Operations Command (9 March 2022)
- Director General Force Exploration (11 March 2022)
- Assistant Secretary AIRTF (11 March)
- Director General Special Operations Modernisation (17 March 2022)
- SOCOMD SOJ7 Health staff (17 March 2022)
- CO SASR and visit to Campbell Barracks to engage SO operators (25 March 2022 – Dr Thom only)
- Australian Defence College staff (1 April 2022)
- Office of the Special Investigator (8 April 2022)
- s47F
- Secretary and Associate Secretary (21 April 2022)

Further discussions are being arranged with:

- First Assistant Secretary Defence Integrity (20 May 2022)
- SASR (19-21 July 2022)
- Other stakeholders named in paragraph 27 of the Panel's terms of reference.

### Background to the Panel

Dr Vivienne Thom AM, Mr Robert Cornall AO and Professor Rufus Black were appointed as members of the Afghanistan Inquiry Implementation Oversight Panel in November 2020 shortly

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before the release of the IGADF Afghanistan Inquiry Report.

The Panel provides independent oversight and assurance relating to Defence's response to the Afghanistan Inquiry and reports directly to the Minister for Defence.

The Panel is required to report quarterly to the Minister. This is the sixth report and covers the period 1 February 2022 to 30 April 2022.

#### Future reports

The Panel will report to the Minister quarterly in accordance with its terms of reference at the end of July 2022 and raise other matters when dictated by circumstances or concerns. The Panel's terms of reference require the Panel to provide a final report at a time directed by the Minister for Defence. The terms of reference state that final report may be tabled in Parliament at the discretion of the Minister for Defence.

Dr Vivienne Thom AM  
Lead, Afghanistan Inquiry Implementation Oversight Panel  
30 April 2022

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