

**From:** s47E(d)  
**To:** [Brereton, Paul MAJGEN](#)  
**Subject:** RESPONSE TO RSL AND SASR ASSOCIATION - SUGGESTED AMENDMENTS [SEC=UNCLASSIFIED]  
**Date:** Wednesday, 19 February 2020 10:00:51 AM  
**Attachments:** [RSL-SASAssn - suggested amendments.docx](#)

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UNCLASSIFIED

Sir, thank you for the opportunity to review the draft letter to MAJGEN Melick and LTCOL Fitzpatrick.

I have provided a number of suggested amendments for your consideration. Some of these are self-explanatory while some may not necessarily be so. In respect to the latter, the below comments are provided.

- a. It would best that both addressees are referred to using their either their first names or initials. It does not matter which approach is adopted as long as it is consistent.
- b. I note that LTCOL Fitzpatrick lists his post nominal as AO, AM (Mil). If I am reading this correctly, he is an Officer of the Order of Australia (AO) and a Member of the Order of Australia (AM). If so, then only the higher award within the Order is used as a post nominal. s47C

c. s47C

d. s47C

e. s47C

Happy to discuss further as required.

Regards

s47E(d)

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**From:** Brereton, Paul MAJGEN s47E(d) @defence.gov.au>  
**Sent:** Tuesday, 18 February 2020 4:45 PM  
**To:** s47E(d) @defence.gov.au>  
**Subject:** FW: Letter as previously discussed. [SEC=UNCLASSIFIED]

UNCLASSIFIED

s47E(d)

Please see the attached letter to me, and my attached draft response.

While I appreciate that this is in the area of responsibility of others, I would very much appreciate any comments you might have on the draft response before I circulate it to others for comment.

Regards,

PB

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**From:** Aziz Melick <s47F >  
**Sent:** Tuesday, 21 January 2020 3:29 PM  
**To:** Brereton, Paul MAJGEN s47E(d) @defence.gov.au>  
**Cc:** PETER FITZPATRICK <s47F >  
**Subject:** Letter as previously discussed.

Dear Paul,

I left a couple of messages re an appropriate e mail address but obviously you are flat out, inter alia, s47F .

Hopefully this address will reach you and I note, as there are two signatories, we have not included an address.

A response via e mail would be much appreciated and if you would like a hard copy please indicate an address.

Best,

Greg

s22

**Subject:** FW: RSL and SAS ASSOCIATION  
**Attachments:** 200224 RSL-SASAssn - v3.docx

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**From:** Brereton, Paul MAJGEN s47E(d) <[redacted]@defence.gov.au>  
**Sent:** Monday, 2 March 2020 1:42 PM  
**To:** s47E(d) <[redacted]@defence.gov.au>; s47E(d) <[redacted]@defence.gov.au>  
**Cc:** Gaynor, James MR s47E(d) <[redacted]@defence.gov.au>; Sneath, Fiona CDRE s47E(d) <[redacted]@defence.gov.au>; s47E(d) <[redacted]@defence.gov.au>; s47E(d) <[redacted]@defence.gov.au>  
**Subject:** RE: RSL and SAS ASSOCIATION [~~DLM-SENSITIVE~~]

~~Sensitive~~

Colleagues,

Further to Friday's email, I have made a further addition at the end of the draft letter, in accordance with a discussion I had with IGADF last week, indicating his agreement.

Please facilitate a quick turnaround on this so that I can release the letter.

Regards,

*P. Brereton*

**P. BRERETON**

MAJGEN

Assistant IGADF

Office of Inspector General ADF

BP25 s47E(d)

Tel: s47E(d)

Mob: s47E(d)

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**From:** Brereton, Paul MAJGEN  
**Sent:** Thursday, 27 February 2020 2:49 PM  
**To:** s47E(d) <[redacted]@defence.gov.au>; s47E(d) <[redacted]@defence.gov.au>  
**Cc:** Gaynor, James MR s47E(d) <[redacted]@defence.gov.au>; Sneath, Fiona CDRE s47E(d) <[redacted]@defence.gov.au>; s47E(d) <[redacted]@defence.gov.au>; s47E(d) <[redacted]@defence.gov.au>  
**Subject:** RE: RSL and SAS ASSOCIATION [~~DLM-SENSITIVE~~]

~~Sensitive~~

Colleagues,

I have made a few additions to this letter, in the light of some ideas that arose in the course of discussions with CDF yesterday.

