8 Yulong Street
Bateau Bay
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4 December 2005

Senator R Hill
Minister for Defence
Parliament House
Canberra
ACT 2600

Dear Senator Hill,

## SECOND MINISTERIAL REPRESENTATION - EX MAJOR A K WARREN

The purpose of this submission is to detail:

- why I still seek a fair and honest ministerial investigation and proper redress against Department of Defence maladministration 1980 to date.

- how Defence legal officers have maintained a 25 year cover-up of Defence's corrupt use of the Section 16, Defence Act 1903 'Notice To Show Cause' (NTSC) charges of unprofessionalism and incompetency to dishonourable terminate my officer career appointment from Army.

-. how responsible ministers, through their egregious decision-making, have ratified this Defence corruption to date; and

-. how a proper and fair investigation into procedural fairness and legal decision-making on my case has been evaded by a succession of responsible ministers 1981 to 2006

*This submission has been divided into parts representing separate but related issues in my case 1980 to date. Therefore there is repetition in the submission. This is necessary to bring relevant material to the issue been addressed.*

### A. MINISTER RATIFIES CORRUPTION OF THE MILITARY JUSTICE SYSTEM (MJS) IN 2005

1. I have not received a reply from you, Senator Hill in response to my ministerial representation of 8th July 2005. This can only serve to encourage continuing corruption of the MJS by the generals and Defence legal officers.

2. On 29 September 2005 I briefed my Local Member for Parliament, Mr Ken Ticehurst (Dobell, Liberal) on the intense efforts of past responsible ministers to shut down my case without proper and fair investigation of it. He refused to take up this case and argued that he does not represent individuals. His attitude also serves to encourage the abuse of power from within our governing institutions.

3. On 4 October 2005 the Minister Assisting the Minister for Defence, The Hon. De-Anne Kelly, wrote to my sister to advise that she has closed down my case and without new evidence she will not revisit it. I

wish to address the reasons given for her decision with particular focus on demonstrating how and why her conduct is no different to previous ministerial cover-ups of Defence's ongoing corruption of the MJS.

4. The Hon De-Anne Kelly misleads to imply that my case was reviewed for decision by the 2004 Senate Inquiry into the Effectiveness of the Australian Military Justice System. But she knew that that inquiry made it clear it did not review individual cases.

5. De-Anne Kelly has ignored relevant considerations made known to her and she misrepresents facts and evidence to make her decision that my case has already been properly considered by the Administrative Appeals Tribunal (AAT) in 1993.

6. The AAT had no authority to investigate or give recommendation on the circumstances of my forced resignation from Army as implied by De-Anne Kelly. Its power was to adjudicate within the ambit of my 1993 Freedom of Information (FOI) Act application to have 13 annotations added to my Defence personal history records to show that these records contained inaccurate or misleading information about my personal affairs. One of those records related to the improper or corrupt conduct of BRIG J A Hooper, then Military Secretary (MS) in 1980. Another exposed the 1981 improper conduct of then Director of Army Legal Services (DALS), BRIG Ewing, that was used to protect BRIG Hooper's abuse of power.

7. The 1993 AAT hearing was itself improperly conducted. Tribunal members refused to make relevant annotations to the improper BRIG Hooper and BRIG Ewing documents. By 1993 BRIG Hooper had retired from Army and was himself a non-presidential member on the AAT in Sydney. Information about BRIG Hooper's AAT collegial position was withheld from me by the AAT Members when they made their decision, contrary to the evidence and the weight of that evidence presented, to protect BRIG Hooper's 1980 document.

8. De-Anne Kelly misleads or lies that LTCOL Ben Salmon QC, then Army Reserve Legal Officer, had "addressed" my complaints against "legal officers and legal decision-making". In 1994 he was appointed by direction of then Minister for Defence, Robert Ray to investigate the circumstances of my forced resignation from Army. De-Anne Kelly knew that immediately after LTCOL Salmon QC submitted his completed report on 6th December 1994, he wrote to COL J A Harvey, Director of Army Legal Services (DALS) on 8th December and put a deliberate disclaimer on his report that he DID NOT investigate Army's legal decision-making or its legal procedural fairness as his Terms of Reference did not require him to do so. He made explicit that he had only considered "moral" aspects of fairness in the general sense of the word and not as a legal decision-making process.

9. The LTCOL B J Salmon QC 1994 Investigating Officer's report was a cover-up investigation of my case by Army for Army. This corrupt practise, or modus operandi, by Defence legal officers, as has been revealed by the Senate Inquiry into the MJS, 2005 and by media investigations, is systemic. This subversion of the rule of law by Defence legal officers destroyed the MJS but has left those responsible

untouched. The improprieties of the LTCOL Salmon QC report were the subject of my detailed Prime Ministerial Representation to The Hon. John Howard in 1997. Mr Aldo Borgu, then a Member of Parliament Staff (MOPS), shut down my representation without any investigation into the failings of the 1994 LTCOL Salmon QC Report.

10. It is an arrogant lie for Defence Legal Services in 2005 to advise De-Anne Kelly to shut down my case on the grounds that my complaints about legal officers and legal decision-making have been essentially addressed by LTCOL Salmon QC. He has never investigated the impropriety of his own report or previous or subsequent abuses of power by Defence legal officers 1982 to date. Nor did LTCOL Salmon QC investigate the improprieties of BRIG Ewing, DALS's legal decision-making on my case in 1980-81. He made this explicit in his disclaimer on his 1994 Investigation Report. The 1994 LTCOL Salmon QC Report was an alleged investigation into my complaints of misconduct of my superior officers in 1980, namely, BRIG Hooper, BRIG Ewing, COL Christopherson and LTCOL P Emmet, in bringing about my dishonourable termination from Army. LTCOL Salmon QC took the stance of a lawyer covering up for a client i.e. Defence. This was in violation of his duty as an Investigating Officer under Defence Regulations. He set up the pretence of examining legal procedural fairness but in order to protect the principal wrongdoers he put a disclaimer on his report that his Terms of Reference did not require him to do so.

11. My case, 1980 to date, has never been honestly or properly investigated for or by any primary decision-maker i.e. Governor-General, Prime Minister(s) and Ministers for Defence. They have never demonstrated the capacity or intent or both to demand that the generals and Defence legal officers report to them properly and honestly. Worse still is the apparent acquiescence of these primary decision-makers in Defence's systemic abuses of power intended to subvert the rule of law. This has been so prominently exemplified by my case over the years. My many ministerial representations progressively informed them of how their decisions were been deliberately corrupted by the generals and their Defence legal officers. The MJS fell into infamous disrepute because they became so accustomed to subverting it at will knowing that responsible ministers, be it Liberal or Labor, would do nothing to interfere. The 1990 decision by then Governor-General Bill Hayden stands out. Senator Hill is acting just the same to-day.

12. The MJS became so dysfunctional and corrupted that the 2005 Senate Inquiry into it deemed it to be "unfixable". The Director-General of Defence Legal Services (D-G DLS), Air Commodore S J Harvey bears a major responsibility for its disgusting failure in legal integrity and competency. MAJGEN Cosgrove had been put on notice several times in previous years to improve the competency, integrity and trust in the MJS. He simply window-dressed it with a plethora of policies which were hollow in outcomes. It was inevitable that the MJS collapsed as it did.

13. De-Anne Kelly used the opinion of Air Commodore Harvey, D-G DLS, in her 4 October 2005 reasons to shut down my case. Not only was he not held publicly accountable for his central role in the collapse of the MJS but his state of mind, or perspective, might explain why this infamous breakdown in the rule of law happened. More poignantly still are De-Anne Kelly’s reasons to keep my case closed

demonstrate that the corruption of the MJS continues under Air Marshall Houston's leadership and his pledged reforms.

