



Ministerial Brief for Action

FOR: Deputy Prime Minister

INFO: Minister for Defence Personnel

THROUGH: Secretary, CDF

CC: Associate Secretary, VCDF, FASMECC



Action Requested By: 1 July 2022

Inspector-General of the Australian Defence Force Annual Report for Financial Year 2020-2021.

s22

Media Considerations: Both the IGADF Afghanistan Inquiry as well as suicide in the Australian Defence Force (ADF) have been the subject of media reporting; s22

s22

Cleared by:

Mr James Gaynor CSC
Inspector-General of the Australian Defence Force.
s22

08/06/2022

Contact Officer:

Commodore Fiona Sneath RAN
Deputy Inspector-General of the Australian Defence Force.
s22

Sensitivity: Yes

- s22 [REDACTED]
- The report refers to the conclusion of the IGADF Afghanistan Inquiry. s22 [REDACTED]
s22 [REDACTED]

s22 [REDACTED]

Background:s22


- The third paragraph on page 4 of the report reveals the total cost of the Afghanistan Inquiry was \$7.243 million.

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QUESTION TIME BRIEF (QTB)**TOPIC: IGADF Afghanistan Inquiry****ISSUE/S OF THE DAY**

- Defence is comprehensively responding to the Afghanistan Inquiry through the work of the Afghanistan Inquiry Reform Program, provision of support to criminal investigations, and by ensuring those affected are able to access the welfare support and legal assistance they may need.
- Defence's response to the Afghanistan Inquiry is well underway.
 - Work completed to date includes addressing accountability for integrity in operational reporting, delivery of military ethics and ADF leadership doctrines, and development of training about the requirement to comply with the Law of Armed Conflict.
- At this time, 101 of the 143 Inquiry recommendations have been closed with respect to action required of Defence.

If raised: What is the status of referrals for allegations of criminal conduct?

- All matters for consideration have been referred to the Office of the Special Investigator (OSI) through the provision of the Afghanistan Inquiry report to the OSI Special Counsel.
- The criminal investigations and any potential prosecution are being conducted independently of Defence.

If raised: What action is being undertaken regarding command accountability?

- The Chief of the Defence Force has suspended his consideration of administrative action for command accountability until any relevant criminal processes are complete.
 - Suspending consideration of administrative action does not absolve commanders of accountability. It is imperative that any internal administrative actions do not risk compromising any relevant criminal processes.

If raised: Will the Afghanistan Inquiry Implementation Oversight Panel's reports be publicly released?

- The Afghanistan Inquiry Implementation Oversight Panel provided six reports to the former Ministers for Defence between February 2021 and May 2022.

QUESTION TIME BRIEF (QTB)

TOPIC: IGADF Afghanistan Inquiry

- The public release of those reports was a matter for the former Government.
- I [Deputy Prime Minister] will receive my first quarterly report from the Panel soon after the end of July 2022.

BACKGROUND AND CHRONOLOGY

- The Afghanistan Inquiry was initiated in 2016 to determine if there was any substance to rumours and allegations relating to breaches of the Law of Armed Conflict by members of the Special Operations Task Group (SOTG) over the period 2005-2016.
- The Inquiry made 191 findings including credible information of criminal misconduct: the alleged unlawful killings of 39 individuals and two allegations of cruel treatment. The Inquiry also made findings in relation to significant and sustained departures from the ADF's professional standards by the SOTG.
- Consequently, the Inquiry made 143 recommendations which focus on culture, command reporting, governance and accountability.
- The Afghanistan Inquiry Reform Plan, released on 30 July 2021, sets out the Defence strategy for responding to the Afghanistan Inquiry and provides an overview of the work already underway, the manner in which future work will be delivered, and the timeframes for the delivery of this work.

MEDIA

<u>Date</u>	<u>Outlet</u>	<u>Reporting</u>
3 June 2022	Guardian Australia	The Deputy Prime Minister was interviewed by <i>Guardian Australia</i> regarding the response to the Afghanistan Inquiry. It was reported the DPM said he is deeply committed to ADF reform and promised to keep parliament informed of progress. Similar stories were published by the Australian Associated Press and NewsCorp .

