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**NOTE FOR CDF: IGADF AFGHANISTAN INQUIRY REPORT FINDINGS AND  
RECOMMENDATIONS RE COMMAND ACCOUNTABILITY**

Sir,

Findings – Chapter 3.03 ‘Command and Collective Responsibility’

- ... SOTG troop, squadron and task group Commanders bear moral and command responsibility and accountability for what happened under their command and control
- That responsibility and accountability does not extend to higher headquarters, including in particular HQ JTF 633 and HQ Joint Operations Command, who did not have sufficient degree of command and control to attract the principle of command responsibility
- Commanding Officers of SASR during the relevant period bear significant responsibility for contributing to the environment in which war crimes were committed, most notably those who embraced or fostered the ‘warrior culture’ and empowered, or did not restrain, the clique of NCOs who propagated it.

Recommendations Chapter 3.03 ‘Command and Collective Responsibility’

- ✓ • The Inquiry recommends that Army give consideration to administrative action in respect of [name] [para 3.301, recommendation 140].  
s47F
- ✓ • The Inquiry recommends that the award of the Meritorious Unit Citation to SOTG (Task Force 66) be revoked [para 3.3.02, recommendation 141].
- The Inquiry recommends that the award of decorations to those in command positions at the troop, squadron and task group level during SOTG rotations [redacted] be reviewed [para 3.03.03, recommendation 142].
- The Inquiry recommends that the award of decorations to those in command positions in SASR during the period 2008 to 2012 be reviewed [para 3.3.04, recommendation 143].

s37

Yours Aye,

s22

s47E(d)

CMD

Legal Advisor

22 Jul 22

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AIRP - HAIRTF Decisions

ID	DATE	OBJ REFERENCE	PROPOSAL/CONTEXT	DECISION	DECISION MAKER(S)	ACTION ITEM(S)	RESPONSIBLE ACTION OFFICER(S)	DUE DATE	SCHEDULE UPDATE REQUIREMENT	COMMENTS
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2	23 September 2022	Email BN53047698	MINSUB (MS22-001668) - Attachment B	On 23 September 2022 HAIRTF provided verbal advice to ASII that status for IR142 is to be changed from On Hold to Open. As recorded in 'Implementation Pathway' this recommendation is now open with consideration of risk to OSI and/or CDPP action ongoing. Following further discussion between DPM and CDF on 21 July 2022 advice has been sought regarding the ability to implement this recommendation prior to the conclusion of OSI investigations and Defence is actively pursuing this.	HAIRTF	Update Master Tracker	sPMO	Completed on 23 September 2022		
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s22

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**From:** s47E(d)  
**Sent:** Tuesday, 27 September 2022 10:44 AM  
**To:** s47E(d)  
**Cc:**  
**Subject:** For Decision Register [SEC=~~OFFICIAL~~]

~~OFFICIAL~~

Good morning s47E(d)

Could you please pop the below decision into the Decision Register?

HAIRTF changed the status of IR142 from On Hold to Open. The only supporting artefact I have is the email below.

Please let me know if you have any concerns. Otherwise, thank you.

Kind regards,

s47E(d)

s47E(d)

Afghanistan Inquiry Response Task Force  
Australian Defence Force Headquarters | Department of Defence  
s22 | Russell Offices | ACT 2600  
s22 | s22 @defence.gov.au

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**From:** s47E(d) s22 @defence.gov.au>  
**Sent:** Friday, 23 September 2022 2:07 PM  
**To:** s47E(d) s22 @defence.gov.au>  
**Cc:** s47E(d) s22 @defence.gov.au>  
**Subject:** HOTO - Director sPMO [SEC=~~OFFICIAL~~]

~~OFFICIAL~~

Hi s47E(d)

I have pulled these notes together over the past week. I hope that you find them helpful.

- **Minsub (MS22-001668):**

Brett requested that Att B be updated, in particular the status change from On Hold to Open for IR142. This meant that the narrative was changed slightly also. It now reads 'On 23 Sep 22 HAIRTF provided verbal advise to ASII that status is to be changed from On Hold to Open. As recorded in 'Implementation Pathway', this recommendation is now open with consideration of risk to OSI and/or CDPP action ongoing. Following further discussion between DPM



*and CDF on 21 July 2022, advice has been sought regarding the ability to implement this recommendation prior to the conclusion of OSI investigations and Defence is actively pursuing this.'*

I updated the Master Tracker to reflect the change of Status and added in the above narrative in the notes section. I hope that was okay. I would be very grateful if you could please check that what I did was correct.

FYI – I have left a hard copy of the Minsub in your drawer, the one which has Brett's requested changes so you can see what Brett requested to be changed. I believe that <sup>s47E(d)</sup> sent it to CDF via PDMS today (Friday).

s22





s22



Kind regards,

s47E(d)



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Defence

Ministerial Brief for Action

LIMITED DISTRIBUTION

MS22-001472

FOR: Deputy Prime Minister

Action Requested by: At your convenience

INFO: Minister for Defence Personnel

Reason for Urgency: N/A

THROUGH: CDF s22

CC: Secretary, VCDF, Associate Secretary, CA, Chief Counsel, FASMECC

INSPECTOR-GENERAL OF THE AUSTRALIAN DEFENCE FORCE AFGHANISTAN INQUIRY - IMPLEMENTATION  
PATHWAY FOR OUTSTANDING RECOMMENDATIONS

Key Issues:

On 8 July 2022, a background brief on Defence's response to the Inspector-General of the Australian Defence Force (IGADF) Afghanistan Inquiry was provided to your Office (MS22-001341 refers). This advice confirmed implementation of the Afghanistan Inquiry Reform Plan is on track, with 101 of the 143 recommendations made by the Inquiry closed with respect to action required of Defence. The office has subsequently requested advice on the pathway to implementation of the remaining 42 recommendations, s47C

Recommendation:

Decision

That you:

1. s47C

Media Considerations:

Media reporting on the Afghanistan Inquiry, Defence's response, and related matters has attracted significant public interest. The Afghanistan Inquiry Reform Plan was publicly released on 30 July 2021 via the Defence Afghanistan Inquiry website and renewed interest in its progress is anticipated with the one year anniversary of its release. Accordingly, on 1 August 2022, Defence published a full list of Reform Program work – completed and in progress – on the Defence Afghanistan Inquiry website: [afghanistaninquiry.defence.gov.au/defence-response](https://afghanistaninquiry.defence.gov.au/defence-response).

Signature

Richard Marles  
August 2022

Minister comments:

Cleared by

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

4 August 2022

s22

Contact Officer

Rear Admiral Brett Wolski  
Head Afghanistan Inquiry Response Task Force  
s22

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Sensitivity: Yes.

1. Advice provided to you on Defence's response to the Afghanistan Inquiry is currently subject to a yet to be finalised Freedom of Information (FOI) request by The Guardian. Separately, there has been two recent media enquiries and a FOI request for six quarterly reports submitted to the former Ministers for Defence by the Afghanistan Inquiry Implementation Oversight Panel. These enquiries highlight ongoing interest in the progress and oversight of Defence's response to the Inquiry and the perceived transparency of this action.

2. ~~s47C~~

Financial Impacts: No.

Systems/legislation/deregulation: No.

Consultation: Yes.

3. Mr Adrian D'Amico, Defence Chief Counsel.

4. ~~s47E(d)~~

#### Attachments

Attachment A ~~s47C~~

Attachment B Implementation pathway for outstanding recommendations.

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**Background:**

5. As detailed at MS22-001341, the Afghanistan Inquiry Reform Program is comprised of four work packages that will deliver on two objectives:
  - a. addressing the past; and
  - b. preventing recurrence.
6. Through the work of the Reform Program, Defence has taken action to close 101 of the 143 Inquiry recommendations. Recommendations are closed when the action required by Defence has been implemented and relevant documentation has been completed.

**Status of Recommendations by Work Package**

7. Work Package 1 contains 103 Inquiry recommendations specific to individuals. Of these:
  - a. 97 are closed;
  - b. 5 are on hold; and
  - c. 1 is open.
8. Work Package 2 does not contain any Inquiry recommendations. Rather, it contains 5 initiatives regarding the consideration of additional workforce management action, all of which are closed.
9. Work Package 3 contains 15 Inquiry recommendations regarding compensation.
  - a. All 15 recommendations are open.

s22



10. Work Package 4 contains 71 reform activities, under which sits 25 recommendations. Of these recommendations:
  - a. 21 are open; and
  - b. 4 are closed.

**Implementation Pathway for Outstanding Recommendations**

11. A table detailing the 42 recommendations yet to be closed, and information on the pathway to implementation of each recommendation, is at Attachment B.
12. Moving forward, Defence has committed to providing a background brief to your Office soon after each quarterly Afghanistan Inquiry Program Board to support your oversight of Defence's response to the Inquiry. These briefs will provide an update on the status of the Reform Program, including progress made on reform initiatives and the implementation of outstanding recommendations. The next program board is currently scheduled for the end of August 2022.