Once staffed, I am happy for it to go to CDF with the covering brief I have already approved.

Regards,

*P Brereton*

**P. BRERETON**

MAJGEN

Assistant IGADF

Office of Inspector General ADF

BP25-<sup>s47E(d)</sup>

Tel: <sup>s47E(d)</sup>

Mob: <sup>s47E(d)</sup>

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**From:** <sup>s47E(d)</sup> [@defence.gov.au](mailto: @defence.gov.au)>

**Sent:** Monday, 24 February 2020 4:00 PM

**To:** Brereton, Paul MAJGEN <sup>s47E(d)</sup> [@defence.gov.au](mailto: @defence.gov.au)>; <sup>s47E(d)</sup>

<sup>s47E(d)</sup> [@defence.gov.au](mailto: @defence.gov.au)>

**Cc:** Gaynor, James MR <sup>s47E(d)</sup> [@defence.gov.au](mailto: @defence.gov.au)>; Sneath, Fiona CDRE <sup>s47E(d)</sup> [@defence.gov.au](mailto: @defence.gov.au)>;

<sup>s47E(d)</sup> [@defence.gov.au](mailto: @defence.gov.au)>

**Subject:** RE: RSL and SAS ASSOCIATION [~~DLM-SENSITIVE~~]

~~Sensitive~~

Dear Sir,

<sup>s47C</sup>

<sup>s47C</sup> I have made a couple of minor editorial changes (still in track changes), including a formatting change which has brought your signature block back onto the last page. I have also incorporated the minor change suggested by <sup>s47E(d)</sup>

<sup>s47C</sup>

<sup>s47C</sup>

OBJ is still down, so I have not yet been able to get an OBJ ID for the document.

Kind regards,

s47E(d)

s47E(d)

s47E(d)

Assistant IGADF

BP25 s47E(d)

Brindabella Park

PO Box 7924 Canberra BC, ACT, 2610

Tel: s47E(d), Mob: s47E(d)

s47E(d) [@defence.gov.au](mailto:s47E(d)@defence.gov.au)

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**From:** Brereton, Paul MAJGEN s47E(d) [@defence.gov.au](mailto:s47E(d)@defence.gov.au)>

**Sent:** Friday, 21 February 2020 4:07 PM

**To:** s47E(d) [@defence.gov.au](mailto:s47E(d)@defence.gov.au)>; s47E(d)

[@defence.gov.au](mailto:s47E(d)@defence.gov.au)>

**Cc:** Gaynor, James MR s47E(d) [@defence.gov.au](mailto:s47E(d)@defence.gov.au)>; Sneath, Fiona CDRE s47E(d) [@defence.gov.au](mailto:s47E(d)@defence.gov.au)>; s47E(d) [@defence.gov.au](mailto:s47E(d)@defence.gov.au)>

**Subject:** RSL and SAS ASSOCIATION ~~[DLM-SENSITIVE]~~

~~Sensitive~~

Dear s47E(d),

Please see, for your consideration and comment, a letter which I have received, and my proposed reply.

The intention is that once settled, it will be the subject a noting brief to CDF before it is released. Could you please draft this s47E(d) – or have s47E(d) do so.

Although I was initially inclined to limit distribution, in my view there is nothing in the content which cannot be more widely circulated.

Regards,

*PBrereton*

**P. BRERETON**

MAJGEN

Assistant IGADF

Office of Inspector General ADF

BP25 s47E

Tel: s47E(d)

Mob: s47E(d)

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have received this email in error, you are requested to contact the sender and delete the email immediately.

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**From:** Aziz Melick s47F  
**Sent:** Tuesday, 21 January 2020 3:29 PM  
**To:** Brereton, Paul MAJGEN s47E(d) [n@defence.gov.au](mailto:n@defence.gov.au)>  
**Cc:** PETER FITZPATRICK s47F  
**Subject:** Letter as previously discussed.

