



Office of the Inspector-General of the Australian Defence Force

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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 IGADF or 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. Former members can, if they wish, be supported by Department of Veterans' Affairs (DVA) who provide access to support services including mental health, medical and in some cases legal support. Ex-Service Organisations, such as yours, also fulfil an important role in supporting former ADF members and their families.

The Inquiry is also 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 access 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 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.

In the last couple of months, in response to the increasing number of witnesses being interviewed, the Inquiry has expanded its witness support program with the appointment of additional Witness Liaison Officers, drawn from each of Special Air Service Regiment, 1st 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 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. 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 and your Associations 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 advice regarding accessing appropriate 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.

The requirement for access to appropriate welfare support by both serving and ex-serving members will continue beyond the completion of the Inquiry. In this respect, you may also consider engaging with Chief of Army. I am also aware that Defence, and in particular Army, are currently planning for the continued provision of welfare support to witnesses and their families following the submission of the Inquiry Report to the Chief of the Defence Force. I

expect that the Inquiry witness support program will remain in place for some time after delivery of the report, but engagement between your Associations also may generate an opportunity for your Associations to assist in the development and implementation of a seamless and coordinated approach to the provision of appropriate welfare support to our serving and ex-serving members and their families.

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.

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

Yours sincerely

A handwritten signature in black ink, appearing to be 'P. Brereton', written over a horizontal line.

Paul Brereton, AM, RFD

Major General

Assistant Inspector-General of the Australian Defence Force

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