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## Afghanistan Inquiry Reform Program: Outstanding Recommendations

s22	Work Package	ID	Description	Category	Accountable Officer	Status	Implementation Pathway
	6	IR142	Review awards to command positions at troop, squadron and task group level during SOTG Rotations.	Review Honours and Awards	Chief of the Defence Force	On Hold	This recommendation is on hold pending removal / satisfactory mitigation of risk to OSI and/or CDPP action. Following further discussion between the Deputy Prime Minister and Chief of the Defence Force on 21 July 2022, advice is being sought regarding the ability to implement this recommendation prior to the conclusion of OSI investigations.

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Afghanistan Inquiry Reform Program : Outstanding Recommendations Timeline

as at 3 August 2022

ID	WBS	Task Name	Finish	2022												2023												2024																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
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Australian Government  
Defence

## Ministerial Background Brief

LIMITED DISTRIBUTION

MS22-001668

FOR: Deputy Prime Minister

INFO: Minister for Defence Personnel

CC: Secretary, VCDF, Associate Secretary, CA, CC, FASMECC

### LIMITED DISTRIBUTION: AFGHANISTAN INQUIRY REFORM PROGRAM UPDATE

#### Key Issues:

On 5 August 2022, advice was provided to your office on the implementation pathway for the remaining 42 of 143 Afghanistan Inquiry recommendations yet to be implemented by Defence (MS22-001472 refers). Through this advice, Defence confirmed its commitment to providing an Afghanistan Inquiry Reform Program update to your office soon after each Afghanistan Inquiry Reform Program Board (currently held on a quarterly schedule) to support your oversight of Defence's response to the Inquiry. On 26 August 2022, the Board met to progress action on a range of reform activities, including five Inquiry recommendations. One of these recommendations, s22 [REDACTED], was considered and approved by the Board for closure, leaving 41 recommendations outstanding. The next Program Board is scheduled for 24 November 2022.

s22

#### Minister comments:

s22

Cleared by:

General Angus Campbell, AO, DS  
Chief of the Defence Force

29 September 2022

s22

Contact Officer:

Rear Admiral Brett Wolski, AM, RAN  
Head Afghanistan Inquiry Response Task Force

s22

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Financial Impacts: No.

Systems/legislation/deregulation: No.

Consultation: Yes.

9. Mr Adrian D'Amico, Chief Counsel, Defence Legal.

10. s47E(d)

#### Attachments

Attachment A Afghanistan Inquiry Reform Program Overview.

Attachment B Implementation pathway for outstanding recommendations.

Attachment C Implementation timeline for outstanding recommendations.

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**Background:**

11. On 5 August 2022, advice was provided to your office confirming Defence had implemented the required action to close 101 of 143 Afghanistan Inquiry recommendations (MS22-001472 refers). A list of the remaining recommendations, and information on their pathway to implementation, was included with this advice.
12. On 26 August 2022, the Afghanistan Inquiry Reform Program Board met to consider the overall progress and status of the Reform Program and to determine action on 13 reform activities, under which sit five Inquiry recommendations. As chair of the Board, I [CDF] also reaffirmed my commitment to the program delivering on time or earlier, and my expectation that a 'deliver and deliver-early' mindset be maintained.

**Key Program Board Outcomes**

13. For the purpose of this reporting, key outcomes focus on Inquiry recommendations. Five Inquiry recommendations were considered at the August Program Board, and decisions were made to enable progress on the following four:

s22



14.

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15.

16. The Afghanistan Inquiry Reform Program Overview, which provides a snapshot of each of the four Reform Program work packages and their current status, has been updated to reflect the outcomes of the August Program Board and is at Attachment A. An updated list of the remaining 41 recommendations and corresponding implementation timeline are at Attachment B and Attachment C respectively.

#### Schedule Forecast

17. The next Program Board is scheduled for 24 November 2022. The agenda for this Board currently includes action on 18 reform activities, under which sit 11 Inquiry recommendations: IR103, IR105, IR120–IR125, IR127, IR132 and IR136.
18. As detailed at Attachments B and C, work on twelve Inquiry recommendations is due for completion by June 2023. These recommendations will then be presented to the next available Program Board (i.e. March, June or September 2023) for closure. In some cases, closures may be presented earlier than the forecast work completion date – for example, s22 was due to be considered at the November board; however, was brought forward to the August board as RMP action was completed. As such, the Board agendas remain fluid until 14 days prior to the board date to ensure activity progress is accommodated and, where possible, presented for closure.

#### Other Business

s22

19.

20.

21.

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## Afghanistan Inquiry Reform Program Overview

As at 01 September 2022

The Inquiry delivered a broad range of findings which informed 143 recommendations. 102 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> <div>Achieved</div> <p>Focused on addressing specific allegations of wrongdoing against individuals.</p> <p>Includes <b>103 Inquiry recommendations</b>:</p> <ul style="list-style-type: none"> <li>1 Open</li> <li>97 Closed</li> <li>5 On Hold.</li> </ul>	<i>Initial determinations made by end-2021.</i> <div>Achieved</div> <p>Review the findings, along with any other relevant evidence, to determine whether additional action is warranted.</p> <p><b>0 Inquiry recommendations.</b> There are five People Initiatives in Work Package 2, all of which are closed.</p>	<i>Approach to be settled by end-2021.</i> <div>Delayed</div> <p>Develop a whole-of-Government response to the Inquiry recommendations relating to compensation.</p> <p>Includes <b>15 Inquiry recommendations</b>:</p> <ul style="list-style-type: none"> <li>15 open.</li> </ul>	<i>Reform Streams to be stood up in second half of 2021.</i> <div>Achieved</div> <p>The program management framework to successfully manage and coordinate Defence's response to the Afghanistan Inquiry has been established. Five <b>Reform Streams</b> have been established to design and implement the transformational reform required to address what went wrong and prevent any future issues occurring.</p> <p>Includes <b>25 Inquiry recommendations</b>:</p> <ul style="list-style-type: none"> <li>20 open</li> <li>5 closed.</li> </ul>

### 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

<b>Organisational Arrangements:</b> <ul style="list-style-type: none"> <li>Capability Development</li> <li>Deployment of capability</li> <li>Selection, ongoing evaluation and communications of operational strategy</li> <li>Reform of specific organisational arrangements</li> </ul> <b>Command Accountability:</b> <ul style="list-style-type: none"> <li>Alignment with work to evolve the Defence Accountability Framework</li> <li>Modernising doctrine and training</li> <li>Clarity of command accountability throughout the command chain</li> </ul>	<ul style="list-style-type: none"> <li>Continuous improvement culture</li> <li>Integrating, aligning and diversifying subcultures</li> <li>Addressing the risk of cultural shift</li> </ul>	<ul style="list-style-type: none"> <li>Recruitment, selection, development and career management</li> <li>Effectively managing performance (including high performance and underperformance) and physical and psychological fitness</li> <li>Developing integrated, contemporary, whole-of-career, outcome-focussed learning</li> </ul>	<ul style="list-style-type: none"> <li>Ensuring that Defence has a strategic approach to establishing, managing and sustaining key partnerships</li> <li>Restoring Defence's reputation and relationships with its partners (and those who should be its partners)</li> </ul>	<ul style="list-style-type: none"> <li>Improving data and information management</li> <li>Becoming more data informed</li> <li>Building the capacity to identify indicators and warning</li> </ul>
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There are 71 activities in Work Package 4, which include 25 Inquiry recommendations. Of the 71 activities, 51 are open, 15 are closed and 5 are on hold.