Dear Paul,

I left a couple of messages re an appropriate e mail address but obviously you are flat out, inter alia, s47F  
[REDACTED]

Hopefully this address will reach you and I note, as there are two signatories, we have not included an address.

A response via e mail would be much appreciated and if you would like a hard copy please indicate an address.

Best,

Greg

~~Sensitive: Personal~~

Note to CDF ~~s22~~ 10/3.

**Staff comments on IGADF Proposed Response to Correspondence from the RSL President and the SAS Association National Chairman**

s47C

s47C

s47C

3. What is being sought from the RSL is information about the measures in place or to be implemented to ensure the mental health and wellbeing of serving and past members and their families are being considered when the IGADF AF Inquiry is announced.
4. The letter notes the 'strong focus on the care and support of veterans and families' which Special Forces Associations provide. In effect, the RSL's letter makes an offer to assist and be an active participant. s47C

s47C

s47C

s47C

s47C

s22

**BRIG Mark Holmes**

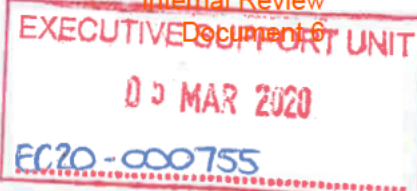
**HIMST-SF**


10 March 2020

~~Sensitive: Personal~~



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		<b>NOTING BRIEF FOR CDF:</b>  <b>IGADF AFGHANISTAN INQUIRY: CORRESPONDENCE FROM RETURNED SERVICES LEAGUE AND SPECIAL AIR SERVICES ASSOCIATION</b>
Group/Service:	Associate Secretary	Reference: <b>EC20-000755 (BN13927874)</b>
For information:	CA	Due date: Routine

### Purpose

1. To invite you to express any views about MAJGEN Brereton's proposed response, and the possible publication of that response, to a joint letter he received from the National President of the Returned Services League (RSL) and the President of the Australian Special Air Services (SAS) Association criticising welfare support to IGADF Afghanistan Inquiry witnesses.

### Recommendations

2. That you:
- Note** MAJGEN Brereton's proposed response to the National President of the RSL and the President of the Australian SAS Association.
  - Note** the RSL President distributed the RSL/SAS Association letter more widely than he originally intended and, as a result, I am considering publishing MAJGEN Brereton's response on the IGADF website.

### Key Issues

3. Enclosure 1 is a letter the National President of the RSL, MAJGEN Melick AO RFD (ret'd), and the President of the Australian SAS Association, LTCOL Fitzpatrick AM AM (Mil) (ret'd), sent to MAJGEN Brereton. s47C

s47C

s22

s22

s22

JM Gaynor

IGADF

Tel: s47E(d)

Mob: s47E(d)

04 Mar 20

Contact Officer: s47E(d)

Clearance Officer: Mr James Gaynor

Angus J Campbell s47C

GEN

CDF

Mar 20

Tel: s47E(d)

Tel: s47E(d)

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4. Enclosure 2 is MAJGEN Brereton's draft response including the attachment. There is nothing in the proposed response, which provides a useful summary of the witness support measures, which could not be more widely distributed.

**Enclosures:**

1. Letter from National President of the RSL, MAJGEN Melick AO RFD (retd), and President of the Australian SAS Association, LTCOL Fitzpatrick AM AM(Mil) (retd) to MAJGEN Brereton of 21 Jan 20
2. MAJGEN Brereton's draft response to MAJGEN Melick and LTCOL Fitzpatrick

ENCLOSURE 1 TO  
EC20-000755 (BN13927874)  
OF 04 MAR 20

21<sup>st</sup> January 2020

Major General the Honourable Paul Brereton, AM, RFD

C/-Inspector General of the ADF

Level 4, 25 Brindabella Circuit

CANBERRA ACT 2609

Dear General Brereton,

We are writing to you in relation to your current Inquiry into the conduct of Special Forces operations in Afghanistan to express concern about the impact of any potential adverse findings against those who have previously served as members of Special Forces units, as well as the widows of the fallen and families.

