

**AFGHANISTAN INQUIRY
IMPLEMENTATION
OVERSIGHT PANEL**

**Final Report to the
Deputy Prime Minister
and Minister for Defence**

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November 2023

8 November 2023

The Hon Richard Marles MP
Deputy Prime Minister and Minister for Defence
Parliament House
CANBERRA

Dear Deputy Prime Minister

The Afghanistan Inquiry Implementation Oversight Panel is pleased to submit its Final Report. The Panel has been advised by Defence that there is no need or justification for this Report to be classified.

The Panel's appointment commenced on 9 November 2020 for an initial term of two years which you extended for a further 12 months.

During those three years, the Panel has oversighted Defence's response to the Afghanistan Inquiry's recommendations, other matters which attracted the Panel's attention and finally the Enterprise Initiatives comprised in the Afghanistan Inquiry Reform Program. In all of its work, the Panel has received willing cooperation and assistance from all parts of Defence.

The Panel acknowledges the contribution made by Mr Simon Buckley, who was the first head of its Secretariat, and his successor, Ms Sharon Dean, who has been an effective organiser of, and active participant in, the Panel's research, enquiries and the preparation of this Report.

Yours sincerely



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Contents

Glossary.....	ii
Executive Summary	iv
SECTION ONE: Afghanistan Inquiry Implementation Oversight Panel.....	16
SECTION TWO: Panel methodology	19
Part 1 Root causes & responses	
SECTION THREE: Broader factors contributing to war crimes	26
SECTION FOUR: Defence's organisational accountability and responsibility.....	33
SECTION FIVE: Two distorted cultural norms: secrecy and loyalty	42
SECTION SIX: Overuse of Special Forces in Afghanistan	49
SECTION SEVEN: Reform Program initiatives of particular interest to the Panel	53
Part 2 Key elements of the broader reform agenda in Special Forces and Defence	
SECTION EIGHT: Governance and cultural reform since 2015	60
SECTION NINE: Military Ethics Doctrine	67
Part 3 Support for those affected	
SECTION TEN: Welfare and legal support	76
SECTION ELEVEN: Compensation	86
Part 4: The future	
SECTION TWELVE: The importance of Special Forces in the future	92
Appendices	
Appendix 1: Terms of Reference.....	100
Appendix 2: Principal consultations	108
Appendix 3: Quarterly progress reports to the Minister	114

Glossary

This Final Report refers to the Afghanistan Inquiry Report released on 19 November 2020 in the several ways noted in this Glossary.

The original draft Implementation Plan was subsequently called the Afghanistan Inquiry Reform Plan, which set out the Defence strategy for responding to the Inquiry and established the Afghanistan Inquiry Reform Program to coordinate and drive that work.

Abbreviation/acronym	Definition
ADF	Australian Defence Force
Afghanistan Inquiry Implementation Plan	The name given to the Reform Plan while it was still in draft form
Afghanistan Inquiry Reform Plan	The approved Implementation Plan
Afghanistan Inquiry Reform Program	The Program which coordinated and drove the work set out in the Reform Plan
AIRTF	Afghanistan Inquiry Report Taskforce
APS	Australian Public Service
ASAS Association	Australian Special Air Service Association
Brereton Report	Another name for the Afghanistan Inquiry Report
CA	Chief of Army
CDF	Chief of the Defence Force
CDPP	Commonwealth Director of Public Prosecutions
DSR	Defence Strategic Review 2023
DVA	Department of Veterans' Affairs
DFRDB	Defence Forces Retirement and Death Benefits
EI	Enterprise Initiative
EKIA	Enemy killed in action
HQJTF	Headquarters Joint Operations Command
HQJOC	Headquarters Joint Task Force
ICOM	A communications device
IGADF	Inspector-General Australian Defence Force

Abbreviation/acronym	Definition
Implementation Plan	Initial draft plan to implement the Inquiry Report
Inspector-General	Inspector-General Australian Defence Force (IGADF)
Inquiry	The IGADF Afghanistan Inquiry
Inquiry Report	Another name for the Afghanistan Inquiry Report
ISAF	International Security Assistance Force
JOC	Joint Operations Command
JTF	Joint Task Force
LOAC	Law of Armed Conflict
Minister	Minister for Defence
MSBS	Military Superannuation and Benefits Scheme
NCO	Non-commissioned officer
OSI	Office of the Special Investigator
Panel	The Afghanistan Inquiry Implementation Oversight Panel
PID	Public interest disclosure
Program Board	The Afghanistan Inquiry Reform Program Board
Quarterly reports	The Panel's quarterly progress reports to the Minister
ROE	Rules of engagement
SAS	Special Air Service
SASR	Special Air Service Regiment
Secretary	Secretary of the Department of Defence
SFTG	Special Forces Task Group
SOCAUST	Special Operations Commander – Australia ¹
SOCOMD	Special Operations Command
SOTG	Special Operations Task Group
2 Commando 2 Commando Regiment	2nd Commando Regiment
Taskforce	Defence Abuse Response Taskforce

¹ Also called Commander Special Operations Command (COMD SOCOMD)

Executive Summary

In March 2016, the then Chief of Army (Lieutenant General Angus Campbell AM DSC) requested the Inspector-General of the Australian Defence Force (IGADF) to conduct an inquiry into rumours of serious misconduct which potentially included war crimes by Australia's Special Forces in Afghanistan between 2006 (later amended to 2005) and 2016. The IGADF, Mr James Gaynor, appointed Major General the Hon Paul Brereton AM RFD as an Assistant IGADF and directed him to inquire into these matters.

The report of the Afghanistan Inquiry was publicly released on 19 November 2020. The Inquiry found credible information to support allegations of grave misconduct – including 23 incidents in which 39 individuals were killed, and a further two incidents in which individuals were treated cruelly – by some Special Operations Task Group members.

In the four years preceding the release of the Inquiry Report, Special Operations Command, guided by Army, implemented a cultural and professional transformation program which encompassed some of the factors the Inquiry subsequently found contributed to the misconduct.

The independent Implementation Oversight Panel was appointed to assure the Minister for Defence of the thoroughness and effectiveness of Defence's response to the Inquiry's 143 recommendations and any overlapping or complementary reforms that were taking place in Defence or otherwise required.²

The Reform Plan

The Afghanistan Inquiry Reform Program Task Force (AIRTF) was responsible for the delivery of the Afghanistan Inquiry Reform Plan through implementation of the Afghanistan Inquiry Reform Program. The AIRTF initially operated under the direction of the Defence Committee and then the Afghanistan Inquiry Reform Program Board.

At the Panel's suggestion, the Plan adopted two objectives: Address the Past and Prevent Recurrence. The reform initiatives were then organised into four work packages and collated in five reform streams.³

The Panel closely monitored the implementation of the Plan and provided constructive input as some of Defence's responses were being developed. The Panel kept the Minister informed through several meetings, its quarterly progress reports⁴ and contact with the Minister's Office.

The Reform Program Board will provide a detailed report on the completion of its work and outcomes. The Panel's assessment is that the Board and the AIRTF have done a

² The Afghanistan Inquiry Reform Program contained 63 Defence Enterprise Initiatives in addition to the Brereton Inquiry recommendations

³ See **Section 2**

⁴ See **Appendix 3**

good job in managing the development of sound responses to a very diverse range of issues with cooperation and assistance from many parts of Defence.

Some reform initiatives have practical application with a firm closure date (such as updating the policy for respite periods following operational deployment) while others deal with intangible issues such as Defence culture or are more theoretical to inform future thinking and policy formulation (such as an academic interdisciplinary examination of incentives to deploy on military operations). Some of the important initiatives will become part of Defence's day-to-day business and the Panel expects all agreed policy development or enhancement initiatives will be kept under regular review.

Subject to these matters, the Panel considers Defence has delivered the wide-ranging and complex Reform Plan to a level or standard which meets the Minister for Defence's requirement for assurance.

However, the long term success of those reforms will depend on their acceptance and ongoing implementation across the whole of Defence. Over time and with regular changes in postings, Defence will need to guard against the risk that the importance attached to the reforms by Defence's present leadership cohort may fade or be displaced by more current priorities.

The Panel therefore supports the closure of the Afghanistan Inquiry Reform Program to formally finalise the response to the Brereton Report as a very important phase in Defence reform but not the end of it.

Wider implications

The terms of reference require the Panel to consider any wider implications and actions in response to the Inquiry.⁵ From the start, the Panel has asked itself whether the combined outcome of such a disparate range of recommendations and reforms, some of which have only a tenuous connection with misconduct on the battlefield, will prevent the recurrence of grave misconduct in future.

The answer to that question has to be: It depends. The foundation stones for preventing recurrence are leadership and culture.

Leadership

The purpose of the Inquiry was to get to the bottom of persistent rumours of criminal or unlawful conduct in Afghanistan. It follows that the Inquiry started with an examination of behaviours at the patrol level where the incidents occurred to ascertain who committed any criminal or unlawful conduct, who played a part in it and who at a higher level had some shared legal responsibility for it. The Afghanistan Inquiry concluded that "it is overwhelmingly at that level [patrol commander⁶] that responsibility resides."⁷

⁵ See terms of reference, paragraph 8

⁶ Corporal or sergeant level

⁷ Afghanistan Inquiry Report, Part 1, page 30, paragraph 26

Looking through a criminal lens, that is appropriate. Looking through an organisational lens, the assessment of accountability and responsibility starts at the top. More senior officers have to take some level of responsibility for what goes wrong in their organisation or at least for any circumstances or policies that permitted or facilitated it. If no one at an appropriate level of authority knew anything about the misconduct, that is an organisational failure in itself.

There is ongoing anger and bitter resentment⁸ amongst present and former members of the Special Forces, many of whom served with distinction in Afghanistan, that their senior officers have not publicly accepted some responsibility for policies or decisions that contributed to the misconduct (such as the overuse of Special Forces).

There has also been some media commentary that the same principles of accountability and responsibility which apply in the public, private and not for profit sectors should have some application in Defence.⁹ However, the Inquiry's conclusion was firmly stated:

But for a small number of patrol commanders, and their protégés, it would not have been thought of, it would not have begun, it would not have continued, and it would have been discovered.¹⁰

That broad brush dismissal of senior level consideration about the possibility of war crimes also dismisses the possibility of any more senior level accountability but sits a little uncomfortably with the Inquiry Report's analysis of War Crimes in Australian History¹¹ and War Crimes Investigations of Other Nations in Afghanistan.¹²

Given the changes in Defence's most senior ranks since the incidents in Afghanistan took place, the purpose in accepting accountability for what occurred is not to allocate personal responsibility (although that could yet happen). It is to ensure the most senior officers in the ADF consider high level policy and organisational factors that may have contributed to the allegedly unlawful conduct in the broadest sense to prevent or mitigate any recurrence.

The Panel considers that the failure to look closely at the collective accountability and responsibility of Defence's most senior leaders continues to generate resentment and anger amongst veterans, soldiers and their families which is likely to last for a long time.

Broader factors contributing to war crimes

The Panel's analysis of broader factors contributing to war crimes is set out in **Section 3**. They include:

- the strategic settings (which included an excessive focus on counter-terrorism rather than counter-insurgency strategies and the lack of clarity with which they were communicated to front-line soldiers)

⁸ See **Section 4.7**

⁹ The Panel acknowledges that the situation here is somewhat different due to the passing of time and the changes in Defence senior leadership since the alleged misconduct occurred

¹⁰ Afghanistan Inquiry Report, Part 1, page 30, paragraph 26

¹¹ Afghanistan Inquiry Report, Part 1, Chapter 1.08, page 183

¹² Afghanistan Inquiry Report, Part 1, Chapter 1.09, page 242

- overly complex command arrangements, with insufficient direct senior Australian command over SOTG operations, and
- insufficient adaptation to the length of the conflict, including the overuse of Special Forces, and failure to reconsider the adequacy of respite policy settings and their application.

Section 7 includes commentary on the Reform Program Enterprise Initiatives that the Panel considers to have had particular impact in addressing broader contributing factors.

Defence culture: two distorted and dangerous cultural norms

The Panel paid particular attention to two distorted cultural norms which undermine Defence beliefs and values and have done so for decades. The Inquiry¹³ and Professor David Whetham¹⁴ found many factors contributed to the incidents of unlawful killing but these cultural norms stood out:

- the Special Forces' obligation of secrecy was used to support a code of silence, and
- alongside secrecy, loyalty (or not ratting on your mates) provided the second pillar of the code of silence.

There is nothing special about these cultural norms. They permeate the rest of Defence. Colloquially they are referred to as "we don't dob on our mates" and "we look out for our mates."

The Brereton findings of evidence to support grave misconduct by some Special Forces members brings dishonour on themselves and shame on the Special Forces, Defence and Australia. The history and legacy of former Special Forces members is unjustifiably tarnished. Present and future members have to live with this dark stain on their Regiment's previously proud name and reputation and the unsought and difficult task of rebuilding trust with the Government and the Australian public. That damage has already been done.

There is no way a member of the Special Forces who acted in this way and caused this much damage can be considered "a mate". Nor can members with direct knowledge of, or solid suspicions about, unlawful killings who reported it, or gave or will give information or evidence to the Inquiry, the Office of the Special Investigator or a court be considered "dobbers." Those actions accord with their obligations as an ADF member and the Defence Values of courage and integrity.

The Panel considers, had these cultural norms not been interpreted in this distorted and dangerous way, there would likely have been: fewer alleged incidents for the Inquiry to investigate; fewer soldiers and non-combatants or persons under control killed; and less damage to the ADF's and Australia's national and international reputation and standing.

The Chief of Army issued Directive 03/21 on 29 January 2021 to prohibit Bystander Behaviour. It requires bystanders to report misconduct and face penalty if they fail to

13 Afghanistan Inquiry Report, Part 3, page 333, paragraphs 18 and 19

14 Afghanistan Inquiry Report, Part 3, Annex A to Chapter 3.03, page 504

do so. This initiative could go a long way to overturning the warped interpretation of looking out for a mate in Army if it is reinforced by continuing strong leadership and firm application. It could also provide a template for the other Services and, in future, a possible solution for other seemingly intractable cultural problems.

In this regard, the Panel noted that the same warped interpretation of “mate” and “dobber” was found to apply by the Defence Abuse Response Task Force which delivered its Final Report in March 2016. Defence members who were, since the 1950s, subjected to serious criminal assaults (including rape and aggravated assault) were treated as dobbers. The abusers were protected as a mate by other members of the unit or group and often by the chain of command as well.¹⁵

Overuse of Special Forces

The Inquiry’s view was that:

... it is a misuse of their [Special Forces’] capability to employ them on a long-term basis to conduct what are essentially conventional military operations. Doing this on a protracted basis in Afghanistan detracted from their intended role in the conduct of irregular and unconventional operations, and contributed to a wavering moral compass, and to declining psychological health.¹⁶

The Inquiry recommended that:

... Special Forces should not be treated as the default “force of first choice” for expeditionary deployments, except for irregular and unconventional operations. While in conventional operations Special Forces will sometimes appropriately provide, or significantly contribute to, early rotations, the “handing off” of responsibility to conventional forces, and the drawdown of Special Forces, should be a prime consideration.¹⁷

This use of the Special Forces led to force sustainability concerns as noted by in the lessons learned review of the Afghanistan Campaign conducted by Major General Andrew Hocking. Through the Operational Establishment Process, HQJOC periodically checked appropriate troops were force assigned to meet operational requirements within personnel caps and the particular demands at the time. While low-density force elements and niche capabilities may have been available and optimal at a point in time, periods of extended deployment were more challenging. The review said:

It also generated risks to the health and wellbeing of personnel and, in some cases, impacted unit cohesion and morale. Early indicators of these risks became apparent around 2008. An increased number of deployment waivers began to indicate that certain force elements, including Special Forces, were being rotated beyond sustainable limits.¹⁸

¹⁵ See **Section 5.5** for more details

¹⁶ Afghanistan Inquiry Report, Part 3, Chapter 3.01, page 337, paragraph 38

¹⁷ Afghanistan Inquiry Report, Part 1, page 110

¹⁸ Preparing for the Future – Key Organisational Lessons from the Afghanistan Campaign by Major General Andrew Hocking, The Vanguard Occasional Paper Series, No 2 March 2022, pages 24-25

The Preparing for the Future review included this lesson:

Lesson 6: Force optimisation and force sustainability should be considered carefully and objectively when selecting the military means to achieve strategic ends. Force options and all associated risks should be formally communicated to government for consideration.

The individual impact of multiple deployments is mentioned throughout the Afghanistan Inquiry Report. The Panel also noted these administrative factors affecting fitness for deployment:

- the availability and adequacy of psychological support, and
- the ease with which waivers of the operational respite period were granted to permit early redeployment.

The Panel is satisfied that Defence has put new processes in place to ensure that the overuse of force elements, particularly low density force elements such as Special Forces, can potentially be avoided in future (or at least subject to more rigorous consideration and risk management). The Panel notes, however, that many decisions on force deployment will reside with the Government of the day.

An important part of ensuring that lessons are adequately learned from the Afghanistan experience will be whether future Defence senior leadership teams and future governments remain open to receiving advice on those lessons when faced with strategic and operational imperatives.

Special Forces reform 2015 to 2023

Special Operations Command has undertaken an eight-year period of continuous reform which commenced when the rumours of war crimes in Afghanistan finally came to light. A chronological overview of some key assessments of that process is set out in **Section 8**.

During that time, the Special Forces reform program ran in parallel with the Brereton investigations until 2020 and then in parallel with Defence's broader Reform Program. It is important to have an understanding of Special Forces' self-initiated reform program to appreciate the complete Defence response to SOTG misconduct in Afghanistan.

In 2015, Special Forces Commander, Major General Jeffery Sengelman commissioned Dr Samantha Crompvoets to conduct a study to support his efforts to continue a program of learning and development, structural and organisational realignment and strategic planning within SOCOMD.

In the course of interviews held for that task, "references to repeated issues of misconduct in SOF were made."¹⁹ Following further enquiries by Dr Crompvoets and consultation between General Sengelman and the then Chief of Army (Lieutenant General

19 Dr Crompvoets' paper Special Operations Command (SOCOMD) Culture and interactions: Insights and reflection dated January 2016, page 1

Angus Campbell), information was passed to the Inspector-General who appointed Major General Brereton to conduct the Afghanistan Inquiry.

Mr David Irvine AO was engaged by the Deputy Chief of Army on 27 March 2018 to assess reform measures taken in SOCOMD since late 2014 against five pillars: governance; accountability; values; perceptions; and integration. In his report dated 31 August 2018, Mr Irvine's recommendations included the need for constant oversight and monitoring of governance within SOCOMD and for a more systematic and considered program for ethical decision-making.

Mr Irvine conducted a second review of SOCOMD which reported on 15 June 2020 in which he noted the thrust of his 2018 recommendations had been seriously taken up and had been, or were in the process of being, implemented. He concluded:

While guarantees against a recurrence of previous concerns can never be absolute, the Command should be trusted to undertake special operations on behalf of the ADF, the Government and Australia.²⁰

On 1 September 2020, shortly before the public release of the Afghanistan Inquiry Report, SOCAUST delivered to Chief of Army a lengthy report on Transformation of Special Operations Command. The tenor of the report is captured in this paragraph:

5. After five years of transformation, SOCOMD today is not the same organisation as it was in 2015. SOCOMD is now positioned to implement the findings of the IGADF Afghanistan Inquiry; to rebuild the trust of Government, Defence and the public; and postured to contribute to Australia's national interests against the evolving geo-strategic challenges as directed by the Defence Strategic Update 2020 and Force Structure Plan 2020.

Finally, the objective of the Afghanistan Inquiry Reform Program Enterprise Initiative 23 titled Audit of Reform undertaken by SOCOMD was "to increase the level of trust and confidence stakeholders have in the deployment of specialist military capability by identifying reforms undertaken within SOCOMD since 2015 that go towards addressing the issues identified by the Afghanistan Inquiry." The outcome of the audit was independent assurance that SOCOMD's reforms contribute positively to preventing recurrence of those issues.

The Panel reviewed the combined sum of all eight years of reform within the Command. While suggestions were made to improve elements of the parts (for example in relation to performance monitoring and reporting), the Panel considers the whole to have been an appropriate response, diligently sustained.

Defence culture: SASR and 2 Commando Regiment

Substantial progress in addressing the cultural issues, which played a central role in events described in the Brereton Report, has been made and the Panel considers the risk of repetition of similar events to have been substantially lowered. While there are still

occasions when individuals exhibit behaviours indicative of unhealthy exceptionalism, today the responses from the leadership appear to be rapid, clear and appropriate.

The Panel conducted confidential interviews with Special Operations Command's external stakeholders in 2022 and 2023. These interviews indicated that, apart from some isolated examples, the dominant view of stakeholders who have had recent interactions with current SOCOMD members is that SOCOMD members are exceptionally professional and have respectful attitudes to others. That is encouraging.

Previous reviews of Special Forces as well as the Brereton Inquiry Report commented on the toxic relationship between SASR and 2 Commando Regiment. General Campbell said in his press conference on 19 November 2020:

What emerged was a toxic competitiveness between the Special Air Service Regiment and the 2nd Commando Regiment. Destructive of trust, cohesion and mission and a disgrace to both.²¹

The Panel met with both Regiments on several occasions to gauge the current state of the relationship between SASR and 2 Commando Regiment. While there was some evidence of an improved relationship – particularly when conducting joint activities – there were some significant and forceful comments that this is an area where problems remain.

It is hoped that better role definition in the future will attenuate this problem.

The Special Forces operate in small groups with lower levels of command supervision, have a necessarily distinctive culture, and a rigorous selection process with a low success rate. These factors mean the risk of pockets of a culture of exceptionalism or of dominant NCOs creating problematic or toxic subcultures is much higher than in many other parts of the ADF.

This elevated risk means it is appropriate to have increased governance and command oversight of these issues in the Special Forces and that the ADF should pay equal attention to other specialist parts of the Defence Force where similar conditions prevail.

Military Ethics Doctrine

The incidents uncovered in Afghanistan immediately focused attention on military ethics. Defence has to be confident that the question for all ADF members faced with a difficult choice is not "What can we do?" but "What should we do?" and that the answer will be ethically defensible. The creation of a Military Ethics Doctrine provided the opportunity for a detailed consideration of these questions.

The Brereton Inquiry recommendations²² put a spotlight on ethics doctrine, training and compliance. Army's interim response (commenced in 2016 before the Inquiry report was delivered) included the development of ethics training based upon a core

²¹ Ibid

²² Afghanistan Inquiry Report, Part 3, Chapter 3.01, page 327

concept called “triangulation”. That was a new approach to military ethics founded on the idea that three different ethical theories – virtue, duty and consequences – could be triangulated to reach a decision that is “most right” in the circumstances. To provide a simple illustration: duty-based ethics will prohibit the killing of a non-combatant while, in some circumstances, utilitarianism can justify it (say one life lost but four soldiers’ lives potentially saved).