14. De-Anne Kelly used half of her letter of 4 October 2005, in response to my Ministerial Representation to Senator Hill, to cite Air Commodore S J Harvey's oral evidence to the 2004 Senate Inquiry. It appears he was then attempting to argue that in a military operational environment the rights of individuals may or may not need to be put aside. It is hard to fathom why she would cite this reasoning to justify either the corruption of the MJS by senior officers or the closing down of my case without fair and proper investigation. Ultimately, it is the sort of excuse that can be offered by any minister for all sorts of corruption and abuses of power by the generals and their legal officers.

15. Air Commodore S J Harvey's reasoning, as cited by De-Anne Kelly, appears something akin to:- because the military chain of command, from corporals through to generals, might be called upon to operate in a difficult operational environment it occasionally may be required to put aside or 'sell short' the rights of subordinates so as to achieve mission and/or protect the group. Hence the commander, albeit corporal or general, must retain full control over the military discipline code for this purpose -. However, this does not explain or address how and why the MJS has collapsed so badly in a in a non-operational environment that is the reality of day-day life of military members. And his argument ignores decades of exposure of senior officers abusing their positions of power in the MJS for motives of maliciousness, vendettas, cover-ups, moral cowardice in leadership, or to perpetrate sexual crimes or other deviate behaviour by senior officers. These scandals have nothing to do with the context of "the unique Defence environment." These scandals are about the ongoing abuse of senior rank and power and how, because of systemic and pernicious cover-ups by Defence legal officers, they caused the MJS to end so badly.

16. Everybody understands that the nature and role of the military requires a disciplined MJS. Hence there is the absolute need for the generals to ensure and maintain its and their integrity by proper and open investigations into breaches of it and to expunge abuses from it. Instead, repeatedly as in my case to date, responsible ministers have allowed the abusers of this system to investigate themselves. Senator Hill and Chief of Defence Force, Air Marshall Houston, have kept these mechanisms in place. This is exemplified by the De-Anne Kelly response to shut down my case using misleading and injudicious reasoning to do so. Therefore, it would seem there is no integrity in Senator R Hill's MJS reforms nor in the pledges by Air Marshall Houston to rid it of it abusers and abuses.

17. My past ministerial representations against the improper 1980 Defence administration by BRIG J.A. Hooper, Military Secretary (MS), BRIG EWING, DALS, COL J Christopherson and LTCOL P Emmet were never rigorously or properly investigated. Consequently no adequate or proper redress has been granted to date. Instead the abuses of the MJS by these senior officers have been covered up. De-Anne Kelly has adopted a position not unlike Air Commodore Harvey's. She seems to reason that regardless of how systemic abuses of power might be amongst senior officers in the MJS they still have the right to complete control over it. They have the right not be properly investigated when they corrupt it as this would

undermine any notion of public trust in their integrity. Similarly she applies these same values to Defence legal officers who conduct these investigations and then advise the responsible ministers. When the responsible minister covers up for his/her department's corruption that behaviour becomes subversive of the well-being of democracy and hence seriously endangers it. This applies equally to Immigration or Defence or any other government department.

18. De-Anne Kelly demands new evidence before she would re-open my case. The following parts of my submission show how responsible ministers, the generals and Defence legal officers have acted improperly in decision-making on the evidence they hold. Their intent is to cover-up to protect the wrongdoers and deny natural justice to me by not acknowledging the circumstances in which I was forced to resign from Army in disgrace. By refusing to acknowledge the evidence held by Defence she is condoning and encouraging the generals to maintain their abuses and corruption of the MJS 2005 onwards.

## B. BRIG HOOPER AND IMPROPER DECISION-MAKING BY ADMINISTATIVE APPEALS TRIBUNAL (AAT) 1993

19. In 1980 BRIG Hooper was the Military Secretary responsible for all Army officers' (below BRIG) career management. He collated and fabricated false evidence to bring about my dishonourable termination from Army in 1981. By 1993 he had retired from Army and served as a non-Presidential member of the AAT in Sydney. Prior to my August 1993 AAT hearing Senior Member Allen, a former Army Reserve Legal Officer, asked if I objected to an ex-BRIG Way sitting in judgement on my case because of his military background. I did object but was overruled. But Senior Member Allen failed to tell me that ex-BRIG Hooper was also then their colleague on the AAT.

20. At the 1993 AAT hearing the three sitting Members were required to address my FOI Act application to annotate 13 documents relating to my forced termination from Army in 1981. Among these documents was their colleague, ex-BRIG Hooper's warning letter to me of 15 October 1980 which threatened to dishonourable terminate my appointment from Army. In his letter BRIG Hooper had used my commanding officer, LTCOL Emmet's June 1980 Confidential Report as part of his alleged proof that I was incompetent warranting termination of service. BRIG Hooper's false accusations, particularly those in paras 3 and 4 of his letter became his evidence of my incompetence and unprofessionalism. Based on BRIG Hooper's collated 9 documents of alleged evidence I was forced, in March 1981, to resign in disgrace from Army.

21. In 1993 I requested, pursuant to the FOI Act, that the AAT put an annotation on BRIG Hooper's 15th October 1980 threatening letter to read:

> *"Its contents are null and void in respect to the comments inspired by Lieutenant Colonel Emmet's 1980 Annual Confidential Report on me."*

In spite of the clarity and weight of my evidence presented to the AAT Members they refused to do so. Their conflict of interest in non-disclosure of BRIG Hooper's collegial closeness to them transgressed to improper conduct when they ruled in his favour. The AAT refused to make the relevant annotation on the document that BRIG Hooper had raised and used as proof for his fabricated charges of my alleged unprofessionalism and gross incompetence. And this is how De-Anne Kelly is misleading in her use of an AAT hearing on an FOI matter as been an "investigation" for her decision to close down my case.

22. Subsequent to the 1993 AAT hearing LTCOL Salmon QC, in December 1994, dismissed the AAT finding in favour of BRIG Hooper and confirmed there was no evidence in the LTCOL Emmet 1980 Confidential Reports on me to demonstrate incompetency or unprofessionalism. LTCOL Salmon QC wrote of LTCOL Emmet's 1980 reports on me:

> *".....it is virtually impossible to identify specific conduct which would support the statement in the Notice (to Show Cause Why Your Appointment Should Not Be Terminated -NTSC) that Warren had failed to attain the standards of competence and professionalism expected"*
>
> *para 70 page 13 Salmon Report 6th December 1994.*

On the warning letter written by BRIG Hooper on 15th October 1980, threatening my dishonourable termination, LTCOL Salmon QC wrote:

> *" The letter contains the following "..successive reporting officers have indicated that your performance suffers through your attitude." No reference is made to any actual example of poor performance. The attitude which is the cause of the alleged problem is not described. This letter is another document relied upon in the Notice to Show cause as demonstrating incompetence etc."*
>
> *para 42 page 8 Salmon Report 6th December 1994*

In effect LTCOL Salmon QC found that LTCOL Emmet's June and December 1980 Confidential Reports on me to be null and void of any evidence of incompetency or unprofessionalism. This questions why the 1993 AAT hearing lacked the propriety or competence to make this same finding. It was so obvious then as it is now.

23. In April 1995 then Director of Army Legal Services (DALS), COL J A Harvey concurred with LTCOL Salmon QC's findings that there was no pattern of professional failure in the evidence used to terminate my career. This included the 15 October 1980 BRIG Hooper letter.

24. On 2 September 1997 LTCOL P M Boyd, Director of Military Administrative Law, on now Air Commodore's S J Harvey's Directorate of Legal Services, admitted that Defence failed to accept my defence reply of 26 February 1981 against BRIG Hooper's NTSC charges wherein I had stated there was no substance in his collated 9 reports and letters which he alleged proved that I was incompetent and unprofessional.