Includes <b>31 activities</b> incorporating <b>13 Inquiry recommendations</b> :	Includes <b>6 activities</b> :	Includes <b>14 activities</b> incorporating <b>11 Inquiry recommendations</b> :	Includes <b>8 activities</b> :	Includes <b>12 activities</b> incorporating <b>1 Inquiry recommendation</b> :
<ul style="list-style-type: none"> <li>20 Open</li> <li>8 Closed</li> <li>3 On Hold.</li> </ul>	<ul style="list-style-type: none"> <li>4 Open</li> <li>1 Closed</li> <li>1 On Hold.</li> </ul>	<ul style="list-style-type: none"> <li>11 Open</li> <li>3 Closed.</li> </ul>	<ul style="list-style-type: none"> <li>6 Open</li> <li>2 Closed.</li> </ul>	<ul style="list-style-type: none"> <li>10 Open</li> <li>1 Closed</li> <li>1 On Hold.</li> </ul>



# Afghanistan Inquiry Reform Program: Outstanding Recommendations

as at 26 September 2022

	Work Package	ID	Description	Category	Accountable Officer	Status	Implementation Pathway
s22							
	6	IR142	Review awards to command positions at troop, squadron and task group level during SOTG Rotations	Review Honours and Awards	Chief of the Defence Force	Open	This recommendation is now open with consideration of risk to OSI and/or CDDP action ongoing. Following further discussion between the Deputy Prime Minister and Chief of the Defence Force on 21 July 2022, advice has been sought regarding the ability to implement this recommendation prior to the conclusion of OSI investigations and Defence is actively pursuing this.

s22							
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as at 8 September 2022

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### Afghanistan Inquiry Reform Program : Outstanding Recommendations Timeline

#	ID	Inquiry Recommendation Name	2022	2023	2024
s22					
6	IR142	Review Honours and Awards		Under consideration in consultation with the OSI and DPM	
s22					

s22 \*

\* Completion date under review

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**Australian Government**  
**Defence**

## Ministerial Background Brief

**LIMITED-DISTRIBUTION**

**MS22-001919**

**FOR: Deputy Prime Minister**

**INFO: Minister for Defence Personnel**

**CC: Secretary, VCDF, Associate Secretary, CA, FASMECC**

### ADMINISTRATIVE ACTION FOR COMMAND ACCOUNTABILITY

#### Key Issues:

In recent discussions, you [Deputy Prime Minister] have emphasised your desire for matters identified in the Afghanistan Inquiry report to be finalised, including the issue of command accountability. I have since progressed my consideration of this matter and, at this time, have identified <sup>s47F</sup> current and former Australian Defence Force officers against whom administrative action will now be commenced. Consequently, I intend to initiate discussions with, and issue correspondence to, these individuals regarding the administrative action process before the end of October 2022. While these discussions and related correspondence will be between the individuals and myself, there is potential for this information to become public. Accordingly, talking points on this matter are at Attachment A for your consideration.

#### Media Considerations:

Command accountability has been a focal topic of Afghanistan Inquiry related media reporting and freedom of information requests over recent months. The commencement of administrative action for command accountability is likely to be of intense interest to the media, public, current and former Australian Defence Force personnel and ex-service organisations.

#### Minister comments:

#### Cleared by:

General Angus Campbell, AO, DSC  
Chief of the Defence Force

16 October 2022

<sup>s22</sup>

#### Contact Officer:

<sup>s47E(d)</sup>

<sup>s22</sup>

**OFFICIAL: Sensitive**

**OFFICIAL: Sensitive**

**Sensitivity:** Yes

s22



**Financial Impacts:** No

**Systems/legislation/deregulation:** No

**Consultation:** No

**Attachment**

Attachment A Ministerial Talking Points.

**OFFICIAL: Sensitive**

**OFFICIAL: Sensitive**

**Background:**

4. Administrative action may be taken under the *Defence Act 1903* or the *Defence Regulation 2016* against individuals whose conduct, performance or standards are unsatisfactory or whose actions or behaviour have adversely impacted, or are likely to impact, the efficiency, reputation or operational effectiveness of the Australian Defence Force.
5. Administrative action can include termination of service, censure, reduction in rank, formal warning or formal counselling. Administrative action may also include the review of honours and awards.
6. The Afghanistan Inquiry report, released in November 2020, made a number of findings regarding command accountability. Specifically, that commanders did not know and were not recklessly indifferent to whether their subordinates were allegedly committing war crimes, and did not fail to take reasonable steps to discover the behaviour. Nonetheless, the Inquiry found commanders bear moral responsibility and accountability for what happened under their command, and recommended the review of honours and awards to commanders.
7. In early 2021, I [CDF] commenced consideration of the Inspector-General's recommendation regarding command accountability; however, suspended this action in accordance with the former Minister for Defence's direction in June 2021. I have now recommenced my consideration of administrative action to address the Inspector-General's recommendation that "awards to command positions at troop, squadron and task group level during SOTG Rotations" be reviewed. s47F  
[REDACTED]
8. At this time, I have identified s47F current and former Australian Defence Force officers against whom administrative action will now be commenced. However, as my consideration of this matter continues, the number of personnel subject to this action may vary.
9. In keeping with the principles of administrative law and procedural fairness, an individual whose award may be affected by administrative/cancellation action is usually afforded an opportunity to put forward a case as to why their award should not be cancelled. Relevant material, including any submissions made by the individual, will be passed on to a decision-maker.
10. Pending the outcome of this process, if I [CDF] consider that information revealed by the Afghanistan Inquiry affects the grounds for which a commander received an award (e.g. for their Special Operations Task Group command tenure), I may ask you [Deputy Prime Minister] to recommend to the Governor-General that the individual's award be cancelled.

**Administrative Action vs Criminal Liability**

11. The decisions made in relation to the administrative action are independent of any consideration of criminal liability, and the threshold for Defence to take administrative action is less than that required under criminal law. A member does not need to be found guilty of an offence before administrative action can be taken against them.
12. Nonetheless, cancelling an award is not treated lightly and my consideration of this matter will be progressed with all natural justice considerations inherent to the military administrative system.

**OFFICIAL: Sensitive**



**OFFICIAL**

## **RECOMMENCEMENT OF CONSIDERATION OF ADMINISTRATIVE ACTION FOR COMMAND ACCOUNTABILITY**

### **MINISTERIAL TALKING POINTS**

- The Chief of the Defence Force and I are deeply committed to following through with the implementation of the Inspector-General's recommendations.
  - The consideration of administrative action for command accountability is one part of a significant and complex process to ensure lasting reform in the ADF in response to the Afghanistan Inquiry.
- I am aware the Chief of the Defence Force has recommenced consideration of administrative action for command accountability related to the Afghanistan Inquiry.
- This is a matter for the Chief of the Defence Force and Defence, as well as the individuals involved.
- For privacy reasons, I will not comment on the circumstances of individuals.
- Support services are available to participants and other individuals who were involved in, or are affected by, the Afghanistan Inquiry whether they are current or former serving Australian Defence Force personnel or their families.

***If asked: were you aware of the Chief of the Defence Force's decision to recommence consideration of administrative action for command accountability?***

- The Chief of the Defence Force provided me with a brief on this matter.
- The Chief of the Defence Force and I have previously discussed this matter, and I support this decision.

***If asked: whether the recommended consideration of administrative action regarding command accountability applies to current and/or former serving ADF members?***

- For privacy reasons, I will not comment on the circumstances of individuals.

***If asked: will the recommencement of administrative action for command accountability impact the work of the Office of the Special Investigator?***

- Criminal investigations and any potential prosecutions are being conducted independently of Defence.
- Defence is ensuring any decisions or actions relating to administrative action for command accountability do not compromise any relevant criminal processes.

**OFFICIAL**

***If asked: does this decision go against your previous statement that you would not “rake over the coals in terms of decision that have been made by the former government”? [\[‘History will judge us’: Richard Marles commits to defence reform after Afghan war crimes inquiry\]](#)***

- The Chief of the Defence Force and I are deeply committed to following through with the implementation of the Inspector-General's recommendations.
  - The consideration of administrative action for command accountability is one part of a significant and complex process to ensure lasting reform in the ADF in response to the Afghanistan Inquiry.

**CLEARANCE:**

	<b>Name</b>	<b>Appointment</b>	<b>Date</b>
<b><i>Drafted by</i></b>	s47E(d)	Media and Communication Manager, AIRTF	13/10/2022
<b><i>Cleared by</i></b>	s47E(d)	SCA AIRTF	13/10/2022
	Mr Jason Woods	ASII	13/10/2022
	s47E(d)	SCA to CDF	14/10/2022
	RADM Brett Wolski	HAIRTF	14/10/2022

OFFICIAL: Sensitive



Australian Government  
Defence

## Ministerial Background Brief

LIMITED DISTRIBUTION

MS22-002109

FOR: Deputy Prime Minister

INFO: Minister for Defence Personnel

CC: Secretary, VCDF, Associate Secretary, CA, FASMECC

### LIMITED DISTRIBUTION: UPDATE TO MS22-001919 – ADMINISTRATIVE ACTION FOR COMMAND ACCOUNTABILITY

#### Key Issues:

On 17 October 2022, I [CDF] provided advice to your office regarding the re-commencement of administrative action for command accountability (MS22-001919 refers). Since this advice, I have issued letters to <sup>s47F</sup> current and former Australian Defence Force officers confirming the administrative action process. A <sup>s47F</sup> letter will also be shortly issued. In accordance with the principles of administrative law, all individuals have been provided a minimum of 28 days to respond to their letter, <sup>s47C</sup> <sup>s22</sup>. Pending my consideration of those responses, I may recommend that you consider recommending to the Governor-General that awards to relevant current or former officers be cancelled. Noting the proximity of this process to the Christmas/Defence stand-down period, I do not anticipate providing any recommendations to you before <sup>s47C</sup> <sup>s22</sup>.

s22

#### Minister comments:

Cleared by:

General Angus Campbell, AO, DSC  
Chief of the Defence Force

<sup>s22</sup>

21 November 2022

General Angus Campbell, AO, DSC

Contact Officer:

<sup>s47E(d)</sup>

<sup>s22</sup>

OFFICIAL: Sensitive

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**Sensitivity:** Yes

1. In addition to the sensitivities outlined at MS22-001919, the issue of command accountability was raised by Senator Malcom Roberts at Budget Estimates on 9 November 2022. Specifically, Senator Roberts raised questions around Defence's "corporate responsibility" and what action had been taken against senior leadership "to hold them accountable for the allegations in the Brereton report."
2. In my absence, Senator Roberts' questions were responded to by the Vice Chief of the Defence Force who confirmed the former Minister for Defence's direction that administrative action for command accountability be suspended, your direction that I may recommence action, and that the review of honours and awards is again underway. No verbal questions were taken on notice.