Panel member and ethicist Professor Rufus Black became involved in a lengthy exchange with academic supporters of the proposed triangulation approach. He proposed an alternate approach to base ADF ethics doctrine on Natural Law theory. In the context of approving the ADF’s new Military Ethics Doctrine and how it was to be applied to training, the Chief of the Defence Force settled the matter on 26 January 2023 when he directed that:

Army cease teaching the Ethical Triangulation Heuristic Decision-Making Tool and replace it with the decision-making framework illustrated on page 27 of the doctrine.²³

A more detailed discussion of the competing concepts is set out in **Section 9** so they are available for careful consideration if this debate comes up again.

Welfare and legal support

The Panel has monitored support for former and present members of Defence and their families since the Inquiry Report was released.

A wide range of individuals and their families have been directly or indirectly affected by the conduct described in the IGADF Inquiry, the publication of its Report, the commencement of criminal investigations and other subsequent events.

Their need for welfare support has included counselling, psychological support and medical services, social work services, and practical support including financial assistance and advice. This support will, in some cases, go on for years and require constant Defence and Department of Veterans’ Affairs attention to ensure no one entitled to that assistance is overlooked.

Two important matters involved legal assistance and superannuation entitlements.

In early 2021, Defence Legal was arranging legal assistance for present and former Defence members caught up in the immediate aftermath of the release of the Inquiry Report. This arrangement was clearly unsatisfactory and fraught with difficulties and risk for all parties. The Panel recommended that responsibility should be passed to an independent agency.

The Government agreed. The Afghanistan Inquiry Legal Assistance Scheme was established in the Attorney-General’s Department and it commenced operation on 30 September 2021.

The second matter involves Commonwealth superannuation and it is more complicated. A detailed explanation is set out in **Section 10.2**.

The Panel was advised early in 2021 that veterans, members and their families were worried that their superannuation entitlements may be at risk based on the possible application of the Crimes (Superannuation Benefits) Act 1989 (Cth).

In short, they fear that, if they are convicted of a war crime or related offence and sentenced to a term of imprisonment of more than 12 months, the Commonwealth-funded share of any past superannuation entitlements may be recovered as debt due to the Commonwealth and any future entitlements forfeited.

However, the Act only applies to “corruption offences” and the Panel’s view is that a war crime or related offence does not come within that statutory definition. In these circumstances, the Panel considers that the stress on families living with this financial risk should be brought to an end by a public Government announcement that the Act does not apply in these circumstances.

The Panel is also concerned that a superannuation order under this Act passed 34 years ago affects not only the interest of the policy holder but unfairly appropriates the interest of the policy holder’s spouse as well. This outcome is contrary to now long-standing family law and government policy that treats all superannuation entitlements as shared family property.

Compensation for Afghan families

The Brereton Inquiry recommended that Australia should compensate the Afghan families affected by the matters referred to the Office of the Special Investigator without waiting to establish criminal liability for what was alleged to have occurred.²⁴ In his press conference on 19 November 2020, the Chief of the Defence Force said:

We will look to support the circumstances of the families affected ... but there will be a process that needs to be developed for this.²⁵

While the Minister and the Government are fully committed to implementing this recommendation, the Panel agrees that there are apparently insuperable barriers to doing so since Kabul fell to the Taliban on 21 August 2021.²⁶ The eligible family members would have to be identified and located and an appropriate means of compensating them without putting them in danger would have to be found.

In the interim, Defence Legal has been seeking an effective way for the Government to advance arrangements for Australia to pay compensation to those Afghan families as soon as possible.

²⁴ The Afghanistan Inquiry Report, Part 1, Chapter 1.05, page 173, paragraphs 33-36

²⁵ See transcript: defence.gov.au: Home/News and events/Media releases/Press Conference-IGADF Afghanistan Inquiry

²⁶ See **Section 11**

At the time of writing this Final Report, a scheme to receive and assess claims for compensation supported by a regulation under the Defence Act 1903 (Cth) was under consideration.

The importance of Special Forces in the future

The Special Forces are not static organisations. They comprise a shifting complement of members and there has been an 80% or more change in their composition since 2015.

From 2005 to 2013, the SFTG and the SOTG:

- deployed continuously for more than 3,000 days in the Middle East
- conducted more than 2,500 operations (including combat operations against Taliban and anti-coalition enemy forces and directed missions against high-value targets)
- participated in 1,500 combat incidents or contacts with the enemy
- conducted special reconnaissance and other technical operations against threat networks
- undertook intelligence operations contributing to whole-of-government understanding of the insurgency and the threat to Afghan civilians
- more than 500 activities in partnership with local Afghan communities facilitating ADF and coalition humanitarian assistance, and
- suffered 21 personnel killed and more than 150 wounded-in-action.

SOCOMD also contributed to, and assisted in, the testing, trial and validation of new equipment and systems to deliver the Army and wider Defence enhanced capability in: biometrics; body armour and helmets; soldier combat ensemble; validation of the Heron unmanned aerial system; development of counter-IED route clearance techniques; multi-cam uniforms; night fighting equipment; improvement to protected mobility vehicles; and introduced or validated several weapon systems.²⁷

The Panel also considered the National Defence Statement 2023 and the Government's assessment of the most challenging circumstances in our region for decades. The Defence Strategic Review found that our current strategic circumstances are now radically different and Defence needs to harness effects across all five domains: maritime, land, air, space and cyber.

As a consequence, the objectives of Australia's new strategic posture lie well beyond our borders and the ADF must have the capacity to engage in impactful projection across the full spectrum of proportionate response. Special operations capabilities will be an essential part of that impactful projection.

Special Operations Command cannot shirk its historical share of responsibility for grave misconduct and any future proven criminal offences between 2005 and 2016. However,

²⁷ The information in this and the preceding paragraph was taken from SOCOMD's Report to CA: Transformation of Special Operations Command since 2015 dated 1 September 2020 (BQ17309479)

those legal outcomes are now beyond its control. In the meantime, today's Special Forces have to look forward, not back. They have to focus on planning, training and preparing for a challenging and different future as Australia confronts uncertainty and new threats in our region.

SECTION ONE:

Afghanistan Inquiry Implementation Oversight Panel

In March 2016, the then Chief of Army (Lieutenant General Angus Campbell AM DSC) requested the Inspector-General of the Australian Defence Force (IGADF) to conduct an inquiry into rumours of serious misconduct which potentially included war crimes by Australia's Special Forces in Afghanistan between 2006 (later amended to 2005) and 2016. The Inspector-General, Mr James Gaynor, appointed Major General the Hon Paul Brereton AM RFD as an Assistant IGADF and directed him to enquire into these matters.

The IGADF delivered the Afghanistan Inquiry Report to the Chief of the Australian Defence Force (General Angus Campbell AO DSC) on 6 November 2020. The IGADF found there was credible evidence of 23 incidents which involved:

- a total of 39 individuals killed, and a further two cruelly treated, and
- a total of 25 current or former Australian Defence Force personnel who were alleged perpetrators, either as principals or accessories, some of them on a single occasion and a few on multiple occasions.

The Inquiry Report comprises three parts:

Part 1 – The Inquiry

Part 2 – Incidents and issues of interest, and

Part 3 – Operational, organisation and cultural issues.

Parts 1 and 3 were published in one volume classified Official subject to some redactions for security, privacy and legal reasons. Part 2 was published in a second, classified volume and access was very tightly restricted to limit the possible compromise of any criminal prosecutions which may follow.

The Government's response to the Afghanistan Inquiry Report's findings and recommendations took two paths.

In a Joint Statement issued on 12 November 2020, the then Prime Minister, the Hon Scott Morrison MP, and the then Minister for Defence, Senator the Hon Linda Reynolds CSC, said:

A new investigative body will be established to assess and examine the findings of the Inspector-General of the Australian Defence Force Afghanistan Inquiry.

The new Office of the Special Investigator will address the potential criminal matters raised by the Inquiry and investigate allegations, gather evidence and where appropriate, refer briefs to the Commonwealth Director of Public Prosecutions for consideration.

In respect of non-criminal matters, the Australian Defence Force would manage the response but be subject to oversight. The Joint Statement advised:

The Government has also established a separate and independent Oversight Panel to provide oversight and assurance of Defence's broader response to the Inquiry relating to cultural, organisation and leadership change.

This Statement recognised that, as the overriding objective of the Brereton Inquiry was to determine if there is any substance to the rumours of misconduct by the Special Operations Task Group in Afghanistan, its recommendations may not identify or fully address all of those broader issues.

The Afghanistan Inquiry Implementation Oversight Panel, comprising Panel Lead, Dr Vivienne Thom AM, and Panel Members Robert Cornall AO and Professor Rufus Black, was established by the then Minister for Defence for two years commencing on 9 November 2020. The Panel's term of appointment was extended to three years in October 2022 by the Hon Richard Marles MP, Deputy Prime Minister and Minister for Defence.

The Panel's essential purpose was to perform an integral role in providing independent oversight and assurance in relation to various aspects of Defence's response to the Afghanistan Inquiry, including delivery of the Implementation Plan and consideration of any wider implications and actions in response to the Inquiry.

As a result of these arrangements:

- to enable the Panel to meet the Government's requirements, Panel members were given access to all three Parts of the Inquiry Report, and
- to reinforce the Panel's independence from other Inquiry related activities, the Panel reported directly to the Minister for Defence in accordance with its detailed terms of reference which are set out in **Appendix 1**.

Defence's administration of the Implementation Plan was managed by the Afghanistan Inquiry Response Task Force (AIRTF).

The development of the Implementation Plan and its content evolved over time. Some Brereton recommendations overlapped with Defence reforms already completed while others were in progress and they were consolidated in the appropriate reform stream. In its final form, the Reform Plan comprised responses to the 143 Brereton recommendations and a further 63 Defence initiated activities. The structure of the Plan is discussed in more detail in **Section 2**.

It is generally agreed that the time has now come to bring the implementation phase of Defence's response to the Afghanistan Inquiry Report and the work of the AIRTF and this Panel to a close. The AIRTF is preparing a comprehensive report of its work and outcomes over the last three years which is expected to be finalised early next year.

As discussed later in this Final Report, any outstanding and ongoing matters needing attention will be dealt with by Defence in the normal course of business but will require monitoring.

SECTION TWO:

Panel methodology

The Panel's oversight methodology was substantially determined by the detailed requirements set out in its terms of reference and the content and progress of the Implementation Plan (which subsequently became the Afghanistan Inquiry Reform Plan, delivered through the Afghanistan Inquiry Reform Program).²⁸

At the same time, the Panel actively pursued enquiries into, and provided advice to the Minister about, broader areas of concern which, in its opinion, form part of the considerations, actions and reforms needed to prevent a recurrence of the misconduct identified in the Afghanistan Inquiry Report.

2.1 Scope of work - objectives

The principal elements of that work were to report to the Minister for Defence on:²⁹

- the thoroughness and effectiveness of the Implementation Plan directed by the Chief of the Defence Force and any additional actions recommended by the Panel not contemplated in the Inquiry's recommendations
- the progress of the Implementation Plan
- whether appropriate welfare and legal support was being provided to persons affected by the Inquiry
- the degree to which governance and cultural reform undertaken by Defence, Army and Special Operations Command since 2015 had already addressed elements of the Inquiry's findings and recommendations
- the overall progress and outcomes of the implementation process
- whether any advice can be drawn from the conduct of the Inquiry and the Defence response in relation to how matters of a similar gravity might be appropriately dealt with by Defence should the need arise in future, and
- whether Defence is adequately positioned, resourced and empowered to appropriately support the response to the Report by other Australian Government agencies.

2.2 Terms of reference

To achieve these objectives, the terms of reference directed that the Panel:

- may engage directly with: the Inspector-General ADF; any Service or Group within the Department of Defence; other Departments and Agencies; current or previous

²⁸ To avoid unnecessary repetition, each of those terms is to be understood as referring to the then current iteration of the Implementation Plan referred to in the terms of reference

²⁹ Terms of reference, paragraph 15

members of any rank or level of the ADF or APS; and other individuals or agencies not otherwise included in those provisions³⁰

- will be provided with access to relevant reports and information, access (to) Defence establishments, ADF and APS personnel and Defence information and communication technology as required for their work³¹
- may undertake visits for the purposes of oversight and assurance³² subject to Covid-19 travel restrictions
- would engage, as necessary, with stakeholders including the Secretary of Defence, the Chief of the Defence Force, the Chief of Army, the Special Advisor – Special Forces, and the Special Operations Commander – Australia,³³ and
- would consider factors beyond the immediate scope of the Inquiry Report's findings and recommendations and recommend any additional actions that should be taken.³⁴

2.3 Context

In undertaking this oversight role, the Panel has borne in mind that the incidents and events investigated by the IGADF which form the basis of his 2020 Report occurred up to 17 years ago. Effective responses to the Afghanistan Report's cultural, organisation and leadership recommendations and the broader issues they raise need to take account of, and fit comfortably with, some significant changes and developments that have occurred since then.

These changes and developments include:

- successive changes of senior leadership in the ADF including Special Forces
- approximately 80 per cent of current personnel have joined Special Forces since 2015 but noting that the Special Operations Command Council largely comprises senior officers and non-commissioned officers who served in Afghanistan
- the investigations into, and responses to, the war crimes rumours already commenced or completed by Defence, Army and Special Operations Command
- the ongoing (and partly overlapping) whole of Defence Transformation Program
- the rapid shift in Australia's regional security, increasing grey zone conflict and the escalation of our international defence arrangements, and
- the 2023 Defence Strategic Review.

2.4 The Panel's approach

The major part of the Panel's work was to provide oversight and assurance of Defence's responses to the Afghanistan Inquiry in accordance with the Reform Plan.

30 Ibid, paragraphs 17, 18 and 19

31 Ibid, paragraph 24

32 Ibid, paragraph 26

33 Ibid, paragraph 27

34 Ibid, paragraph 30

Defence's response was directed first by the Defence Committee and then by the Afghanistan Inquiry Reform Program Board. The Panel met with the Defence Committee on 20 January 2021 and was subsequently provided with the papers submitted for consideration at each Board meeting. The Afghanistan Inquiry Response Task Force coordinated the draft Implementation Plan, the Reform Plan and the Reform Program on a day-to-day basis. The preparation of Defence's responses to individual Enterprise Initiatives managed under the Reform Program was assigned to relevant areas in Defence or appropriate key personnel.

It quickly became apparent that the Panel's views and input would be of very limited value to Defence if it withheld its oversight comments until the proposed response to a particular Enterprise Initiative had been finalised.

As a result, it was agreed at the January 2021 meeting with the Defence Committee that the Panel would be consulted, where appropriate, during the development of Defence's responses. In some cases, the Panel's input was limited to supporting the suggested course of action or possible response put forward by Defence and monitoring its progress. In other cases, the Panel was an active participant in the discussions and debate leading up to the formulation of the final response.

In addition, the Panel pursued further enquiries into the broader cultural, organisational and leadership factors resulting from its own analysis of the alleged war crimes and misconduct identified by the Brereton Report.

2.5 The Afghanistan Inquiry Reform Program

At the outset, the draft Implementation Plan comprised a long and diverse list of Afghanistan Report recommendations and proposed reform initiatives across four work packages without a stated objective. This omission meant there was no cohesive theme indicating how each item contributed to a coherent and unified outcome which addressed the root causes for the misconduct and failures uncovered in Special Operations Command.

Defence adopted the Panel's suggestion to draw the work packages and individual Enterprise Initiatives together under two related objectives:

Objective 1:

Address the Past, which comprised three work packages:

1. Address inquiry recommendations regarding individuals

2. Consider/undertake additional workforce management, and

3. Address Inquiry recommendations regarding compensation.

Objective 2:

Prevent Recurrence, which comprised one work package:

4. Transformational Reform.

The Reform Program Enterprise Initiatives were collated in five Reform Streams:

1. Organisational Arrangements and Command Accountability	2. Culture	3. Workforce	4. Partnerships	5. Information
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2.6 The Panel’s focus

The Reform Program comprised responses to 143 Brereton recommendations and 63 Defence initiated activities. The Panel considered its role would be best performed by seeking to understand whether these individual reforms were collectively addressing the root causes of the misconduct in Afghanistan and preparing the ADF and the Special Forces for the future. The Panel was conscious that, after the completion of the Reform Program, the root causes could still sufficiently exist to pose an unacceptably high-level risk of repeated offences. The Panel formed views about the progress of reforms that were particularly important to shifting the overall picture and reported on them but it has focused substantially on the key themes of command accountability, culture and ethics, reporting misconduct and preventing overuse.

There were also specific requirements included in the terms of reference which exceeded the scope of the Reform Program. They included advising the Minister on issues such as whether appropriate welfare and legal support was being provided to persons affected by the Afghanistan Inquiry.

2.7 Meetings and consultations

Throughout the term of its appointment, the Panel regularly met or consulted with the Minister, Defence senior leadership, the AIRTF, the action areas of Defence and key personnel about the progress of the Reform Program generally and individual responses to Brereton recommendations or Enterprise Initiatives in particular.

In some matters of concern to the Panel, the meetings and consultations extended to outside organisations and individuals that could be of assistance.

Due to Covid travel restrictions and the dispersed locations of some participants, many of the Panel's meetings and consultations were conducted partly in person (mainly in Canberra) and partly by videoconference or teleconference or a combination of all three.

A detailed list of some of the Panel's key meetings and consultations is attached at **Appendix 2**. The list indicates the level of involvement and support the Panel received from the Minister, the Secretary, CDF, Chief of Army, SOCAUST, Joint Operations Command and all levels of Defence as well as relevant external organisations and individuals.

2.8 Advice to the Minister

During the term of its appointment, the Panel has provided advice to the Minister in:

- meetings with the Minister
- responses to the Minister's specific requests
- the twelve quarterly progress reports listed in **Appendix 3**, and
- irregular briefings on matters requiring more timely advice.

There was also regular informal contact between the Panel's Secretariat and the Minister's Office to facilitate and supplement the formal advice and reporting arrangements.

In view of that previously provided advice and the AIRTF's forthcoming closing report, there is no need for the Panel to repeat those details in this Final Report. Instead, the Report focuses on:

- the extent to which the Reform Program has achieved its overall objectives
- the Panel's views on several areas of contention
- some key areas of reform which the Panel considers require close monitoring in future, and
- a broader analysis of, and reflection on, the issues raised by the Afghanistan Inquiry Report.

PART 1

Root causes & responses

SECTION THREE:

Broader factors contributing to war crimes

In the Panel's initial briefing by the then Minister for Defence, Senator the Hon Linda Reynolds CSC requested the Panel to advise if the recommendations made in the IGADF's Report fully address the causes of the alleged war crimes. The Panel has kept this request at the forefront of its enquiries and thinking throughout the course of its appointment.

This Section sets out the Panel's views about broader factors which could have contributed directly or indirectly to the commission of war crimes and therefore demand close Defence leadership and Command attention. The Panel's general assessment is based on its detailed reading of the Brereton report, its investigations and interviews, the other sources quoted across all Sections of this Final Report and previous knowledge and understanding from other work, study and experience the Panel has brought to its task for the Minister.

3.1 The objective of the Afghanistan Inquiry

Major General Brereton's terms of reference directed him to "inquire into whether there is any substance to persistent rumours of criminal or unlawful conduct by or concerning Special Operations Task Group deployments in Afghanistan during the period 2007 to 2016"³⁵ and, in accordance with his direction from the IGADF, "make recommendations resulting from your findings."³⁶

These requirements were expanded and amended in other directions and minutes, but were predicated on the Inquiry finding "substantial accounts or credible information or allegations, relating to the military justice system, concerning criminal, unlawful or inappropriate conduct by, or involving, Special Operations Task Group (SOTG) deployments in Afghanistan during the period 2007 to 2016."³⁷

The overwhelming scope of this core task is underlined by the volume of material set out in Part 2 of the Inquiry Report about specific events and incidents. The Inquiry found there is credible information of 23 incidents in which one or more non-combatants or persons hors-de-combat were unlawfully killed by or at the direction of members of the Special Operations Task Group and that these incidents involved:

- a total of 39 individuals killed and a further two cruelly treated, and
- a total of 25 current or former ADF personnel who were perpetrators, either as

³⁵ Afghanistan Inquiry Report, Part 1, Annex A to Chapter 1.01, page 44

³⁶ Direction to Assistant IGADF INQ/17/16, 12 May 2016 (Inquiry Report, Part 1, page 45)

³⁷ Enclosure 1 to IGADF INQ/17/16, 12 May 2016

principals or accessories, some of them on a single occasion and a few on multiple occasions.³⁸

The Inquiry's factual findings are supported by some considerations about accountability for what occurred and factors that contributed to it.

The Panel's analysis suggests there was a complex set of circumstances in Afghanistan which created conditions that increased the possibility (or even probability) the alleged crimes could be committed and reduced the likelihood they would be discovered in a timely way to prevent multiple occurrences over a long period of conflict.

3.2 The nature of Special Forces

Special Forces operate in small teams with high levels of operational autonomy, limited tactical oversight, and with a mandate to find unconventional solutions that will create disproportionate strategic advantage. This structure has been an integral element of their effectiveness since the British Special Air Service was first established in World War II but it increases the risk that "rogue" activities could occur.³⁹

If potentially criminal or unlawful conduct does occur, the Special Forces nature and skills will make it far more difficult to discover. Small, highly interdependent groups are not only naturally self-protective but Special Forces are trained to resist interrogation to discover the true nature of their activities.

These factors should put all levels of Defence on notice that the risk of such misconduct needs careful attention and any hint of it investigated without delay.

3.3 Strategic settings

The Panel considers that some strategic settings may have contributed to the risk of wrongful killings in the war in Afghanistan.

- 3.3.1 A long war run on shorter war settings – too high a tempo for too long. After the first few years it was clear that the situation in Afghanistan could easily require prolonged involvement. There does not seem to have been a point where a strategic decision was made to adjust the model of engagement to address the issues and risk associated a protracted conflict. If there was a point where some adjustment was made, then the changes to the model were insufficient.

The ADF's operational tempo was very high for an extended period. There were people, including senior leaders, who were aware and expressed concerns that these strategic settings were creating serious issues and risks but that awareness does not appear to have led to any fundamental change in settings to address them.