25. Hence three senior ranking Defence legal officers finally had to acknowledge that in effect or by default, they did not support the 1993 AAT Member's decision to refuse to annotated BRIG Hooper's 15 October 1980 letter. This was a critical legal document used to force my termination from Army. However, the AAT decision had protected both BRIG Hooper and LTCOL Emmet.

C. SENIOR OFFICERS LEAD THE CORRUPTION OF THE MILITARY JUSTICE SYSTEM

26. In 1980 a group of senior officers, including BRIG Hooper, fabricated evidence with intent to discredit my professional worth and competency. COL G J Christopherson and LTCOL P Emmet, my Commanding Officer, were at the forefront of making report accusations to be used to raise a Section 16, Defence Act 1903, Notice to Show Cause (NTSC) charges for my dishonourable termination from Army. Those charges were for unprofessionalism and gross incompetency. From 1981 to 1993 several ministerial investigations and decisions indifferently or improperly upheld Defence's evidence and repeatedly declared that I was unprofessional and incompetent, that natural justice had prevailed and that Defence administration in handling my case was at all times proper and strictly according to the letter of the law.

27. In 1994 LTCOL Salmon QC's investigation report did identify a sinister intent by a person or persons at my Corps Headquarters in Canberra to destroy my career. In 1993 the AAT found that the damning input into LTCOL Emmet's June 1980 Confidential Report on me by my Head of Corps, COL P W Blyth contained no evidence to justify his accusations.

28. Yet despite the evidence available to them, neither the 1993 AAT hearing nor LTCOL Salmon QC was prepared to find that BRIG Hooper or LTCOL Emmet had done anything wrong in bringing about the false charges for my dishonourable termination from Army.

29. In 1980 BRIG Hooper featured prominently in Defence's corruption involved in my case. In his warning letter of 15 October 1980 he made allegations based on false information. He collated fabricated Confidential Report evidence raised by COL Christopherson and LTCOL Emmet and he collected secret and illegal letters raised by LTCOL Emmet in late 1980 to improperly discredit me.

30. Years later, in October 1992, LTCOL Emmet (Ret'd) wrote to a successor to BRIG Hooper, then Military Secretary, BRIG R W Fisher, that his (Emmet's) involvement in my case was the most unsavoury and extremely distasteful episode in his 30 year military career. In this same letter LTCOL Emmet (Ret'd) fabricated new and serious accusations against my professional worth and these were used by BRIG Fisher in submission to the 1993 AAT hearing. These new accusations bore no connection to any previous allegations made by LTCOL Emmet.

31. Between late September to December 1980, LTCOL Emmet set about to fabricate Confidential Report evidence and secret letters for use by COL Christopherson and BRIG Hooper as evidence for Section 16, Defence Act 1903 charges to dishonourable terminate my career. Whilst there is documented evidence to indicate he was under pressure from COL Christopherson and COL Blyth at Corps Headquarters to get this evidence there is absolutely no explanation to suggest that these same persons pressured him to fabricate his new damning accusations against me in 1992.

32. In 1980 COL Christopherson was LTCOL Emmet's immediate superior officer in the Corps chain of command which was the direct link back to COL Blyth at Corps Headquarters in Canberra from where the sinister intent to destroy my career and reputation was originating. COL Christopherson applied pressure on LTCOL Emmet to produce performance report evidence that I was grossly incompetent. COL Christopherson himself manufactured such evidence. Using accusations and lies, he savagely downgraded LTCOL Emmet's June 1980 Confidential Report. In 1994 LTCOL Salmon QC found that COL Christopherson's downgrading of LTCOL Emmet's report must be treated as unreliable and questioned why COL Christopherson's opinion should be accepted over LTCOL Emmet's judgement of me on the June 1980 Confidential Report.

33. In 1979 LTCOL Alan Corboy was the then officer in charge of the management of Corps officers' careers, including mine. He served under COL Blyth on Corps Headquarters in Canberra. He also worked directly to the Military Secretary, BRIG Hooper, who had overall Army control of management of all army officers' careers below Brigadier. In 1975 LTCOL Corboy had organised a Singleton Base Officer's Mess celebration for the dismissal of the Whitlam Government by Governor-General Kerr. All officers were expected to attend and local business and community leaders from Singleton were invited for free drinks. Not only was this a highly irresponsible action but it was in serious breach of Defence Act Law which forbids the staging of political activities in uniform and/or on military bases. I was then a captain in command of an independent transport unit at Singleton. I requested that my objection to this celebration be noted. This became a significant loss of face for LTCOL Corboy who subsequently cancelled his political celebration of 'The Dismissal' and renamed it a celebration of the passing of the Supply Bill. Events subsequently saw LTCOL Corboy transfer from the Ordinance Corps to the Transport Corps of which I was a member. Chance resulted in his posting to Canberra as my Corps career manager where a sinister intent to maliciously destroy my career emerged.

34. In 1980 COL Christopherson was directly subordinate to then MAJGEN Peter Gration in the operational chain of command been separate from the Corps chain of command. COL Christopherson had no role or authority to input into LTCOL Emmet's Confidential Report writing in 1980. But MAJGEN P Gration did.

35. Only on MAJGEN Gration's personal authority could COL Christopherson legally add to LTCOL Emmet's June 1980 appraisal report on me. MAJGEN Gration directed COL Christopherson to do this on his behalf because he, MAJGEN Gration, did not personally know me. COL Christopherson used this

opportunity to fabricate damning accusations to severely downgraded LTCOL Emmet's assessments on me. He then told MAJGEN Gration that my career should be terminated. COL Christopherson's 15 August 1980 downgrading of LTCOL Emmet's June 1980 Confidential Report was done in MAJGEN Gration's name.

36. The file records are unclear if MAJGEN Gration was pushing COL Christopherson to get "bad" evidence against my performance or if he was been duped by COL Christopherson. Either way MAJGEN Gration was certainly in the conduit of impropriety and at the least ought to have been aware of the intensity of it. In fact, in mid 1980 I sought an interview with him about it. He commenced this interview with the intimidating question, "Now, tell me what have my officers been up to?"

37. COL Christopherson's downgrading of the June 1980 Confidential Report in August gave LTCOL Emmet impetus to begin fabricating his own damning accusations against my work competency and secretly submitting letters into the report system for use by BRIG Hooper in his collation of evidence to dishonourable terminate my career.

38. On 7 January 1981 MAJGEN Gration wrote his own assessment of me at the rear of LTCOL Emmet's Special Confidential December 1980 Report. He falsely accused me of failing to obey his order and recommended I be charged with a Section 16, Defence Act NTSC for dishonourable termination from Army. Within the military MAJGEN Gration's criticism was very serious. He documented me as guilty of disobedience, or defying his authority, without my right to even know of his accusation, to see his record of it, or to initial it or defend myself against it.

39. MAJGEN Gration was the only officer who had attempted to substantiate his criticism of me by citing a specific incident of my alleged 'poor attitude'. But like all of BRIG Hooper's other evidence for the charges, it to was false. MAJGEN Gration had ignored the fact that he had extended the time for my report representation and then accused me of not having it done by the original date given. The documented proof of MAJGEN Gration's false accusation was held by LTCOL Emmet, who had successfully made the original request for an extension of time to MAJGEN Gration on my behalf.

40. FOI Act records of this sequence of MAJGEN Gration's false evidence for the charges was detailed in my submission of 10 Feb 2004 to the Senate MJS Inquiry. It held this submission 'in camera' and hence not made available for public scrutiny. There was simply no truth in Gration's accusation against me and there was no means of rebuttal available to me.