QUESTION TIME BRIEF (QTB)

TOPIC: IGADF Afghanistan Inquiry

3 June 2022	Sunday Agenda, Sky News	The Deputy Prime Minister was asked when charges, in relation to the Afghanistan Inquiry, will be laid. In response the DPM did not provide a timeframe but committed to following the process through and said that there would be no stepping back as it is a “fundamentally important process for who we are as a people.”
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Lead Division

Contact: Rear Admiral Brett Wolski

Phone s22

Division: Afghanistan Inquiry Response Task Force

Date first prepared: 28 June 2022

Originating Source: Dept

Action Officer: Kenny Ang

Date last Updated: 4/07/2022 - 5:16 PM

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Australian Government
Defence

Ministerial Background Brief

MS22-001341

FOR: Deputy Prime Minister

THROUGH: Secretary ~~CD~~ s22

CC: VCDF, Associate Secretary, CA, FASMECC

DEFENCE RESPONSE TO THE INSPECTOR-GENERAL OF THE AUSTRALIAN DEFENCE FORCE (IGADF) AFGHANISTAN INQUIRY

Key Issues:

The Inspector-General of the Australian Defence Force (IGADF) Afghanistan Inquiry (the Inquiry) was completed in November 2020. Defence is comprehensively responding to the Inquiry through the implementation of the Afghanistan Inquiry Reform Plan (the Reform Plan), provision of support to criminal investigations, and by ensuring those affected are able to access the welfare support and legal assistance they need.

Implementation of the Reform Plan is currently on track, with 101 of the 143 recommendations made by the Inquiry closed with respect to action required of Defence.

To date, the Minister for Defence, on behalf of government, has been responsible for overseeing Defence's response to the Inquiry. In support of this responsibility, Defence will provide a background brief to your office on a quarterly basis to inform you of progress on the Reform Plan's implementation.

Media Considerations:

Media reporting on the Afghanistan Inquiry, Defence's response, and related matters has attracted significant public interest. The Reform Plan was publicly released on 30 July 2021 via the Defence Afghanistan Inquiry website (<https://afghanistandinquiry.defence.gov.au>). Renewed interest in the progress of the Reform Plan is anticipated with the one year anniversary of its release approaching. Separately, there have been two recent media enquiries and a Freedom of Information (FOI) request for access to six quarterly reports submitted to former Ministers for Defence by the Afghanistan Inquiry Implementation Oversight Panel. Further information on this issue is at paragraphs 23-24.

Minister comments:

Cleared by:

Rear Admiral Brett Wolski
Head Afghanistan Inquiry Response Task Force
Australian Defence Force Headquarters
Phone s22

7 July 2022

Contact Officer:

Rear Admiral Brett Wolski
Head Afghanistan Inquiry Response Task Force
Phone: s22

Sensitivity: Yes.

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1. The Reform Plan was publicly released on 30 July 2021 to demonstrate Defence's commitment to addressing the recommendations and issues arising from the Afghanistan Inquiry. The release was supported by communication activities to enable Defence to maintain transparency and accountability for its response, and to manage any risk of the perception that no action was being taken.
2. A year on from the Reform Plan's release, the same considerations apply. ^{s47C}
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3. In line with your intent to update parliament on Defence's response to the Inquiry – expressed through media reporting over the weekend 2-3 July 2022 – ^{s47C}
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4. Media reporting and public commentary – specifically related to the Inquiry and Defence's response – has focused on transparency; command accountability; administrative action; the Special Operations Task Group 66 Meritorious Unit Citation; Special Air Service Regiment (SASR) command changes; disestablishment of the 2nd Squadron, SASR; and a proposed joint Special Forces selection course.
5. Related reporting on the Ben Roberts-Smith v Fairfax and Others defamation hearing has also been of particular interest, with some publications suggesting the proceeding has become a 'proxy war crimes trial'. ^{s42}
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^{s37}
^{s37}
6. An investigation by the Australian Broadcasting Corporation (ABC) into allegations of misconduct by ADF personnel during Australia's contribution to International Force East Timor (INTERFET) in 1999 has since been the focus of multiple media articles and a two part ABC *Four Corners* program. Most recently, reporting has focused on documents released on 1 July 2022 by Defence to the ABC under Freedom of Information regarding Defence's investigation into the allegations (circa 2000-2003). ^{s47C}
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7. Despite the East Timor allegations having been investigated at the time, the ABC has attempted to draw parallels between Special Forces culture during INTERFET with the culture described in the Inquiry report. Defence has acknowledged that culture within Special Forces has not always been to the professional standard our nation expects, and Special Operations Command has been on an internally-initiated transformation and remediation journey since 2015. In addition, concerns regarding culture and related themes are being addressed at an enterprise level through the work of the Reform Program.