**Financial Impacts:** No

**Systems/legislation/deregulation:** No

**Consultation:** No

**Attachment**

Attachment A Ministerial Talking Points.

~~OFFICIAL: Sensitive~~



~~OFFICIAL-Sensitive~~

**Background:**

3. Defence honours and awards are granted by the Governor-General on the recommendation of a Defence minister – either the Minister for Defence or the Minister for Defence Personnel. Accordingly, the cancellation of an honour and award must also be recommended by a Defence minister.
4. In practice, this means that if I [CDF] consider that information revealed by the Afghanistan Inquiry affects the grounds for which a commander received an award, I may ask you to recommend to the Governor-General that the individual's award be cancelled. This would include briefing you on the facts of the case, and all evidence, including any submission made by an individual, would be provided to you.
5. Where it is agreed that cancelling an award is an appropriate course of action, you would then write to the Governor-General with that recommendation. Should the Governor-General agree with the recommendation and the award be formally cancelled, the Governor-General's decision would be officially notified in the Commonwealth of Australia Gazette. Consequently, the award insignia would be returned to Government House, the medal ribbon bar could no longer be worn, the individual would not be entitled to use the post nominal associated with the award, and reference to the award would be removed from the member's Defence record and the 'It's an Honour' database hosted by the Department of the Prime Minister and Cabinet.
6. s47C [REDACTED]  
[REDACTED]  
[REDACTED]
7. In my advice to you at MS22-001919, I confirmed I had identified s47F current and former Australian Defence Force officers against whom administrative action would be commenced. However, I also advised this number may vary as my consideration progressed. Since that advice, I have identified s47F additional people against whom I am taking action, bringing the present number of affected individuals to s47F. This number is not absolute and may continue to vary as I consider relevant information. For example, I have not considered any s47C [REDACTED] at this stage, given that they are s37 [REDACTED]  
[REDACTED]
8. Letters to s47F individuals have been issued, with the s47F [REDACTED] to be released shortly. s47C [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Affording individuals with the right of response satisfies the principles of procedural fairness and is consistent with broader administrative law obligations.
9. Noting the upcoming Christmas and Defence stand-down period, and inherent welfare considerations, I do not intend to finalise my decisions on this matter or make any recommendations to you, prior to s47C [REDACTED].

~~OFFICIAL-Sensitive~~

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**Australian Government**

**Defence**

**MINISTERIAL TALKING POINTS  
RECOMMENCEMENT OF CONSIDERATION OF ADMINISTRATIVE ACTION  
FOR COMMAND ACCOUNTABILITY**

**Ministerial Talking Points**

- The Chief of the Defence Force and I are deeply committed to following through with the implementation of the Inspector-General's recommendations.
  - The consideration of administrative action for command accountability is one part of a significant and complex process to ensure lasting reform in the ADF in response to the Afghanistan Inquiry.
- I am aware the Chief of the Defence Force has recommenced consideration of administrative action for command accountability related to the Afghanistan Inquiry.
- This is a matter for the Chief of the Defence Force and Defence, as well as the individuals involved.



**OFFICIAL**

- For privacy reasons, I will not comment on the circumstances of individuals.
- Support services are available to participants and other individuals who were involved in, or are affected by, the Afghanistan Inquiry whether they are current or former serving Australian Defence Force personnel or their families.

***If asked: were you aware of the Chief of the Defence Force's decision to recommence consideration of administrative action for command accountability?***

- The Chief of the Defence Force provided me with a brief on this matter.
- The Chief of the Defence Force and I have previously discussed this matter, and I support this decision.

***If asked: whether the recommenced consideration of administrative action regarding command accountability applies to current and/or former serving ADF members?***

- For privacy reasons, I will not comment on the circumstances of individuals.

**OFFICIAL**

***If asked: will the recommencement of administrative action for command accountability impact the work of the Office of the Special Investigator?***

- Criminal investigations and any potential prosecutions are being conducted independently of Defence.
- Defence is ensuring any decisions or actions relating to administrative action for command accountability do not compromise any relevant criminal processes.

***If asked: does this decision go against your previous statement that you would not “rake over the coals in terms of decision that have been made by the former government”?***

- The Chief of the Defence Force and I are deeply committed to following through with the implementation of the Inspector-General’s recommendations.
  - The consideration of administrative action for command accountability is one part of a significant and complex process to ensure lasting reform in the ADF in response to the Afghanistan Inquiry.



~~OFFICIAL~~

CLEARANCE:

	<i>Name</i>	<i>Appointment</i>	<i>Date</i>
<i>Drafted by</i>	s47E(d)	Acting Director	17 November 2022
		Communication, AIRTF	
	s47E(d)	SCA to CDF	
	BRIG Jocelyn King	A/HAIRTF	17 November 2022

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## QUESTION TIME BRIEF (QTB)

### TOPIC OF THE DAY: Brereton: IGADF Afghanistan Inquiry

#### KEY MESSAGES

- Defence is fully committed to responding to the Inspector-General of the Australian Defence Force Afghanistan Inquiry Report findings and recommendations. Actions in response to the Inquiry are well underway.
- In June 2021, the then-Minister for Defence wrote to the CDF directing him to suspend any consideration of administrative action in relation to personnel who held command positions in the period within the scope of the Afghanistan Inquiry (2005 to 2016).
  - Consequently, the CDF suspended his consideration of the recommendation concerning the awards to those in command positions.
- I [Deputy Prime Minister] have confirmed the CDF may recommence his consideration of administrative action for command accountability related to the Afghanistan Inquiry.
- To protect the privacy and support the welfare of our people, Defence will not comment on the circumstances of individuals.

#### ***If asked: what is the Afghanistan Inquiry recommendation being implemented and how many individuals have been impacted?***

- The Inspector-General of the Australian Defence Force Afghanistan Inquiry recommended that the award of decorations to those in command positions at troop, squadron and task group level during particular Special Operations Task Group rotations be reviewed.
- The Inspector-General found credible information that unlawful killings and other serious unlawful misconduct occurred during the period of 2005 to 2016.
- The CDF is considering the command accountability of those in command positions, at a range of levels, during the periods for which the Inspector-General found multiple incidents of alleged unlawful conduct.
  - Only those who held command positions during those periods may be affected by the implementation of this recommendation.

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## QUESTION TIME BRIEF (QTB)

### TOPIC OF THE DAY: Brereton: IGADF Afghanistan Inquiry

- CDF is committed to implementing the Inspector-General's recommendation. However, in accordance with the Afghanistan Inquiry Reform Plan, action taken with respect to command accountability may be broader than the recommendation.

#### *If asked: what period were those impacted in command positions?*

- Impacted personnel held command positions at a range of ranks in the period within the scope of the Afghanistan Inquiry, 2005 to 2016.
  - Alleged incidents occurred in 2009 and 2010, with the majority occurring in the latter years of 2012 and 2013.

### Honours and Awards

- Individual Australian Defence Force members may be awarded Australian honours and awards in recognition of their personal achievement and service.
- Defence honours and awards are granted by the Governor-General on the recommendation of a Defence minister – either the Minister for Defence or the Minister for Defence Personnel.

#### *If asked: what is the process for cancelling an award?*

- A Defence honour may only be cancelled by the Governor-General.
- The process is that the Chief of the Defence Force requests that I [the Deputy Prime Minister] make a recommendation to the Governor-General to cancel an honour.
- Before requesting that the Minister make a recommendation to the Governor-General, Defence must determine that a member or former member of the Australian Defence Force is no longer eligible for, or should no longer be entitled to be recognised by, the honour.
- The determination that an Australian Defence Force member or former member is no longer eligible for, or should no longer be entitled to be recognised by, the honour includes the provision of a notice of the intent to do so and the provision of a right of reply to the individual.



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## QUESTION TIME BRIEF (QTB)

### TOPIC OF THE DAY: Brereton: IGADF Afghanistan Inquiry

- Once the Governor-General has received the recommendation, considered the matter and decided to cancel an honour it is announced in the Gazette in the Federal Register of Legislation.