41. COL Christopherson's savage downgrading of LTCOL Emmet's June 1980 report judgements on me were made on MAJGEN Gration's behalf. In 1994 the Director of Army Psychology Corps, in audit for LTCOL Salmon QC's 1994 Investigation Report, gave LTCOL Emmet's report a statistical T-Score 22. Such was the maliciousness of COL Christopherson's attack on LTCOL Emmet's report that it was downgraded to a T-Score 10. It is statistically unattainable for any T-Score to fall outside the range T-Score 20 to T-Score 80. A T-Score 22 puts the officer under the bottom 0.001% of peer group on a performance scale. The T-

Scores 22 and 10 reveals the arrant nonsense, ignorance and stupidity of what was done by COL Christopherson, LTCOL Emmet and the Military Secretary. Even more absurd was LTCOL Salmon QC's finding that the T-Scores and the methodology used were correct. His in-depth investigation, using a D-PSYCH- Army special audit on my 1980 Confidential Reports T-Score 22, 10 and 9, was a major part of his investigation into my forced resignation. The subsequent outrageous attempt by D-PSYCH-Army to cover-up for its absurd T-Score audit findings was unprecedented.

42. In 1994 LTCOL Salmon QC also found that no officer had acted improperly or unfairly in forcing my dishonourable resignation from Army. He could not explain why COL Christopherson's savage alterations to LTCOL Emmet's June 1980 report on behalf of MAJGEN Gration had been accepted as evidence by BRIG Hooper. Nor could he find any substance or material in the NTSC charge documents to support any criticism of my competency or professionalism. Then two days after submitting his report, LTCOL Salmon QC wrote to DALS, on 8th December 1994, to disclaim that he had investigated any violations of legal procedural fairness or legal decision -making used in the dishonourable termination of my officer career. The LTCOL Salmon QC report was an Army cover-up for Army. His spin was to make it look as through Army had finally come clean by admitting that the charges had been "morally" unfair but no officer had done anything wrong or had acted improperly.

43. Department of Defence evidence shows otherwise. On 24 September 1980 BRIG Ewing, DALS wrote to BRIG Hooper that there was no evidence to warrant the issue of a NTSC. On 30 September 1980 BRIG Hooper told COL Christopherson that LTCOL Emmet was to write a Special Confidential Report (AAF-A26) on me. He told COL Christopherson that "if the report was a bad one we would be in a position to invite the CPEPS-A (Chief of Personal-Army) to give Warren a NTSC." On 15 October 1980 Hooper wrote to me threatening a NTSC if LTCOL Emmet's Special December 1980 Report did not show a lift in my competency. LTCOL Emmet then went into overdrive to fabricate evidence that I was grossly incompetent, thus giving COL Christopherson what he wanted to pass onto BRIG Hooper. By December 1980 BRIG Hooper had amassed 30 pages of 9 documents as his proof for the Section 16, Defence Act 1903 charges for incompetency and unprofessionalism. He activated these charges based on accusations without any substantive evidence whatsoever. In 1994 LTCOL Salmon QC found that BRIG Hooper had arranged his NTSC charges in a way that predetermined an existing finding of my gross incompetency and unprofessionalism and that it was near impossible to find any evidence to support them.

44. LTCOL Emmet went further in his fabrications of evidence, including raising secret and illegal letters into the reporting system for use by BRIG Hooper. These documents were the subject of my 1993 FOI Act application for annotations to my termination history records by the AAT. The AAT refused to make any of the 13 annotations requested. But the AAT initiated five of its own annotations to be added to my termination of service records. These AAT annotations did not address the improprieties of BRIG Hooper and LTCOL Emmet in their fabrications and exaggeration of accusations to discredit me.

D. GOVERNOR-GENERAL B HAYDEN MAKES DEPRAVED DECISION 1990

45. Before I brought my 1993 FOI Act application for 13 annotations before the AAT hearing I first had to obtain the relevant records from Defence. In 1990 I made FOI Act application to Defence for access to them. In response the relevant branches of Defence embarked on a corrupt process to lose, destroy or feign loss and destruction of the crucial sets of documents that I had requested. These documents related to:

a. the circumstances of my forced resignation from Army,
b. BRIG Hooper's 1980 abuse of power,
c. BRIG Ewing's corrupt legal opinion to terminate my career i.e. DALS Minute L207/81,
d. the 1985/86 Prime Ministerial investigation and decision-making that covered up for them.

46. Concurrent with Defence's crime of "losing" or feigning destruction of my personal history records, BRIG Hooper's former Office of the Military Secretary was allegedly conducting a comprehensive and rigorous investigation into all aspects of the circumstances of my termination for decision-making by the then Governor-General, Bill Hayden. Military Secretariat officer, Major W Norton conducted this investigation for then Military Secretary, BRIG Fisher.

47. Thus, simultaneously Defence was involved in an investigation report for the Governor-General and at the same time was "losing" or feigning destruction of the documents relevant to both that investigation and my FOI Act application for access to copies of these relevant records. These documents related to the abuse of power and improprieties of then Military Secretary BRIG Hooper, BRIG Ewing, then Director of Army Legal Services (DALS) and LTCOL Emmet.

48. On 30 July 1990 the Minister for Defence, Science and Personnel, Mr G Bilney advised the Governor-General, amongst his several other crude lies, that the delay in Defence's advise had been necessary in order to re-examine all aspects of my case. Bilney advised Governor-General B Hayden that my "claims of indifference, obstruction and victimisation were unsubstantiated." This was a repugnant cover-up investigation of the Military Secretary by the Military Secretary. On 5 May 1995 LTGEN J C Grey, Chief of the General Staff, wrote to then Minister for Defence, Science and Personnel, Mr G Punch, and in an attempt to cover-up for this previous cover-up stated that the Governor-General's 1990 decision against me was based on: "information available at the time." LTGEN J C Grey thus excused deliberately corrupted advice to the Crown at a time when Defence was thwarting that investigation by claiming that the relevant records had been destroyed or "lost".

49. Ten days prior to Bilney's corrupted advise to Governor-General B Hayden, the current Governor-General, then Acting Chief of the General Staff-Army, MAJGEN P M Jeffery wrote to me to deny me FOI Act access to my personal history records. He gave statutory decision that he knew all of the records, as listed

by him, had been lost or destroyed several months earlier. In truth the records were extant and evidence reveals that some of them were in the hands of MAJ W Norton for his report for Governor-General B Hayden.

50. I appealed to LTGEN John Coates, against MAJGEN Jeffery's cover-up of Army's feigned destruction or loss of my records. On 15 August 1990 MAJGEN Coates certified under FOI Act law that my records were technically denied to me as he to was aware they were either lost or destroyed.

51. I made a FOI Act application to the AAT to review the 1990 Jeffery/Coates decisions denying me access to my personal history records. Defence eventually released the records of my termination of service rather than face AAT adjudication on them. However Defence withheld my Prime Ministerial 1985/86 representations file which included Defence's perfunctory advice to Gareth Evans, Minister Assisting then Prime Minister Bob Hawke, for his two decisions against me.

52. Federal Court Judge, The Hon. Justice P.J Moss, been the AAT Presidential Member, gave decision on 14 October 1991 to deny me access to this 1985/86 Prime Ministerial Representation file on the grounds that Defence had accidentally destroyed it in January 1990. A document submitted to the AAT showed that in reality the file was used by the Military Secretariat officer, Major W J Norton in July 1990 for his cover-up investigation that manifested into the several crude lies that were Governor-General B Hayden's decisions against me.

53. On 18 August and 29 September 1995 I made respectively a 3rd and 4th petition to Governor-General B Hayden in which I detailed evidence of the impropriety and corruption of Defence's advice given to him for his decision on my case. Governor-General B Hayden refused to correct his corrupted decision or to be further involved in the case. In 1993 the AAT had decided that Defence's investigative advice for ministerial decision-making against me was cursory. By 1995 it had become putrid.