We understand from statements issued by the Department of Defence including a recent ABC report that those impacted by the inquiry are receiving "comprehensive support services" in preparation of the release of your final report. This is the link to that report.

<https://www.abc.net.au/news/2019-12-19/defence-supporting-veterans-forced-to-testify-afghan-war-crimes/11810894>

We are concerned that the statements made in this report might not hold up to close scrutiny, particularly where they apply to those who are no longer serving.

We have seen clear evidence of a level of care for the wellbeing of current serving members who have testified before the Inquiry, but those closest to former members and families are seeing little evidence of any significant level of care for their wellbeing.

We are aware that measures for those no longer serving have been implemented but it appears that proactive engagement for those needing assistance is required. Furthermore families of potential participants do not appear to be aware of such measures which substantially reduces the potential benefits of any assistance.

There also seem to be issues caused by privacy concerns that limits the information available to families and ESOs to ensure an appropriate level of engagement with such services for those in need.

We note the serious concerns expressed by Government for the mental health of veterans, including from the Prime Minister and his Cabinet, which are being echoed by Ex-Service Organisations and within the community. It would therefore seem incongruous if the level of support for those who have been involved in the Inquiry is not being universally applied to all who are likely to be impacted by its findings.

The release of your final report has the potential to cause serious mental health problems for those who are named in it, despite their entitlement to the presumption of innocence.

We would therefore welcome an opportunity to gain a better understanding from you of any measures that are in place or likely to be implemented to ensure that the mental health and welling of past serving members and their families are being seriously considered as part of the the release of your final report.

As you would appreciate, the Inquiry is likely to attract widespread media and community interest. It is therefore crucial for the Special Forces Associations, who have a strong focus on the care and support of veterans and families, to have a clear understanding of what will be expected of them following the inevitable fallout from this Inquiry.

Yours sincerely,

s22



Greg Melick

President

Returned Services League  
of Australia

s22



Peter Fitzpatrick AO, AM (Mil), JP

National Chairman

Australian SAS Association

**DRAFT**

**ENCLOSURE 2 TO  
EC20-000755 (BN13927874)  
OF 04 MAR 20**



**Office of the Inspector-General of the Australian Defence Force**

IGADF/BN13845452

**Major General Greg Melick AO, RFD, SC (retd)**  
National President, Returned Services League of Australia

**Lieutenant Colonel Peter Fitzpatrick AO, AM (Mil) (retd)**  
National Chairman, Australian SAS Association

Dear General Melick and Colonel Fitzpatrick

**IGADF AFGHANISTAN INQUIRY**

Thank you for your letter of 21 January 2020, which I received, by email, on 22 January. I have taken some time to reply because I wanted to let you have a comprehensive response, and also because of competing demands.

I welcome your interest in the welfare of persons who may be affected by the Inquiry, in particular as witnesses, and the opportunity to explain the measures that the Inquiry has adopted in that respect.

In your letter you express concern about the impact of any potential adverse findings against those who have previously served as members of the Special Forces, as well as the widows of the fallen and their families. As you will no doubt be aware, the essential task of the Inquiry, which is being conducted at the direction of the Chief of the Defence Force, is to ascertain whether there is any substance to rumours and reports of breaches of the laws of armed conflict by elements of the Special Operations Task Group in Afghanistan between 2005 and 2016. It is the duty of the Inquiry to inquire into those matters, without fear or favour, affection or ill-will, so as to uncover the truth. As General Melick would appreciate from his experience in the conduct of inquiries, this requires the rigorous and comprehensive collection, evaluation and testing of all available evidence, and this sometimes means that robust examination of witnesses cannot be avoided. Given the nature of the Special Forces community, in which the bulk of relevant witnesses reside, this is especially so in this Inquiry. It is also inevitable that, in discharging its duty, the Inquiry has to raise with witnesses events which occurred during their deployments and which may have been traumatic. In that respect, the position is little different from many trials, in which witnesses will have to revisit, and in a sense relive, incidents which have traumatised them.