*If asked: is the former-Minister's decision regarding the Meritorious Unit Citation under review?*

- On 19 April 2021, the former Minister for Defence, the Hon Peter Dutton MP, announced he did not support the recommendation to cancel the Meritorious Unit Citation awarded to SOTG (Task Force 66) and that it would be retained.
  - This decision was not a reinstatement of the Meritorious Unit Citation as it had not been cancelled.
- I [Deputy Prime Minister] have indicated publicly that I do not intend to review this decision of the former government.

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## QUESTION TIME BRIEF (QTB)

### TOPIC OF THE DAY: Brereton: IGADF Afghanistan Inquiry

s22

#### Lead Division

Contact: Rear Admiral Brett Wolski, RAN  
Division: Afghanistan Inquiry Response Task Force

Phone: s22

Action Officer: s47E(d)

Date first prepared: 28 November 2022  
Originating Source: Dept

Date last Updated: 29/11/2022 - 12:20 PM



## IGADF Afghanistan Inquiry

### Key messages

- The Afghanistan Inquiry was commissioned by Defence in 2016 after rumours and allegations emerged relating to possible breaches of the Law of Armed Conflict by members of the Special Operations Task Group (SOTG) in Afghanistan over the period 2005 to 2016.
- The Chief of the Defence Force (CDF) received the Afghanistan Inquiry report from the Inspector-General of the Australian Defence Force (IGADF) on 6 November 2020, and announced the findings and released a public version of the report on 19 November 2020.
- The Inquiry made a broad range of findings and 143 recommendations. Defence has accepted all the findings and is addressing all the recommendations.
- The Afghanistan Inquiry Reform Plan was released publicly on 30 July 2021 and sets out the strategy for responding to the Inquiry. It also established the Afghanistan Inquiry Reform Program to coordinate and drive this work.
- Defence acknowledges the impact the Inquiry has had on individuals and their families.
- Defence, with the Department of Veterans' Affairs, remains committed to ensuring current and former serving ADF personnel and their families have access to welfare support, especially those who are vulnerable or at risk.

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### Findings and Recommendations

- The Inquiry considered in detail 57 allegations of incidents and issues.
- The Inquiry found credible information to substantiate the alleged unlawful killings of 39 individuals in 23 separate incidents. The Inquiry also found credible information to substantiate two allegations of cruel treatment.
- 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.
- Arising from these incidents, 25 current or former serving ADF personnel are alleged perpetrators, either as principals or accessories, some on a single occasion and a few on multiple occasions.
- The Inquiry also made findings in relation to significant and sustained departures from the ADF's professional standards by the SOTG including:
  - unacceptable behaviour
  - the submission of false operational reporting
  - deliberate actions to misrepresent operations that were undertaken.



- The 143 recommendations made by the Inquiry deal with three main areas: culture, command reporting and governance, and accountability.
- Through the work of the Afghanistan Inquiry Reform Program, Defence has to date implemented the required action to close 102 of the Inquiry's 143 recommendations.

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- Defence is being as transparent as possible about the findings and recommendations of the Inquiry, as well as its response, subject only to security, legal and privacy requirements.
- Defence will learn from the Inquiry's findings and recommendations to ensure we become a better, more capable and future-ready force.

### **Administrative Action**

- Administrative action may be taken under the *Defence Act* 1903 or the *Defence Regulation* 2016 against individuals whose conduct, performance or standards are unsatisfactory or whose actions or behaviour have adversely impacted, or are likely to impact, the efficiency, reputation or operational effectiveness of the ADF.
- Administrative action has been considered where individuals are alleged to have been involved in misconduct in the performance of the duty.
  - Administrative action can include termination of service, censure, reduction in rank, formal warning or formal counselling. Administrative action may also include the review of honours and awards.

### **How many individuals were issued termination notices as a result of the Afghanistan Inquiry?**

- Following the release of the Afghanistan Inquiry report, Army initiated administrative action for involuntary separation against 17 individuals where alleged failure to meet ADF expectations and values were identified.
- Army has suspended action for personnel medically discharged and completed action for all others.

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### **Command Accountability**

- ADF commanders at all levels have a legal responsibility for ensuring forces under their command and control comply with the Law of Armed Conflict and Rules of Engagement.
- Commanders can be held criminally responsible for, among other things, being directly or indirectly or knowingly concerned in or party to the commission of a war crime.
- Separate from criminal responsibility, command accountability can exist regardless of individual criminal liability. Command accountability holds commanders accountable for the actions of their subordinates.



- . Administrative action may be considered where it is found that a commander is morally responsible for the actions of their subordinates, regardless of the commander's involvement in the specific acts.
- . With respect to the Afghanistan Inquiry, the Inquiry found alleged criminal behaviour was 'conceived, committed, continued and concealed' at patrol commander level.
- . The Inquiry also found, above patrol commander level, commanders did not know and were not recklessly indifferent to whether their subordinates were allegedly committing war crimes, and did not fail to take reasonable steps to discover the behaviour.
  - Nonetheless, the Inquiry found commanders bear moral responsibility and accountability for what happened under their command, and recommended the review of honours and awards to commanders.

### ***What were the command arrangements for Afghanistan?***

- . Command is the authority that a commander in the military lawfully exercises over subordinates by virtue of rank or assignment.
- . Operational command authorities detail command arrangements for a specific operation, operational activity or exercise.
- . Definitions of command:
  - Theatre command: the authority given by CDF to a subordinate to command assigned forces to prepare for and conduct operations.
  - National command: the authority, conferred upon an appointed Australian commander, to safeguard Australian national interests during multinational operations.
  - Operational command: the authority granted to a commander to specify missions or tasks to subordinate commanders, to deploy units, to re-assign forces and to retain or delegate operational control, tactical command and/or tactical control, as may be necessary.
  - Operational control: the authority delegated to a commander to direct forces assigned so that the commander may accomplish specific missions or tasks which are usually limited by function, time or location.
- . Throughout SOTG (Task Force 66) rotations 4-20 (2007 to 2013), command authorities remained relatively unchanged:
  - Theatre command remained with the Chief Joint Operations (CJOPS) throughout.
  - National command remained with the Commander Joint Task Force 633 (CJTF 633) throughout.
  - Operational control was held by the CJTF 633 for rotations 4-14 (2007 to 2011), then transitioned to Commander International Security Assistance Force Special Operations Forces (COMISAF SOF) for rotations 15-20 (2011 to 2013).
  - During the period of COMISAF SOF operational control, CJTF 633 assumed operational command.

***Has administrative action been taken against commanders?***

- . When the CDF spoke publicly about the Afghanistan Inquiry Report on 19 November 2020, he committed to working to understand the role of command in the alleged unlawful conduct of ADF personnel in Afghanistan, and what actions, if any, should be taken in response.
- . In June 2021, the former Minister for Defence directed that any administrative action being considered for personnel who held command positions be suspended.

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- Consequently, the CDF suspended consideration of administrative action for command accountability at that time.
- . The current government has confirmed Defence may recommence action for command accountability. This is a separate process from any action being considered by the OSI.
  - Accordingly, the CDF has recommenced consideration of this matter with all due process and natural justice considerations inherent to the military administrative system.

***If pressed: about the impact of culture on command accountability.***

- . The Inquiry found some Special Air Service Regiment commanders fostered a 'warrior culture' within the regiment, and within this culture the concept of being a 'warrior hero' was prioritised over being a professional soldier.
- . This culture also supported the notion that being 'special' justified exceptions from the ordinary rules and oversight applicable to the rest of the ADF.
- . The Inquiry report notes this distorted culture was embraced and amplified by some experience, charismatic and influential non-commissioned officers and their protégés who sought to fuse military excellence with ego, elitism and entitlement.
- . Not correcting this culture as it developed was a failure of unit and higher command.

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## Honours and Awards

- . The Afghanistan Inquiry report recommends:
  - the award of the Meritorious Unit Citation to SOTG (Task Force 66) be revoked
  - the award of decorations to those in command positions at troop, squadron and task group level during specific SOTG rotations be reviewed
  - the award of decorations to those in command positions in the SASR during the period 2008 to 2012 be reviewed
  - a small number of individual honours and awards be reviewed.
- . The award of individual medals for Defence operational service, such as the Australian Active Service Medal, are not subject to review as an outcome of the Inquiry.

### ***What is a Meritorious Unit Citation and what is the difference between it and an individual honour or award?***

- . A Meritorious Unit Citation is a collective group decoration awarded to recognise the collective actions and accomplishments of a unit as a whole. It is not an individual honour or award.
- . A Meritorious Unit Citation is awarded to a unit for 'sustained outstanding service in warlike operations'.
  - The Meritorious Unit Citation was awarded to SOTG (Task Force 66) for sustained and outstanding warlike operational service in Afghanistan from 30 April 2007 to 31 December 2013, through the conduct of counter insurgency operations in support of the International Security Assistance Force.
- . There has been almost 30 Meritorious Unit Citations awarded since the introduction of the award in 1991.
- . Conversely, individual Australian honours and awards may be awarded to ADF members in recognition of their personal service and individual achievement.