³⁸ See Afghanistan Inquiry Report, Part 1, pages 28-29. Note that these figures do not include 28 incidents which were not substantiated and 11 investigations which were discontinued

³⁹ This terminology was used in *SAS Rogue Heroes* by Ben Macintyre (Penguin Books, 2017) and *Rogue Forces* by Mark Willacy (Simon & Schuster Australia, 2021)

- 3.3.2 SOTG was tasked with counter-terrorism operations for much of the time. (Other Australian contingents were counter-insurgency focused.) This counter-terrorism focus placed an emphasis on taking terrorists off the battle field rather than winning over the local population, which is the central feature of counter-insurgency strategies. That emphasis created circumstances where a priority to remove terrorists from the conflict could easily be given a distorted meaning, especially over time.
- 3.3.3 Unclear strategy at a local level: While the overall strategy may have been clear at senior levels of command, it was not always clear at more junior levels. As a result, there was room for local commanders to interpret the strategy in ways that made tactical decisions in the field seem consistent with the strategy (or, at least, not misaligned with it) which were in fact both unethical and potentially illegal. That ability for local commanders to strategically justify their decisions provided less grounds for other, especially more junior, soldiers to challenge what occurred.
- 3.3.4 Shifting strategy at an international Coalition level: When acting as part of an international Coalition, participating forces may be subject to short term changes in strategic direction by successive superior officers in senior Coalition positions. Those changes could reflect specific goals of their participating governments but conflict with the Australian Government's directions to and caveats on the use of Australian forces.

3.4 Operational settings

The Panel considers that a number of operational settings contributed to circumstances that made it more likely war crimes might be committed.

- 3.4.1 Reliance on Special Forces to do tasks that could be done by regular soldiers: This reliance came from Australian decision making as well as ISAF decisions about the uses of Special Forces. There were a range of reasons that this occurred. Central to those reasons was a belief that the Special Forces comprised more highly trained soldiers at less risk of casualties. Using Special Forces in that way has historically caused issues from the very beginning.⁴⁰
- This assumption meant the Special Forces were undertaking operational activities outside the scope of their purpose and training without sufficient reflection on the implications of using them in this way and the risks associated with doing so.
- 3.4.2 The nature of the tasking: Unlike regular soldiers involved in mentoring tasks, the Special Forces (especially in some periods) had few tasks that involved them building relationships with the local population. That lack of contact limited their

40 This issue confronted the British SAS in World War II: "... the SAS was being shoehorned into the more traditional, one-dimensional demands of the Italian campaign – they were doing what any group of highly trained soldiers could do, suffering and succeeding in the normal way. That was not why the SAS had been formed ... The full consequences of that change, the loss of their singular advantage as a fighting squad, would become horribly apparent at Termoli ..." (SAS Rogue Heroes by Ben Macintyre, page 201, Penguin Books 2017)

ability to establish empathy with Afghan citizens or to understand the human and social consequences of their operational choices. At the same time, it meant many Special Forces individuals only really ever saw the Afghan population through the lens of potential threat.

In addition, conducting broadly the same type of operation many times risked reducing the opportunities to reflect carefully on all the implications of how those operations were run.

- 3.4.3 Model of Special Forces deployments: The approach to allocating deployments separately to the SAS and Commando regiments reinforced the SAS's culture of unique capability and of being above others. This approach in turn contributed to a broader culture which was inconsistent with placing a high value on adherence to the norms that governed all soldiers.

- 3.4.4 Clarity about the role of theatre command: There appear to have been issues in relation to the role of theatre command based in the Middle East. To at least some officers, it does not seem to have been clear whether theatre command was a forward-deployed Joint Operations Command or logistics command to support forward operations. Others saw it as a combination of both.

In determining responsibility in relation to issues concerning the conduct of the war, this lack of clarity may have contributed to the lack of focused accountability to detect the rumours of criminal, unlawful or inappropriate conduct the Afghanistan Inquiry was later directed to investigate.

- 3.4.5 The management of detention: The Australian Government position was that Australians were not to be responsible for detention and detainees had to be handed over. Captives were released if there was no evidence found against them within 72 hours. This approach was very frustrating for Special Forces at times when they had gone to considerable effort and taken significant risks in their capture.

In either case, the so-called "catch and release" management of detention created the sort of frustration that could weaken (as it has in other theatres of war) the priority to capture rather than kill people.

3.5 Special Forces selection, training, deployment and promotion

Concerns about Special Forces selection and training were canvassed in the Brereton Report and in the work undertaken by Defence as factors which likely contributed to practices, culture and behaviour that led to the alleged wrongdoing in Afghanistan.

The Panel notes that issues with Special Forces people development had already been identified by Special Forces leadership by 2015 and substantial action taken in response.

Nonetheless, for the sake of completeness, this Section sets out the Panel's overview of the factors it identified from its investigations and interviews.

- 3.5.1 Separate selection process for different elements of Special Forces: Some see the separate selection process for Special Forces elements as the foundation of the culture of exceptionalism. That culture ultimately contributed to some parts of the Special Forces operating above or outside the norms that governed the regular Army in the conduct of war.
- 3.5.2 A lack of diversity in selection: The ability to generate debate on operational decisions is hampered by lack of diversity.
- 3.5.3 The lack of a mature embedded ethical capability development function: Most Special Forces deployments operate in an ethically complex environment. Soldiers need to be able to make critical ethical decisions under great pressure but it appears that their training did not appropriately prepare them for that experience.
- 3.5.4 Officers trained almost entirely alongside soldiers without adequately differentiating their skillsets: Officers and soldiers were trained together in a setting that valued the skills acquired and the physical attributes developed by the soldiers. This arrangement resulted in an almost inevitable weakening of the officers' natural authority because they would rarely have the most developed combat skills or be the most physically able member of the team.

With strands of authority developed in this way, the role of the NCO would be strongly reinforced because their long service would make it likely they possessed very high operator skill levels.

- 3.5.5 A lack of exposure to the practices of regular Army: There was very little rotation by Special Forces operators through other Army elements so their sense of specialness and the ability to operate on a different set of rules and norms was not challenged.

This concern is not easily addressed because the nature of their special skills and capabilities make it difficult to find useful placements for Special Forces personnel elsewhere and the operators fear their skill and capability levels could suffer during the posting.

- 3.5.6 Members who were questionably psychologically or morally unfit for deployment: Interviews with Special Forces operators suggested that they had concerns that colleagues had PTSD or moral injury when they were deployed to Afghanistan. If this is true and it happened in sufficient numbers, it would indicate that the Special Forces' psychological support processes were manifestly unsatisfactory and that a very important safety valve had failed.
- 3.5.7 Promotion: NCOs were promoted on the basis they were effective Special Forces operators without paying systematic attention to the importance of their development as ethical leaders.

The Panel questions whether the personnel promoted in accordance with that limited selection criteria are more vulnerable to the sort of forces eroding the barriers to wrongful behaviour that were in operation in Afghanistan.

3.6 Organisational settings

There are several organisational settings that made an important contribution to the circumstances where unlawful killings could occur without detection.

- 3.6.1 Special Forces organisation and culture: There is evidence that there were aspects of the Special Forces and their culture that were not healthy. There was conduct inconsistent with a healthy culture and the existence of difficult to penetrate sub-cultures.

The opportunity for inquiries into misconduct in Afghanistan to begin earlier did exist. Ultimately, it was rumours that had circulated for some time about wrongful killings that reached the attention of the Special Forces leadership. But those rumours were not new when they first received leadership attention and they were reinforced at the time by complaints of Special Forces misconduct from Afghan locals and international non-government organisations but not investigated effectively. Had Special Forces, Army or Defence made further investigations at that time, the alleged crimes reported by the Afghanistan Inquiry (or at least some of them) may have been brought to light much earlier.

The Special Forces' culture of exceptionalism was widely recognised, resulting in a lack of trust in the Special Forces in other parts of Defence.

There is also a view that Australian Special Forces were increasingly influenced by unhealthy aspects of the Special Forces culture in the ISAF Special Forces community. These aspects include the valorisation of violence in videos of destructive operations set to rock music, the creation of heroic public stories of Special Forces actions through best-selling publications, the use of "death cult" imagery, and the evolution of a more distinctive Special Forces "style". These broader cultural issues are well set out in Simon Akam's careful study of the British Forces in this period.⁴¹

- 3.6.2 Poor contestability of decisions: Defence did not have a culture of contestable decision-making. Given the issues the Panel identified with many of the settings surrounding the Afghanistan conflict, there was a strong need for those settings to be contested.

This issue goes to wider cultural questions in Defence but it was particularly material for the use of Special Forces in Afghanistan.

41 The Changing of the Guard - The British Army since 9/11 by Simon Akam (Scribe Publications, 2021)

3.7 Leadership settings

The Panel noted two broader leadership settings that contributed to alleged wrongful killings not being discovered earlier.

- 3.7.1 A lack of operational or risk adjusted curiosity: There were multiple signs that there were matters requiring attention in Afghanistan. They included: spreading rumours; issues arising from operational reporting (including a formulaic format lacking in detail); reports by locals and non-government organisations; and media commentary. None of these indicators of trouble sparked sufficiently sustained curiosity.

Similarly, there does not seem to have been a sufficient awareness of the need for relatively significant risk mitigation strategies for the high risks associated with special operations and, therefore, the need to make regular and appropriately penetrating inquiries to obtain assurance that all was in order.

- 3.7.2 Insufficient regard for non-Defence sources of insight: The reporting by non-government organisations and the media was not treated with the proportionate respect it deserved.

SECTION FOUR:

Defence's organisational accountability and responsibility

When he announced the findings of the Afghanistan Inquiry Report on 19 November 2020, the Chief of the Australian Defence Force, General Campbell said:

Today the Australian Defence Force is rightly held to account for allegations of grave misconduct by some members of our Special Forces community during operations in Afghanistan.⁴²

In that public announcement, General Campbell set out his preliminary view as to how the events in Afghanistan could have happened. He highlighted: culture including the toxic competitiveness between the Special Air Service Regiment and the 2 Commando Regiment; false reporting; higher arrangements for command and control were too dispersed and too distant; and a failure to recognise sooner that Special Operations Command units were unable to sustain all the demands placed on them.

In the Panel's view, all of these matters could reasonably have been expected to attract attention and accountability at the highest levels in Defence at the time the events happened.

In this respect, the Panel notes that the IGADF inquiry was commissioned by the Chief of Army and reported to the Chief of the Defence Force. (By comparison, the UK Ministry of Defence established an independent statutory inquiry to investigate and report on allegations of wrongdoing by the British Armed Forces in relation to their conduct of deliberate detention operations in Afghanistan. That UK inquiry will report to the Secretary of State for Defence.)

4.1 Levels of accountability

Throughout his Report, Major General Brereton attributed or dismissed legal, moral and collective accountability for the incidents that were uncovered, factors which contributed to their occurrence, actions or behaviours which facilitated them and governance oversights and failures. The scope of the IGADF Inquiry, consistent with the functions of the IGADF and the terms of reference for the Inquiry and its reporting obligations, was such that the highest levels of Defence leadership at the relevant times were not required to give evidence to the Inquiry and were not included in the Inquiry's attribution of accountability.

42 <https://www.abc.net.au/news/2020-11-19/defence-chief-angus-campbell-afghanistan-apology-transcript/12899854>

The exclusion of Defence's most senior officers has attracted public criticism and caused continuing resentment and anger amongst Special Forces veterans, soldiers and their families. This criticism has been expressed forcefully and repeatedly to the Panel by Defence members of all ranks on visits to Campbell and Holsworthy Barracks throughout the period since the Afghanistan Inquiry Report was handed down.

The Panel provided initial advice to the Minister about this controversial issue in May 2021.⁴³ This Section revisits those considerations and notes Defence's response to the criticisms and the situation as at the date of this Final Report.

4.2 Bottom-up allocation of command accountability and responsibility

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

The Inquiry investigated 55 allegations of war crimes⁴⁴ which included looking from the bottom-up to see if any more senior officers also had any potential criminal responsibility for their actions.

The Inquiry's findings about command and collective responsibility set out in Chapter 3.03 of the Afghanistan Inquiry Report include:⁴⁵

- the criminal behaviour was conceived, committed, continued, and concealed at patrol commander level, and it is overwhelmingly at that level that responsibility resides
- there is no credible evidence that any troop/platoon, squadron/company or SOTG commander knew that, or was recklessly indifferent as to whether, subordinates were committing war crimes
- there is no credible evidence of failure by more senior officers up to troop/platoon, squadron/company or SOTG commander to take reasonable and practical steps that would have prevented or discovered the war crimes referred to in the Report, and
- command responsibility and accountability does not extend to higher headquarters, including HQ JTF 633 and HQ JOC who did not have a sufficient degree of command and control to attract the principle of command responsibility.

The CDF delegated Theatre Command for the conduct of the Afghanistan campaign to CJOPS. CJOPS assigned National Command and administrative control to the Commander JTF 633 for governance, performance, deployed personnel, and the safeguarding of Australian national interests. In January 2011, Operational Command

⁴³ The advice is contained in Discussion Paper 2 which was an attachment to the Panel's quarterly progress report Number 2 (12 May 2021)

⁴⁴ A Chronology and brief redacted summary of each of the 55 incidents investigated is set out in the Afghanistan Inquiry Report, Part 1, pages 60-67

⁴⁵ Afghanistan Inquiry Report, Part 3, pages 470-472

for the assignment of missions and allocation of forces across the theatre was further assigned to Commander JTF 633. Commander JTF 633 assigned Australian Force Elements under Operational Control to the relevant ISAF commands. The SOTG functioned on a daily basis under the Operational Command of the ISAF SOF.

The Report also found, when considering non-criminal levels of responsibility, that:

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

Based on these last three findings, the Inquiry recommended Defence undertake a review of decorations and revocation of the Meritorious Unit Citation.⁴⁶

4.3 Top-down allocation of accountability and responsibility

The Panel’s terms of reference authorise it to recommend additional actions not contemplated in the recommendations of the Inquiry. The Panel did not agree with the Brereton Inquiry’s view that some accountability and responsibility could not fall on the most senior officers and it suggested that issue should be the subject of further consideration.

In the private sector, major corporate failures result in both an organisational and individual responsibility. A common first step in responding to such a governance failure is for the members of the governing body to accept organisational accountability for the governance failure, explain how they failed to stop it (if they can) and announce plans to address the issues raised and improve future governance arrangements to prevent it happening again.

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

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

⁴⁶ The Meritorious Unit Citation recommendation was highly controversial and was rejected by the then Minister for Defence (Transcript, the Hon Peter Dutton MP, interview with Ben Fordham, 19 April 2021)

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

Similar approaches apply in the not-for-profit and public sectors.

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

A number of Defence Enterprise Initiatives were designed to mitigate future risk, including those Initiatives relating to Command and Control, Preparedness and Operational Respite. However, in the Panel's view, there was still a need for Defence's senior leadership to:

- identify any shortcomings in Defence's governance arrangements at the most senior level that caused, allowed or contributed to this organisational failure to take place
- consider whether any such shortcomings could or should have been apparent to any of Defence's most senior officers at the relevant time, and
- take steps to ensure Defence's future governance and corporate arrangements will prevent, or at least minimise the risk of, such shortcomings occurring again.

On 28 October 2022, the Panel asked the Chief of the Defence Force to confirm whether the review of decorations recommended by the IGADF (limited to SOTG positions) had been expanded to consider those broader issues of accountability and responsibility. The Panel was subsequently advised that:

CDF has considered the command accountability of current and former serving ADF members who held command positions during the periods in which the Inspector-General found credible information of multiple incidents of alleged unlawful conduct as identified in the Afghanistan Inquiry Report. Persons who held command positions during the periods where there was credible information of alleged unlawful conduct, irrespective of rank, have been considered in a consistent manner. ... The CDF has provided the relevant materials to the Deputy Prime Minister (in his capacity as Minister for Defence) for his consideration. This concludes the CDF's involvement in the process.⁴⁷

The Panel has not been provided with details about which appointments fall within the scope of the CDF's review or what factors the CDF had regard to in determining whether any shortcomings could be identified. The Panel cannot form a view as to whether this internal process could provide an objective analysis of the adequacy Defence's

47 [Defence response FAQ | Defence](#)

governance arrangements that were in place at the time at the most senior levels, and whether any shortcomings could or should have been apparent to Defence's most senior officers.

4.4 Possible indicators of organisational accountability and responsibility

The Brereton Report identifies indicators that all was not well within Special Forces. At least some of those indicators could or should have come to the attention of more senior Defence ranks and prompted further enquiry. They include:

- intelligence, surveillance and reconnaissance assets were typically pushed off target once the Force Element was there⁴⁸
- a practice evolved of delaying the reporting of engagements until after the Force Element returned to Multi-National Base – Tarin Kowt⁴⁹
- the sanitisation of information (apparent from its formulaic presentation) before it came to the notice of commanders at squadron/company level⁵⁰
- a consistent presumption on the part of the chain of command and a number of inquiry personnel that complaints by local elders were part of an insurgent strategy or were driven by compensation⁵¹
- there may well have been a sense ... not least because of the numbers of enemy killed in action (EKIA), and the number of them who were found to be unarmed, or armed only with a pistol, grenade or ICOM, but to have been manoeuvring tactically against the Force Element, that the ROE were being exploited, and lethal force was being used very readily when perhaps it was not always necessary⁵²
- ethical leadership was compromised by its toleration, acceptance and participation in widespread disregard for behavioural norms: such as drinking on operations, the Fat Lady's Arms, and lax standards of dress, personal hygiene and behaviour – not only on operations – which would not have been tolerated elsewhere in Army⁵³
- there was at least an “abandoned curiosity” in matters which ought to have attracted attention⁵⁴
- obfuscation in reports and operational reporting which was bland and stereotyped ... Aspects which might have attracted attention or questions were sanitised, and in many cases the reports bore no real resemblance to actual events⁵⁵
- there was the embracing of “inappropriate metrics of success,” or more crudely the EKIA count,⁵⁶ and
- because SOTG was a task group drawn from multiple troop contributing units and

48 Afghanistan Inquiry Report, Part 3, page 491, paragraph 55

49 Ibid, page 492, paragraph 56

50 Ibid, page 492, paragraph 57

51 Ibid, page 494, paragraph 64 and page 497, paragraph 76

52 Ibid, page 495, paragraph 69

53 Ibid, page 495, paragraph 71

54 Ibid, page 496, paragraph 72

55 Ibid, page 496, paragraph 73 and page 497, paragraph 74

56 Ibid, page 497, paragraph 77

multiple rotations, each SOTG Commanding Officer acquired a mix of personnel with which he had typically little prior influence or exposure. There was little opportunity for the Commanding Officer of any SOTG rotation to create a SOTG culture.⁵⁷

The Brereton Inquiry engaged Professor David Whetham to provide an independent professional assessment of command as distinct from criminal responsibility for the crimes of their subordinates. The assessment is entitled Special Operations Command Leadership and Ethics Review.⁵⁸ Professor Whetham covers much of the same ground but provides some fresh perspectives:

- contributing to this gradual decline in standards was fatigue and a general sense of loss of purpose. Fatigue is an issue that is going to be a factor on any deployment and ... is also recognised as a major ethical risk factor in its own right. Insufficient sleep and fatigue lead to poor judgment, lack of self-control, and impaired creativity as well as increasing the likelihood that people will engage in unethical behaviour⁵⁹
- the disenchantment caused by “catch and release” also added to that sense of fatigue ... One could conclude from this that it is not surprising that a decline in standards of behaviour coincided with a loss of sense of purpose for some in SOCOMD⁶⁰
- “There is a culture of silence and I do think people get ostracised who potentially speak out against it. There’s also the people who stay silent and they tend to continue on.” ... Others, including lawyers, who couldn’t reconcile what they saw with what they thought should have happened just left the organisation⁶¹
- this environment meant that those with the specific responsibility to sustain the integrity of the chain of command, the link between operations on the ground and the operational and strategic ambition, were unable to perform this task due to physical and cultural separation from operations on the ground⁶²
- beyond the excessive willingness of so many people to take things at face value when told from those outside of the wire of what had happened, there were also others who played a more active role. Many things were simply not reported upwards or were intentionally hidden by those who were in a position to look after their personnel and possibly believed that shielding subordinates was part of their job requirement⁶³
- some Joint Operations Command lawyers above the SFTG started to try and assert some control over what they increasingly believed were “sanctioned massacres.” The ROE were tightened up, but there was scepticism about whether this had any actual effect as “SF just got more creative in how they wrote up incidents.” As the lawyers started to become more “troublesome,” the SF unit started to rely more on their own lawyers, “with the promise of being inside their elite tent, doing cool stuff in

57 Ibid, page 498, paragraph 79

58 Ibid, Annex A to Chapter 3.03, pages 504-529

59 Ibid, page 514, paragraph 26. This observation raises other concerns about exemptions permitting shorter than prescribed respite periods between deployments and the adequacy of any psychological assessments on which the exemptions were based

60 Ibid, page 514, paragraph 28

61 Ibid, page 520, paragraph 50

62 Ibid, page 521, paragraph 51

63 Ibid, page 523, paragraph 58

return for legally polishing their version of events and the truth in a way that created enough doubt as to exonerate them ...” It was considered normal practice to change the Intelligence Summary that was supposed to drive activity to accord with what actually happened on the ground⁶⁴

- complaints made by or through the International Committee of the Red Cross, the Afghan Independent Human Rights Commission, or local elders – a number of which can now be seen to have substance – were routinely passed off as Taliban propaganda or motivated by a desire for compensation⁶⁵
- there is also the observation that appropriate scrutiny from higher up may have been avoided in part, due to the Special Forces officers who have proliferated throughout the ADF ... On the other hand, it is notable that the present inquiry was instigated and continued under two Chiefs of Army, both with Special Forces backgrounds⁶⁶, and
- while legal accountability for wrong-doing is likely to be focused on a tiny minority of personnel, there is no doubt that this goes beyond the law. Responsibility and accountability beyond purely legal matters is something that is recognised in the ADF. ... It is clear that a wider organisational accountability for creating a system that made those failures possible is also required.⁶⁷

Based on the Panel's initial interviews and early inquiries, the Panel formed the view that there may be even broader factors contributing to the alleged war crimes than the Brereton Report identified. The Panel's analysis is set out in **Section 3**. The analysis is not exhaustive and the Panel recognises the identified causes can be characterised in different ways. Issues in addition to those listed above included:

- the lack of clarity with which strategic settings were communicated to and understood by front-line soldiers
- overly complex command arrangements, with insufficient direct senior Australian command over SOTG operations
- insufficient adaptation to the length of the conflict, including the overuse of Special Forces, and failure to reconsider the adequacy of respite policy settings and their application. If there was a point where some adjustment was made, then the changes to the model were insufficient
- inadequate risk treatment of special operations: Special Forces operate in small teams with high levels of operational autonomy and limited tactical oversight. If potentially criminal or unlawful conduct does occur, their nature and skills will make it far more difficult to discover. These factors should put all levels of Defence on notice that the risk of such misconduct needs careful attention and any hint of it investigated without delay
- Special Forces (especially in some periods) had few tasks that involved them building relationships with the local population. That lack of contact limited their ability to establish empathy with Afghan citizens or to understand the human and social consequences of their operational choices. At the same time, it meant many

⁶⁴ Ibid, page 524, paragraph 60

⁶⁵ Ibid, page 525, paragraph 61

⁶⁶ Ibid, page 525, paragraph 64

⁶⁷ Ibid, page 528, paragraph 71

Special Forces individuals only really ever saw the Afghan population through the lens of potential threat

- the so-called “catch and release” management of detention created the sort of frustration that could weaken (as it has in other theatres of war) the priority to capture rather than kill people
- NCOs were promoted on the basis they were effective Special Forces operators without paying systematic attention to the importance of them also being Army and ethical leaders
- the Special Forces’ culture of exceptionalism was widely recognised, resulting in a lack of trust in the Special Forces in other parts of Defence. There is also a view that Australian Special Forces were increasingly influenced by unhealthy aspects of the Special Forces culture in the ISAF Special Forces community, and
- Defence did not have a culture of contestable decision-making. Given the issues the Panel identified with many of the settings surrounding the Afghanistan conflict, there was a strong need for those settings to be contested.