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Financial Impacts: No.

Systems/legislation/deregulation: No.

Consultation: Yes.

8. Brigadier David Kelly, Chief of Staff Army Headquarters.

9. Mr Simon Buckley, Assistant Secretary Afghanistan Inquiry Implementation Oversight Panel Secretariat.

Attachments

Attachment A

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Attachment B

Afghanistan Inquiry Reform Program Overview (as at 24 May 2022).

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Background:

10. The Afghanistan Inquiry was initiated in 2016 to determine if there was any substance to rumours and allegations relating to breaches of the Law of Armed Conflict by members of the Special Operations Task Group (SOTG) over the period 2005 to 2016.
 - Importantly, the Inquiry did not focus on decisions made under pressure in the heat of battle. Where it has been found there is credible information of a war crime, it is in relation to cases where it was plain the persons involved were non-combatants or hors-de-combat.
11. The Inquiry report was delivered to the CDF on 6 November 2020. Key findings and recommendations were announced and a redacted version of the report was publicly released on 19 November 2020.
12. The Inquiry made 191 findings including credible information of criminal misconduct; the alleged unlawful killings of 39 individuals and two allegations of cruel treatment. The Inquiry also made findings in relation to significant and sustained departures from the ADF's professional standards by the SOTG. Consequently, the Inquiry made 143 recommendations which focus on culture, command reporting, governance and accountability.
13. Defence's response to the Inquiry, including the development and implementation of the Reform Plan, is led by the Afghanistan Inquiry Response Task Force on behalf of CDF.

Reform Program Objectives

14. It is vital that the failings identified by the Inquiry are addressed in a deliberate, fair and transparent manner, with the root causes targeted for enterprise-wide and future-focussed reform that prevents recurrence. The Defence response therefore includes, and goes beyond, the 143 specified recommendations.
15. The Reform Plan sets out the Defence strategy for responding to the Inquiry and established the Reform Program. The Reform Program's objectives are to:
 - Address the past: Consider and take appropriate action to meet organisational, collective and individual responsibility for past failures and wrongdoing.
 - Prevent recurrence: Build the best possible organisation for the future, comprehensively understanding and addressing the root causes of the failures and wrongdoing, and developing the systems, culture and accountability that will prevent—and promptly detect and respond to—departures from required standards.
16. The Reform Program is comprised of four work packages that address the 143 Inquiry recommendations and a range of initiatives.
 - Objective 1 is being delivered through Work Packages 1-3, and will address the Inquiry recommendations regarding individuals and compensation.
 - Note, the Reform Plan directs the development of a whole-of-government response to the 15 Inquiry recommendations relating to compensation.^{s42}

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- Objective 2 is being delivered through Work Package 4, which is focussed on transformational reform. This package comprises five reform streams: Organisational Arrangements and Command Accountability; Culture; Workforce; Partnerships; and Information.
 - Each reform stream has key focus areas that are being addressed through specific initiatives, informed by Inquiry recommendations or analysis of the report and its findings.
- 17. The design, implementation and governance of the Reform Plan is supporting Defence in achieving the balance of deep reform and urgent action. The underlying assumption of the Reform Program is that Defence will adopt an approach which is “whole of organisation learning and response, based on Defence values and behaviours”. Defence’s approach to reform is therefore deliberately designed to ensure the organisation learns from past mistakes but does not take a narrow and inadequate approach to devising and applying solutions.
- 18. s47C
s47C . As such, initiatives under the program touch on many areas across Defence, not just Army or Special Forces.
- 19. An overview of the Reform Program, including the status of each work package, is at Attachment B.