54. By 1995 it was obvious that the Department of Defence's senior legal officers were seriously corrupted and compromised in my case. This was in tandem with systemic abuses of power by the army generals with the acquiescence of the responsible minister(s). Their only concern over time has been to shut down the case using cover-up investigations and suppression of evidence to do so. And now in 2005 De-Anne Kelly, Minister Assisting the Minister for Defence, is intent on doing the same without fair and proper redress of wrongs to me.

## E. MAJGEN P M JEFFERY 1990 DECISION FEIGNS DESTRUCTION OF CRUCIAL LEGAL DOCUMENT AND RECORDS

55. Defence went to extraordinary efforts to feign loss or destruction of the most crucial one page document in my case. It was the Director of Army Legal Services BRIG Ewing's DALS Minute L207/81 of 6

March 1981, been THE legal opinion that gave protection to BRIG Hooper's and LTCOL Emmet's corruption of the military justice system. It protected their use of allegations as evidence against me. BRIG Ewing's document couldn't and didn't withstand scrutiny. BRIG Ewing had used BRIG Hooper's accusations of my incompetence and unprofessionalism to draft NTSC charges then used his legal opinion, DALS Minute L207/81, to dismiss my sound defence reply against those charges. In 1990 MAJGEN Jeffery gave decision that the multiple and separate copies of this Minute held by Defence had ALL been lost or destroyed. This was despite the law requiring that this record be permanently held by Defence. LTGEN J Coates upheld the MAJGEN Jeffery decision.

56. Any public examination of BRIG Ewing's DALS Minute L207/81 of 6 March 1981 cannot but instantly recognise it as worse than a perfunctory Defence legal opinion. But it exemplified just how deeply involved were Defence's senior legal officers in the corruption of the MJS. It is hard to fathom why Generals Jeffery and Coates would have so willingly compromised their integrity and that of Army unless they understood the significance of the BRIG's Ewing and Hooper connection and the intense improprieties of both of them.

57. In late 1990 Defence eventual released the documents to me, including DALS Minute L207/81. I was then in a position to make my second FOI Act application to Defence. In it I requested 13 annotations to be placed on my personal history records to show that the relevant records contained misleading or inaccurate information that was used to terminate my Army career.

## F. THE GENERALS AND MINISTER FOR DEFENCE OBSTRUCT EXPOSURE OF DEFENCE CORRUPTION.

58. A successor to BRIG Hooper as Military Secretary was BRIG R W Fisher. He refused to make the 13 annotations to my records which included the BRIG Hooper's warning letter of 15 October 1980 and BRIG Ewing's DALS Minute L207/81. He falsely asserted that the relevant records did not relate to my 'personal affairs' under FOI Act definition. Yet these records had been used by BRIG Hooper and BRIG Ewing to improperly push through the NTSC charges against me in 1980 for dishonourable termination from service. These records clearly fell within the ambit of the FOI Act definition. BRIG Fisher would have well understood the abuses of power by my then superior officers and that I was endeavouring to have these documents righted.

59. I appealed against BRIG Fisher's decision to the then Deputy Chief of the General Staff-MAJGEN J C Grey. He supported BRIG Fisher's decision but refused to give reasons for not making the FOI Act annotation on my records. MAJGEN Grey was clearly acting in arbitrary defiance of his statutory obligations if albeit on Defence legal officer advise to him.

60. After my experience of BRIG Fisher's abuse of his statutory duties in relation to my FOI Act application to Defence, it was predictable what his superior officer, MAJGEN Grey was likely to do the same.

LTGEN J Coates had done likewise for MAJGEN Jeffery in 1990. Hence, on 8 April 1992 I wrote directly to the then Minister for Defence, Robert Ray, that he, as the Minister, make the relevant 13 FOI Act annotations to my records. He refused, claiming the records were not in his possession and referred me back to MAGEN Grey. On 10 May 1992 I again wrote to Ray and outlined the obstruction, maladministration and malevolence that I was encountering with Defence. On 22 May 1992 he replied that "Defence was in contact with you in compliance with its statutory obligations."

61. Hence, I was forced to apply to the AAT for it to review MAJGEN Grey's decision to refuse to give reasons for his decisions. This became my second hearing before the AAT. I did not even present a case against MAJGEN Grey but I did tell AAT Deputy President Mr B J McMahon that I would if required. Mr McMahon said it would not be necessary that I do so. He called upon the Australian Government Solicitors representing MAJGEN J C Grey to explain his position. They could not. On 7 September 1992 Mr McMahon handed down a scathing decision against MAJGEN J C Grey and referred the matter back to Defence for it to correct MAJGEN Grey's egregious decisions so as comply with Defence's statutory obligations which the Minister for Defence, R Ray, and Defence Legal Services had thus so far evaded.

62. Mr McMahon's 1992 AAT decision reveals the infidelity to duty by the culture of the general's that is prepared to abuse the rule of law within Defence. MAJGEN Grey's abuse of the law and his power in his leadership over the military justice system was exemplified by his improper conduct in my case. In 2005, Air Commodore Harvey now argues that the generals must maintain control of it as it is essential to their command in an operational environment.

## G. MAJOR GENERAL CARTER, BRIGADIER FISHER AND THE AAT ACT TO PROTECT BRIGADIER HOOPER

63. Defence responded viciously to the 7 September 1992 adverse AAT decision by Mr Mahon against MAJGEN Grey. On 26 October 1992 Military Secretary BRIG R W Fisher submitted a 120 page facts and reasons statement pursuant to the FOI Act sub-sec 48 (D) to prove that I was grossly incompetent and unprofessional warranting dishonourable termination from Army and that Army's handling of my case was at all times proper and strictly according to the letter of the law. BRIG Fisher again refused to make any of the 13 requested annotations to my history records.

64. I appealed to Defence against BRIG Fisher's 26 October 1992 decision. On 15 January 1993 MAJGEN G D Carter, then Deputy Chief of the General Staff, upheld Fisher's decision. He added to BRIG Fisher's treatise yet another 60 pages of facts and reasons to defend BRIG Fisher's condemnation of me and to persist that all previous Army's investigations and ministerial investigations of my case had been thorough, objective and comprehensive. This included the 1990 ministerial investigation and report to the Governor-General by Gordon Bilney and Major W Norton.

65. My third and last application to the AAT was the 1993 FOI Act 13 annotations request. This was against MAJGEN Carter's refusal to annotate my history records to reflect unfair administration by BRIG Hooper, BRIG Ewing and LTCOL Emmet. I did not know at this time that BRIG Hooper was then in fact a non-presidential member of the AAT in Sydney. Two of the three AAT members who sat on my case were themselves former senior army officers. They declared this to me but concealed ex-BRIG Hooper's AAT collegial closeness to them. This conflict of interest transgressed to improper conduct by non-disclosure of BRIG Hooper's position and by ruling in his favour contrary to the evidence and the weight of the evidence presented.

66. AAT Senior Member Allen was however scathing of BRIG J S Kendell, then Commander 3rd Military District (Victoria) for his abusive input to LTCOL Emmet's June 1980 Confidential Report and for his headquarters "disgusting" abuse of due process in its dealing with my 1979 Redress of Wrongs application, including the conduct by then MAJ Hevey (now Director of Military Prosecutions). Mr Allen was also critical of COL G J Christopherson and COL P W Blyth, Head of Corps RACT. He similarly condemned their report assessments of me as been pejorative, made without a requirement to justify them and were more a reflection on them than on me. Their comments condemned themselves and were written without one scintilla of evidence used to justify their extravagant language to discredit me. These observations demonstrate COL Christopherson's malicious intent and are indicative of COL Blyth's closeness to the sinister intent to destroy my career and to LTCOL Corboy who served on his headquarters. But the 1993 AAT refused to criticise or annotate LTCOL Emmet's accusations of my incompetency in his June 1980 Confidential Report (T-Score 22).