4.5 Initial advice to the Minister and Defence

In May 2021, the Panel 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.

The main purpose of such enquiry would have been not to apportion responsibility and accountability to specific officers (although that could yet happen under the auspices of the CDF command accountability review) 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 in particular failing in its fundamental obligation to enforce strict compliance with the Law of Armed Conflict and all of 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.

4.6 Defence’s response

In June 2021, the Chief of the Defence Force appointed Major General Andrew Hocking to lead a study of organisational learnings on behalf of the Chiefs of Service Committee (COSC)⁶⁸. His terms of reference included that:

Where appropriate, lessons should reference the structures, systems and directions or guidance (doctrine, policy, processes, etc) that direct, govern, guide and enable the way the ADF conducts operations and Defence works to achieve its mission.

68 Membership of the COSC is: CDF, Secretary, VCDF, Chief of Navy, Chief of Army, Chief of Air Force, Chief of Joint Capabilities, Chief of Joint Operations, Chief of Personnel and Chief of Guided Weapons and Explosive Ordnance.

The product of that exercise – Preparing for the Future: Key Organisational Lessons from the Afghanistan Campaign⁶⁹ – identified lessons in areas of strategy making, campaign design, command and control, culture, learning systems and risk management. It made 80 recommendations, with COSC accepting 79 of the 80 recommendations in full and one recommendation in part. The Defence Enterprise Committees Secretariat is responsible for tracking the ongoing implementation of the recommendations.

This publication provides a valuable and comprehensive assessment of lessons learned in Afghanistan. In some cases, its analysis involves consideration of higher-level decisions that contributed to the circumstances which gave rise to those lessons. The report was released to the public in March 2022 to contribute to broader debate on current and future challenges facing Australia's military, policy and strategy decision makers.

4.7 The current situation

Irrespective of the publication of the Hocking report and that the CDF has now passed recommendations on command accountability to the Government; the Panel still considers that, for the entirety of 2021 to 2023, there has been an unmet need for Defence senior leadership to communicate to the serving and ex-serving ranks of the ADF that they collectively accept organisational responsibility and accountability for part of what went wrong in Afghanistan. The failure by Defence's senior leaders to communicate that collective accountability and responsibility continues to generate resentment and anger amongst veterans, soldiers and their families which is likely to last for a long time.

Despite the passage of time since it was first proposed, the Panel considers that the discussion in this Section and **Section 3** indicates that further reflection could still provide positive outcomes for Defence. The failure to do so may mean some important lessons from Afghanistan are overlooked.

⁶⁹ [Preparing for the future: key organisational lessons from the Afghanistan campaign | Defence](#)

SECTION FIVE:

Two distorted cultural norms: secrecy and loyalty

The second objective of the Afghanistan Inquiry Reform Plan is:

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.

This Section looks at two corrosive attitudes or behaviours that contributed to SOTG misconduct in Afghanistan and also to failings in the reporting of that misconduct. These attitudes have been observed across all Services for decades and, if not addressed, will seriously hinder Defence's objective to prevent recurrence of wrongdoing.

5.1 The CDF's preliminary view

In his opening statement to the press conference held on 19 November 2020, General Campbell said:

These findings allege the most serious breaches of military conduct and professional values. ... In order to deal with what happened, we need to understand how it could have happened. I will offer a preliminary view based on both the Inspector-General's findings and my own professional judgment. ... It starts with culture.⁷⁰

5.2 The Afghanistan Inquiry's findings

The Inquiry found many factors contributed to the incidents it identified in its Report⁷¹ as did Professor David Whetham in his Special Operations Command: Leadership and Ethics Review.⁷²

For the purposes of this Section, these two cultural norms stood out:

- the obligation of secrecy has been used to support a code of silence, and
- alongside secrecy, loyalty provided the second pillar of the code of silence.⁷³

⁷⁰ See transcript: defence.gov.au: Home/News and events/Media releases/Press Conference-IGADF Afghanistan Inquiry

⁷¹ See Afghanistan Inquiry Report, Part 1, Chapter 3.01, page 325

⁷² See Afghanistan Inquiry Report, Part 1, Annex A to Chapter 3.03, page 504

⁷³ Ibid, page 333, paragraphs 18-19

But the Inquiry noted that loyalty:

... has its limits. It is clear that there remain many who are not prepared to speak the truth ... because they do not wish to inculcate their mates, or affect the reputation of their regiment, or be seen as one who “ratted.”⁷⁴

The Inquiry linked the Special Forces’ obligation of secrecy to a code of silence in this way:

Operators are conscious that their security clearances are critical to their employability and will not risk them. The organisational reaction to media reports is illustrative of the official reinforcement that the code of silence receives.⁷⁵

5.3 Broader application in Defence

That linkage to Special Forces’ secrecy and the life and death bond of loyalty between soldiers to support a code of silence is unnecessary. There is nothing special about those cultural norms. They permeate the rest of Defence but are called by different names.

In colloquial terms, they are commonly expressed as “we don’t dob on our mates” and “we look out for our mates,” meaning the members of the immediate unit or group to which they belong.

The problem is that any blanket application of these two cultural norms irrespective of the circumstances can produce distorted and dangerous outcomes.

5.4 Special Forces in Afghanistan

Special Forces and other Defence members who stayed silent about their knowledge of, or rumours about, unlawful killings which took place in Afghanistan are considered to be looking out for their mates. They may also be too intimidated to speak up by the likely reprisals for dobbing on a mate.

There are three problems with these warped interpretations of looking out for a mate and not dobbing on a mate.

The first is that the Brereton Inquiry findings of credible information that some Special Forces members may have committed war crimes brings dishonour on them and shame on the Special Forces, the ADF and Australia. The history and legacy of former Special Forces members is tarnished. Present and future members have to live with this dark stain on their regiment’s name and reputation and the unsought and difficult task of rebuilding trust with the Government and the Australian public. That damage has already been done.

Second, based on the credible information uncovered by the Inquiry, the members involved likely breached their duty to Defence, the Defence Values, the Law of Armed

⁷⁴ Ibid

⁷⁵ Ibid, page 333, paragraph 18

Conflict and international humanitarian law. Those members likely no longer qualify (then or now) as “mates” in any sense that could justify other members staying silent.

Third, at least some members who had knowledge of, or solid suspicions, about the allegations of war crimes ignored their duty to report it. If they had made such a report, they could not in any logical use of the term have been considered dobbers. They would have been doing their duty as a member of Defence and acting in accordance with these Defence Values:

- **Courage:** The strength of character to say and do the right thing, always, especially in the face of adversity, and
- **Integrity:** The consistency of character to align one’s thoughts, words and actions to do what is right.

The Brereton Report judged that significant responsibility falls on those who contributed to the environment in which the war crimes were committed:

... who, in misconceived loyalty to their Regiment, or their mates, have not been prepared to “call out” criminal conduct or, even to this day, decline to accept that it occurred in the face of incontrovertible evidence, or seek to offer obscure and unconvincing justifications and mitigations for it.⁷⁶

However, these warped cultural norms resulted in past or present Special Forces members who have given information or evidence to the Afghanistan Inquiry, the Office of the Special Investigator or a court as dobbers and they have been treated – or mistreated – accordingly.

In assessing the strength of those norms, it is necessary to take account of the number of allegations of war crimes, the length of time over which they arose, the reports from civilians, charities and non-government organisations and the likely wide circulation of the persistent rumours within Defence.

But no one, from privates to senior officers, apparently knew enough or was prepared to report the allegations before the Special Forces Commander, Major General Jeffery Sengelman,⁷⁷ set in train a series of Special Forces and ADF reviews starting with a study in 2015 which received unexpected allegations of war crimes and ultimately led to the Afghanistan Inquiry and five years of Special Forces reform.

That wide-spread failure to report or act on direct knowledge or credible rumours about war crimes is a disgraceful example of the damage these distorted cultural norms can cause – to the Special Forces, to Defence and to Australia.

⁷⁶ Afghanistan Inquiry Report, Part 3, page 472

⁷⁷ See **Section 9**

5.5 Abuse in Defence

The situation becomes more complicated if the two norms clash. What happens if one member of a unit or group mistreats, harms or causes detriment to another member who reports that abuse?

The other members of the unit or group either choose to support one or other of the parties or don't get involved. If they choose, they will most likely support the alleged abuser (looking out for a mate) and turn their backs on the abused person (as a dobber).

That assessment is supported by the Defence Abuse Response Taskforce's findings about sexual abuse, physical abuse, sexual harassment and workplace harassment and bullying in Defence. The abuse alleged in complaints to the Taskforce included very serious criminal offences (including rape and aggravated assault) against women and men over the last 70 years.⁷⁸

The Taskforce's findings are relevant because of their similarity, despite the different context, to the Brereton Inquiry findings. The Taskforce found:

The Defence culture underpinning many complaints at the time the abuse occurred was that you don't jack on your mates, even if those so-called mates sexually or physically abused you.

This flawed and dysfunctional culture discouraged some complainants from reporting abuse and, in other cases, led to complainants who did report their abuse being further abused and mistreated, often without receiving any support from the chain of command.

On occasions, that subsequent mistreatment was worse than the initial abuse. ... other complainants told the Taskforce they were effectively forced out of Defence for reporting their abuse.⁷⁹

Reporting the abuse⁸⁰ was often followed by bullying, persecution, ostracism and other mistreatment that left some complainants with no option but to resign. In some cases, a Defence career was the only career they ever wanted. In some cases, the complainants suffered long-term physical or mental health problems which limited their future career prospects and had a lasting, even lifetime, adverse impact on them and their close family.

The Taskforce also found that the chain of command often disregarded its obligations to the person who had been abused and provided little or no assistance.

5.6 Distorted and dangerous interpretations

These cultural norms have driven the silence in relation to alleged war crimes in Afghanistan and, for decades, the sexual abuse, physical abuse, sexual harassment and bullying of women and men in Defence.

⁷⁸ Note: Robert Cornall AO was deputy chair and then chair of the Taskforce.

⁷⁹ Defence Abuse Response Taskforce, Final Report, March 2016, page 60

⁸⁰ Report in this context is to an appropriate authority according to the policy

A mate yesterday should not be cast aside today because they reported an alleged breach of the Law of Armed Conflict, Defence Values and Defence's Military Ethics Doctrine by a fellow member of the unit or group. A mate yesterday should not be cast aside today because they reported an alleged sexual or physical assault or other abuse on themselves by a fellow member of the unit or group.

These norms are dangerous and yet they persist. The damage they have caused to Defence in Afghanistan and its members over decades is enormous. By covering up:

- grave misconduct and alleged war crimes, they have substantially facilitated huge damage to Special Forces, Defence and Australia, and
- abuse, they have substantially facilitated abusive behaviour which can include criminal offences, the destruction of the abused person's career and grievous physical and mental harm.

The Panel considers that, but for the malign influence of these distorted and dangerous cultural norms, there would likely have been: fewer alleged incidents for the Afghanistan Inquiry to investigate; fewer non-combatants or persons under control mistreated; and much less damage to the ADF's and Australia's national and international reputation and standing.

The Inquiry Report referred to a comment by Professor Philip Dwyer who said:

unless fundamental changes are made to the culture of cover-up in the Special Forces, or the way these allegations are handled internally, the problem will persist.⁸¹

That culture has resisted correction in Defence for decades. While Defence members may say they accept their obligations to do one's duty and to abide by Defence Values, a long history shows those obligations have been widely ignored when mates are involved in misconduct.

5.7 CA Directives 03/21 and 04/21

On 29 January 2021, the then Chief of Army, Lieutenant General Richard M Burr AO DSC MVO, signed off on two significant Directives setting enforceable Good Soldiering standards directed against these cultural norms:

- CA Directive 03/21 Bystander Behaviour, and
- CA Directive 04/21 Initiation Ceremonies.

The Directives are general orders for the purposes of the Defence Force Discipline Act 1982. A member who fails to comply with their mandatory requirements or breaches other prohibitions may be subject to disciplinary or administrative action.

Under Directive 03/21, a bystander is anyone involved in or becomes aware of an incident or situation that is a serious contravention to Army values, has an adverse impact on

⁸¹ Afghanistan Inquiry Report, Part 1, Chapter 3.01, page 329

morale, wellbeing or discipline or which compromises Army 's reputation or capability. A bystander is neither a perpetrator, nor a victim.

All Army members are to:

- Act: take all reasonable steps available to them to prevent inappropriate conduct from occurring or continuing
- Report: report instances of inappropriate conduct that they observe, or gain knowledge about, as soon as reasonably practical, and
- Empower: encourage people to stop or report behaviour that falls short of the standards expected.

In his evidence to the Royal Commission into Defence and Veteran Suicide on 7 March 2022, Lieutenant General Burr said:

... anyone who sees something or is a participant in something and doesn't declare that are just as accountable as those who perpetrate an act. So that is one example of trying to create an environment where we are all holding each other to account.

[Question from Counsel: Has that been applied in any disciplinary case against a bystander?]

It has. And a number of people have left the Army as a result of that.⁸²

Directive 04/21 prohibits initiation activities involving hazing, bullying and belittling new members which are "unacceptable and in direct contravention of Defence Values". This type of abuse was widely reported across all Services to the Defence Abuse Response Taskforce and often caused serious physical harm and mental distress. The scope and nature of the mistreatment perpetrated in initiation ceremonies is described in unpleasant detail in the Taskforce's Report on Abuse in Defence delivered on 24 November 2014.⁸³

The purpose of the Directive is to improve the methods by which Army welcomes new members including a requirement that they be treated with respect and expressly states that bystander behaviour will not be tolerated.

The Directive imposes obligations on all members of Army to:

- not organise or participate in initiation ceremonies, and
- report the conduct or planning of initiation ceremonies.

⁸² Transcript of Proceedings, page 75

⁸³ Glossary, abbreviations and acronyms, page xi

The Panel suggests Defence could also consider a mechanism (a further Directive, if appropriate) to prohibit any reprisal being taken against a person making a report under Directives 03/21 or 04/21 (including the subject of any abuse). Reprisal is defined as “causing any detriment (including any disadvantage)”⁸⁴ to a person who makes a disclosure or report in the Public Interest Disclosure Act 2013⁸⁵ and the National Anti-Corruption Act 2022.⁸⁶ The definitions also include some examples of actions that can cause detriment.

5.8 Summary

The Panel fully supports both of these Directives which may prove to be an important step forward for the whole of Defence. If promoted and strictly enforced, Directives like these could, through strong leadership, make a significant impact on the deeply embedded, distorted and dangerous cultural norms discussed in this Section.

The Panel urges the other Services to follow Army’s example (if they have not already done so).

⁸⁴ The definition is expanded by the addition of some actions that constitute detriment

⁸⁵ **Section 12**

⁸⁶ **Section 29**

SECTION SIX:

Overuse of Special Forces in Afghanistan

There is a common view that the Special Forces were overused in Afghanistan. Further details about the Special Forces participation are set out in **Section 12.2**.

6.1 The Afghanistan Inquiry

The Inquiry set out this conclusion in Part 3 of its Report:

While, because of the standard of their training and their professional skill levels, as well as their high degree of readiness and flexibility, the Special Forces provide an attractive option for a first deployment, it is a misuse of their capability to employ them on a long-term basis to conduct what are essentially conventional military operations. Doing this on a protracted basis in Afghanistan detracted from their intended role in the conduct of irregular and unconventional operations, and contributed to a wavering moral compass, and to declining psychological health.⁸⁷

The Inquiry recommended that:

... Special Forces should not be treated as the default “force of first choice” for expeditionary deployments, except for irregular and unconventional operations. While in conventional operations Special Forces will sometimes appropriately provide, or significantly contribute to, early rotations, the “handing off” of responsibility to conventional forces, and the drawdown of Special Forces, should be a prime consideration.⁸⁸

6.2 Preparing for the Future—Key Organisational Lessons from the Afghanistan Campaign

As noted earlier in this Final Report, the Chief of the Defence Force commissioned Major General Andrew Hocking to undertake a lessons learned review of the Afghanistan campaign. The review’s findings were published in March 2022 in his report entitled *Preparing for the Future – Key Organisational Lessons from the Afghanistan Campaign*.

The report is structured around five focus areas including Focus Area 2: Campaign Design. The following long quote from that report encapsulates and explains many of the issues surrounding the Afghanistan deployments.

⁸⁷ Afghanistan Inquiry Report, Part 3, Chapter 3.01, page 337, paragraph 38

⁸⁸ Afghanistan Inquiry Report, Part 1, page 110

The ADF mechanism to review and adapt deployed force structures evolved significantly during the Afghanistan Campaign. Through the Operational Establishment Review (OER) process, HQJOC periodically checked appropriate troops were force assigned to meet operational requirements within the constraints listed above. Because of personnel caps, the desire to maximise fighting groups or trainers often led to compromises that generated risks in other parts of the deployed force. This dynamic was exacerbated by perceptions in some parts of the organisation that the ADF had limited scope to propose personnel cap adjustments to government.

As part of the OER process, it was important to consider force sustainability over time. This had particular relevance for low-density forces such as special forces, human intelligence and other niche capabilities. While these force elements may have been available and optimal to deploy at particular points in time, sustaining their deployment for extended periods was more challenging. It also generated risks to the health and wellbeing of personnel and, in some cases, impacted unit cohesion and morale.

Early indicators of these risks became apparent around 2008. An increased number of deployment waivers began to indicate that certain force elements, including special forces, were being rotated beyond sustainable limits. As is mentioned in the culture section of this study, the ADF's "can do" culture has vulnerabilities. In this case, it manifested in a general reluctance for special force leaders and others in the community to pre-emptively flag force sustainability risks or reduce their commitment. However, a concurrent aspiration to integrate part-time soldiers into "One Army" provided an opportunity to mitigate this emerging risk and part-time members were eventually deployed on full-time service for winter rotations of the Special Operations Task Group. This was a more effective utilisation of the Army's total forces available.

The ADF did consider other options that would have reduced the Special Forces footprint, but it is understood that they were not presented to government because these options were not Uruzgan focused. Other higher density conventional forces with more capacity for ongoing rotation and possibly better suited to both training and the counterinsurgency necessity of holding ground were also not deployed. This may have been driven by a false perception in some circles that these forces were not as well trained or presented a higher casualty risk. It is also worth noting that the traditional role of forces like the Special Air Service Regiment was long-range/duration strategic reconnaissance and indigenous force capacity building rather than raiding action.⁸⁹

89 Preparing for the Future – Key Organisational Lessons from the Afghanistan Campaign by Major General Andrew Hocking, The Vanguard Occasional Paper Series, No 2 March 2022, pages 24-25

These findings were encapsulated in the report's Lesson 6:

Lesson 6: Force optimisation and force sustainability should be considered carefully and objectively when selecting the military means to achieve strategic ends. Force options and all associated risks should be formally communicated to government for consideration.

6.3 Limitations on the use of Infantry in Afghanistan

The Panel understands the overuse of Special Forces and the limitations on the use of Infantry caused frustration and embarrassment for Infantry deployments, particularly when compared to the US, British and Canadian use of Infantry in combat operations.

The Preparing for the Future report noted:

Unlike the Vietnam War ... for the most part, in Afghanistan, the ADF deployed bespoke units, smaller sized elements and embeds as part of a larger coalition force. With the exception of Combined Team Uruzgan ... from 2012 to 2014, Australia was the only Five Eyes nation not to assume leadership of a province in Afghanistan.⁹⁰

National limitations on the use of Australian forces meant they could not operate outside Uruzgan Province with the Afghan forces they were mentoring, affecting Australia's influence and credibility, and

At a personal level, the requirement for other coalition partners to temporarily assume mentoring responsibility for units with whom they were unfamiliar was also morally difficult for ADF mentors.⁹¹

These observations are encapsulated in Lesson 9:

Lesson 9: Restrictions and caveats calibrated by national risk appetite can affect national reputation, strategic influence and broader alliance objectives, which over time can unintentionally increase risk to mission.

The Preparing for the Future report included this recommendation:

9.1 Carefully calibrate caveats and restrictions: In a campaign where alliance objectives are paramount, careful consideration should be given to any caveats and restrictions that may impinge on national reputation and associated influence.⁹²

The future use of Special Forces is considered in **Section 12**.

⁹⁰ Ibid, page 32

⁹¹ Ibid

⁹² Ibid

6.4 The individual impact of multiple deployments

The individual impact of multiple deployments is mentioned throughout the Inquiry Report.

For example, in his Special Operations Command: Leadership and Ethics Review, Professor David Whetham says:

Contributing to this gradual decline in standards was fatigue and a general sense of loss of purpose. Fatigue is an issue that is going to be a factor on any deployment and was mentioned by multiple interviewees. It is also recognised as a major ethical risk factor in its own right. Insufficient sleep and fatigue lead to poor judgment, lack of self-control, and impaired creativity as well as increasing the likelihood that people will engage in unethical behaviour.⁹³

There were also administrative factors relating to fitness for deployment that could contribute to those individual impacts which have been considered by the Panel and, where appropriate, covered in its quarterly progress reports to the Minister. They include:

- the availability and adequacy psychological support, and
- the ease with which waivers of the respite period were granted to permit early redeployment (the Panel understands applications for respite were rarely rejected).

In **Section 7**, the Panel notes that it supports recent changes to the ADF's respite policy settings. Future assessments of individual fitness for deployment should be considerably assisted by current research into incentives to deploy on military operations. The project is conducting research into the way intrinsic motivation (interest in the nature of the task) and extrinsic incentives (rewards and outcomes) complement and, on occasions, conflict with each other in a Defence member's decision to seek or volunteer for deployment. The project aims to "better understand the benefits and risks associated with the incentive structures so that individual welfare can be better managed."⁹⁴

6.5 Summary

In an article titled *Special Forces Issues Have Deep Historical Roots*, Neil James concluded:

Australia sent its Special Forces personnel "to the well too often." The high operational tempo taxed individuals psychologically, pressured their families, stressed unit cultural norms, strained unit resilience and seems to have diluted accountability mechanisms.⁹⁵

⁹³ Afghanistan Inquiry Report, Annex to Part 3, page 514, paragraph 26

⁹⁴ See An Interdisciplinary Examination of Incentives to Deploy on Military Operations, 16 May 2023 by Maria Beamond, Robert Hoffmann, Phillip Hoglin, Andrew R Timming and Lena Wang and Afghanistan Inquiry Reform Program Enterprise Initiative 35

⁹⁵ <https://www.aspistrategist.org.au>

SECTION SEVEN:

Reform Program initiatives of particular interest to the Panel

Work Package Four of the Afghanistan Inquiry Response Program included 72 initiatives designed to prevent recurrence of incidents of the type described by Major General Brereton⁹⁶.