Reform Program Governance

- 20. All elements of Defence’s response to the Inquiry are being managed under the Reform Program, chaired by CDF, to ensure appropriate governance, oversight and alignment to strategic priorities. A Program Board has been established to drive the Reform Program in its delivery of outcomes and benefits, and Defence’s peak decision-making body – the Defence Committee – is the final internal authority for overseeing Inquiry-related reform and implementation.
- 21. As the Senior Responsible Officer, CDF is responsible for the overall delivery of Reform Program with Group Heads and Service Chiefs responsible for individual streams, initiatives, and recommendations. The Head Afghanistan Inquiry Response Task Force holds the position of Program Manager.

Reform Program Oversight

- 22. The Government is overseeing the Defence response to the Afghanistan Inquiry. To date, this has occurred through the Minister for Defence, informed by advice from the Afghanistan Inquiry Implementation Oversight Panel (AIIOIP).
- 23. The AIIOIP was established by the former Prime Minister, the Hon Scott Morrison MP, and former Minister for Defence, Senator the Hon Linda Reynolds CSC, on 12 November 2020. Under its current Terms of Reference (TOR), the AIIOIP provides the Minister for Defence with independent oversight of Defence’s response to the Afghanistan Inquiry; reports directly on the implementation of the Inquiry’s recommendations; and may consider any wider implications and actions in response to the Inquiry s47C

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24. The AIOP has demonstrated its intent to work collaboratively with Defence and was consulted at all stages during the development of the Reform Plan. s47C
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25. The AIOP has provided six PROTECTED CABINET quarterly reports to the former ministers for Defence, s47C
s47C
26. In accordance with the AIOP's TOR, Defence expects you [Deputy Prime Minister] will receive your first quarterly report from the AIOP soon after the end of July 2022. s47C
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27. To further support your oversight of Defence's response to the Inquiry, a background brief will be provided to your office by the Afghanistan Inquiry Response Task Force quarterly – soon after each Program Board – to inform you of the progress made, and status of, the Reform Program.

Related Criminal Investigations

28. The OSI was established on 4 January 2021 and is working with the Australian Federal Police (AFP) to investigate allegations of criminal offences arising from or related to breaches of the Law of Armed Conflict by ADF members in Afghanistan between 2005 and 2016. Notably, the OSI can investigate matters which are beyond those addressed by the Afghanistan Inquiry but within the OSI's mandate.

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Legal Assistance

33. Defence is funding all reasonable costs for the legal representation of current and former ADF members who are the subject of, or participating in, criminal investigations or proceedings related to matters arising out of the Afghanistan Inquiry.
34. Legal assistance is being funded due to the unique situation of these members, and the need to ensure a fair trial and the proper administration of justice in accordance with the rules and norms of the Australian criminal justice system. Factors relevant to these members include:
- the Commonwealth's duty of care to current and former ADF members
 - the overseas deployment context in which the alleged incidents occurred
 - the unique and complex nature of the investigation and potential proceedings
 - the complexity and potential expense of legal proceedings where the Commonwealth seeks to protect sensitive information under the NSI Act.
35. Prior to 30 September 2021, legal assistance for these members was funded by Defence under the Legal Services Directions 2017. From 30 September 2021, funding has been provided by the Afghanistan Inquiry Legal Assistance Scheme (AILAS). The AILAS is administered independently by the Attorney-General's Department to ensure the independence of decisions regarding the funding of reasonable legal and associated costs.

Welfare

36. The careful management of all people known to be impacted by the Afghanistan Inquiry and related matters was, and remains, a priority for Defence. Those impacted include current and former serving members, their families, and potentially the interests of deceased members. Those impacted may have been directly contacted by the Inquiry or vicariously impacted by close knowledge and relationships with those involved.
37. Defence, in conjunction with the Department of Veterans' Affairs (DVA), is committed to ensuring current and former serving ADF members and their families have access to the right support at the right time, with a focus on supporting those who are vulnerable or at risk. Defence has, and continues to, encourage anyone who requires welfare support to access the services available to them if they need help.