### ***If pressed: about the former Minister for Defence's decision regarding the Meritorious Unit Citation awarded to SOTG (Task Force 66).***

- . On 19 April 2021, the former Minister for Defence, the Hon Peter Dutton MP, announced he did not support the recommendation to cancel the Meritorious Unit Citation awarded to SOTG (Task Force 66) and that it would be retained.
  - This decision was not a reinstatement of the Meritorious Unit Citation as it had not been cancelled.
- . Current and former entitled Defence personnel can continue wearing the insignia for the Meritorious Unit Citation. However, an individual's entitlement may be reviewed where they are:
  - convicted of a serious offence in a court of law, or
  - administratively identified by Defence as implicated in serious wrongdoing.

- Defence senior leaders were advised of the Minister for Defence's decision over the weekend of 17-18 April 2021.
- In July 2022, the Deputy Prime Minister indicated publicly that he does not intend to review the decisions of the former government.

***Who is entitled to wear the Meritorious Unit Citation awarded to SOTG (Task Force 66)?***

- More than 3,400 individuals from the Navy, Army, Air Force and the Australian Public Service are known to be eligible to wear the Meritorious Unit Citation insignia for service with SOTG (Task Force 66).
- The citation insignia has been issued to:
  - 707 officers
  - 2,687 other ranks
  - 24 civilians.

***Is there a mechanism for personnel to voluntarily return honours or awards?***

- Yes, any individual is able to return their medals or awards to Defence for any reason. Returned medals or awards should be sent to the Directorate of Honours and Awards.

***Have any current or former serving members returned their Meritorious Unit Citation insignia?***

- Defence is aware of four individuals who have indicated their intent to voluntarily return their Meritorious Unit Citation insignia.
  - One of these individuals has also requested their entitlement to the citation be removed from their PMKeyS record. This was actioned in November 2020.
- The Directorate of Honours and Awards has not received any returned Meritorious Unit Citation insignia.
- Due to privacy considerations, Defence cannot comment on individual decisions on why personnel wish to voluntarily return awards.

***If pressed: about claims in s22 [REDACTED] book Rogue Forces that a member has returned their Meritorious Unit Citation.***

- Defence is aware of claims in s22 [REDACTED] book 'Rogue Forces' that an individual has returned their Meritorious Unit Citation.
- No Meritorious Unit Citation insignia have been received by Defence Honours and Awards to date.

***Can a member still wear an honour or award if it has been removed from their service record?***

- This depends on the reason for the removal from a member's service record.
  - For a disciplinary reason, a member may be directed not to wear their honour or award.



- In cases where the member has requested the removal from their service record, a member still has an entitlement to wear their honour or award even if they choose not to.
- . The entitlement to wear the honour or award can only be removed if the Governor-General approves the cancellation of the honour or award entitlement.

***How many members of the SOTG received individual honours or awards for their service in Afghanistan?***

- . More than 500 people from the SOTG were recognised with individual honours and awards for distinguished service, or acts of gallantry, between 2001 and 2014.
- . All eligible personnel also received operational service awards such as the Australian Active Service Medal, Afghanistan Medal and foreign awards such as the NATO medal.

***If pressed: about the cancellation of individual honours and awards.***

- . Cancelling an award is not treated lightly. There may be circumstances that require consideration of a member's right to retain an individual honour or award.
- . In keeping with the principles of administrative law and procedural fairness, an individual whose award may be affected by cancellation action will be provided procedural fairness. Relevant material, including any submissions made by the individual, will be passed onto a decision-maker.
- . This procedural fairness process is not required where an alternate process, such as court proceedings, have already provided the opportunity for an individual to be afforded natural justice.
  - For example, a review of a member's right to retain an award is undertaken when an ADF member is convicted of a criminal offence or is found to have behaved inappropriately.
  - Defence will allow legal proceedings to conclude and avenues of appeal to be exhausted before considering any decision to cancel a member's award.
- . When a decision is made to seek the cancellation of a member's award, Defence will submit a case to the Governor-General, who is the cancelling authority.

***If pressed: have the decorations to those in command positions been reviewed?***

- . In June 2021, the former Minister for Defence directed that any administrative action being considered for personnel who held command positions be suspended
- . In accordance with advice from the current government, the CDF has recommenced consideration of this matter.

***Who can recommend that an award be cancelled?***

- . If a Service Chief or other authority considers that a person's entitlement to an award may no longer exist, the CDF may ask the Minister for Defence to recommend to the Governor-General that the person's award be cancelled.
- . Another authority would normally be a Group Head within Defence, or other senior government official or government body.


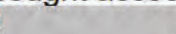
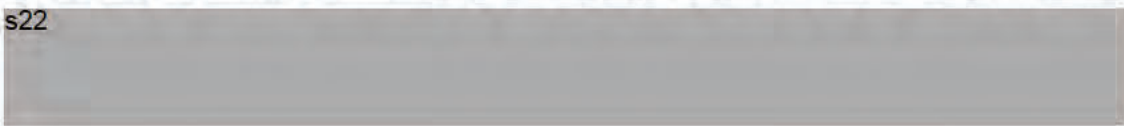
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## Supporting information

### Questions on Notice

- No QoNs asked by the 47<sup>th</sup> Parliament.

### Freedom of Information (FOI) Requests

- s22  

- In October 2022, a media organisation sought access to documents relating to an **investigation carried out by** s47E(d)  on accountability of senior leadership for matters identified by the inquiry. Response under consideration.
- s22  


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Budget Estimates: November 2022

Last updated: 7 November 2022

Key witness: Vice Admiral David Johnston; Rear Admiral Brett Wolski

PDR No: SB22-000989

IGADF Afghanistan Inquiry

## IGADF Afghanistan Inquiry

**Handling Note:** Head Afghanistan Inquiry Response Task Force, Rear Admiral Brett Wolski to lead on Afghanistan Inquiry Reform Program questions.

### Key Messages

- The Afghanistan Inquiry found credible information of the most serious breaches of ethical, legal, professional and moral responsibilities by members of the Australian Defence Force (ADF) on operations in Afghanistan during the period 2005 to 2016.
- The Inquiry made a broad range of findings and 143 recommendations. Defence is fully committed to responding to the Inquiry's findings and recommendations, and actions in response are well underway.
- It has been over a year since Defence released the Afghanistan Inquiry Reform Plan, which set out the Defence strategy for responding to the Inquiry.
- A substantial body of work has been undertaken through the Reform Program to address the findings and recommendations and embed sustainable, enduring reform across the organisation.
- Defence has implemented the required actions to close 102 of the 143 Inquiry recommendations.

### Talking Points

#### Afghanistan Inquiry Reform Program

- The Reform Program has two objectives:
  - 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 which will prevent, and promptly detect and respond to, departures from required standards.
- To deliver on these objectives, the Reform Program is addressing specific Inquiry recommendations and leveraging existing reform to implement Inquiry-related initiatives.
- Objective 1 (address the past) is being delivered through three work packages.
  - Work Package 1 is addressing the 103 recommendations regarding individuals.
  - Work Package 2 gives consideration to additional workforce management action.
  - Work Package 3 is addressing the 15 recommendations regarding compensation.
- Objective 2 (prevent recurrence) will be delivered through a fourth work package.

#### Prepared By:

Name: Brett Wolski

Branch: Head Afghanistan Inquiry Response Task Force

Branch: Afghanistan Inquiry Response Task Force

Phone: s22

#### Cleared By:

Name: Vice Admiral David Johnston

Position: Vice Chief of the Defence Force

Group: Vice Chief of the Defence Force

Phone: s22



Budget Estimates: November 2022

Last updated: 7 November 2022

PDR No: SB22-000989

IGADF Afghanistan Inquiry

Key witness: Vice Admiral David Johnston; Rear Admiral Brett Wolski

- Work Package 4 is focused on transformational reform through which 25 Inquiry recommendations are being addressed, and comprises five reform streams:
  - : Organisational Arrangements and Command Accountability; Culture; Workforce; Partnerships; and Information.
- . Work completed to date includes addressing accountability for integrity in operational reporting; updates to ADF and APS annual reporting processes; delivery of Military Ethics and ADF Leadership Doctrines; and the introduction and publication of interim respite policy in the Military Personnel Manual (MILPERSMAN).
- . A full list of work completed and in progress is available on the 'Defence Response' page of the Afghanistan Inquiry website at: <https://afghanistandinquiry.defence.gov.au>

### Reform Program Governance

- . The Government, through the Deputy Prime Minister, oversees the Defence response to the Afghanistan Inquiry. It is informed by advice from the Afghanistan Inquiry Implementation Oversight Panel, with the Defence committee as the final internal authority.

