

~~OFFICIAL - Sensitive~~
~~Personal privacy~~



INSPECTOR-GENERAL OF THE AUSTRALIAN DEFENCE FORCE

IGADF/^{s47E(d)}

DIRECTIONS TO ASSISTANTS IGADF – CDF-DIRECTED IGADF INQUIRY INTO THE CULTURAL CONTEXT IN WHICH COMMAND OVER SPECIAL OPERATIONS TASK GROUPS OR SPECIAL FORCES PERSONNEL WAS EXERCISED IN AFGHANISTAN

IGADF INQ ^{s47E(d)}

To: LTGEN (Retd) ^{s47F} (Assistant Inspector-General ADF)
Mr ^{s47F} (Assistant Inspector-General ADF)

Introduction

1. In accordance with section 110C(1)(f) of the *Defence Act 1903*, the Chief of the Defence Force (CDF) has directed me to inquire into a matter concerning the Defence Force, namely the cultural context in which command over the Special Operations Task Groups or Special Forces personnel was exercised, as addressed in the IGADF Afghanistan Inquiry Report dated 2 November 2020.

2. Pursuant to your appointment as Assistants IGADF and Section 10 of the *Inspector-General of the Australian Defence Force Regulation 2016* (the IGADF Regulation), I direct you to assist me in inquiring into this matter. The purpose of this inquiry is to review and analyse known information in order to inform future action including possible reform of command doctrine and leadership ethics.

3. The Report prepared as a result of your work will be provided to the CDF.

Background

4. On 10 November 2020, the IGADF delivered to CDF the IGADF Afghanistan Inquiry Report (the Report). The Report detailed IGADF's inquiry into rumours of serious misconduct by Australia's Special Forces in Afghanistan. Some of the rumours potentially disclosed war crimes. As a result of the Report's findings and recommendations, separate criminal investigations may be commenced against certain individuals identified in the Report.

5. Chapter 3.03 of the Report considers the issue of Command and Collective Responsibility. Although the Report found that commanders were morally responsible for the alleged wrongdoing, the Report found no evidence that there was knowledge, or even reasonable suspicion, at troop/platoon, squadron/company or task group command level, or at higher levels such as Commander JTF 633, Joint Operations Command, or Australian Defence Headquarters, that war crimes were allegedly being committed under their command.

6. Nevertheless, the report refers to the indirect contribution of command in the context of otherwise deviant behaviour and this inquiry is to explore that further.

~~Personal privacy~~
~~OFFICIAL - Sensitive~~

~~OFFICIAL. Sensitive~~
~~Personal privacy~~

The Inquiry

7. You are to determine the key facts relevant to this matter and present this to me as a report.

8. In addressing this matter the inquiry should assess and analyse the culture of the Special Forces units providing personnel to the SOTG, to assist with identifying any potential indicators and linkages between a culture and alleged unlawful behaviour.

9. Specifically, you are directed to review the identity-protected IGADF Afghanistan Inquiry Report, and speak with ^{s47F} [REDACTED], ^{s47F} [REDACTED] and relevant members of the IGADF Afghanistan inquiry team.

10. You are to:

- a. Find out whether there is sufficient specific information that could demonstrate a causal linkage between a culture within SOTG, or the Special Forces units providing personnel to the SOTG, and the prevalence of alleged unlawful behaviour unknown to or suspected by command.
- b. Find out whether there were any things that could have been indicators to alert tactical, operational or strategic commanders to the possibility that SOTG members were potentially committing serious misconduct.
- c. Prepare a report addressing whether and how any cultural issues and indicators may have alerted commanders up to the highest levels of the Australian Defence Force of the possibility that SOTG members might be engaging in serious misconduct.

11. **Public or private.** Pursuant to section 19 of the IGADF Regulation, I direct the inquiry be conducted in private. Your Report is to be drafted to ensure that it does not identify any person subject of recommendations in the IGADF Afghanistan Inquiry; or any evidence that may have been given to that Inquiry under compulsion, or derived from such evidence. These matters are necessary to ensure that your Report can be of practical use on its completion and not inadvertently affect any future criminal investigations or prosecutions arising from the IGADF Afghanistan Inquiry.

12. **Documentation.** You will be provided with access to the identity protected IGADF Afghanistan Inquiry Report and any Defence records which do not identify particular individuals as persons who were affected by the IGADF Afghanistan Inquiry. All documentation is to be saved in the IGADF work group in the *Objective* records management system.