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Afghanistan Inquiry Reform Program Overview

As at 24 May 2022

Defence has accepted all 191 findings and is addressing all 143 recommendations (101 of 143 Inquiry recommendations are closed)

Vision: One Defence, living Defence values, wherever we are, whatever we do**Objective 1: Address the past**

Consider and take appropriate action to address organisational, collective and individual responsibility for past failures and wrongdoing.

Objective 2: Prevent recurrence

Build the best possible organisation for the future, comprehensively understanding and addressing the root causes of the failures and wrongdoing; and developing the systems, culture and accountability that will prevent, and promptly detect and respond to, departures from required standards.

Work Package 1:	Work Package 2:	Work Package 3:	Work Package 4:
Address Inquiry recommendations regarding individuals	Consider / undertake additional workforce management action	Address Inquiry recommendations regarding compensation	Transformational Reform
<i>Defence responsibilities to be 90% complete by end-2021.</i> Achieved Focused on addressing specific allegations of wrongdoing against individuals. Includes 103 Inquiry recommendations . The 90% target has been achieved with 97 of 103 Inquiry recommendations closed (94%). One is open and five are on hold.	<i>Initial determinations made by end-2021.</i> Achieved Review the findings, along with any other relevant evidence, to determine whether additional action is warranted. 0 Inquiry recommendations. There are five People Initiatives in Work Package 2, all of which are closed.	<i>Approach to be settled by end-2021.</i> Delayed Develop a whole-of-Government response to the 15 Inquiry recommendations relating to compensation. All 15 Inquiry recommendations are open.	<i>Reform Streams to be stood up in second half of 2021.</i> Achieved The program management framework to successfully manage and coordinate Defence's response to the Afghanistan Inquiry has been established. Five Reform Streams have been established to design and implement the transformational reform required to address what went wrong and prevent any future issues occurring. This includes work to address 25 Inquiry recommendations . 21 Inquiry recommendations are open and four are closed.

Work Package 4 Reform Streams

Organisational Arrangements and Command Accountability	Culture	Workforce	Partnerships	Information
Stream Lead: CJC	Stream Lead: DEPSEC DP	Stream Lead: DEPSEC DP	Stream Lead: DEPSEC SP&I	Stream Lead: ASSOC SEC

Focus areas

Organisational Arrangements: <ul style="list-style-type: none"> Capability Development Deployment of capability Selection, ongoing evaluation and communications of operational strategy Reform of specific organisational arrangements Command Accountability: <ul style="list-style-type: none"> Alignment with work to evolve the Defence Accountability Framework Modernising doctrine and training Clarity of command accountability throughout the command chain 	<ul style="list-style-type: none"> Continuous improvement culture Integrating, aligning and diversifying subcultures Addressing the risk of cultural shift 	<ul style="list-style-type: none"> Recruitment, selection, development and career management Effectively managing performance including high performance and underperformance) and physical and psychological fitness Developing integrated, contemporary, whole-of-career, outcome-focussed learning 	<ul style="list-style-type: none"> Ensuring that Defence has a strategic approach to establishing, managing and sustaining key partnerships Restoring Defence's reputation and relationships with its partners (and those who should be its partners) 	<ul style="list-style-type: none"> Improving data and information management Becoming more data informed Building the capacity to identify indicators and warning
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Endorsed Program of work. There are 71 activities in Work Package 4, which include 25 Inquiry recommendations. Of the 71 activities, 54 are open, 11 are closed and six are on hold.

Total: 31 activities incorporating 13 Inquiry recommendations <ul style="list-style-type: none"> 21 Open 6 Closed 4 On Hold 	Total: 6 activities <ul style="list-style-type: none"> 6 Open 	Total: 14 activities incorporating 11 Inquiry recommendations <ul style="list-style-type: none"> 11 Open 3 Closed 	Total: 8 activities <ul style="list-style-type: none"> 7 Open 1 Closed 	Total: 12 activities incorporating 1 Inquiry recommendation <ul style="list-style-type: none"> 9 Open 1 Closed 2 On Hold
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