From the outset, the Inquiry has been conscious of the potential for its proceedings to have an impact on the mental health of witnesses (and others who may be affected or involved). You would understand that it is not the function of the Inquiry to provide direct welfare support to persons who are witnesses. For serving personnel, that is the responsibility of Defence, through the chain of command, which provides or coordinates medical, psychological, welfare, pastoral and other support services as required. s47C

s47C

s47C

Ex-Service Organisations, such as yours, also fulfil an important role in supporting former ADF members and their families.

**DRAFT**



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However, the Inquiry is conscious that many, both serving personnel and ex-Service personnel, will not spontaneously or proactively reach out to the relevant sources for assistance, and for that reason, the Inquiry has put in place a number of measures to assist witnesses and other affected persons to obtain appropriate support.

First, the Inquiry conducts its proceedings so as to minimise the impact on witnesses and ensure they have access to appropriate legal and welfare support. All witnesses, whether current serving ADF members or not, are informed of their legal right (under the IGADF Regulation 2016) to be accompanied by a lawyer. While maintaining the necessary degree of separation and independence, the Inquiry assists with coordinating legal support through Defence Legal if required, including Legal Assistance at Commonwealth Expense (LACE) for ex-serving members who request it in connection with an appearance before the Inquiry. In addition to legal representation, and although witnesses are not legally entitled to a support person as a matter of right, the Inquiry has invariably exercised its discretion to permit one whenever requested, and witnesses are routinely advised that they may bring one. So far as practicable, interviews are conducted in locations and at times convenient to witnesses. Particularly in the case of potentially fragile or vulnerable witnesses, interviews are conducted where the witness' support network is readily available to them. Where sought, in the case of a fragile witness, the Inquiry has also permitted the witness's psychologist to be present.

Secondly, the Inquiry has routinely provided to witnesses, before an interview, not only information about their rights and obligations, but also the welfare support options available to them. A copy of the current form is attached for your information; and I draw your attention in particular to the box outlined in red on the last page. In addition, serving and former members are encouraged to seek support if they need it. The standard non-disclosure direction given at the conclusion of each interview contains an exception, which is emphasised, that the witness may discuss the interview not only with a lawyer for the purpose of obtaining legal advice, but also with a psychiatrist, psychologist, padre, social worker or other professional counsellor, so long as the consultation is on a strictly confidential basis. If there is any sign or suspicion that a witness may have been distressed as a result of an interview, the Inquiry immediately notifies the witness's chain of command (in the case of serving personnel), so that a check can be made on the witness's welfare. For persons (such as those no longer serving) for whom that is not possible, a member of the Inquiry team follows up with the witness.

Thirdly, as the number of witnesses has increased, a Witness Liaison Officer was added to the Inquiry team in September 2018 in order to expand the support for witnesses. This position is filled by an Army Reserve Warrant Officer Class 1, who has a Special Air Service Regiment background. For many, though not all interviews, he greets and meets the witness and any support person before an interview and speaks to them again at its conclusion. When he is not present, witnesses are provided at the end of an interview with the contact details for the Witness Liaison Officer and an Inquiry team member, and encouraged to make contact as required. In any event, the Witness Liaison Officer engages the witness after interview to ascertain their immediate well-being, and provides an ongoing point-of-contact. (There are a few exceptions to this, in circumstances where the witness is legally represented and the lawyers request that all communications be through them). If the Witness Liaison Officer has any concerns as to the witness's welfare or wellbeing, immediate advice is provided to the Inquiry team for action. Further follow up is undertaken if appropriate or requested, according to the particular circumstances of the witness. Bearing in mind that the Inquiry cannot itself act as a welfare delivery service, the action taken is ordinarily referral to an appropriate agency. In one exceptional case, the Inquiry has offered to facilitate access to an in-country psychiatrist for a former Special Forces member who is currently domiciled overseas.

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In the last couple of months, witness support has been expanded with the appointment of additional Witness Liaison Officers, drawn from each of Special Air Service Regiment, 1<sup>st</sup> Commando Regiment and 2nd Commando Regiment. These members are Reservists who were former permanent members and have been selected because of their long connection with the respective units, the regard in which they are held locally, and their ability to relate to soldiers at all levels. They are not privy to the evidence before the Inquiry, and their function is to maintain contact with and monitor the welfare of witnesses from their respective units.