13. **Criminal or disciplinary investigation.** You are not to conduct a criminal or disciplinary investigation or to conclude that an offence has been committed by any person. If facts point to the likelihood that a criminal or service offence not already known to me, may have been committed, you are to immediately report to me to determine the future course of the inquiry.

~~Personal privacy~~
~~OFFICIAL. Sensitive~~

~~OFFICIAL - Sensitive~~
~~Personal privacy~~

14. **Procedural fairness.** You are not to make findings or include opinions adverse to any identifiable individual. Therefore it is not expected that you will need to accord any person procedural fairness. If circumstances become apparent that adverse findings could be made against a person not already subject of a recommendation in the IGADF Afghanistan Inquiry, you are to immediately report to me to determine the future course of the inquiry.

15. **Findings.** The draft report is not to make any findings that any person has committed a service or civilian offence; nor is the draft report to contain the language of the criminal law to describe the conduct of any person. The draft report is also not to make any findings that any person has engaged in conduct below the expected standard sufficient to consider initiation of action for an administrative sanction.

16. **Witnesses.** It is not envisaged that you will need to conduct extensive interviews during this Inquiry. You are not to speak with any of the witnesses interviewed during the IGADF Afghanistan Inquiry. If you consider this necessary to complete the inquiry, you are to immediately report directly to me to determine the future course of the inquiry. Should you believe that interviews are required of any other person to assist you with your inquiries, you are to seek further guidance from me through the Deputy IGADF.

17. **Powers to compel witnesses.** In relation to the information gathering powers of the IGADF under sections 22 and 23 of the IGADF Regulation you are authorised only to give a notice requiring an ADF member or other person to produce a document or thing that is relevant to the inquiry. You are not authorised to give a notice requiring an ADF member or other person to appear before you and answer questions.

18. **Non-disclosure directions.** Further to section 21 of the IGADF Regulation, I authorise you to give a direction restricting disclosure of information contained in oral evidence, any part of a document received in the course of the inquiry, or information contained in a report about the inquiry that is given to a person under section 27 of the IGADF Regulation.

19. **Variation and guidance.** Any difficulties in complying with these directions are to be raised with me at the first available opportunity. Deficiencies in, or suggested amendments to, these directions are to be raised with me for consideration—particularly if they relate to matters which may compromise the overall purpose of the inquiry.

20. **Progress reports.** You are to provide me with a fortnightly report detailing inquiry progress.

21. **Completion.** You are to present the draft report for Executive Review by 16 August 2021.

IM Gaynor CSC
Inspector-General of the Australian Defence Force

9 June 2021

~~Personal privacy~~
~~OFFICIAL - Sensitive~~

~~Legal Privilege~~



INSPECTOR-GENERAL OF THE AUSTRALIAN DEFENCE FORCE

IGADF/ ^{s47E(d)}

Lieutenant General ^{s47F} and Mr ^{s47F}
By email: ^{s47E(c)} [@defence.gov.au](mailto:ig.adf@defence.gov.au); ^{s47E(c)} [@defence.gov.au](mailto:ig.adf@defence.gov.au)

Dear Lieutenant General ^{s47F} and Mr ^{s47F},

On 9 June 2021 I directed you to inquire into the cultural context in which command over Special Operations Task Groups or Special Forces personnel was exercised in Afghanistan. The Inquiry Directions (IGADF/ ^{s47E(d)} of 9 June 2021) expressly did not envisage you would need to conduct extensive interviews.

You recently informed me that it will not be possible to complete your inquiries into the matters referred to in subparagraph 10b of the Inquiry Directions without interviewing witnesses. Some of those witnesses would likely be individuals whom the Office of the Special Investigator may wish to interview as part of their ongoing war crimes investigations.

It is essential that your inquiry not risk interfering with or compromising the Special Investigator's work. Therefore, I direct you to discontinue those aspects of your inquiry – into the matters referred to in subparagraph 10b of the Inquiry Directions – that would require you to interview witnesses.

If you become aware of any matters that should be disclosed to the Office of the Special Investigator, please let me know.

Yours sincerely

JM Gaynor CSC
Inspector-General of the Australian Defence Force

^{s47E(c)}

ig.adf@defence.gov.au

PO Box 7924
CANBERRA BC ACT 2610

19 October 2021

~~OFFICIAL: Sensitive~~
~~Legal Privilege~~