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#### Prepared By:

Name: Brett Wolski

Branch: Head Afghanistan Inquiry Response Task Force

Branch: Afghanistan Inquiry Response Task Force

Phone: s22

#### Cleared By:

Name: Vice Admiral David Johnston

Position: Vice Chief of the Defence Force

Group: Vice Chief of the Defence Force

Phone: s22

## Administrative Action

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- Administrative action has been considered where individuals are alleged to have been involved in misconduct in the performance of the duty.
  - Administrative action can include termination of service, censure, reduction in rank, formal warning or formal counselling. Administrative action may also include the review of honours and awards.
- Following the release of the Afghanistan Inquiry report in November 2020, Army initiated administrative action for involuntary separation against 17 individuals where alleged failure to meet ADF expectations and values was identified.
- Army has suspended action for personnel medically discharged and completed action for all others.

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- ADF commanders at all levels have a legal responsibility for ensuring forces under their command and control comply with the Law of Armed Conflict and Rules of Engagement.
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- Administrative action may be considered where it is found that a commander is morally responsible for the actions of their subordinates, regardless of the commander's involvement in the specific acts.
- With respect to the Afghanistan Inquiry, the Inquiry found alleged criminal behaviour was 'conceived, committed, continued and concealed' at patrol commander level.
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  - Nonetheless, the Inquiry found commanders bear moral responsibility and accountability for what happened under their command, and recommended the review of honours and awards to commanders.

### Prepared By:

Name: Brett Wolski

Branch: Head Afghanistan Inquiry Response Task Force

Branch: Afghanistan Inquiry Response Task Force

Phone: s22

### Cleared By:

Name: Vice Admiral David Johnston

Position: Vice Chief of the Defence Force

Group: Vice Chief of the Defence Force

Phone: s22

***If pressed: Has administrative action been taken against commanders?***

- When the Chief of the Defence Force spoke publicly about the Afghanistan Inquiry report on 19 November 2020, he committed to working to understand the role of command in the alleged unlawful conduct of ADF personnel in Afghanistan, and what actions, if any, should be taken in response.
- In June 2021, the former Minister for Defence directed that any administrative action being considered for personnel who held relevant command positions be suspended. [This direction has been made public under Freedom of Information and is available on the Defence disclosure log.]
- The Government has confirmed Defence may recommence action for command accountability. This is a separate process from any action being considered by the OSI.
  - Accordingly, the Chief of the Defence Force has recommenced consideration of this matter with all natural justice considerations inherent to the military administrative system.

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**Honours and Awards**

- The Afghanistan Inquiry report recommended:
  - the award of the Meritorious Unit Citation to Special Operations Task Group (SOTG) (Task Force 66) be revoked;
  - the award of decorations to those in command positions at troop, squadron and task group level during specific SOTG rotations be reviewed;
  - the award of decorations to those in command positions in the Special Air Service Regiment (SASR) during the period 2008 to 2012 be reviewed; and
  - a small number of individual honours and awards be reviewed.

***If pressed: Have the decorations to those in command positions been reviewed?***

- In June 2021, the former Minister for Defence directed that any administrative action being considered for personnel who held command positions be suspended. This included the review of command position honours and awards.
- In accordance with advice from the Government, the Chief of the Defence Force has recommenced consideration of this matter.

**Prepared By:**

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Branch: Head Afghanistan Inquiry Response Task Force

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**Cleared By:**

Name: Vice Admiral David Johnston

Position: Vice Chief of the Defence Force

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Budget Estimates: November 2022

Last updated: 7 November 2022

Key witness: Vice Admiral David Johnston; Rear Admiral Brett Wolski

PDR No: SB22-000989

IGADF Afghanistan Inquiry

***If pressed: About the cancellation of individual honours and awards.***

- Cancelling an award is not treated lightly. There may be circumstances that require consideration of a member's right to retain an individual honour or award.
- In keeping with the principles of administrative law, an individual whose award may be affected by cancellation action will be provided procedural fairness. Relevant material, including any submissions made by the individual, will be passed onto a decision-maker.

**Background**

- Defence commissioned the Afghanistan Inquiry in 2016 after rumours and allegations emerged relating to possible breaches of the Law of Armed Conflict by members of the Special Operations Task Group (SOTG) in Afghanistan over the period 2005 to 2016.
- The Inquiry was conducted at arm's length from both the ADF chain-of-command and Government to ensure the independence and integrity of what are well-established and rigorous processes. The Inquiry was also conducted in private because it involved matters of operational security and protected identities, as well as to protect witnesses and lines of inquiry.
- The Chief of the Defence Force received the Afghanistan Inquiry report from the Inspector-General of the Australian Defence Force (IGADF) on 6 November 2020, and announced the findings and released a public version of the report on 19 November 2020.
- The Inquiry considered in detail 57 allegations of incidents and issues, and found credible information to substantiate the alleged unlawful killings of 39 individuals in 23 separate incidents. The Inquiry also found credible information to substantiate two allegations of cruel treatment.

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Budget Estimates: November 2022

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PDR No: SB22-000989

IGADF Afghanistan Inquiry

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<b>Division:</b> Afghanistan Inquiry Response Task Force	
<b>PDR No:</b> SB22-000525	
<b>Prepared by:</b> Rear Admiral Brett Wolski, Head Afghanistan Inquiry Response Task Force Mob: s22 Ph: s22 Date: 11 October 2022	<b>Cleared by Group Head:</b> Vice Admiral David Johnston, Vice Chief of the Defence Force Mob: s22 Ph: s22 Date: 28 October 2022
<b>Consultation:</b> Defence Legal Name: Mr Adrian D'Amico	Date: 2 September 2022 Mob: s22
<b>Cleared by CFO / DPG:</b>	N/A
<b>Cleared by Group Head:</b> Vice Admiral David Johnston	<b>Date:</b> 28 October 2022

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Name: Brett Wolski

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**Cleared By:**

Name: Vice Admiral David Johnston

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## BPB - Command Accountability

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### Key Messages

- . Defence is deeply committed to addressing the findings and recommendations of the Inspector-General of the Australian Defence Force Afghanistan Inquiry.
- . The Chief of the Defence Force (CDF) has recommenced consideration of administrative action for command accountability related to the Afghanistan Inquiry.
- . The consideration of administrative action for command accountability is one part of a significant and thorough process to ensure lasting reform in the Australian Defence Force in response to the Afghanistan Inquiry.
- . To protect the privacy and support the welfare of our people, Defence is unable to comment on the circumstances of individuals.
- . Support services are available to participants and other individuals who were involved in, or are affected by, the Afghanistan Inquiry whether they are current or former serving Australian Defence Force personnel or their families.

### Criminal Responsibility vs Command Accountability

- . ADF commanders at all levels have a legal responsibility for ensuring forces under their command and control comply with the Law of Armed Conflict and Rules of Engagement.
- . Commanders can be held criminally responsible for, among other things, being directly or indirectly or knowingly concerned in or party to the commission of a war crime.
- . Separate from criminal responsibility, command accountability can exist regardless of individual criminal liability. Command accountability holds commanders accountable for the actions of their subordinates.
- . Administrative action may be considered where it is found that a commander is morally responsible for the actions of their subordinates, regardless of the commander's involvement in the specific acts.
  - Administrative action can include termination of service, censure, reduction in rank, formal warning or formal counselling. Administrative action may also include the review of honours and awards.
- . With respect to the Afghanistan Inquiry, the Inspector-General found alleged criminal behaviour was 'conceived, committed, continued and concealed' at patrol commander level.



- . The Inquiry also found, above patrol commander level, commanders did not know and were not recklessly indifferent to whether their subordinates were allegedly committing war crimes, and did not fail to take reasonable steps to discover the behaviour.
  - Nonetheless, the Inquiry found commanders bear moral responsibility and accountability for what happened under their command, and recommended the review of honours and awards to commanders.

***Why is the CDF recommencing consideration of administrative action for command accountability now?***

- . When the CDF spoke publicly about the Afghanistan Inquiry Report on 19 November 2020, he committed to working to understand the role of command in the alleged unlawful conduct of ADF personnel in Afghanistan, and what actions, if any, should be taken in response.
- . In June 2021, the former Minister for Defence directed that any administrative action being considered for personnel who held command positions be suspended.

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- Consequently, the CDF suspended consideration of administrative action for command accountability at that time.
- . The current government has confirmed Defence may recommence action for command accountability. This is a separate process from any action being considered by the OSI.
  - Accordingly, the CDF has recommenced consideration of this matter with all due process and natural justice considerations inherent to the military administrative system.
  - Defence takes the welfare of personnel seriously, and key contacts for welfare support are available at the Defence Afghanistan Inquiry website: <https://afghanistaninquiry.defence.gov.au/welfare-support>

***Does the CDF intend to take any action against commanders, besides the review of honours and awards (as recommended by the Inspector-General)?***

- . Any action will be guided by the Afghanistan Inquiry and relevant material available to Defence.