At the most basic level, the Panel's threshold for a successful program was one which:

- ensures ADF members have adequate social mastery skills in ethics, leadership, command and culture prior to deployment
- addresses the overuse of individuals
- addresses the overuse of individual force elements, especially low-density elements such as Special Forces
- improves the quality of force deployment options put to government
- improves the command and governance structures for ADF force elements once deployed, and
- encourages and enables the reporting of misconduct.

7.1: Improved social mastery skills

The Centre for Defence Leadership and Ethics at the Australian Defence College led a full program of work across the last three years to ensure the ADF's doctrine, practices and teaching of ethics, leadership, command and culture represent best practice. More detail on the ethics component is at **Section 9**. The Panel believes that work should collectively protect the ADF against the risk of recurrence and individually protect ADF members against the risk of moral injury. However, the Panel notes the need for properly resourced ongoing assurance that training across all services is aligned to ADF doctrine.

The Panel believes opportunity remains for the recording of vignettes (as initially recommended by Major General Brereton) exploring how leadership approaches across 2005 to 2016 should have been different with the benefit of hindsight. Although Defence has chosen not to do this as yet (due to legal caution while the work of the OSI is ongoing), the Panel believes that some reflections could reasonably be made once the command accountability review is finalised, especially on matters such as recognising cultural deviance and risk management. This would make a significant contribution to senior level accountability, and demonstrate Defence values and a learning culture in practice.

⁹⁶ The 72 initiatives in Work Package 4 comprised: 14 initiatives which responded to 25 recommendations from the IGADF Inquiry and 58 initiatives that were generated by Defence through the Afghanistan Inquiry Reform Program

The Panel conducted two series of confidential interviews with SOCOMD's external stakeholders in 2022 and 2023 to seek information on how culture change efforts within the Command to address exceptionalism have been perceived by those they work with most closely and most often. These interviews indicated that, apart from some isolated examples, the dominant view by external stakeholders of current SOCOMD members is that they are exceptionally professional and have respectful attitudes to others outside the Command. That is encouraging. The Command will, however, need to continue to monitor the nature of competitiveness between its regiments and address any signs of unhealthy or unproductive competition if they arise.

7.2: Improving operational respite and psychological support policy settings

Overwhelmingly, Defence is a “can do” organisation full of members with a bias to action; nowhere more so than within Special Forces. The drivers for an ADF member to continue to volunteer to deploy are many, including their professional satisfaction in undertaking a job they have trained hard to master; their contribution to a team; and incentives within the promotion and remuneration systems. However, there is evidence that the sustained involvement in killing, especially when it is intentional and at close quarters, can desensitise some people to the process of killing itself. The risk of wrongful killing can increase in a prolonged war in which some soldiers are engaged in multiple deployments.

There comes a time when Defence needs to help members help themselves with an honest accounting that their last period of respite from operations has not provided sufficient rest and recovery, and they are not yet ready to deploy again; or that they may not be in a psychologically fit state to deploy.

The Panel supported the introduction of a new rule, within a new whole-of-ADF respite policy, that reducing any period of respite must be approved at “one remove” from a member's chain of command (by Headquarters Joint Operations Command) to ensure alternatives are genuinely explored and the status of the member's wellbeing and personal circumstances are sufficiently challenged and prioritised. The system as it currently stands is not perfect, but is a significant improvement on the past.

The Panel also took particular interest in the work undertaken to improve psychological support to Special Operations Command members. The Panel was advised of SOCOMD's Human Performance Optimisation program which aims to better manage the physical and mental fitness of Special Forces on a contemporary scientific basis, through improved nutrition, injury prevention and rehabilitation, resilience training, welfare support and psychology support. The Panel also noted Defence's advice that the shortage of psychologists during and after COVID19 has hindered the progress of Defence's initiatives to improve psychological support to the force in general.

7.3: Improved preparedness reporting and risk management of low density force elements

When the Panel challenged what processes had led to Special Forces being overused in Afghanistan, it was concerned to learn that one element had been a preparedness system that put the onus on Commanding Officers alone to raise and champion sustainability concerns – essentially to say their unit was not ready to deploy. The Panel considers that was a manifestly unfair burden to place on the COs within Special Operations Command at the time. For example, working against such reporting was: the desire of members under their command to deploy, the clear preference expressed by government to use Special Forces, the expectations placed on them to deliver capability, and the impact such reporting was likely to have on their careers.

The ADF's management of preparedness risks and deficiencies has changed in a number of ways in recent years. The Reform Program included a digitisation and data management initiative to broaden the range of inputs, improve the fidelity of data available to senior decision makers, and generate assurance reports. The Panel was particularly supportive of that initiative. The current system provides Commanding Officers and their leaders with better tools to inform sustainability and risk discussions.

The Panel has emphasised that assumptions about the level of risk of misconduct, and risk treatments, should be reassessed and adjusted whenever 'overuse' parameters are stressed.

7.4: Improved operational command and control arrangements

Major General Brereton made three recommendations about the need for Australia to maintain operational command of Australian forces in future. The Panel agrees that the coalition command and control arrangements for the Special Operations Task Groups in Afghanistan resulted in sub-optimal lines of accountability and responsibility for both the prevention and detection of misconduct.

A new policy on the operational command of deployed forces has been developed by the Chief of Joint Operations in response and is supported by the Panel. Details are above the classification level of this report. In 2023, the Panel has received a personal statement from the incumbent CJOPS that he is comfortable with his oversight of Special Forces and is happy to be held fully accountable for their operations. The Panel also supports guidance contained in new Command Doctrine on the need to ensure adequate oversight is in place, and national command is strengthened, on the irregular occasions when operational command is assigned to a non-ADF force element.

7.5: Improved channels for reporting serious operational misconduct

The Panel acknowledges that the Brereton Inquiry arose from past and present members of Special Operations Command having the courage to report what they had seen or heard. Defence's responsibility to create a reporting culture is addressed in **Sections 4 and 5**.

The Panel's questions for Defence, as an organisation, were:

- whether delays in reporting had been caused by inadequate reporting options in-theatre and/or outside the chain-of-command, and
- in relation to some early reports of misconduct from the International Committee of the Red Cross, why complaints did not feed through to changes in risk management.

The new system now in place should improve channels for reporting serious operational misconduct. The scheme provides a safe and confidential reporting mechanism through the Public Interest Disclosure (PID) scheme, which makes it sufficiently independent from the tactical chain of command. Relevant information from PID reports is passed to a newly created Sensitive Incident Management Cell at Headquarters Joint Operations Command, for assessment by individuals with the requisite military expertise to understand what is being described and the security access to collate all operational information relevant to the report. IGADF provides an oversight, assurance and inquiry function. The Public Interest Disclosure Act 2013 (Cth) framework also allows for second tier independent assurance from the Commonwealth Ombudsman through their statutory oversight role, providing added trust and confidence in the process from the perspective of an individual making a report. Moreover, use of the PID scheme provides disclosers with statutory protections against reprisal and statutory timeframes for consideration of the matters they raised and investigation.

The creation of this framework also includes an avenue for reports or allegations to be received by Headquarters Joint Operations Command from foreign individuals and the ICRC, thereby providing wider coverage when compared to other internal Defence reporting avenues.



PART 2

Key elements of the broader reform agenda in Special Forces and Defence

SECTION EIGHT:

Governance and cultural reform since 2015

At the press conference held on 19 November 2020, General Campbell said:⁹⁷

Firstly, in terms of culture, Army has in parallel with this Inquiry driven a comprehensive reform program within Special Operations Command over the last five years. This program focuses on ethical leadership, good governance and command responsibility.

While much good progress has been made, the Report notes that elements of resistance to change and professionally corrosive attitudes or behaviours persist.

It is important to recognise that Defence had already started an intensive reform journey in Special Operations Command before the Brereton Report was handed down. This Section sets out a brief chronological overview of some key assessments of the process of reform undertaken by SOCOMD from 2015 to 2023 and the documents that provide details of its outcomes.

8.1 The starting point: 2015

In 2015, the Special Operations Commander – Australia (SOCAUST), Major General Jeffery Sengelman DSC AM CSC, commissioned Dr Samantha Cromptoets to conduct a study to assist his efforts to continue a program of learning and development, structural and organisational realignment and strategic planning within SOCOMD.

Dr Cromptoets advised SOCAUST that, in some of the interviews with Defence insiders undertaken for that study, “references to repeated issues of misconduct in SOF were made.”⁹⁸ These initial observations were supplemented in a follow up note Dr Cromptoets sent to Major General Sengelman and the then Lieutenant General Angus Campbell (Chief of Army) in an email dated 2 February 2016 “to elaborate on the parameters of the information gathered in order to address the questions that you had.” The unexpected allegations of war crimes and cover ups in Afghanistan formed a significant part of Dr Cromptoet’s formal report at the completion of the study.⁹⁹

These findings lead directly to the appointment of Major General Brereton as an Assistant Inspector-General ADF on 12 May 2016 to conduct the Afghanistan Inquiry.

⁹⁷ See transcript: defence.gov.au: Home/News and events/Media releases/Press Conference-IGADF Afghanistan Inquiry

⁹⁸ Dr Cromptoet’s paper Special Operations Command (SOCOMD) Culture and interactions: Insights and reflection dated January 2016, page 1

⁹⁹ Special Operations Command (SOCOMD) Culture and interactions: perceptions, reputation and risk, February 2016

For the next seven years, reforms in SOCOMD driven by SOCAUST and the Chief of Army proceeded in parallel with first, the Afghanistan Inquiry and then Defence's implementation of its responses to the Inquiry's findings and recommendations.

8.2 The first Irvine Report: 2018

Mr David Irvine AO was engaged to assess reform measures taken in SOCOMD since late 2014 against five pillars: governance; accountability; values; perceptions; and integration. The terms of reference for the review included:

3. However, over time, incidents, reports, organisational performance and anecdotal stories indicated the impact of such a high tempo had triggered unintended and until recent years, unnoticed consequences. The cumulative effect of these consequences was a subsequent erosion of trust in SOCOMD by the broader Defence organisation.

The report included these observations:¹⁰⁰

- unprofessional conduct was not being properly managed, with a preference for “mateship over leadership” and misuse of secrecy
- collectively, these symptoms contributed to a culture that had begun to drift in adverse directions, not accountable to normal military standards
- audit results and feedback during focus group sessions demonstrated positive evidence of individual accountability within the Command and a leadership willing to hold its members to account for their actions, but
- it can take years to change organisational culture – and perceptions of that culture.

The report delivered on 31 August 2018 contained 14 recommendations including:

Recommendation 3: The current action within SOCOMD to hold its personnel to account for their behaviour and actions must be maintained. Accountability needs to be demonstrated constantly by all leadership levels within SOCOMD.

8.3 The second Irvine Report: 2020

In March 2020, the Chief of Army requested Mr Irvine to undertake further work on the current state of SOCOMD and the progress being made on the implementation of the recommendations in his 2018 report, together with any other recommendations Mr Irvine thought appropriate.¹⁰¹

The second report adopted the same five themes as the first report. Mr Irvine made the following comments arising from his revisited investigations:¹⁰²

- alignment with Army values is at the core of cultural renewal
- there is genuine appreciation for the Command's efforts to pull itself up from its low

¹⁰⁰ Review of Special Operations Command Australian Army, 31 August 2018: extracts from the Executive Summary

¹⁰¹ Review of Special Operations Command Australian Army, 15 June 2020: See Introduction, page 2

¹⁰² Ibid, Executive Summary, paragraphs 11, 14, 17 and 18

state of six years ago and for the fact it is integrating more effectively with Army and with Joint Operations ...

- the animosity between the Commando and SASR, which was proving so counter-productive a few years ago, seems to have abated somewhat. But it needs active leadership to avoid any future flare up, particularly at the NCO and senior NCO levels, and
- Special Operations Command now has a very different and more positive feel by comparison with the low point of 2014-15. It has a clear purpose and mission. Its governance is sound and its operating culture is developing in the right directions.

Mr Irvine made 21 recommendations mainly focused on suggestions to assist in carrying the reforms forward. These three recommendations stood out:¹⁰³

- 10. Greater workforce diversity to include more women and people of Indigenous and ethnic backgrounds needs active consideration
- 15. The Command must continue to insist on the timely enforcement of firm but fair discipline and the reporting of infringements, and
- 20. The leadership and the members of the Command should continue their collaborative engagements with Army, the ADF and partner agencies and departments, ensuring that SOCOMD is seen as a helpful, trusted, reliable and skilled team player.

Mr Irvine's overall assessment was:

The reform and modernisation process has not finished – if it ever will be. Much remains to be done. However, while guarantees against a recurrence of previous concerns can never be absolute, the Command should be trusted to undertake special operations on behalf of the ADF, the Government and the people of Australia.¹⁰⁴

8.4 Report to CA: Transformation of Special Operations Command: 2020

On 1 September 2020, the Special Forces Commander, Major General AG Findlay AM, delivered this report to Chief of Army. It describes SOCOMD's "cultural and professional journey since 2015 and projects into the emerging posture of a reformed and more capable Command for the future."¹⁰⁵ The Irvine reports are the only references.

This lengthy and detailed report comprehensively describes SOCOMD's self-identification of the problems confronting it in 2015 and the reforms and other measures it has taken since then to address past problems and prepare for future challenges. There is too much information in the report to deal with in the Panel's Final Report and it is not necessary in view of the audit covered in **Section 8.6**.

¹⁰³ Ibid, pages 38-39

¹⁰⁴ Ibid, Executive Summary, page 4

¹⁰⁵ Report to CA, Introduction, page 1

However, the Panel particularly noted this reform:

66. SOCOMD has fundamentally redefined the core activities required to generate a SOTF and each unit has been assigned one of these to focus on: Strategic Strike, Special reconnaissance and Special Warfare. These have provided clarity of purpose for each SOCOMD unit, and they have been enshrined within SOCOMD's doctrinal framework ... SOCOMD is currently considering a fourth vector/core activity, utilising the working title of "Technical Enablement" in order to be able to generate technical capabilities for successful conduct of special operations into the future.

The tenor of the whole Report to CA is captured in this paragraph:

5. After five years of transformation, SOCOMD today is not the same organisation as it was in 2015. SOCOMD is now positioned to implement the findings of the IGADF Afghanistan Inquiry; to rebuild the trust of Government, Defence and the public; and postured to contribute to Australia's national interests against the evolving geo-strategic challenges as directed by the Defence Strategic Update 2020 and Force Structure Plan 2020.

This paper concludes with a SOCOMD that is determined to emerge from this intense five-year period of cultural and professional transformation as a stronger, more accountable and much more capable organisation.

8.5 Continuing reform post the Afghanistan Inquiry

Major General Paul Kenny DSC AM DSM took over as SOCAUST on 27 November 2020 and led SOCOMD's participation in the implementation of the Brereton recommendations and the broader Afghanistan Inquiry Reform Program.

During the period to the date of this Final Report, SOCOMD made professional and cultural improvements in the Special Forces and realigned its operational capabilities to meet the emerging strategic environment.

8.6 Enterprise Initiative 23 – Audit of reform undertaken by SOCOMD: 2023

This audit was conducted internally by Defence as part of the Afghanistan Inquiry Reform Program. The audit was described in these terms:

Defence will conduct a second line audit of reforms undertaken by SOCOMD from 2015 that go towards addressing the issues identified by the Afghanistan Inquiry. The audit will seek to determine the status and effectiveness of the reforms (i.e. what impact they have had) and arrangements in place for ongoing assurance and management.

Its objective was:

To increase the level of trust and confidence stakeholders have in the deployment of specialist military capability by identifying reforms undertaken within SOCOMD since 2015 that go towards addressing the issues identified by the Afghanistan Inquiry.

Its expected outcome was:

The outcome of this initiative is independent assurance on the reforms within SOCOMD that contribute positively to the overall objective of preventing recurrence of the issues highlighted by the Afghanistan Inquiry.

All of the requirements for EI23 were met in accordance with the approved Reform Management Plan. The audit of SOCOMD reform has been completed and the final report was issued on 22 May 2023. The audit conclusion was:

Overall the audit found that SOCOMD has undertaken a significant and extensive range of reforms that contribute positively to the overall objective.

A reading of the report makes it clear the auditors conducted a very thorough analysis of every issue identified by the Afghanistan Inquiry Report that came within the scope of the audit. The report's security classification limits any further discussion of the auditors' detailed considerations in this Final Report but the Panel is inclined to support the audit's positive conclusions based on the material it reviewed.

8.7 Defence culture: SASR and 2 Commando Regiment and other stakeholders

Previous reviews also focused on the relationship between SASR and 2 Commando Regiment. Mr Irvine commented in his 2018 report that "many interlocutors described the relationship between SASR and 2 Commando as reaching at times a point of highly counter-productive toxicity." He noted that the overlap in mission sets and capabilities was a significant source of friction.

General Campbell said in his press conference on 19 November 2020:

What emerged was a toxic competitiveness between the Special Air Service Regiment and the 2nd Commando Regiment. Destructive of trust, cohesion and mission and a disgrace to both.¹⁰⁶

The Panel met with both Regiments on several occasions to assess the current state of the relationship between SASR and 2 Commando Regiment. The Panel also conducted interviews with other stakeholders in an effort to gauge the effectiveness of Special Forces' relationships with them.

The feedback provided from the late 2023 discussions was positive overall although the Panel has some lingering reservations. Stakeholders observed many people had worked hard over many years to change the Command's reputation and that is now seeing results.

¹⁰⁶ See transcript: defence.gov.au: Home/News and events/Media releases/Press Conference-IGADF Afghanistan Inquiry

Individuals who have been embedded in SOCOMD units since 2015 described the jobs as some of the best of their career. The difference in culture between the pre-2013 period and post-2014 period (for those who were able to make comparisons) was stated as being very noticeable. For those who might have expected a more difficult initial experience as representatives of the more diverse workforce being introduced, the related experience was also welcoming and accepting.

The Panel notes that when people speak of SOCOMD they mention the professionalism, the excellent quality advice and capability, and opportunities that come with collaboration. When personal attributes were specifically queried by the Panel, the response was that SOCOMD members are usually good to work with because they are hardworking, adapt to meet changing circumstances very quickly and always offer to contribute to the team. They are reported as socialising well as one team and being respectful of others.

When asked about areas of concern it was interesting that most interviewees expressed concern for SOCOMD staff, instead of concerns about SOCOMD staff. This is a significant change over the past three years of the Panel's experience:

- interviewees are generally concerned that the IGADF Inquiry Report has been perceived as painting all of SOCOMD with the same brush. Now staff who served and did a good job are doubting their service, which has adverse effects, and
- a number of people commented that they are hoping the SOF Workforce Review will provide a clearer way ahead to give the Command a new, forward looking purpose and open up new opportunities for collaboration. This was particularly in relation to 2 Commando Regiment who some perceive as still trying to find purpose and relevance outside of the tactical assault group function. SASR was reported as being more comfortably settled in its role with the intelligence, surveillance and reconnaissance functions already having more breadth and scope.

The Panel did receive information about a small number of compliance issues which had arisen in recent times, but it was clear these had been appropriately and quickly addressed by SOCOMD leadership. A similarly small number of comments were also made in relation to the culture reform work still needing to remain a focus to prevent recurrence in particular areas. This feedback has been directed to SOCAUST for his consideration.

There were mixed messages about whether unhealthy tensions still existed between SASR and 2 Commando Regiment. For the most part, stakeholders reported either no tensions in the relationships they observed, or healthy tensions. However, discussions with members of the Regiments themselves seemed to indicate that relationships were a work in progress and much would depend on successful implementation of the role delineation measures in the SOF Workforce Review. It is hoped that better role definition in the future will attenuate this problem.

8.8 Summary

The Panel agrees that, based on those reports and the results of its own interviews and investigations, it is time for SOCOMD to put the response to the Afghanistan Inquiry behind it. It is time to move forward and to consolidate the reforms under firm and watchful leadership, “to rebuild the trust of Government, Defence and the public; and be postured to contribute to Australia’s national interests against the evolving geo-strategic challenges.”¹⁰⁷

¹⁰⁷ Report to CA, Introduction, page 1

SECTION NINE:

Military Ethics Doctrine

The Brereton Report made it clear that the Australian Defence Force needs to place a renewed and systematic focus on ethics. It includes these recommendations:¹⁰⁸

- basic and continuation training should reinforce that not only is a member not required to obey an obviously unlawful order, but it is the member's personal responsibility and legal duty to refuse to do so, and
- both selection and continuation training should include practical ethical decision-making scenarios in which trainees are confronted in a realistic and high pressure setting with the requirement to make decisions in the context of incidents of the kind described in Part 2 [of the Report].

Defence has to be confident that the question for all ADF members faced with a difficult choice is not "What can we do?" but "What should we do?" and that the answer will be ethically defensible.

9.1 Military Ethics Doctrine

Part of the ADF's response was the development of ethics training and, importantly, the development of Military Ethics Doctrine that sets out the fundamental principles and is a consolidation of the key tenets of ethics, and more particularly military ethics, as understood and applied by the ADF. That work also built on the substantial efforts already being pursued by SOCOMD before the delivery of the Brereton Report to develop new ethics training. The Panel welcomed the opportunity to engage with that process to create the doctrine.

The initial drafts of Military Ethics Doctrine drew upon some of the relatively new ethics training that was being rolled out in SOCOMD and elsewhere. The core concept in that training was called triangulation. This new approach to military ethics is based on the idea that there are three different ethical theories – virtue, duty and consequences – which should be triangulated to reach the decision which is the "most right" in the circumstances.

9.2 Triangulation

The Panel pointed out four fundamental issues with the triangulation approach.

9.2.1 Utilitarianism

The first issue arose from the use of utilitarianism in the triangulation logic. Utilitarianism considers the consequences of a decision. Put simply, that means the choice that produces the greatest good for the greatest number is the right thing to do. That

¹⁰⁸ Afghanistan Inquiry Report, Part 3, Chapter 3.01, page 327

calculation can be used to override any duty-based ethics where following one's duty will lead to far more negative consequences than abandoning it. This is a form of ethics that can justify committing war crimes or other related breaches of international law as the right thing to do in some circumstances. Consider the following examples.

One of the core notions of duty-based ethics is founded on the principles of reason formulated by Immanuel Kant. Those notions include the pivotal idea that you should "act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means." That principle is commonly understood to be the basis of an absolute prohibition on torture.