67. The AAT also refused to make an annotation to LTCOL Emmet's Special 1980 December Report (T-Score 9). In it LTCOL Emmet had documented his allegations of my alleged total collapse in competency as his Regimental Operations Officer. Yet prior to writing this report and despite an order from MAJGEN Gration to record any evidence of failure in my performance, LTCOL Emmet was unable to identify and record any evidence of incompetency whatsoever. The AAT upheld LTCOL Emmet's savage report accusations of my alleged collapsed performance in late 1980. Subsequent examination and decisions by Defence legal officers, LTCOL Salmon QC, COL Harvey DALS and LTCOL Boyd admitted in effect or by default that the AAT finding was wrong and they agreed with me that LTCOL Emmet's Special 1980 December Report contained no evidence of a collapse in my performance. But this was 14 years after the event to enable delay to destroy equity and without any officer having acted improperly or been held accountable.

68. LTCOL Salmon QC found it is virtually impossible to identify specific conduct in either of LTCOL Emmet's June or December 1980 Confidential Reports to support the charges that I had failed to attain the standards of competency and professionalism expected. This again questions why the AAT lacked the propriety or competence to make this same finding. It was so obvious then as it is now.

69. Prior to my 1993 AAT application for annotations to 13 documents, the Military Secretary, Brig R W Fisher notified both ex-COL Christopherson and ex-LTCOL Emmet of my FOI application to Defence that their damning 1980 Confidential Reports and letter writing on me were under investigation for FOI Act annotations.

70. On 14 October 1992 ex-LTCOL Emmet replied to BRIG Fisher and provided him with a new set of fabricated accusations against me to justify his savage 1980 attacks on my professional worth. In a lie of sheer hypocrisy he accused me of been disloyal to him and undermining his authority. He had not previously raised such allegations. And again he failed to provide one iota of evidence. He also incredulously wrote that he had less competent Majors under his command but emphatically stood by his appraisal reports of my performance which BRIG Fisher's Military Secretary T-Scored 22 and T-Score 9 on a T-Score range of 20 to 80. Emmet's fabricated assessment of my work performance demonstrated an incomprehensible level of incompetency. The 1993 AAT upheld these report assessments on me. These reports were consistent with his secret letter sent to BRIG Hooper that if I was left in charge of the Victorian State's military transport and logistics operations for another week it would be positively damaging. It is bizarre that during 1980, 3 Transport and Movement Group, of which I was the Operational Officer in charge, was been praised for its performance in what was acknowledged as a highly demanding year and during which time LTCOL Emmet was frequently absent from the unit for days at a time on an Industrial Mobilisation Course which extended over months of that year.

71. Hence, as late as 14 October 1992 ex-LTCOL Emmet was still fabricating damning evidence against my professionalism which BRIG R W Fisher and MAJGEN Carter subsequently attempted to use in AAT proceedings. In 1993 the AAT refused to have this 1992 ex-LTCOL Emmet letter to BRIG Fisher examined as evidence before its hearing. This letter demonstrated LTCOL Emmet's propensity to make false accusations to seriously damage my professional reputation and it reflected disgustingly on his judgement and integrity. It begs the question why wouldn't the AAT accept ex-LTCOL Emmet's letter as evidence in its deliberations if not to protect BRIG Hooper and LTCOL Emmet? In 1994 LTCOL Salmon QC did examine this letter and found that it seriously questioned LTCOL Emmet's competency and integrity in making his 1980 Confidential Report accusations against my competency and professionalism.

72. In October 1992 COL Christopherson also replied to BRIG Fisher. He distanced himself from LTCOL Emmet's 1980 conduct and report writing stating that LTCOL Emmet was capable of making his own judgements on me and that he in no way influenced LTCOL Emmet to be critical of my performance. He confirmed that his severe downgrading of LTCOL Emmet's 1980 June report was done on behalf of MAJGEN Gration. He denied that his handling of my 1979 Redress of Wrongs was improper whereas the 1993 AAT described it as "disgusting" conduct by my superior officers. The AAT was also highly critical of COL Christopherson's downgrading of the LTCOL Emmet June 1980 Confidential Report as was LTCOL Salmon QC in his 1994 report.

H. THE GENERALS USE THE LTCOL SALMON QC 1994 INVESTIGATION REPORT TO COVER-UP SYSTEMIC CORRUPTION OF THE MILITARY JUSTICE SYSEM.

73. Despite the refusal of the 1993 AAT to make any of my requested 13 annotations under the FOI Act, it did initiate 5 of its own adverse annotations on matters within the relevant documents. These provided some insight into the scale of abuse of power and the dysfunctional behaviour of my superior officers, namely BRIG Kendall, COL Christopherson and COL Blyth. However the AAT left BRIG Hooper, BRIG Ewing and LTCOL Emmet's improper conduct protected from exposure. Yet their improper conduct was at the crux of my case and was well documented to show how they had corrupted Confidential Report writing, procedural fairness and decision-making.

74. Subsequent to the 1993 AAT hearing I made representations to scores of parliamentarians to address the serious and scandalous maladministration of the MJS in my case. Except for Senator John Woodley (Democrat Queensland), no politician was willing to address this matter. Senator Woodley wrote a scathing criticism of my superior officers' 1980 conduct in his letter to Senator Ray and pushed him to open a new ministerial investigation into the circumstances of my forced resignation.

75. Ministers for Defence 1981 to 1986, J. Killen, I Sinclair, I. Viner, K Beazley, Senator Gareth Evans (for Prime Minister, Bob Hawke,1986), Gordon Bilney and the Governor-General B Hayden (1990) had all previously given decision to allege that my case had been comprehensively, objectively and thoroughly investigated for them by Defence. In turn each had upheld the charges of unprofessionalism and incompetency against me and shut down the case. Governor-General B Hayden's decision was emphatic that there had been no obstruction, indifference or unnecessary delay in Defence's handling of my case. His decision was based on an alleged long and detailed re-examination of all aspects of the case by Military Secretary, BRIG Fisher's subordinate Major W Norton. The 1993 AAT found that my case had not been comprehensively investigated for these primary decision-makers. On 5 May 1995, LTGEN J C Grey endeavoured to cover-up for Defence's 1990 corrupt advice to the Governor-General by arbitrarily claiming that it was based on "information available at the time". This was a blatant lie and no different to the repetitions of crude lies upon crude lies, year after year, that has become ministerial decision-making on my case.

76. In 1995 LTGEN Grey in particular ought to have been sensitive to the AAT Mr McMahon's scathing ruling against him in 1992 and of the indefensible positions of MAJGEN Gration in 1980, MAJGEN Jeffery and LTGEN Coates in 1990 and MAJGEN Carter in 1993, as well as amoral and cowardly behaviour of other senior officers involved in decision-making on this case. And over the years all this was been done by the generals and their legal officers to conceal the infamous improprieties of BRIG Ewing and BRIG Hooper's abuses of power and rank. Responsible ministers have persistently acquiesced with this Defence culture of cover-up. They have never called Defence to open and transparent account.

77. In response to Senator Woodley's representation, Minister for Defence, R Ray directed Army to re-open the case. In 1994 MAJGEN J C Grey then appointed LTCOL B Salmon QC to investigate the circumstances of my dishonourable severance from Army. The LTCOL Salmon QC 1994 report was a cover up of BRIG Hooper's impropriety. The LTCOL Salmon QC report itself became the subject of my Prime Ministerial representation to John Howard in 1997. Then Member of Parliament Staff (MOPS), Aldo Borgu, acting for the responsible minister, Bronwyn Bishop shut down the case and refused to have BRIG Hooper or the LTCOL Salmon QC report investigated.