***What was the administrative action taken against Army members following the release of the Afghanistan Inquiry report?***

- . Administrative action may be taken under the *Defence Act 1903* or the *Defence Regulation 2016* against individuals whose conduct, performance or standards are unsatisfactory or whose actions or behaviour have adversely impacted, or are likely to impact, the efficiency, reputation or operational effectiveness of the ADF.

- . Following the release of the Afghanistan Inquiry report in November 2020, Army initiated administrative action for involuntary separation of 17 members where alleged failure to meet ADF expectations and values was identified.
  - This action was taken with regard to allegations of individual misconduct, not command accountability.
- . Army has suspended such action for personnel medically discharged and completed action for all others.

***Media reporting has suggested Defence has failed to take up advice by the Afghanistan Inquiry Implementation Oversight Panel that a “top down” inquiry be undertaken into Defence’s ‘corporate responsibility’ for alleged war crimes. Is Defence going to follow through with the panel’s advice?***

- . During its initial engagements with the Defence, the Afghanistan Inquiry Implementation Oversight Panel suggested that Defence conduct a broad top-down analysis of what occurred in Afghanistan as a lessons learnt activity led by a very senior official.
- . In June 2021, the CDF appointed Major General Andrew Hocking to independently identify, consolidate and report on ADF organisational-level lessons from operations in Afghanistan between 2001 and 2021.
  - It was directed that this work be non-attributable, constructive and while reflecting on the past, focussed on preparing for the future.
- . During the conduct of this work, Major General Hocking engaged with, and briefed, the Panel.
- . Major General Hocking’s report was published in March 2022 and, among other matters, referenced a range of lessons associated with command and control. In support of those lessons, a number of recommendations were made for improvements in command doctrine and training which are being actively pursued by Defence.
- . Recent media reporting took commentary from the Panel’s quarterly reports out of context, stating that Major General Hocking’s review had failed to address ‘strong criticisms and sense of fairness’ over the lack of command accountability.
  - Major General Hocking’s work was focused on future organisational and systemic improvements rather than individual command accountability.
- . Major General Hocking’s work ‘Preparing for the Future: Key Organisational Lessons from the Afghanistan Campaign’ is publicly available on the [Vanguard Occasional Paper Series](#) website.

## Background

- . The Afghanistan Inquiry report, released in November 2020, made a number of findings regarding command accountability. Specifically, that commanders did not know and were not recklessly indifferent to whether their subordinates were



allegedly committing war crimes, and did not fail to take reasonable steps to discover the behaviour. Nonetheless, the Inquiry found commanders bear moral responsibility and accountability for what happened under their command, and recommended the review of honours and awards to commanders.

- . The CDF accepted the Inspector-General's findings, and in early 2021 commenced his consideration of command accountability for matters identified by the Inquiry. This included a review of the operational chain of command at the time of each incident of alleged unlawful conduct, and consideration of the scope of responsibility (and therefore accountability) of commanders in this chain. The CDF considered how each commander attempted to exercise oversight of their personnel, including through reviews, quick assessments and inquiries, and how varying approaches may reflect each commander's personal level of accountability.
- . However, on 2 June 2021, the former Minister for Defence wrote to the CDF and directed that any administrative action being considered for personnel who held command positions be suspended.
- . On 19 July 2021, the CDF wrote to the Chief of Army providing detail on the conduct of the review and confirming the matter had been suspended. This correspondence, and the 2 June 2021 correspondence from the former Minister for Defence, was released to a media organisation under freedom of information on 28 March 2022.
- . The Deputy Prime Minister has since directed the CDF to progress consideration of command accountability. As such, the CDF has recommenced his consideration of administrative action to address the Inspector-General's recommendation that "awards to command positions at troop, squadron and task group level during SOTG Rotations" be reviewed.
- . In keeping with the principles of administrative law and procedural fairness, an individual whose award may be affected by administrative/cancellation action will be provided procedural fairness. Relevant material, including any submissions made by the individual, will be passed on to a decision-maker.
- . Pending the outcome of this process, should the CDF consider that information revealed by the Afghanistan Inquiry affects the grounds for which a commander received an award (i.e. accountability for their command tenure rather than their individual actions and service), he may ask the Deputy Prime Minister to recommend to the Governor-General that the award be cancelled.
- . Further, as CDF's consideration of this matter continues, the number of current and former affected personnel may vary.
- . The decisions made by CDF in relation to administrative action are independent of any consideration of criminal liability. The threshold for administrative action is less than that required under criminal law, and a member does not need to be found guilty of an offence before administrative action can be taken against them.

- . Nonetheless, cancelling an award – and any other action the CDF may decide to take for command accountability – is not treated lightly and will be progressed with appropriate procedural fairness.

### Afghanistan Inquiry Implementation Oversight Panel Commentary

- . The Afghanistan Inquiry Implementation Oversight Panel was established in November 2020 to provide the Minister for Defence with independent oversight and assurance of Defence's response to the Inquiry. The Panel reports directly to the minister on the implementation of the Inquiry's recommendations, and may consider any wider implications and actions in response to the Inquiry.
- . To date, the Panel has provided seven quarterly reports to the Minister for Defence – six to the then-Ministers for Defence, Senator the Hon Linda Reynolds and the Hon Peter Dutton MP, and one to the Deputy Prime Minister. In response to a reported request from Senator Reynolds (for advice on whether Defence's proposed response to the accountabilities of the chain of command was appropriate and sufficient) the Panel provides their view on the issue of command accountability throughout these reports.
- . In their second quarterly report, the Panel notes they had "*heard disagreement with the Inquiry Report's virtually blanket exemption of the most senior levels of the Defence hierarchy from that responsibility*" and had provided discussion papers, setting out their preliminary views on organisational accountability and the broader causes of alleged war crimes, to the then acting Minister for Defence on 12 March 2021.
- . A summary of the discussion papers suggested "*Defence should consider what occurred in Afghanistan from a top-down perspective and assess the extent to which organisational and governance policies and structures were contributing factors*". Contrary to media reporting on this issue, the Panel further commented that:

*"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."*
- . In addition, the discussion paper on organisational responsibility contrasts the apparent bottom up allocation of command responsibility and accountability taken by the Inquiry and Defence's then-draft implementation plan, against the top down approach taken by the private sector for major corporate failures (e.g. resignation/ dismissal/demotion of officers). Nonetheless, the Panel acknowledges the passage of time and changes in senior ranks since

the alleged incidents took place “*do not neatly provide a direct comparison for Defence’s situation*”.

- The third quarterly report notes Major General Hocking's appointment as the lead to conduct a lesson learned exercise ‘*Preparing for the Future: Key organisational Lessons from the Afghanistan Campaign*’, and the fourth quarterly report notes their satisfaction that the report was progressing well. However, the panel also noted the 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.*”
- The sixth and final reports provide further commentary on ‘senior leadership responsibility’ being raised repeatedly in the media and in their discussions with ADF members, and that in the view of Special Forces members and veterans there has been no requirement for senior leaders to accept accountability. The panel also expresses their view that failure to address this issue could “*seriously compromise the moral authority of current and future Defence leaders*”.
- The first six quarterly reports were released to a media organisation on 2 September 2022, and the seventh quarterly report is due for release to a separate media organisation on 28 October 2022.

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Australian Government  
Office of the Special Investigator

~~OFFICIAL~~

Ms Jo Tarnawsky  
Chief of Staff  
Office of the Hon Richard Marles MP  
Deputy Prime Minister  
Minister for Defence

Via email: [REDACTED]

Dear Ms Tarnawsky

It was a pleasure to meet with the Deputy Prime Minister and Minister for Defence, the Hon Richard Marles MP, and yourself earlier this week.

As we discussed I am writing to provide further information about the Office of the Special Investigator (OSI)'s progress and my position on the implementation of specific recommendations in the Inspector-General of the Australian Defence Force Afghanistan Inquiry (Afghanistan Inquiry).

The OSI was established under Executive Order to fulfil three key functions:

- i. to review the potential criminal matters raised by the Afghanistan Inquiry
- ii. to work with the Australian Federal Police (AFP) to investigate the commission of criminal offences under Australian law arising from or related to any breaches of the laws of armed conflict by members of the Australian Defence Force (ADF) in Afghanistan from 2005 to 2016, and
- iii. to develop briefs of evidence in respect of any offences that are established for referral to the Commonwealth Director of Public Prosecutions for prosecution.

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In our meeting you sought our views on a range of recommendations in the Afghanistan Inquiry. s22

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In relation to any administrative actions the Deputy Prime Minister or Chief of Defence Force (CDF) may wish to consider, these are entirely separate matters to the work of the OSI. We stand ready to engage with your office and Defence in relation to specific actions as required, but with the understanding that our criminal investigations need not prevent such action from proceeding. s37

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Yours sincerely


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Chris Moraitis  
Director-General  
Office of the Special Investigator

11 August 2022

cc: General Angus Campbell, AO, DSC  
Chief of Defence Force



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