Your point about the need for proactive engagement with those no longer serving is well made. It was similar thinking that prompted the Inspector-General of the Australian Defence Force to communicate recently with all Inquiry witnesses by an email which reaffirmed the various welfare support services available to them, as you are I am sure aware. The purpose of this was to ensure that, although witnesses had been provided with details of available welfare support services at the time of their interviews, they were given it a second time and continue to have it available. As you would expect, and as was foreseen at the time, this has produced a mixed reaction, and while we have received many positive responses, there have been some negative ones. Essentially this was a measure which would be criticised by some if taken, and by others if it were not; but on balance it was better to ensure that everyone had ready access to the relevant information should they need it, rather than to risk that they might not. These emails are to be followed up, over the next few weeks, by telephone calls from the Witness Liaison Officers, except in the case of those witnesses who have indicated that they do not wish to be contacted.

Your point about the desirability of families being aware of the services available is also well made, and you are right in identifying privacy issues as being an impediment to achieving this, by limiting the provision of information to families and ESOs. For my part, I would welcome the involvement of your associations in the provision of information about the available support services through your communications to your members, families and wider audiences.<sup>s47C</sup>

If you have any other ideas as to how you might be able to assist, I would be very happy to receive them.

The prospect that the Inquiry's report will occasion distress to some who may be referred to in it cannot be completely avoided. That is inevitable given the task of the Inquiry, and it is probably so of any Inquiry. However, I can confirm that before the final report is delivered, persons who are potentially the subject of any adverse finding or recommendation will be afforded procedural fairness. That is likely to be a stressful time for some, and at that time, they will again be reminded of the available welfare support services. For serving personnel, their chain of command will be informed, so that appropriate support measures can be in place. This is more challenging for ex-serving personnel, but it is here I think you may be able to assist. It would be helpful if you could nominate suitable points of contact within your Associations, who ex-serving members could consult for support. . Given the demographics of those concerned, preferably these points of contact would be veterans with a Special Forces background, and ideally there would be at least one former member of each of the Special Air Service Regiment, 1 Commando Regiment and 2 Commando Regiment. I would be very happy to discuss this further.

As I think you know, your letter received an unintentionally wide distribution. However, there is nothing in this letter which cannot be published, and I have in mind providing a copy to those who received your letter. I have no objection to you distributing it.

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The Inspector-General, Mr James Gaynor, has read and agrees with this letter.

Yours sincerely

**Paul Brereton, AM, RFD**

Major General

Assistant Inspector-General of the Australian Defence Force

BP25 s47E(

PO Box 7924

Canberra BC ACT 2610

AUSTRALIA

March 2020

DRAFT



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ATTACHMENT TO  
IGADF/BN13845452  
OF MARCH 2020



## RIGHTS AND OBLIGATIONS OF WITNESSES INVOLVED IN INSPECTOR-GENERAL OF THE AUSTRALIAN DEFENCE FORCE (IGADF) INQUIRIES

### Application

This notice applies to inquiries ('IGADF Inquiries') conducted by:

- the Inspector-General of the Australian Defence Force (IGADF);
- an Inquiry Officer appointed by IGADF;
- an Inquiry Assistant appointed by IGADF; or
- an Assistant IGADF directed by IGADF;

under the *Inspector-General of the Australian Defence Force Regulation 2016* ("the IGADF Regulation").

### Instruments of Appointment

Except in the case of inquiries conducted by IGADF personally, witnesses are entitled to be shown relevant Instruments of Appointment, to establish that those conducting IGADF Inquiries are authorised to do so.

### IGADF Inquiry Directions and Terms of Inquiry

The substance and context of relevant matters being the subject of an IGADF Inquiry will generally (but not always) be explained to witnesses. The person conducting the IGADF Inquiry may provide such information verbally or by way of witness access to relevant directions.

### Compellability to appear as a witness

Under s 22 of the IGADF Regulation, the IGADF (or an inquiry officer or an Assistant IGADF authorised in writing by the IGADF to do so), may by written notice require *a member of the Defence Force (including a Reservist)* to give information, produce documents and/or attend at a specified time and place to answer questions, if the IGADF has reason to believe that the member has information or a document or thing that is relevant to the inquiry.