However, utilitarian ethics in whatever formulation (utility, preferences, happiness and so on) focuses on maximising good over bad consequences. It provides an equally strong justification for torture because, if the suffering caused to one person by torturing them saves the lives of many others, then it can be justified. This sort of ethics can and has provided a justification for bombing innocent civilians to terrorise a population into surrender.

Duty-based ethics will prohibit the intentional killing of an innocent person. Utilitarianism can justify it. Consider if, as has occurred, a Special Forces patrol deep in enemy territory stumbles on a shepherd boy who is clearly a non-combatant. In all likelihood, he will reveal the patrol's presence and therefore put those soldiers, their colleagues and their mission at risk. In those circumstances, according to utilitarianism, the boy could be killed. Duty-based ethics would prohibit killing a non-combatant.

A similar analysis could be undertaken for each category of war crime and demonstrate there will always be situations when a utilitarian-based tradition will justify the commission of those crimes as the right thing to do whereas a duty-based tradition never will.

To give utilitarian theories this standing in Military Ethics Doctrine would be to conceptually undermine the idea that it is always wrong to commit a war crime. The proposed method of triangulation does not prevent this problem. The method's first step was to start with duties and responsibilities and then, as a second step, consider consequences. However, there was nothing in the logic set out in the draft Ethics Doctrine that would prevent the duty being overridden if the consequences of doing so were severe enough.

9.2.2 Tension between virtue, duty and consequences

The second issue with the triangulation method emerged from the first one. For the theory of triangulation to work, it needed some higher order ethical theory sitting above the three theories to explain how logically to relate the different approaches (virtue, duty and consequences), especially where they are in tension. The closest the draft Ethics Doctrine came to such logic in the proposed process was the suggestion that you consider duties first, then consequences with a "check" against Defence Values. However, there was no ethical logic to justify why you would do it in that order or how you would resolve any of the direct conflicts described above.

9.2.3 Practicality

There was a third set of issues around the practicality of this proposed new approach. It required every member of the ADF to develop a sophisticated set of ethical reasoning tools and an ability to apply them consistently in situations of extreme pressure. In practice, this approach asked all members of the ADF to understand three quite complex forms of ethical reasoning, to be able to look through all three lenses at every problem they face and, finally, logically to work through how the three approaches interrelate. Experience suggests it is very difficult even for tertiary students and requires substantial study for people to undertake this analysis well and consistently, let alone to the level required when the ramifications of the wrong decision may be to commit a war crime.

9.2.4 Exclusion of natural law theory

Finally, the triangulation approach systematically excluded from consideration the ethical tradition of natural law theory upon which just war theory, the laws of war and much modern humanitarian law like the Geneva conventions are built.

9.3 The Panel's proposal

The Panel proposed that the Military Ethics Doctrine should be built upon natural law theory, which provides the ethical foundation for just war theory and its subsequent translation into the Law of Armed Conflict. This form of ethical theory also resolved the supposed tensions that could arise between duty, virtue, and consequences using the triangulation approach.

Natural law theory focuses on what our intentions are and whether our plans represent a practically reasonable way to pursue what is humanly fulfilling for ourselves and others. When we consistently act reasonably, it gives rise to both duties and virtues and being reasonable involves the consideration of consequences although in a non-utilitarian way.

Natural law theory is a principles-based form of ethics because it looks to the principles we need to promote and protect human flourishing and the common good. For example, one of its principles to protect human flourishing is that you should not use people as means to ends. That underpins strong principles such as torture is always wrong. Importantly for military ethics, the principles of discrimination and proportionality in just war theory are also principles that come directly from the natural law tradition.

We can also describe this principles-based form of ethics as duty-based because duties describe what it is to act consistently with these principles. For example, another way to describe adherence to the principle that torture is always wrong is to say we have a duty not to torture people.

In addition to being a principles-based form of ethics, natural law theory is a form of virtue ethics. It recognises, if you act consistently in the line with its principles, that consistency will form your character in a way that predisposes you to act in those ways in future. So, for example, if as the Defence Values propose, you act consistently "to say and do the right thing, always, especially in the face of adversity," you will develop the

virtue of “courage”. The Western ethical tradition has long had lists of virtues and they have been determined by principles founded in natural law theory.

Natural law theory also considers consequences, although not in the utilitarian way of the triangulation model. One of the important ways natural law theory does so is with the notion of proportionality. In the natural law tradition, the meaning of proportionality differs to the way it is sometimes used by utilitarians. Proportionality to a natural law theorist and, therefore, a just war theorist does not involve weighing cost and benefits. Rather, natural law theory asks, are the harmful consequences that come from an action the minimum necessary to achieve the intended objective and is there a reasonable symmetry between the good objective and the harmful consequences?

9.4 CDF Minute

Having outlined the Panel's concerns, Professor Rufus Black engaged in sustained debate with the ethicists promoting the triangulation approach to help Defence determine the way it wanted to proceed. In the end, the ADF determined to use natural law theory and its expression in just war theory as the foundation for the ADF's Ethics Doctrine.

On 16 January 2023, the Chief of the Defence Force issued a Minute which included this request:

3. *ADF-P-0 Military Ethics, Edition 1*, and the ADF Ethical Decision-Making Framework contained within, represent the ADF's agreed approach. In that context I ask that Army cease teaching the Ethical Triangulation Heuristic Decision-Making Tool and replace it with the decision-making framework illustrated on page 27 of the doctrine. The lessons learnt from that experience can then be captured in the development of *ADF-P-0 Military Ethics, Edition 2*, which will be reviewed in 2026.¹⁰⁹

9.5 Broader significance

The key academic protagonists who contributed to the debate about what form of ethics the ADF should use and some of their international colleagues agreed there was a broader significance to the exchange that had that led to this resolution. They have worked together to share their debate with a wider audience in a forthcoming book by Routledge, *Ethics at War: How Should Military Personnel Make Ethical Decisions*. The authors are Deane-Peter Baker, Rufus Black, Roger Herbert and Iain King. In the book, each ethicist sets out their approach and then in a separate chapter provides a critique of the approaches taken by the others. Deane-Peter Baker and Roger Herbert offer versions of the triangulation theory, Iain King of a form of utilitarianism and Rufus Black, natural law theory. Rufus Black's chapters set out a fuller account of how natural law theory works as a form of military ethics and his views on the problems with triangulation theories than can be included in this Final Report.

109 Minute EC22-005076

Ethics at War: How Should Military Personnel Make Ethical Decisions indicates that this is an ongoing debate in the academic community, not just in Australia but in other major Western countries. Roger Herbert is an ex-US Navy SEAL who has taught ethics courses for the US Military and Iain King's work is influential in Britain.

The continuing differences of view mean that the fundamental question about the right way for the ADF to make ethical decisions could well be revisited when the Military Ethics Doctrine is reviewed in 2026 or a new ethics course is proposed sometime in the future when learnings from the Brereton Report are more distant.

9.6 Historical development of Just War

This debate is historically consequential because the inclusion of utilitarian ideas in military ethics would end the ethical tradition that has been central to the Western history of seeking to constrain war from its worst excesses.

In a form that is recognisable today, that history goes all the way back to medieval philosopher and theologian Thomas Aquinas who used natural law theory to set out a series of conditions for Just War. Aquinas argued, "[I]n order for war to be just three things are necessary". The first is that there is legitimate authority; the second, a just cause; the third, a right intention, which is to bring about peace.¹¹⁰ Those requirements are still recognisable in today's version of just war theory and are embodied in international law.

Following Aquinas, key thinkers in Western thought built on his work. Francisco de Vitoria in *De Indis* and *De Indis Relectio Posterior* argued for the equal sovereignty of Indigenous people to protect them against Spanish forces in the Americas and expanded the protection of the innocent in war. In doing so, he laid down key notions of sovereignty that remain important today. Francisco Suarez in *Disputatio de bello* shaped the idea that international law, which came from customary conduct, was separate to natural law even if natural law had shaped those original customs. Suarez created a mutually informing parallel world of law and ethics which has remained critical to this day. Suarez further broadened the protection of innocents to "those who have not shared in the unjust war."

Then Hugo Grotius, commonly considered as the founder of modern international law, wrote his seminal *De Jure Belli Ac Pacis Libri Tres* "On the Laws of War and Peace" in which he set out the idea that the international order was a society of states governed by laws of custom and treaty. In this society of states, war was justified by both international customary law and natural law in certain circumstances. Grotius' recognition of the justification for just war in both law and ethics secured the path opened by Suarez of law and ethics travelling in parallel. All along the route that followed, ethical thought kept pushing the further reform of international laws. That reform is perhaps best seen through the evolution of the various Geneva conventions with their ever-widening recognition of who were the innocents to be protected in times of war. That journey of ethical thought informing the law continued in the period post-World War II. The just war

¹¹⁰ Question 40, Article 1 in Thomas Aquinas Summa Theologiae

tradition contributed to the evolution of legal thinking about when force might legally be used to intervene in a nation state to stop genocide or other crimes against humanity.

The long view of history shows how consequential the relationship has been between natural law tradition of ethics, international law, and the constraint on the tendency of war to excessive violence and inhumanity. For more than half a millennium, they have worked against the realist forces of history to create a more civilised world. That is why it is important that military forces, whether in Australia or elsewhere, do not start to move away from that tradition of ethics and use other forms, especially utilitarian ones, which justify what we today see as war crimes and breaches of the Geneva Conventions. If that happens, we will almost certainly look back and mark that move as the point where progress ended and we started to ease the restraints on war.

9.7 Future vigilance

The events dealt with in the Brereton Report stand as a stark reminder that we have to be enduringly vigilant in working against the darker parts of human nature that can perpetrate terrible inhuman acts under the cover of war. In that light, it was significant that, when it became evident there were parts of the ADF continuing to teach the triangulation method in defiance of the Ethics Doctrine, the Chief of the Defence Force issued the Minute preventing its use. It will need that kind of continued commitment by future ADF leaders to ensure that Australia maintains an ethical foundation for its military that is consistent with our international obligations and the ethical gains that have increasingly restrained inhumanity in war for over 500 years.

What may also help this tradition of ethical thought to continue in the ADF is that Defence is drawing more explicitly on the notion of there being a Profession of Arms in its thinking. One of the features of professions is that they have enduring ethical codes. The doctors' code, the Hippocratic Oath, goes back to Ancient Greece. The code of lawyers' duties to the courts above their clients has its origins deep in the common law's defence of the rule of law. The ethical tradition embodied in the ADF's current Ethics Doctrine is of similar origin and standing and therefore plays an important role in giving depth and substance to the Profession of Arms.



PART 3

Support for those affected

SECTION TEN:

Welfare and legal support

The terms of reference direct the Panel to report to the Minister on whether welfare and legal support is being provided to persons affected by the Afghanistan Inquiry, including consideration of the support provided by the ex-service organisations and how these are complementary to, and integrated with, the services provided by both Defence and the Department of Veterans' Affairs.¹¹¹

This Section deals with three important aspects of welfare and legal support that fall within that requirement.

10.1 Legal assistance

One of the Panel's early tasks was to consider concerns about legal assistance raised by the outgoing Chairman of the Australian Special Air Service (ASAS) Association.

It was no surprise to learn that some Special Forces veterans, members and their families were under great stress following the publication of the Afghanistan Inquiry Report and that stress was expected to continue for a long time.

The Special Forces community had three serious concerns in the about the initial legal assistance arrangements:

- uncertainty about the amount of legal assistance that may be available through Defence Legal
- a fear that persons subject to investigation or prosecution may have to sell their home to pay some or all of their legal costs, and
- having to explain details of their possible involvement to Defence Legal to obtain legal assistance and the basis on which assistance would be provided.

In the initial stages of the response to the Afghanistan Inquiry, Defence Legal provided assistance through its appointed lawyers on a case by case basis. The assistance was granted in accordance with the Attorney-General's Legal Services Directions 2017 Appendix E – Assistance to Commonwealth Employees for Legal Proceedings.

The general policy underlying the provision of Appendix E legal assistance is the prospect of some benefit for the Commonwealth's financial interests or its general interests including, in particular, to act properly as an employer in supporting employees who have acted reasonably and responsibly in circumstances where the Commonwealth may not be vicariously liable for their actions.¹¹²

¹¹¹ Paragraph 15(c)

¹¹² Paragraph 4

In the circumstances, this arrangement was understandable as a short term, stop gap measure but unacceptable to both the applicants and Defence for very serious criminal investigations and prosecutions.

The ASAS Association expressed particular concern about the “reasonably and responsibly” requirement which highlighted that Appendix E arrangements were inappropriate for criminal matters but there were three more important factors the Panel took into consideration:

- no prosecution for war crimes or related offences could proceed unless the accused has appropriate legal representation
- utilising an independent legal assistance scheme would remove any real or perceived conflicts of interest arising from the use of defence lawyers appointed, managed and directly funded by Defence Legal, and
- independent legal assistance would also eliminate the risk that Defence Legal could inadvertently pass confidential information or documentation to the wrong party, thereby prejudicing a successful investigation or prosecution.

A further consideration was that Australia’s conduct of these war crimes investigations and any subsequent trials will attract international scrutiny and reputational risk. The legal assistance arrangements need to be unimpeachable.

In its quarterly progress report Number 2 (February – April 2021), the Panel recommended to the Minister that Defence should consult the Attorney-General’s Department to establish a separate legal assistance scheme for eligible persons affected by the findings in the Afghanistan Inquiry Report.

The Government accepted the Panel’s recommendation and established the Afghanistan Inquiry Legal Assistance Scheme which commenced on 30 September 2021. This scheme is administered by the Attorney-General’s Department in accordance with comprehensive guidelines governing eligibility and assistance, prescribed forms and the scheme’s payable rates for legal services and disbursements.

10.2 Commonwealth-funded superannuation entitlements

10.2.1 Background

In February 2021, the outgoing Chairman of the ASAS Association raised member concerns about the possible application of the Crimes (Superannuation Benefits) Act 1989 (Cth) to past and present members of the Special Forces convicted of war crimes or related offences.¹¹³

That financial threat was causing significant stress for persons who could be caught up in investigations and prosecutions arising from the Afghanistan Inquiry and their families.

¹¹³ In this Final Report, the expression “related offences” includes lesser offences subsumed under the categorisation of the principal war crime offence such as an accomplice or an accessory after the fact and perverting the course of justice

10.2.2 The Crimes (Superannuation Benefits) Act 1989

The Act enables the Government to recover past and forfeit future Commonwealth-funded employer superannuation benefits from government employees (including ADF members¹¹⁴) who have been convicted of a corruption offence and sentenced to more than twelve months imprisonment.

The term “corruption offence” is defined in section 2 of the Act as an offence:

- whose commission involved an abuse by the person of their office as such an employee; or
- that, having regard to the powers and duties of such an employee, was committed for a purpose that involved corruption; or
- that was committed for the purpose of perverting, or attempting to pervert, the course of justice.

Once an offender has been convicted and sentenced for a corruption offence, the court must make a superannuation order if one is sought but the Attorney-General has a discretion not to make an application.

The effect of a superannuation order is that the whole of past Commonwealth-funded payments become a debt due to the Commonwealth and all future superannuation payments cease. The order includes all rights and benefits of a dependant of the convicted person.¹¹⁵ The Attorney-General cannot apply for an order covering, for example, half of the total superannuation entitlement amount nor can the judge make such an order.

10.2.3 Early Panel advice

Once the Panel was alerted to this issue, it provided initial advice to the Minister in its quarterly progress report number 2. The advice:

- drew this concern to the Minister’s attention, and
- suggested the Government adopt and announce its view about the application of the Act to war crimes to give persons who may be affected some immediate clarity about its possible impact on them and their families.

Sometime later (before the change of government last year), the ASAS Association was told that careful consideration would be given to the individual circumstances of each case before an application for a superannuation order was made.

The Panel had, and still has, serious concerns about this advice:

- it indicated the Government accepted (subsequently confirmed by the Attorney-General’s Department) that a war crime or related offence is or could be a corruption offence
- it did nothing more than state the normal procedure undertaken before making a superannuation order application, and

114 Section 7(2)(c)

115 Section 21(1)(a)

- it meant that the financial stress on the persons likely to be affected will continue for years until the Office of the Special Investigator, the Director of Public Prosecutions and the trial and appeal courts complete their work.

The Panel decided to give this superannuation issue much more detailed consideration.

10.2.4 War crimes are not corruption offences

The Panel's principal concern is that war crimes and some related offences are not corruption offences.

"Corruption" is such an indefinite term, it is not defined in the Act and the second, circular limb of the statutory definition of corruption offence includes "an offence ... committed for a purpose that involved corruption."

"Corruption" is generally defined and understood to involve some form of financial or other improper advantage for the person committing the offence (such as fraud, deceit or bribery) or another person they wish to benefit (such as undue preference in, or an irregular process for, the award of a contract or appointment). In the Panel's view, it would not be correct to categorise, for example, the murder of a civilian or person under control in a conflict zone, as a corruption offence based on the plain meaning of the word "corruption" and the apparent purpose of the legislation.

The Panel read the Second Reading speeches to gain some insight into Parliament's intentions. None of the speakers attempted to define "corruption." They relied entirely on repetitive statements of the statutory definition and focused on the bill's mechanical provisions. However, their speeches were consistent with the common use and understanding of corruption in public office.

Mr N A Brown succinctly stated:

One way of rooting out corruption is to make it very plain to the people who might be tempted to engage in corrupt activities that there will be no money in it for them.¹¹⁶

The bill passed with cross-party support at a time of heightened public concern about the impact of corruption on Australian society arising from the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct conducted by Mr Tony Fitzgerald QC.

The Parliamentary Bills Digest No 141 1997-98 contained this comment about the policy underpinning the Act in its discussion about the Crimes (Superannuation Benefits) Amendment Bill 1997:

Whilst the meritorious nature of the stated underlying policy is not in question, it is not applied universally. It should be noted that employers in the private sector are unable to access the employer funded superannuation entitlements of an employee or former employee who deliberately causes loss or defrauds his or her employer.

¹¹⁶ Mr N A Brown, Hansard, House of Representatives, page 1433, 4 October 1989

No one else followed the Government's lead and progressive Commonwealth superannuation and family law and practice have moved ahead. While family law now treats superannuation investments held by either partner as property to be divided on relationship breakdown, this Act still treats superannuation benefits as belonging solely to the member.¹¹⁷

10.2.5 Superannuation then and now

Here is a brief comparison.

In the 1980s, superannuation was still in its infancy. Superannuation was generally limited to public servants and white collar employees of large corporations. In 1987, superannuation assets were assessed to be \$41.1 billion with 32% of private sector employees covered. The Superannuation Guarantee was not introduced until 1992 with a mandatory 3% contribution rate (or 4% for employers with an annual payroll above \$1 million).¹¹⁸ For most citizens who first joined a fund in their mid-40s or 50s, superannuation would not have seemed overly important due to the low contribution rate and because they did not have the benefit of compound interest on their investment for the whole of their working life.

In 2023, participation in the superannuation system is compulsory for permanent employees. Many citizens who are not compelled to participate (such as sole traders) do so voluntarily. The Superannuation Guarantee rate is now a mandatory 11% of salary.¹¹⁹ Total superannuation assets are estimated to be \$3.5 trillion at 31 March 2023 making it the fifth-largest superannuation savings system in the world covering around 16 million Australians. As a result, our retirement savings scheme has been called a "global superstar."

Superannuation contributions and accumulated earnings are the sole, or at least principal, savings for retirement for the great majority of Australian families, not just the person who is a member of a superannuation fund.

10.2.6 Defence's superannuation schemes

Superannuation for Defence members has been provided under three schemes. Only the first two are relevant to the Panel's considerations.

The Defence Forces Retirement and Death Benefits (DFRDB) scheme operated from 1 October 1972 until it was closed to new members on 30 September 1991. Currently it has 706 contributors and 52,158 pensioners. The DFRDB is a defined benefits scheme providing a lifetime pension that increases in line with the consumer price index.

¹¹⁷ It is also worth noting that, from 15 March 2013, the law governing the statutory pensions of federal judges was changed to protect a former partner's share in the judge's judicial pension following a relationship breakdown: see the Judges' Pension Scheme Handbook, Department of Finance, August 2017 for further details

¹¹⁸ See APRA's Superannuation in Australia: a timeline (<https://www.apra.gov.au/superannuation-australia-a-timeline>)

¹¹⁹ The mandatory rate is scheduled to go to 11.5% in 2024 and 12% in 2026

The DFRDB was replaced by a part accumulation and part defined benefits scheme for new members called the Military Superannuation and Benefits Scheme (MSBS) from 1 October 1991. Defence's contribution is the defined benefits component and it may be paid in cash, a lifetime pension or a combination of both. A MSBS pension component also increases in line with the consumer price index. Currently the MSBS has: 34,390 contributors; 117,547 preservers; and 26,664 pensioners. It ceased taking new members from 30 June 2016.

The third scheme is ADF Super which commenced for new members on 1 July 2016. It is an accumulation scheme with no defined benefit component.

The key purpose of this staged progression was to limit and then remove the defined benefits component in second and third schemes and thereby place some brakes on the Commonwealth's future projected superannuation liability. This change to accumulation funds has occurred across the public and private sectors and defined benefits schemes are no longer available.

The great value of the first two schemes is found in the defined benefits pension. In both the DFRDB and the MSBS, the pension reverts to a surviving eligible partner on the death of the fund member and continues at around 66% of the member's pension for the partner's lifetime.

If a superannuation order was made in relation to conviction for a war crime or related offence, then its effect would be not only to forfeit the offender's interest in the DFRBD or MSBS, it would also appropriate the partner's contingent interest in the lifetime defined benefits pension.

In the 1989 parliamentary debate, Senator Macklin made these very prescient observations:

... in a very short time indeed, superannuation will be seen as an accepted part of the whole arrangement [the partnership of marriage] – not as peripheral to it but as an essential part of it.

But it seems to me that if the spouse of a corrupt police officer ... has not committed a crime, if it is not able to be proven in court that there was collusion between the couple and if the partner who was not the serving officer was not an accessory before or after a crime and, in other words, is innocent, I think what we are doing is visiting a direct penalty on the spouse ...

The children also have to be considered. When one thinks of the other types of penalties that will be visited upon a corrupt officer in these circumstances, it could very well be that the family structure itself will almost be reduced to penury. On top of that, we will be depriving the spouse and children of their moral right to part of that superannuation.¹²⁰

120 Hansard, page 2805-2806, 2 November 1989

10.2.7 Prolonged duration and stress

The current situation is that there is still uncertainty about the possible application of the Crimes (Superannuation Benefits) Act to persons convicted of war crimes or related offences. A superannuation order would have very serious financial outcomes not just for the convicted offender but for their family as well.

It is well accepted that financial distress creates a vulnerability that can have very serious adverse mental and physical outcomes. This was unfortunately confirmed by the Royal Commission into the Robodebt Scheme. It identified a number of recipients who committed suicide after they received false debt notices for alleged overpayment of government benefits.