78. LTCOL Salmon QC found that no officer bringing about the false charges of professional incompetence against me had acted unfairly or improperly. He also found there was no evidence to support BRIG Hooper's damning charges that I was grossly incompetent or unprofessional. But in a separate letter to the Director of Army Legal Service he put in a disclaimer against his report for the Minister of Defence that his Terms of Reference did not require him to investigate legal procedural fairness and legal decision-making and he did not do so. By using his disclaimer LTCOL Salmon QC was able to declare that no officer had acted improperly in raising and using Section 16, Defence Act 1903 'NTSC' charges against me, including their handling of my defence reply.

79. It goes beyond all reason that BRIG Hooper was able to bring the NTSC charges against me He used 30 pages of evidence to do so yet LTCOL Salmon QC found it was near impossible to find any substantive evidence in these documents. In my defence reply to the NTSC charges I did successfully defended myself against BRIG Hooper's charges but my evidence was put aside by BRIG Ewing, DALS and by BRIG Hooper's subordinate officer, Major F Flawith, when he investigated it for BRIG Hooper. MAJGEN Carter attempted to justify BRIG Ewing and Major F Flawith's conduct when under oath in cross-examination before the 1993 AAT hearing when he argued they had no need to consider my defence reply because I had refused to admit to the NTSC charges and hence I could not be rehabilitated.

80. The allegations used as evidence by COL Christopherson, LTCOL Emmet and BRIG Hooper to support their charges were littered with trumped up accusations that I was grossly incompetent. LTCOL Salmon QC knew there was no substance to these charges and reported accordingly but stated that not one of these officers was to blame. Thus their corrupt conduct, using administrative procedures deliberately designed to bring about my dishonourable termination from Army - a process that ought to have demanded the highest level of competency, integrity and scrutiny through the chain of command - was put aside.

81. It is obvious that the history of my case demonstrated that Defence legal officers were dysfunctional and their evil culture of non-compliance was out of control and subverting the MJS to a state of collapse. The LTCOL Salmon QC report was part of that process.

I. COLONEL HARVEY, DALS, COVERS UP THE USE OF FABRICATED EVIDENCE

82. In September 1980 BRIG Ewing advised BRIG Hooper he had no grounds to issue me with a NTSC on the charges of unprofessionalism and incompetency. In early 1981 BRIG Ewing then gave BRIG Hooper legal advice that he could use LTCOL Emmet's damning Special 1980 December Confidential Report for the NTSC charges. I made representation against the NTSC charges. BRIG Ewing, in his legal opinion DALS Minute L207/81 improperly dismissed my sound defence so that BRIG Hooper could use the fabricated charges to dishonourable terminate my career.

83. In my defence reply of 26 February 1981 to the NTSC I identified that the Confidential Report allegations used as BRIG Hooper's proof of my incompetency and unprofessionalism contained no substantive information. In 1994 LTCOL Salmon QC agreed. But he wrote the NTSC charges off as an 'error' in administration and called it "morally unfair Defence administration" for which no officer could be blamed. Then, using his disclaimer on his Investigation Report, LTCOL Salmon QC was able to cover-up for BRIGs Ewing and Hooper's corruption of the Section 16, Defence Act 1903 'NTSC'.

84. From 1981 to 1994 Defence legal officers have atrociously covered up for BRIGs Ewing and Hooper's corruption by evading any admission or recognition that my defence reply to the NTSC had successfully challenged the allegations in 1981. This matter should have stopped there and my Army career continued. Instead, Defence legal officers denied that my defence response to the charges of incompetency and unprofessionalism had properly and fairly argued that Defence's "evidence" for the charges were allegations without substance. For 14 years Defence legal officers perverted the most fundamentals of law by deliberately equating allegations to evidence. In 1995 Col Harvey endeavoured to cover up for their corrupt conduct by writing it out of the NTSC charges and out of ministerial decision-making on my case.

85. The 1994 LTCOL Salmon QC report let it be known to the responsible minister that **I** had successfully defended myself against **both** the NTSC charges of unprofessionalism and incompetency in 1981. In 1995 COL Harvey deliberately distorted **this** LTCOL Salmon QC report finding. COL Harvey misleads when he alleges that LTCOL Salmon QC had found that it was **I** who had identified that the material in the reports and letters used by BRIG Hooper for his charges **only** mentioned an 'inappropriate attitude.' LTCOL Salmon QC **did not** find this at all. LTCOL Salmon QC had found that I had successfully identified that there was no substance within the documents to support the incompetency **or** unprofessional allegations therein. By only referencing 'inappropriate attitude' in his advice to the minister, COL Harvey perversely attempts to argue that there were no accusations of incompetency in BRIG Hooper's 9 documents of evidence. Accordingly, COL Harvey's position is that neither LTCOL Emmet nor COL Christopherson nor BRIG Hooper had accused me of incompetence but had only accused me of unprofessionalism. COL Harvey claimed to the responsible minister that Defence did act unfairly because it accepted that in my case there was a pattern of gross incompetency and unprofessionalism when the report and letters in the NTSC charges only mentioned an 'inappropriate attitude.' Thus in a surreptitious and subtle use of his pen, COL Harvey has falsely advised the minister that:

a. these three officers had not accused me of incompetency, and
b. incompetency had not been raised as an issue in BRIG Hooper's 30 pages of evidence for the NTSC charges

This was a lie.

86. BRIG Hooper's evidence was saturated with accusations by COL Christopherson, LTCOL Emmet and himself that I was grossly incompetent. He used the LTCOL Emmet 1980 June and December Confidential Reports (T-Score 22 and 9 respectively) as evidence of my gross incompetency. BRIG Hooper included his own attacks on my professional knowledge, analytical skills and communication skills as evidence for his charges. In reality my defence to the NTSC charges was that BRIG Hooper used allegations as evidence for both incompetency and unprofessionalism and that there were no substantive facts to support either of them. LTCOL Salmon QC supported my defence. He found that none of BRIG Hooper's 9 documents of evidence was believable as evidence of incompetency or inappropriate attitude.

87. In 1995 the responsible Minister Mr Gary Punch gave decision that my career had been unfairly terminated because there was no evidence of a pattern of professional failure as had been alleged in the NTSC charges. But he claimed that this was simply an "error in Defence administration." It had taken me 14 years and almost as many ministerial investigations to get this partial admission from Defence. But the corruption of Defence law and abuse of power by those involved at the time and in subsequent cover-ups remains covered-up to date without proper redress to me.

88. On 2 September 1997, LTCOL P M Boyd, the Director of Military Administrative Law, covered up for the total corruption of legal procedural fairness and legal decision making involved in my case. He dismissed it as merely been a technical point. He wrote in a brief for the responsible Minister:

> *"The unfairness which I found depended on the rather technical point of the wording of the Notice to Show Cause, and the failure to recognise any error when considering MAJ Warrens' response".*

89. On 12 September 1997, LTCOL Boyd wrote in advice to the responsible minister that my case has been fully investigated and that the 'unfair Defence administration' had been identified. This was written to maintain the chronic Defence legal officer's cover-up culture in my case. He continues to argue:

> *"I have found that there was an 'error' in the NTSC charges but all the correct procedures were followed and there is simply no evidence to suggest any impropriety on the part of any of those involved, either at the time or in the reviews which followed."*

90. LTCOL Boyd was then Director of Defence Military Administrative Law under now Air Commodore Harvey's DG-DLS, and bears major responsibility for the chronic collapse of the Administrative Law

component of the MJS. The Senate Report into MJS 2005 has identified this component to be the most significant and widespread breakdown in the MJS. This behaviour that the Senate identified, is the same behaviour in LTCOL Boyd's brief for the responsible minister. In it he attempts to write out of my case senior officers' corrupt use of the Section 16, Defence Act 1903, NTSC charges to improperly terminate my officer career and to avoid any proper investigation into what they did.