Under s 23 of the IGADF Regulation, the IGADF (or an inquiry officer or an Assistant IGADF authorised in writing by the IGADF to do so), may in the case of:

- (a) an inquiry into the death of a member of the Defence Force, where the relevant death appears to have arisen out of, or in the course of, the member's service in the Defence Force; or
- (b) an inquiry into a matter concerning the Defence Force, if the Minister or the Chief of the Defence Force has directed the Inspector-General ADF to inquire into the matter;

by written notice require *any person (including a former member of the Defence Force, and a civilian who has never been a member of the Defence Force)* to give information, produce documents and/or attend at a specified time and place to answer questions, if the IGADF has reason to believe that the member has information or a document or thing that is relevant to the inquiry.

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Under s 29 of the IGADF Regulation, *a person who is given a notice under section 22 or 23 and fails to comply with it commits an offence*, for which the penalty is 10 penalty units, unless the person considers, on reasonable grounds, that complying with the notice may be prejudicial to the defence of the Commonwealth.

## **Evidence on oath or affirmation**

The IGADF may require answers to be given on oath or affirmation, and either orally or in writing. The IGADF, or the inquiry officer or Assistant IGADF to whom the information or answers are given, may administer the oath or affirmation. An oath is a religious promise to tell the truth, enforceable by penalty for perjury. An affirmation is a non-religious promise to tell the truth, which has the same legal effect and consequences.

## **Self-incrimination and protections**

Under s 32 of the IGADF Regulation (and s124 of the *Defence Act 1903*), a person is *not excused* from giving information, producing a document or thing or answering a question under section 22 or 23 on the ground that the information, the production of the document or thing, or the answer to the question, might tend to incriminate the person or expose the person to a penalty - *unless the person has been the person has actually been charged with a relevant offence and the charge has not been finally dealt with or disposed of*. However, in the case of an individual (but not a corporation), the information given or the document or thing produced, and giving the information or producing the document or thing, and any information document or thing obtained as a direct or indirect consequence of giving the information or producing the document or thing, are not admissible in evidence against the individual in any civil or criminal proceedings in any federal court or court of a State or Territory, or proceedings before a service tribunal, other than proceedings by way of a prosecution for giving false testimony in the inquiry.

## **Protection from liability in civil proceedings**

Under s 33 of the IGADF Regulation, civil proceedings (such as for defamation or breach of confidence) cannot be brought against a person for loss, damage or injury of any kind suffered by another person by reason of:

- (a) the making in good faith of a submission to the IGADF, an inquiry officer or an Assistant IGADF;
- (b) the making in good faith of a statement to, or the giving of a document or information to, the IGADF, an inquiry officer or an Assistant IGADF as a part of, or in connection with, a submission.

## **Legal representation**

Under s 20 of the IGADF Regulation, a person who attends an inquiry to answer questions is entitled to be accompanied by a lawyer. However, the lawyer may only address the inquiry at such times as the IGADF, inquiry officer or Assistant IGADF conducting the inquiry determines.

## **Disclosure of evidence**

Under s 21 of the IGADF Regulation, the IGADF (or an inquiry officer or Assistant IGADF authorised in writing by the IGADF to do) may, if satisfied that it is necessary to do so in the interests of the defence of the Commonwealth, or of fairness to a person who may be affected by an inquiry, give a direction restricting the disclosure of information contained in oral evidence given during the inquiry, all or part of any document received during the course of the inquiry, and/or information

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contained in a report about the inquiry under section 27. *A person who contravenes such a direction commits an offence* for which the penalty is 10 penalty units.

In the case of a witness who is a defence member, an inquiry officer or Assistant IGADF who is the witness's superior officer may give the witness a lawful order, for the purposes of the Defence Force Discipline Act, not to discuss or disclose the subject matter and contents of the evidence given to and proceedings of the inquiry, except for the purposes of obtaining professional legal advice. *Disobedience of such an order is a service offence*, liable to be dealt with under the Defence Force Discipline Act.