It appears that veterans, members and their families became aware of the Act shortly after the publication of the Afghanistan Inquiry Report. If so, some of them have lived with the stress caused by this financial threat for nearly three years with great uncertainty about if and when the issue of the Act's application will be resolved.

The Panel's view is that the Government should resolve this uncertainty as soon as possible.

One way to do it would be for the Attorney-General to determine that war crimes and related offences do not come within the statutory definition of a "corruption offence" and therefore the Act does not apply in these circumstances.

Another way is to consider making a regulation pursuant to section 45 of the Act to the same effect. That section states that the Governor-General to make regulations "necessary or convenient to be prescribed for carrying out or giving effect to this Act." The convenience would be the clarification of the uncertainty whether the definition of "corruption offence" includes or does not include war crimes and related offences.

10.2.8 Further advice

The Panel has previously recommended the Deputy Prime Minister in consultation with the Attorney-General announce that the Government will not seek recovery or forfeiture of past or future Commonwealth superannuation benefits from a person convicted of a war crime or related offence under the Crimes (Superannuation Benefits) Act on the basis that:

- war crimes and related offences are not a "corruption offence" as defined in the Act
- the total forfeiture of the convicted person's Commonwealth funded superannuation appropriates an innocent partner's legal interest in the superannuation which is recognised in family law and superannuation law
- the forfeiture and recovery of superannuation benefits will impose unjustified hardship on the convicted person's innocent partner and children, and
- it is unacceptable to have veterans, members and their families living under this financial threat for years and may result in serious outcomes.

10.3 Monitoring welfare assistance

A wide range of individuals and their families have been directly or indirectly affected by the conduct identified by the IGADF Inquiry, the publication of its Report, the commencement of criminal investigations and other subsequent events.

Their need for welfare support has included counselling, psychological support and medical services, social work services, and practical support including financial assistance and advice.

10.3.1 Trials and other legal proceedings

Members and veterans who gave evidence to the IGADF inquiry or in recent court proceedings have required particular welfare support as will those involved in any future court cases.

During the Ben Roberts-Smith v Fairfax Media defamation proceedings in 2021-22, welfare support was largely provided by staff from Campbell Barracks on secondment to Sydney. A small number of dedicated individuals provided intensive support over many months at some significant personal cost. This arrangement was not ideal. When criminal charges were brought against Oliver Schulz in March 2023, the Panel suggested a more comprehensive approach was needed.

The Panel was advised that, learning from the previous legal proceedings, a more coordinated welfare arrangement was being put in place. Serving ADF members involved in or impacted by war crimes prosecutions will be assisted by Defence and Army welfare support arrangements. They will be directly assisted by their unit chain of command and be able to access mental health, medical, legal, pastoral and social work services. Services will be provided by the unit and formation specialist staff or supporting agencies including Joint Health Command, Defence Legal, Defence Member and Family Support, Open Arms and ex service organisations.

During the trial, Army will establish a dedicated scalable welfare presence at or near to the court to provide immediate on-site assistance and welfare triage for serving members and their families. Additionally, serving ADF personnel appearing as witnesses for the Commonwealth will also have access to the Director of Public Prosecutions Witness Assistance Service comprising on-site social workers. Department of Veterans' Affairs staff will be embedded in these welfare nodes. The Panel has also been advised that DVA consults regularly with Defence to be proactively ready when Brereton Inquiry and Office of the Special Investigator milestones occur.

The Panel supports this more coordinated professionalised model of support.

10.3.2 Department of Veterans' Affairs support

By July 2023, DVA had approximately 200 clients on record identifying as affected by the Inquiry, with particular issues relating to uncertainty, loss of trust and ongoing mental

health support requirements. The Department ensures that contacts related to the Inquiry are prioritised by the use of keyword recognition in its systems and case managed appropriately. Around 40% of Open Arms clients are serving members.

Many partners and children of members affected by the IGADF Inquiry and related matters also require support. Open Arms support extends to partners, children and, in certain circumstances, parents and ex-partners. It provides coordinated client support case managers, use of crisis accommodation where appropriate, and expanded family support services.

At an initial Panel visit to Holsworthy in March 2021, some serving members of 2 Commando Regiment expressed a reluctance to access support services because of their concern about confidentiality. The Panel understands DVA now provides an anonymous counselling service (Safezone) to address that concern, if required. The current non-liability healthcare system also allows veterans to seek assistance from external providers.

The psychological services themselves provide a high degree of confidentiality apart from mandatory reporting of concerns about the safety of an individual or others (an obligation which also applies to private practitioners).

The Panel observed the strong focus SASR Command has on the psychological health and welfare of its members and their families in a visit to Campbell Barracks in July 2022. The demand on existing services is high and is likely to remain so. The management of the transition of welfare assistance between Army and the services provided by Department of Veterans' Affairs was raised as a concern.

10.3.3 Transition

When a member transitions out of the ADF, they need to access support provided by non-government organisations, including ex-service organisations. Transitioning members are connected to services provided by DVA and provided with expert assistance to ensure they receive their full entitlements. There are strong links between the SASR chaplain and the Australian Special Air Service Association chaplain funded by ADF.

However, Defence recognises more needs to be done to connect members with other external service providers and facilitate transition to these services.

The Panel also notes the then Minister for Veterans Affairs commissioned a Veterans' Advocacy and Support Services Scoping Study which reported in December 2018.¹²¹ The study found that the present arrangements for assistance mainly from volunteer veterans advocates "will not as presently structured provide veterans and their families with a modern professional sustainable advocacy service in the future."¹²²

¹²¹ Note: Robert Cornall AO led the Veterans' Advocacy and Support Services Scoping Study

¹²² See Report, page 7

Enhanced transition services now include: the Special Forces pilot which established a permanent DVA presence at Holsworthy and Campbell Barracks; the Chaplains pilot at Campbell Barracks; the introduction of Veteran Support Officers; a lived-experience peer team, including in Holsworthy and Campbell Barracks; and early notification by Defence to DVA for involuntary and medical separations. DVA also conducts ongoing liaison with ex-service organisations, particularly those associated with the Special Forces. Most transitioning members (around 90%) now have claims lodged by the time they leave Defence.

10.3.4 Financial advice

As noted in **Section 9.2**, families of veterans who may be convicted and imprisoned can face significant financial uncertainty. While permanent impairment payments are not affected by custodial sentences, incapacity payments cease and partners and families may need to rely on welfare payments. It is important that financial advice is available for them in these circumstances.

10.3.5 Summary

The need for the welfare assistance described in this Section will, in some cases, go on for years and require constant Defence and DVA attention to ensure no one entitled to that assistance is overlooked.

SECTION ELEVEN:

Compensation

In his opening statement to the press conference held on 19 November 2020, the Chief of the Defence Force said:

To the people of Afghanistan, on behalf of the Australian Defence Force, I sincerely and unreservedly apologise for any wrongdoing by Australian soldiers.

In response to questions, General Campbell made the following remarks:¹²³

... we would look to support the circumstances of the families affected, and

... there will be a process that needs to be developed for this [compensation]. We haven't done this in this way before. And we will seek to develop it with the other parts of government involved and, indeed, engaging with the Afghan government as quickly as possible. But it needs to be done correctly and it needs to be done in a way that allows and creates the effect that we are seeking, which would be to support those families.

11.1 The Brereton rationale and recommendation

The Afghanistan Inquiry Report set out its rationale and recommendation for payment of compensation as follows:¹²⁴

33. Australia has had long historical connections with Afghanistan. Australia's stated purpose in being in Afghanistan, and Uruzgan Province in particular, included improving the conditions of the Afghan people. Accounts received, directly and indirectly, by the Inquiry, testify instead to the fear and terror which villagers experienced in the context of a Special Operations Task Group (SOTG) raid. During Operation SLIPPER, payments of compensation were routinely made, under the Tactical Payment Scheme, for damage to the property of local nationals, and for the deaths of non-combatants.

34. If Afghans have been unlawfully killed by Australian soldiers ostensibly acting in the name and on behalf of Australia, then Australia should compensate their families. Doing so will contribute to the maintenance of goodwill between the nations, and do something to restore Australia's standing, both with the villagers concerned, and at the national level. But quite aside from that, it is simply the morally right thing to do.

35. The Inquiry does not consider that this should be contingent on establishing criminal liability. First, that may take a long time – several years

¹²³ See transcript: defence.gov.au: Home/News and events/Media releases/Press Conference-IGADF Afghanistan Inquiry

¹²⁴ The Afghanistan Inquiry Report, Part 1, Chapter 1.05, page 173

– to resolve. Secondly, there may well be cases in which, though a non-combatant has been killed, a prosecution fails to establish the requisite intent. While acting on the basis of the Inquiry's findings of "credible information" may result in some receiving compensation who should not, on balance that risk is justified by the overall benefits of taking this step to right the ledger.

36. The Inquiry has therefore recommended that in cases where it has found that there is credible information that an identified or identifiable Afghan national has been unlawfully killed, Australia should now compensate the family of that person.

The Government accepted the Inquiry's rationale and recommendation for payment of compensation to those Afghan families without the need to establish criminal liability.

11.2 The worsening situation in Afghanistan¹²⁵

In early 2021, the Government endorsed the Implementation Plan and the Afghanistan Inquiry Report Task Force commenced work. In the succeeding months, the bad situation in Afghanistan got worse.

In 2020 President Trump announced that the United States would withdraw from Afghanistan in 2021. President Biden began to implement this policy in early 2021 with a final withdrawal date of 30 August 2021.

The Taliban increased its efforts to regain power as the withdrawal date approached and the Afghan National Army provided little resistance. Kabul fell to the Taliban on 15 August 2021. On 7 September 2021, the Taliban formed an interim government and announced the restoration of the Islamic Emirate of Afghanistan and the creation of a caretaker cabinet under the supreme leader Mullah Hibatullah Akhundzada. In late September 2021, the Taliban suspended the 2004 Afghanistan constitution. A map published by the Long War Journal indicated that, as at 21 July 2022, the Taliban were controlling all of the country's 407 districts.

The Afghan economy is in crisis and close to collapse. The country experienced the negative economic impacts of the COVID-19 pandemic, conflict, and high food prices following successive years of drought in many provinces and floods in others. Development cooperation aid and trust funds were frozen or diverted to humanitarian support following the Taliban takeover. The United Nations applied sanctions and the US Federal Reserve and commercial financial institutions froze Afghan government assets.

The Taliban was apparently surprised by the speed of its takeover and ill-prepared for government. The Taliban is understood to be divided into factions of moderates and hardliners with different aims and expectations of governance competing for influence and control.

¹²⁵ The information in **Section 11.2** is drawn from: the DFAT Thematic Report on Political and Security Developments in Afghanistan (August 2021 to January 2022) Purpose and Scope and Background Information; Country of Origin Information: Afghanistan Security Situation August 2022 prepared by the European Union Agency for Asylum, Chapter 1 and pages 188-191 dealing with recent security trends in Uruzgan Province; and DFAT's Smart Traveller Advice for Afghanistan updated on 18 April 2023 and still current at 8 August 2023

Many of the cabinet members appointed by the supreme leader as at June 2022 had clerical backgrounds and limited experience in administrative affairs. The de facto government's technical and administrative capabilities had been drained by former civil servants fleeing the country or going into hiding, its restrictive policies regarding women's employment and its lack of funds and uncertain capacity to pay their government employees.

The Australian Government's Smart Traveller advice as at 8 August 2023 was:

We continue to advise do not travel to Afghanistan. There's an ongoing and very high threat of terrorist attacks throughout Afghanistan, including in Kabul. Terrorists continue to target foreigners, NGOs and humanitarian operations. Foreign nationals, including Australians, also face a serious threat of kidnapping or detention. There are no Australian consular officials present in Afghanistan and our ability to provide consular assistance to Australians in Afghanistan is severely limited.

The update also noted:

- the situation remains highly volatile and dangerous
- all travel throughout Afghanistan is extremely dangerous
- attacks against aviation and airports are very likely
- kidnapping is a serious and ongoing threat with terrorists and criminal groups targeting foreigners and dual citizens
- aid and humanitarian workers are not safe from harassment, the threat of terrorism or kidnapping. Terrorists continue to target both local and foreign NGO operations across the country including both politically motivated and kidnap-for-ransom abductions
- foreign nationals, including Australians and aid and humanitarian workers, have been detained without due process or clear reasons for their detention, and
- the Australian Government may not be notified about a detention and, in any event, its ability to access information about or assist a detainee is severely limited and can't be delivered in person.

11.3 The Government's response

The Deputy Prime Minister and Minister for Defence advised the Panel in August 2022 that he was keen to provide compensation as soon as possible. However, there are very significant barriers to doing so. In addition to those noted in **Section 11.2**, they include:

- the lack of a diplomatic or charitable organisation presence on the ground in Afghanistan to facilitate arrangements
- the difficulty in identifying and locating family members and the danger of the associated travel within Afghanistan
- the difficulty in effecting payment given the state of Afghanistan's banking sector
- the need to work within sanctions and policies that limit dealings with the Taliban, and

- the risk that a recipient of a compensation payment (particularly a cash payment) could be put in danger and become a criminal target.

11.4 The Panel's input

The Panel has provided its views about compensation to the Minister in six quarterly progress reports¹²⁶ and in two meetings (participants attended in person or by video link). The Panel has also met with a DFAT representative and, on several occasions, with Defence Legal.

The Deputy Prime Minister requested specific advice about how the Government could make compensation payments given the present circumstances in Afghanistan or at the very least give some tangible substance to the Government's commitment to do so.

In quarterly report number 8, the Panel advised it had suggested to DFAT and Defence Legal that the Government could consider setting aside a designated fund to cover potential compensation payments which may be made in future when circumstances in Afghanistan permit.

This Panel considered this action could constitute "a strong public statement of" the Government's commitment to paying compensation as recommended by the Afghanistan Inquiry. However, it did not satisfy the Minister's request.

In a meeting held on 28 July 2023, Defence Legal Chief Counsel briefed the Panel on its continuing efforts to find and implement a more effective response to the Deputy Prime Minister's requirement to pay compensation to Afghan families as soon as possible.

Defence Legal proposed the Government could introduce a scheme to receive and assess claims for compensation supported by a regulation made under section 63(1)(f) and section 124(1)(r) of the Defence Act.

The advantages of this proposal are:

- it is a legislative mechanism demonstrating the Government's enduring commitment to paying compensation
- the scheme can be established quickly
- its scope, purpose and limits will be public information
- it allows flexibility in design, and
- operational details can be dealt with in underlying policies.

The Panel supported the approach taken by Chief Counsel and understands it is being progressed.

¹²⁶ See quarterly reports numbers 4 (August-October 2021), 6 (February-April 2022), 7 (May-July 2022), 8 (August-October 2022), 10 (February-April 2023) and 12 (August-October 2023)

PART 4

The future

SECTION TWELVE:

The importance of Special Forces in the future

The Afghanistan Inquiry Report's allegations of grave misconduct by Australian forces in Afghanistan have cast a dark cloud over the proud history and achievements of Australia's Special Forces.

The Government immediately established the Office of the Special Investigator to investigate those allegations and to assist the Commonwealth Director of Public Prosecutions in any prosecutions that may result. Successive Ministers have said that any present or former member of Defence convicted of a war crime or related offence must face the full force of the law.

However, the Inquiry Report found it useful to place these allegations in a broader context. This Section looks at that broader context and, recognising their importance, the need to have today's Special Forces firmly looking forward, not back.

12.1 Context: other war crimes

Part 1, Chapter 1.08 of the Inquiry Report provides a 58-page analysis of war crimes in Australian history. Australia is described as "an overt and enthusiastic supporter of, and advocate for, most international treaties applicable to the LOAC."¹²⁷

However, that assessment is qualified by this statement:

Nonetheless, there are indications in the historical record – from the Boer War through to the Vietnam War – that some Australian service members have, and that other Australian service members may have, previously been involved in the killing of detainees, prisoners, persons hors de combat, and persons otherwise under the control of Australian forces. There are indications of disconnects between formal orders and policy, and local unit practices, in relation to operations involving contact with enemy forces and civilians in the area of operations.¹²⁸

Part 1, Chapter 1.12 of the Inquiry Report deals with war crimes investigations of other nations in Afghanistan.¹²⁹ It summarises investigations and prosecutions by other International Security Assistance Force nations in respect of alleged war crimes during the Afghanistan conflict.

¹²⁷ Afghanistan Inquiry Report, Part 1, Chapter 1.08, War Crimes in Australian History, page 183

¹²⁸ Ibid

¹²⁹ Afghanistan Inquiry Report, Part 1, Chapter 1.12, War Crimes Investigations of Other Nations in Afghanistan, page 301

The nations the subject of war crimes allegations include: the United States; Canada; the United Kingdom; Netherlands; New Zealand; and Denmark. It is important to note that, in most cases, the allegations were dismissed or not substantiated.

12.2 Special Forces in Afghanistan 2005 to 2013¹³⁰

The Special Forces Task Force (SFTG) (August 2005 to September 2006) and the Special Operations Task Group (SOTG) (May 2007 to December 2013) were based at Camp Russell within the Multi-National Base – Tarin Kowt in Uruzgan Province.

Although this Final Report is concerned with the eight years to 2013, Australia's involvement in Afghanistan commenced on 17 September 2001 when Parliament committed the ADF intervention to:

- ensure Afghanistan would never again become a safe haven for terrorism, and
- mentor the Afghan National Security Force to take responsibility for Afghanistan's future stability and security.

The initial deployment in 2005 comprised approximately 150 personnel, increasing to a peak of around 300 from 2006. Members were drawn from across all SOCOMD units, Army, Navy, Air Force, other government departments and coalition partner organisations.

The initial SOTG deployment returned to Australia in late 2006 but its success saw a shift in the Government's approach to the use of Special Forces. Until then, Special Forces had been used for short, defined missions and then withdrawn as operations moved into stabilisation and nation building. The dynamic threat environment and the Special Forces' experience in Uruzgan resulted in them being redeployed in May 2007 as part of the International Security Assistance Force.

For the next six years through 17 task group rotations to the end of 2013, Special Forces took the fight to the Taliban. They conducted operations targeting: key insurgent leaders; Taliban compounds; weapons caches and bomb-making facilities; and drug-related organisations.

From 2005 to 2013, the SFTG and the SOTG:

- deployed continuously for more than 3,000 days in the Middle East
- conducted more than 2,500 operations (including combat operations against Taliban and anti-coalition enemy forces and directed missions against high-value targets)
- participated in 1,500 combat incidents or contacts with the enemy
- conducted special reconnaissance and other technical operations against threat networks

¹³⁰ Special Forces information in this **Section 12.2** is drawn from a paper prepared by Special Operations Command titled *Australian Special Forces in Afghanistan 2001 – 2013* dated 20 November 2020 (BQ16768876)

- undertook intelligence operations contributing to whole-of-government understanding of the insurgency and the threat to Afghan civilians
- participated in more than 500 activities in partnership with local Afghan communities facilitating ADF and coalition humanitarian assistance, and
- suffered 21 personnel killed and more than 150 wounded-in-action.

The Roll of Honour shows that those killed were members of:

- 2 Commando Regiment/4th Battalion (Commando) Royal Australian Regiment: 12
- SAS Regiment: 5
- 1 Commando Regiment: 1, and
- Special Operations Engineer Regiment/Incident Response Regiment: 3.

The deployments to Afghanistan contributed significantly to the continued professional development of Army and broader Defence capability in: leadership; doctrine development; introduction of new equipment and systems; and personnel development.

SOCOMD contributed to, and assisted in, the testing, trial and validation of new equipment and systems to deliver the Army and wider Defence enhanced capability in: biometrics; body armour and helmets; soldier combat ensemble; validation of the Heron unmanned aerial system; development of counter-IED route clearance techniques; multi-cam uniforms; night fighting equipment; improvement to protected mobility vehicles; and introduced or validated several weapon systems.

In February 2015, the Minister for Defence, the Hon Kevin Andrews MP, said that the ADF's mission in Afghanistan was the longest military commitment in Australia's history. Special Forces were there every step of the way.

12.3 Special Forces now and then

In the press conference held on 19 November 2020, General Campbell said:

“... it's important to note that over the period from 2005 to 2016, more than 26,000 Australians served in Afghanistan, 3,000 of them in the Special Operations Task Group.”

The Special Forces are not static organisations. They comprise a shifting complement of members.

The Panel has been advised that there has been an 80% change in the composition of the Special Forces between 2015 and 2023. Accepting that estimate, when thinking about the Special Forces, it is important to remember that most of their current members did not serve in Afghanistan.

It follows that the present members of the Special Forces inevitably bear the shame of allegations the CDF has described as “the most serious breaches of military conduct and

professional values” and the attendant public condemnation for the alleged behaviour of a small number of members in which most of them had no involvement.¹³¹

However, General Campbell also said that, in a recent visit to the Special Air Services Regiment, he could:

... see incredible commitment and an appreciation of the pain and hurt that these allegations, this Inquiry and this stain, brings not just to the Regiment but to Australia. So, I have no doubt of the determination by that leadership community to return to a status in which that entire organisation is a magnificent and finely developed instrument of national capability.¹³²

12.4 New tensions and threats in our region

The National Defence Statement 2023 delivered by the Deputy Prime Minister and Minister for Defence highlights the increased tensions and threats Australia now faces:

Australia’s region, the Indo-Pacific, faces increasing competition that operates on multiple levels – economic, military, strategic and diplomatic – all interwoven and all framed by an intense contest of values and narratives.

A large-scale conventional and non-conventional military build-up without strategic reassurance is contributing to the most challenging circumstances in our region for decades. Combined with rising tensions and reduced warning time for conflict, the risks of military escalation or miscalculation are rising.¹³³

The Statement was informed by the Defence Strategic Review’s (DSR) finding that:

... our current strategic circumstances are now radically different. ... The strategic risks we face require the implementation of a new approach to defence planning, force posture, force structure, capability development and acquisition.”¹³⁴

The DSR concluded that the ADF as currently constituted and equipped is not fully fit for purpose.¹³⁵ We must move from the Defence of Australia doctrine to a new strategic conceptual approach to Australia’s defence planning and strategy – National Defence.¹³⁶

131 See transcript of the Press Conference, 19 November 2020: Defence/News and events/ Media releases/Press Conference-IGADF Afghanistan Inquiry

132 Ibid

133 National Defence Statement, page 5

134 Defence Strategic Review 2023, page 7

135 Ibid, page 17

136 Ibid, page 18

The DSR continued:

To maximise the deterrence, denial and response options for the Government, the ADF must evolve into a genuine Integrated Force which harnesses effects across all five domains: maritime, land, air, space and cyber.¹³⁷

The National Defence Statement states that:

The defence of Australia lies in the collective security of the Indo-Pacific. The defence of Australia's national interests lies in the protection of our economic connection with the world and the maintenance of the global rules-based order.¹³⁸

As most of the objectives of Australia's new strategic posture:

... lie well beyond our borders, the ADF must have the capacity to engage in impactful projection across the full spectrum of proportionate response. The ADF must be able to hold an adversary a risk further from our shores.¹³⁹

Many more apposite points could be drawn out of the National Defence Statement and the DSR but they are not necessary to support the Panel's view that Special Forces will be an essential and vital element of the evolved ADF contemplated by the DSR and the National Defence doctrine.