91. But the corruption of process and decision-making of how BRIG Hooper brought his NTSC charges together and used them is still been covered up. This in spite of me pursuing fairness and proper redress through the systems of ministerial responsibility and representation which continue to be the only avenues available to me. Defence legal officers have spent over two decades attempting to re-write the history of this case and to cover up for the cover-ups by the generals and their legal officers involved. Regrettably responsible ministers, on advice from Defence legal officers, still continue to acquiesce in these cover-ups.

## J. GENERALS BLAME DEAD GENERAL TO COVER UP FOR BRIG HOOPER

92. In 1990 I attempted to get access to my Army personal history records. Of crucial importance was BRIG Ewing's DALS Minute L207/81 of 6 March 1981. It was his legal opinion used to back BRIG Hooper's allegations that I was grossly incompetent and unprofessional and to allege that my performance under LTCOL P Emmet had totally collapsed in the previous six months. It was raised by BRIG Ewing to dismiss my defence reply to the NTSC charges. In that submission I had properly identified that both of the NTSC charges were damning accusations lacking any substantive information to support either charge.

93. It was this DALS Minute L207/81 that then MAJGEN P M Jeffery, Acting Chief of General Staff-Army gave decision in 1990 that he knew that the multiple and separately held copies had been lost or destroyed. His decision was another Defence lie. This Minute was extant. But under MAJGEN Jeffery several branches of Defence had embarked on the crime to lose, destroy or feign destruction of the entire set of records used by BRIG Hooper and BRIG Ewing to fabricate charges against me.

94. DALS Minute L207/81 of 6 March 1981 was written by BRIG Ewing, DALS, to protect then Military Secretary, BRIG Hooper, with a legal mechanism that had enabled him to use his and LTCOL Emmet's allegations as evidence in the NTSC charges. In September 1980 BRIG Ewing had warned BRIG Hooper not to proceed with the NTSC charges because he, BRIG Hooper, didn't have the substantive evidence to do so. In September 1995, LTCOL P M Boyd acknowledged that BRIG Ewing "had been alive to this problem in October 1980" in his warning to BRIG Hooper. But somehow LTCOL Boyd then accepts that BRIG Ewing adopts BRIG Hooper's use of allegations to be used as evidence so as to allow BRIG Hooper to push through the NTSC charges.

95. MAJGEN P M Jeffery and his sub-branches of Army would not have gone to the extraordinary lengths to feign loss or destruction all copies of this legal opinion, DALS Minute L207/81 of 6 March 1981, unless they understood its corrupt nature.

96. BIG Hooper's successors in the Office of the Military Secretary went to extreme lengths to "lose" the copy of L207/81 from a Freedom of Information Act file. This was too much for the Executive Officer, FOI Office, Department of Defence, Mr F Crowe. The reputation of his office was already severely compromised by Defence's concerted efforts to destroy the history records of my case. Mr Crowe would have nothing to do with it. He personally conducted a search of the Military Secretary's Office and questioned officers there. He recovered the alleged 'lost' DALS Minute L207/81 and released a copy to me.

97. Any examination of DALS Minute L207/81 is struck by its superficiality. It is less than a perfunctory legal document made worse in the context of the circumstances leading to its creation. It was the product of a Defence legal system that was corrupt from the top down and has remained so to date in the handling of my case. It is one of the documents that a succession of responsible ministers, Prime Ministers and Governor-General B Hayden have defended as been objective, competent and comprehensive. It gave BRIG Hooper the legal protection for his malicious and corrupt conduct to destroy my career and reputation whilst at the same time protecting him from responsibility and accountability for what he did. But it left BRIG Ewing, Director of Army Legal Services totally exposed for a blatant and scandalous corruption of the MJS.

98. On 2 September 1997 LTCOL P M Boyd, then Director of Military Administrative Law, used BRIG Ewing's legal advise to BRIG Hooper to protect BRIG Hooper from any wrongdoing in using the LTCOL Emmet's 1980 December report's false allegations as his evidence in the NTSC charges against me. But BRIG Ewing was now deceased. Thus LTCOL Boyd in his advice to the responsible minister was able to blame the dead general. It also had the effect of protecting BRIG Hooper's non-presidential position on the AAT.

## K. SENATOR R HILL AND AIR MARSHAL HOUSTON PROTECT CORRUPTION OF THE MILITARY JUSTICE SYSTEM IN 2005

99. The role played by Defence legal officers is at the centre of the corruption of the administration of the Department of Defence. As exemplified by my case, ministerial competency and ethics in the administration of their portfolio responsibilities has never been able to rise above these overt improper and corrupt standards within Defence.

100. Over the years I reported back to the relevant ministers who made decisions on my case that the generals and their senior legal officer were improperly or corruptly reporting on Defence administration to them with deliberate intent to deceive the minister and to cover up for BRIG Hooper, BRIG Ewing, and LTCOL Emmet's subversion of the MJS. These parliamentary decision-makers from the Governor-General

down have stonewalled this substantive material and sequel of this evidence provided to them by me. This same evidence has always been available to them by Defence. The success of this Defence cover-up culture has nurtured and united senior officers in a subversive cult that undermines the legality and ethics of military leadership. But there has been no relief in this process for me because the Crown itself and responsible ministers has been complicit in this subversion of the rule of law that is said to define Australia's liberal democratic position in the world.

101. De-Anne Kelly's decision of 4 October 2005 is to shut down my Ministerial Representation to Senator Hill of 8 July 2005, in which I requested that the case be objectively and rigorously investigated for a fair and proper redress. Her decision contains the same deceit and impropriety that her predecessors have used to protect the generals and their senior legal officers to date.

102. Her decision is that the case is closed unless I provide new evidence. Ultimately, it is her predecessors who have persistently been responsible for Defence's manipulation and corruption of the evidence in this case albeit on advice from the generals and their legal officers. Responsible ministers have allowed Defence to investigate themselves and allowed them to feign ignorance of the evidence of their own impropriety when reporting to the minister on their own corrupt conduct. This is how and why the MJS has collapsed. De-Anne Kelly, like the several responsible ministers before her, has simply feigned ignorance of been able to understand what the generals and their legal officers are doing in order to continue their evil culture of non-compliance to their statutory obligations.

103. De-Anne Kelly has written that I have made raised serious and unsubstantiated allegations regarding legal officers and legal decision-making. Well may De-Anne Kelly criticise me but this submission outlines the improper conduct that she, as Minister is attempting to cover-up.

104. Given that the Director-General Defence Legal Services was at the centre of the complete collapse of the MJS 2005, then one needs to question why would De-Anne Kelly accept advice from his office without having demanded forthright and competent answers be given to her. In accepting such advice she is no different from the politicians who have preceded her. In the current climate of alleged reforms to the MJS, Air Marshal Houston must accept responsibility for the misleading advice given to De-Anne Kelly by Defence legal officers for use in her letter of 4 October 2005 to close down my case. Instead she has accepted dishonest Defence reasons as given in her letter for closing down this case. This is made worse as the only avenue I have for proper redress is through the responsible minister.

105. Senator Hill, I asked you to please bring fair and proper redress to my case based on an open and rigorous investigation of the circumstances of my forced resignation from Army and to the causes of the improper ministerial decision-making that has failed to address the continuing harm and injury to me. You could start by demanding that Air Commodore Harvey explain to you how the then Director Army Legal Service, J A Harvey was able to deceive the Minister for Defence, R Ray, and his junior minister, Gary Punch, when he manufactured his improper legal opinion to cover-up for BRIG Hooper. You would first

need to investigate my complaints about the LTCOL Salmon QC cover-up for BRIG Hooper that was the subject of my Prime Ministerial representation to The Hon J W Howard in 1997 or you could simply go back to the original documents where LTCOL Emmet and BRIG Hooper are exposed.

Yours sincerely,

Allan Warren