### **Contempt**

Under s 30 of the IGADF Regulation, it is an offence, for which the penalty is 10 penalty units, if a person:

- (a) engages in conduct which insults the IGADF, an inquiry officer or an Assistant IGADF in the course of an inquiry;
- (b) engages in conduct which disturbs or interrupts the proceedings of an inquiry; or
- (c) engages in conduct which would, if an inquiry were a court of record, constitute a contempt of that court. Breach of an undertaking given to the inquiry is such a contempt.

Where the IGADF, an inquiry officer or an Assistant IGADF considers that a person has, during the proceedings of an inquiry, engaged in conduct of that kind, the IGADF; inquiry officer or Assistant IGADF may direct that the person be removed from the place where the proceedings are being held.

### **Reprisals against witnesses**

Under s 31 of the IGADF Regulation, it is an offence, for which the penalty is 10 penalty units, if a person:

- (a) prevents or dissuades another person from giving information, producing a document or thing, or answering questions, for the purposes of an inquiry conducted by the IGADF, an inquiry officer or an Assistant IGADF; or
- (b) causes another person to be victimised, penalised or prejudiced, in some way for giving information, producing a document or thing, or answering questions, for the purposes of an inquiry conducted by the IGADF, an inquiry officer or an Assistant IGADF.

### **Witness expenses**

Under s 34 of the IGADF Regulation, a person (other than a member of the Defence Force) who attends an inquiry in accordance with a notice given under section 23 is entitled to be paid a reasonable allowance for expenses incurred by the person for transport, meals and accommodation in connection with attending the inquiry.

### **Privacy**

Information obtained during an IGADF Inquiry (including information provided by witnesses) may be used or disclosed for purposes associated (directly or incidentally) with the IGADF's role and functions. Without restricting the generality of the above, IGADF may release such information to:

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- a. the Minister for Defence;
- b. persons adversely affected by the findings of the Inquiry Report;
- c. complainants (in advising them of the outcome of matters affecting them personally and about which they have complained);
- d. areas within Defence which may be responsible for implementing recommendations or to address any matters arising from the Inquiry Report, such as to Values Behaviours and Resolution Branch, CDF, Service Chiefs, APS Code of Conduct delegates, Defence Legal or Service Police; and
- e. external agencies with a legitimate reason for requiring the information, including the Department of Veterans' Affairs, Comcare, law enforcement agencies, courts, coroners and external complaints bodies, such as the Ombudsman and Human Rights Commission.

Further details may be found in the IGADF 'Privacy Notice to Inquiry Witnesses'.

#### Further information

Further information concerning IGADF Inquiries may be found in the Inspector-General of the Australian Defence Force Regulation 2016, which can be accessed at:

<https://www.legislation.gov.au/Details/F2016L01558>

#### **IMPORTANT - SUPPORT SERVICES**

If you are concerned about any aspect of the inquiry, please contact the Assistant IGADF. The following helplines may also be of assistance:

- All-hours Support Line (for ADF members and their families) – call 1800 628 036 (available 24/7)
- Defence Family Helpline – call 1800 624 608 (available 24/7);  
[www.defence.gov.au/DCO/Defence-Helpline.asp](http://www.defence.gov.au/DCO/Defence-Helpline.asp)
- Family and dependants of defence members have access to Chaplaincy services to receive pastoral care, support or advice. Service Chaplains maintain a 24/7 on-call service and have support networks across Australia. To get in touch with a Chaplain, Defence or family members can either call their unit, base or ship Chaplain or ring 1300 DEFENCE and ask to speak to the on-call Chaplain in your area
- Open Arms (for current and ex-serving ADF members and their families) – 1800 011 046;  
<https://www.openarms.gov.au/>
- Lifeline Australia (available 24/7) – call 13 11 14; [www.lifeline.org.au](http://www.lifeline.org.au)
- Employee Assistance Program (for Defence APS, ADF members and their families) – call 1300 OUR EAP (1300 687 327)
- ADF Health and wellbeing portal – [www.defence.gov.au/health/healthportal](http://www.defence.gov.au/health/healthportal)
- Department of Veterans' Affairs (for current and ex-serving ADF members) – call 1800 555 254

Information on other available welfare support services can be found at:

<https://www.defence.gov.au/mjs/welfare-support-services.asp>

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