Special Forces' traditional roles of clandestine operations including reconnaissance and surveillance together with their specialist technical capabilities provide a solid basis for any further development required to meet the future challenges Australia now faces and assist the ADF to deliver the impactful projection the Government requires.

12.5 Looking forward, not back

To date, three years after the delivery of the Inquiry Report, only one former Defence member has been charged with a war crime. None of the allegations have been tested in a criminal case before a jury. It will take further years before the OSI's investigations and any prosecutions before trial and appeal courts are finalised.

Special Operations Command cannot shirk its historical share of responsibility for grave misconduct and any future proven criminal offences between 2005 and 2016. However, those legal outcomes are out of its control. In the meantime, today's Special Forces have to look forward, not back. They have to focus on planning, training and preparing for a challenging and different future as Australia confronts uncertainty and new threats in our own region.

¹³⁷ DSR, page 19

¹³⁸ National Defence Statement 2023, page 6

¹³⁹ Ibid

Appendices

APPENDIX 1:

Terms of Reference



SENATOR THE HON LINDA REYNOLDS CSC
MINISTER FOR DEFENCE
SENATOR FOR WESTERN AUSTRALIA

Purpose

1. The Afghanistan Inquiry Implementation Oversight Panel ('the Panel') provides independent oversight and assurance relating to the Department of Defence response to the Afghanistan Inquiry ('the Inquiry') and reports directly to the Minister for Defence.

Background

2. In May 2016, at the request of the Chief of the Defence Force, the Inspector-General of the Australian Defence Force established an independent Inquiry to determine whether there is any substance to rumours and allegations relating to possible breaches of the Law of Armed Conflict by members of the Special Operations Task Group in Afghanistan over the period 2005-2016 ('the Inquiry').

3. The intention of this administrative inquiry process was not only to ascertain whether there is substance to rumours and allegations of misconduct, but also to consider whether there was a cultural normalisation of deviance from professional standards, and if so, what underlying issues may have led to the development of this culture.

4. The Inquiry was led by Major General the Honourable Justice Paul Brereton AM RFD, a Judge of the New South Wales Supreme Court of Appeal who was appointed as an Assistant Inspector-General of the Australian Defence Force.

5. The Inquiry has concluded, and on 6 November 2020, the Inspector General of the Australian Defence Force delivered the Inquiry Report to the Chief of the Defence Force.

6. The Chief of the Defence Force has commenced a review of the Inquiry findings and recommendations in order to determine appropriate actions in response, which will be

documented in the form of an Implementation Plan authorised by the Chief of the Defence Force ('the Implementation Plan').

7. The Implementation Plan will be subject to usual monitoring and performance oversight, internal to the Department. Cognisant of the accountabilities to the Minister for Defence both jointly and individually for Defence's performance as detailed in the *Ministerial Directive to the Secretary of the Department of Defence and the Chief of the Defence Force dated 30 June 2015*, the Implementation Plan as authorised by the Chief of the Defence Force remains subject to review and amendment at the discretion of the Minister for Defence.

The Panel

8. The Panel will provide assurance of Defence's delivery of the Implementation Plan, but also consider any wider implications and actions in response to the Inquiry.

9. The Panel will consist of three eminent persons who will work part-time and independently of Defence to oversee the Defence response to the Inquiry.

Appointment to the Panel

10. Appointments to the Panel will be made by the Minister for Defence, or by the Secretary of Defence, on behalf of and with the approval of the Minister for Defence.

11. Initial appointment tenure will be for a period of two years, with provision for extension in the event that the Minister for Defence has not called for the Panel's Final Report within this period.

12. Members of the Panel may be replaced should they be unable to extend beyond the initial tenure of two years, or otherwise cease to be available as a Panel member.

Expert Consultants

13. Should the Panel require expert consultant advice to support specific matters or elements of the work of the Panel, sessional engagement of such expert consultants may be approved by the Minister for Defence upon written request by the Panel. The Minister for Defence may delegate this approval to the Secretary of Defence.
14. For specific matters, other persons could be co-opted to the Panel with the approval of the Minister for Defence.

Scope of Work

15. The Panel will report to the Minister for Defence on the following matters:
 - a. The thoroughness and effectiveness of the Implementation Plan directed by the Chief of the Defence Force in response to the findings and recommendations of the Inquiry. In this regard, the Panel may recommend additional actions not contemplated in the recommendations of the Inquiry, nor subsequently initiated by the Secretary of Defence or the Chief of the Defence Force.
 - b. The progress of the Implementation Plan directed by the Chief of the Defence Force in response to the findings and recommendations of the Inquiry, including whether internal oversight and resourcing are sufficient to respond to the Inquiry in a timely and comprehensive manner.
 - c. Whether appropriate welfare and legal support is being provided to persons affected by the Inquiry; including consideration of the support and services provided by the ex-service organisations and how these are complementary to, and integrated with, the services provided by both Defence and the Department of Veterans' Affairs.
 - d. The degree to which governance and cultural reform undertaken in Defence, Army and Special Operations Command since 2015 has already addressed elements of the findings and recommendations of the Inquiry; by way of a holistic review of previous reforms and reports on reform that have already been completed, including advice on the efficacy of actions arising from these recommendations, particularly associated with systemic issues, and any outstanding actions from those reforms.
 - e. The overall progress and outcomes of the implementation process, alerting the Minister for Defence to any challenges and difficulties which may be identified.

f. Whether any advice can be drawn from the conduct of the Inquiry and the subsequent Defence response in relation to how matters of similar gravity might appropriately be dealt with by Defence, should the need arise, in the future. This includes consideration and review of the role of Command element, oversight of and accountability for deployed forces, and related policies associated with deployment of both regular and special forces.

g. Whether Defence is adequately positioned, resourced and empowered to appropriately support the response to the Inquiry by other Australian Government entities; including but not necessarily limited to; the Australian Federal Police, the Department of Home Affairs, the Commonwealth Director of Public Prosecutions and the Attorney-General's Department.

16. The Panel may establish and conduct activities to validate the efficacy of Implementation Plan actions and to assess any cultural issues across the ADF and broader Defence, through surveys and other engagement as the Panel deems necessary.

17. It is anticipated that the Panel will engage directly with the Inspector-General of the Australian Defence Force. The Panel may engage directly with any Service or Group within the Department of Defence as considered necessary in the course of their role. This engagement may, at the discretion of the Panel, be undertaken confidentially with current or previous members of any rank or level of the ADF or APS in the Department of Defence. This engagement may occur in a manner that is independent of the member's supervisory chain.

18. While the role of the Panel is to oversee the response of the Department of Defence, appropriate input should be sought from other areas of Government in order to assess the Defence response to the Inquiry. Such advice should include how the Defence response supports and interacts with the related roles and responsibilities of other Departments and Agencies. In this regard, the Panel is expected to engage with other Departments and Agencies, including but not limited to:

- the Attorney-General's Department;
- the Department of Home Affairs, including the Office of the Special Investigator;
- the Australian Federal Police; and the
- the Department of Veterans' Affairs.

19. The Panel may, at its discretion, elect to engage with other individuals or agencies not included in previous descriptions to the extent to which such engagement would assist in undertaking its oversight role.

20. The Panel should examine the manner in which the above matters are being addressed and make resulting reports and recommendations to the Minister for Defence; having regard to the responsibilities of the Minister and the Government, including identification of any actions for the Minister and/or the Government.

Reporting

21. The Panel will provide Progress Reports to the Minister for Defence on a quarterly basis.

22. The Panel will provide a Final Report at a time directed by the Minister for Defence. The Final Report may be tabled in Parliament at the discretion of the Minister for Defence.

Values

23. The Panel's recommendations, are to reflect Defence's organisational values and Defence's commitment to ensure that these values are at the foundation of Defence's actions and behaviours. In this context, the Panel will consider the Defence values of:

- Service
- Courage
- Respect
- Integrity
- Excellence

Working methods

24. The Panel will be provided with access to relevant reports and information, access Defence establishments, ADF and APS personnel and Defence information and communications technology as required for their work.

25. The Panel will be supported by a Secretariat in the conduct of its work.

26. The work of the Panel may include undertaking visits for the purposes of oversight and assurance, with those visits anticipated to include, but not be limited to:

- progress meetings with the Secretary of Defence and Chief of the Defence Force;

- inspection of records of actions taken by the Department in response to the Chief of the Defence Force Implementation Plan;
- review of the internal Department implementation monitoring processes;
- interviews with key stakeholders;
- site visits as appropriate;
- inspection of documentation; and
- engagement of external stakeholders, such as other Government departments and agencies

27. It is anticipated that the Panel would engage, as necessary, with the following stakeholders, internal and external to the Department of Defence:

- the Secretary of Defence
- the Chief of the Defence Force
- the Chief of Army
- the Special Advisor – Special Forces
- the Special Operations Commander – Australia
- the Commissioner of the Australian Federal Police
- the Inspector-General of the Australian Defence Force.

28. Collective and individual visits will be facilitated by the Secretariat, as is required to support the Panel in responding to these Terms of Reference.

29. The Panel will have an active, dynamic and visit-based (subject to any COVID-19 restrictions that may be in place from time-to-time) approach by:

- a. providing iterative feedback; both through quarterly reporting to the Minister for Defence and by direct engagement of the Secretary of Defence and the Chief of Defence Force, as appropriate; to enable timely response to their observations and recommendations.
- b. making assessments and recommendations which result as necessary in prompt reorientation or renewed approach in Defence's response and/or adjustment of the Implementation plan.

30. The Panel will consider factors beyond the immediate scope of the Inquiry report's findings and recommendations and recommend to the Minister for Defence, the Secretary of Defence and the Chief of the Defence Force any additional actions that should be considered.

Secretariat

31. The Secretariat will be provided by the Department of Defence within the Defence Headquarters, segregated from functions subject to oversight.

32. The Secretariat responsibilities include:

- arranging visits by the Panel
- arranging stakeholder meetings as required by the Panel
- arranging travel and accommodation requirements of the panel
- arranging circulation of papers as required by the Panel
- supporting drafting of reports to the Minister of Defence

Conflict of Interest

33. Prior to appointment to the Panel, or to the engagement of an expert consultant, a declaration of any real or apparent conflict of interest in relation to the scope of work to be completed is to be made in writing. Conflict of interest declarations will be considered by the Minister of Defence when making appointments to the Panel or approving the engagement of an expert consultation. Consideration of conflict of interest declarations may be delegated to the Secretary of Defence.

34. Members of the Panel and expert consultants have an ongoing obligation to update their conflict of interest declaration if any real or apparent conflict of interest arises in the course of their work.

Security

35. Members of the Panel and expert consultants will hold, and maintain, an appropriate security clearance for the work that they are engaged to complete.

36. The work of the Panel, and any expert consultant engaged to assist the Panel, will be conducted in accordance with Defence Security Principles Framework.

Confidentiality

37. The role of the Panel is to provide advice to the Minister for Defence. The work of the Panel including but not limited to working papers, notes or minutes from meetings, briefing documents and reports are to be treated as confidential and may not be publicly released without the approval of the Minister for Defence.

38. Members of the Panel, or any expert consultant engaged to assist the Panel, will consult with the Minister for Defence before making public comment regarding the Inquiry, the Defence response to the Inquiry report, the Implementation Plan, or the work of the Panel.

39. It is noted that any public comment, or release of information, may affect potential investigations, prosecutions or legal proceedings arising from the Inquiry.

Amendment of Terms of Reference

40. Any amendment of this Terms of Reference is to be authorised by the Minister of Defence. Amendments will be advised in writing to:

Oversight Panel Members

Secretary of Defence

Chief of the Defence Force

Secretariat for the Afghanistan Inquiry Implementation Oversight Panel

Authorisation

41. This Terms of Reference for the Afghanistan Inquiry Implementation Oversight Panel was authorised by the Minister for Defence, Senator, the Honourable Linda Reynolds CSC, on 12 November 2020.

APPENDIX 2:

Principal consultations

Ministerial Meetings

- Minister for Defence, Senator the Hon Linda Reynolds (26 November 2020)
- Minister for Defence, Senator the Hon Linda Reynolds (22 December 2020)
- Office of the Minister for Defence (2 March 2021)
- Acting Defence Minister, Senator the Hon Marise Payne (15 March 2021)
- Minister for Defence, the Hon Peter Dutton MP (1 June 2021)
- Deputy Prime Minister, the Hon Richard Marles MP and the Minister for Defence Personnel, the Hon Matt Keogh MP (9 August 2022)
- Minister for Defence Personnel, the Hon Matt Keogh MP (23 August 2022)
- Deputy Prime Minister, the Hon Richard Marles MP (19 April 2023)
- Deputy Prime Minister, the Hon Richard Marles MP (6 November 2023)¹⁴⁰

CDF Meetings

- The Defence Secretary and the Chief of the Defence Force (20 January 2021)
- Chief of Defence Force (28 October 2022)
- Chief of Defence Force (3 July 2023)
- The Defence Secretary, the Chief of the Defence Force and the Chief of Army (5 October 2023)

Secretary Meetings

- The Defence Secretary and the Chief of the Defence Force (20 January 2021)
- Secretary and Associate Secretary (21 April 2022)
- Secretary and Associate Secretary (13 December 2022)
- Secretary and Associate Secretary (22 August 2023)
- The Defence Secretary, the Chief of the Defence Force and the Chief of Army (5 October 2023)

140 Scheduled at time of printing

Defence Committee Meeting

- Defence Committee (20 January 2021)

Chief of Army Meetings

- Chief of Army (21 January 2021)
- Chief of Army and Director General Sensitive Issues Management – Army (4 June 2021)
- Chief of Army (31 August 2021)
- Chief of Army (14 September 2021)
- Chief of Army (13 September 2022)
- Chief of Army and SOCOMD Auditors from Strategic Governance Army, Army Headquarters (31 March 2023)
- The Defence Secretary, the Chief of the Defence Force and the Chief of Army (5 October 2023)

Special Operations Commander Australia Meetings

- Special Operations Commander Australia and Special Operations Incident Manager (20 January 2021)
- Special Operations Commander Australia (5 May 2021)
- Special Operations Commander Australia (27 August 2021)
- Special Operations Commander Australia (17 August 2022)
- Special Operations Commander, Australia (4 July 2023)
- Special Operations Commander, Australia (9 October 2023)

Special Operations Command Staff Meetings

- Special Advisor, Special Forces (9 February 2021)
- Special Advisor, Special Forces staff (9 February 2021)
- Special Advisor, Special Forces (4 May 2021)
- Director General Special Operations and Counter Terrorism (16 July 2021)
- SASR Command Group (26 July 2021)
- Special Operations Command Headquarters staff (30 August 2021)
- Special Advisor, Special Forces (22 October 2021)
- Special Operations Command Headquarters staff (26 November 2021)
- Special Operations and Counter Terrorism staff (9 March 2022)
- Director General Special Operations Modernisation (17 March 2022)
- SOCOMD SOJ7 Health staff (17 March 2022)

- Commander Special Forces Group (24 October 2022)
- Special Operations Command Headquarters (7 December 2022)
- Lead, Review of Special Forces Networks initiative (4 July 2023)
- Special Operations Command, Command Council (5 July 2023)

Visits to Special Operations Command Units

- Defence Special Operations Training and Education Centre (17 March 2021)
- 2nd Commando Regiment (18 March 2021)
- SOCOMD Ethical Leader Course (17 June 2021)
- Defence Special Operations Training and Education Centre (9 August 2021)
- Special Air Service Regiment (25 March 2022 – Dr Thom only)
- Special Air Service Regiment (19-21 July 2022)
- Defence Special Operations Training and Education Centre (23-24 October 2022)
- 1 Commando Regiment (24 October 2022)
- 2nd Commando Regiment (29 August 2023)
- Special Air Service Regiment (28-29 September 2023)

Reform Program Meetings – General (including program management, prioritisation and benefits realisation)

- Assistant Secretary Inquiry Implementation (4 June 2021)
- Project Lead - Key Organisation Lessons from the Afghanistan Campaign (26 July 2021)
- Project Lead - Key Organisation Lessons from the Afghanistan Campaign (14 September)
- Assistant Secretary Afghanistan Inquiry Response Task Force (24 September 2021)
- Project Lead - Key Organisation Lessons from the Afghanistan Campaign (8 October 2021)
- Director General Afghanistan Inquiry Response Task Force (9 December 2021)
- Afghanistan Inquiry Reform Task Force staff (3 February 2023)
- AIRTF Leadership Group (18 February 2022)
- Assistant Secretary Afghanistan Inquiry Response Task Force (11 March 2022)
- SOCOMD Auditors from Strategic Governance Army, Army Headquarters (16 March 2023)
- Head, Afghanistan Inquiry Reform Task Force and Assistant Secretary Inquiry Implementation (3 July 2023)

Reform Program Meetings – Command Accountability, Leadership and Ethics

- Australian Defence College (16 April 2021)
- Australian Defence College (3 May 2021)
- Australian Defence College (12 August 2021)
- Afghanistan Inquiry Response Task Force and ADF Ethics Doctrine stakeholders (20 August 2021)
- Australian Defence College (1 April 2022)
- Defence Integrity Division, Defence Ethics Framework (3 June 2022)
- Australian Defence College (2 September 2022)
- Defence Integrity Division, Defence Ethics Framework (3 February 2023)
- Australian Defence College (17 February 2023)
- Royal Military College Duntroon (4 July 2023)
- Australian Defence College (25 August 2023)

Reform Program Meetings – Workforce (including respite policy and Defence culture programs)

- People Capability Division, Defence Personnel Group and Sensitive Issues Management - Army (20 January 2021)
- People Capability Division, Defence Personnel Group (24 September 2021)
- People Capability Division, Defence Personnel Group (4 February 2022)
- People Policy and Culture Division, Defence Personnel Group (18 February 2022)
- People Policy and Employment Conditions Branch, Defence Personnel Group (29 September 2022)
- People Capability Division, Defence Personnel Group (30 September 2022)
- People Policy and Employment Conditions Branch, Defence Personnel Group (2 December 2022)
- People Policy and Culture Division, Defence Personnel Group (17 March 2023)
- Chief of Staff, Land Capability Division, Army Headquarters (4 July 2023)
- Head, Military Personnel (11 August 2023)
- People Policy and Culture Division, Defence Personnel Group (22 September 2023)

Reform Program Meetings – Health, Wellbeing and Moral Injury Research

- Joint Health Command and Directorate of Army Health (8 October 2021)
- Surgeon General of the ADF and Commander Joint Health (9 December 2021)
- Deputy Secretary Defence People Group and Joint Health Command (15 July 2022)
- Joint Health Command (11 November 2022)
- Joint Health Command (28 November 2022)

**Reform Program Meetings – Information and Operations
(including data management, analytics and reporting)**

- Headquarters Joint Operations Command (11 March 2021)
- Preparedness - Army (21 May 2021)
- Chief of Joint Operations (16 July 2021)
- Chief Joint Operations (26 November 2021)
- Acting Chief Data Integration (4 February 2022)
- Force Exploration, Force Design Division ADF Headquarters (11 March 2022)
- Joint Operations Command staff (24 November 2022)
- International Policy Division (7 December 2022)
- Force Exploration, Force Design Division ADF Headquarters (17 March 2023)
- Chief of Joint Operations (24 March 2023)
- Chief of Joint Operations (5 July 2023)

**Reform Program Meetings – Legal (including serious incident
reporting and investigation, and compensation)**

- Defence Chief Counsel (20 January 2021)
- Defence Chief Counsel and Director General – Military Legal Services (21 May 2021)
- Defence Associate Secretary and Chief Counsel (26 July 2021)
- Defence Chief Counsel (22 October 2021)
- Associate Secretary, Department of Defence (22 August 2022)
- International Security Division, Department of Foreign Affairs and Trade (9 September 2022)
- International Cooperation Unit, Attorney-General's Department (12 September 2022)
- Legal Assistance Branch, Attorney-General's Department (12 September 2022)
- Afghanistan and Regional Branch, Department of Foreign Affairs and Trade (30 September 2022)
- Associate Secretary (21 April 2023)
- Defence Chief Counsel (28 July 2023)

Meetings with investigative bodies

- IGADF (10 December 2020)
- Office of the Special Investigator (20 January 2021)
- Office of Special Investigator (8 April 2022)

Other Meetings

- Dr Samantha Crompvoets (21 January 2021)
- Mr David Irvine AO (21 January 2021)
- Major General (Rtd) Sengelman (8 February 2021)
- Major General Findlay (9 February 2021)
- Dr Tom Frame (11 March 2021)
- MAJGEN Duncan Lewis (Rtd), Colonel Commandant SASR (13 April 2022)
- 17 Confidential Interviews with SOCOMD External Stakeholders (23 September to 4 October 2022)
- Mr Peter Fitzpatrick AO, AM, (Mil), FSAE, GAICD – Bravery Trust (30 March 2023)
- FAS Mental Health and Well Being Service, DVA (14 July 2023)
- National Manager Open Arms, DVA (3 August 2023)
- Assistant Secretary Benefits Policy, DVA (4 August 2023)
- Deputy Commissioner Western Australia, DVA (28 September 2023)
- 17 Confidential Interviews with SOCOMD External Stakeholders (4 September to 6 October 2023)

APPENDIX 3:

Quarterly progress reports to the Minister

MINISTER	NUMBER	PERIOD	DATE
Senator the Hon Linda Reynolds CSC	1	09.11.2020 – 31.01.2021	01.02.2021
The Hon Peter Dutton MP	2	01.02.2021 – 30.04.2021	12.05.2021
The Hon Peter Dutton MP	3	01.05.2021 - 31.07.2021	04.08.2021
The Hon Peter Dutton MP	4	01.08.2021 – 31.10.2021	02.11.2021
The Hon Peter Dutton MP	5	01.11.2021 – 31.01.2022	15.02.2022
The Hon Peter Dutton MP	6	01.02.2022 – 30.04.2022	02.05.2022
The Hon Richard Marles MP	7	01.05.2022 - 31.07.2022	02.08.2022
The Hon Richard Marles MP	8	01.08.2022 – 31.10.2022	07.11.2022
The Hon Richard Marles MP	9	01.11.2022 – 31.01.2023	16.02.2023
The Hon Richard Marles MP	10	01.02.2023 – 30.04.2023	01.05.2023
The Hon Richard Marles MP	11	01.05.2023 - 31.07.2023	01.08.2023
The Hon Richard Marles MP	12	01.08.2023 – 31.10.2023	31.10.2023

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