REPRESENTATION TO PRIME MINISTER K RUDD BY EX-MAJOR A K WARREN - MARCH 2009

In 1981 MAJ Warren was falsely charged with unprofessionalism and gross incompetency and was dishonorably forced from Army. Numerous ministerial inquiries to date have denied any wrongdoing by Defence or by those involved in the ensuing cover-up ministerial investigations. Rudd's Labor Government is determined to keep this case closed despite Warren's continual representations for the case to be honestly and properly investigated and a proper Redress of Wrongs (RofW) granted so as to bring it to closure.

On 23 September 2008 the Minister for Defence, Science and Personnel, Warren Snowdon MP, gave formal decision that he would not re-open the ex-Major Warren case. Snowdon refused to touch it. He gave six paragraphs of reasons for his decision. Four of these were built on lies, misinformation and errors. The other two are merely bureaucratic information. However these two paragraphs themselves belie the current government's failure to control and supervise the rule of law within Defence.

Snowdon's reasons for decision are equivalent to the improper standards of ministerial decision making by past Ministers for Defence, Prime Ministers and a Governor-General, over the past 28 years. His reasons reek of the same duplicity, incompetencies and improprieties that caused the collapse of the MJS years ago – long before the 2004 Senate inquiry into it. Snowdon's failed ministerial standards exemplify the reason why the MJS collapsed and evidenced why it has never been genuinely reformed. Some political scientists would describe Snowdon's decision as 'empty process' - which is simply another term for deciding improperly.

Snowdon cannot infer that the MJS is reformed when the Rudd Government ministers continue to abuse it to the extent that they and the army generals are currently doing in the ex-Maj Warren case. Snowdon's decision demonstrates this and is reminiscent of the decision mettled out by then Governor-General Bill Hayden in 1990. That decision against Warren was putrid. It was based on lies fabricated into advice given to him by

then Minister for Defence, Science and Personnel, Gordon Bilney. It is interesting to note that in recent years Bilney has endeavoured to distance himself from his decisions by claiming that he had difficulty getting proper advice from the generals. This in itself was a lie when weighted against the viciousness of the reasoning in his advice to Hayden against Warren.

The main thrust of Snowdon's duplicity was his pretence to misunderstand Warren's request that his case be properly and honestly reviewed by the minister. Instead Snowdon fabricated a position that Warren's request was: "*for an inquiry into the Australian Defence Force (ADF) military justice system"*. Warren's request was for no such thing. Thus, Snowdon was able to tell Warren that a new inquiry was not appropriate because "*an Independent Review of Military Justice Reforms is currently in progress*."

On 30 September 2008 a Member of Parliament Staff (MOPS), a Mr Peter Reece, from Snowdon's office rang Warren. He attempted to talk Warren out of pursuing his representation for the minister to review his case. Reece suggested that Warren should take his grievances elsewhere and urged that he seek an independent inquiry. Warren responded that it was a good political tactic for the minister to use a MOPS to attempt to evade responsibility and get the case out of the minister's office. Warren stressed to Reece that it is only the minister who has the power to call his department to account and neither the parliament nor the courts can do so. Reece retorted that the minister had no intention of reviewing the case and he would only be writing a standard response to Warren's request.

Warren's response to Reece was pushed aside. By this process the minister was able to manipulate Warren's request for a ministerial review of his case into a general request for a new independent inquiry into the MJS knowing that an inquiry was already in place. Hence Snowdon extinguished Warren's request and so continued the cover-ups.

Snowdon's decision also claimed that Warren had made a number of submissions in the past seeking compensation for mistreatment in the army. In fact Warren's ministerial submissions, 1981 to date, have requested that the relevant minister have his case honestly and properly investigated and a RofW be granted. A succession of ministers has done the complete opposite. The generals, under ministerial control, have produced a plethora of improper and dishonest investigation reports to deny any Defence wrongdoing. They have used their reports to build layers upon layers of cover-ups to keep this case suppressed.

A RofW which is under ministerial control and investigation obviously cannot occur unless the minister obliges his department to report properly, competently and honestly to him so that he understands his own personal decision making on the matter at hand. Therefore, Snowdon cannot claim his government is reforming the MJS unless the minister can identify the causes and cases of dysfunctionalism or maladministration or both within it. Nor can the minister redress wrongs unless he knows what those wrongs entail. There has been no RofW in Warren's case because responsible ministers, from Killen in 1981 to Snowdon in 2009, have obfuscated the issues and the natural justice involved - principally by not having the case properly investigated.

In his reasons for decision Snowdon falsely asserted that Warren's past submissions to former Ministers for Defence resulted in a Defence Force Ombudsman (DFO) Inquiry and an Administrative Appeals Tribunal (AAT) hearing into his case. Snowdon had the information available to know these too were lies. There has never been a DFO investigation into the circumstances of Warren's dishonorable termination from army. Nor has there ever been an AAT hearing investigation into it.

The Commonwealth Ombudsman and the Defence Force Ombudsman both refused to investigate the Warren case because they would not review the decisions by the Prime Minister and the Governor-General, Bill Hayden on the ex-MAJ Warren case.

Defence's abuse of power forced Warren to initiate three Freedom of Information (FofI) Act applications for hearings before the AAT during 1991 to 1994. These hearings were specifically confined to access to and annotations on his army personal history records held by the Department of Defence. All three hearings were FofI Act matters. The AAT made it clear to Warren that it had no jurisdiction to adjudicate on the circumstances of his termination from Army as this matter was outside the ambit of the FofI Act application items being considered by it.

The first AAT application involved the depraved decisions against Warren by MAJGEN Michael Jeffery (former Governor-General) and LTGEN John Coates, former Chief of the General Staff. (To read about this on the Internet, google 'case of ex-Major Warren' then scroll to the short submission titled 'Effectiveness of the Australian military justice system, Submission P5D by Allan Warren 2004- abuses of FofI Act. See diagrams 1– 4).

Warren's second application was against former Deputy Chief of General Staff – Army, MAJGEN C J Grey's arrogant contempt of the rule of law and his feigned stupidity to evade accountability for his incompetent and improper decision making under the FofI Act. The AAT ruling against Grey was severe and came after a hearing that only required 15 minutes.

Warren's third FofI Act application to the AAT involved 12 documents that related to then Military Secretary, BRIG J A Hooper's fabricated charges to terminate Warren from Army. One other document related to the illegal and improper stoppage of a pay allowance to him in 1979. These personal history records also included information that stated all several previous ministerial investigations of Warren's case were "*comprehensive, objective, thorough and were done by competent authority."*
In 1994 the AAT initiated its own annotation to Maj Warren's army personal records to record that "*the Tribunal was not prepared to find that the case of ex Major Warren had been exhaustively reviewed several times*". The effect of this annotation was to expose the lie that the several ministerial investigations of the case by Labor Party former ministers were "comprehensive, objective and thorough". The AAT then gave decision

that there has been no investigation of MAJ Warren's termination from Army by the Defence Force Ombudsman. Snowdon knew this to be the case.

The AAT also condemned the Army's documentary evidence used to charge Warren and directed that their own annotations be placed on Warren's personal history records to record this observation. Furthermore the AAT was at a loss to understand how Army could have brought the charges against Warren in the first place. The AAT only had the power to correct inaccurate or misleading information on Warren's personal history records. This is all that they did. Snowdon also knew this to be the case.

The problem for the AAT was that the Brigadier-General at the centre of the putrification of the MJS in the ex-MAJ Warren case was BRIG J A Hooper. After retiring from army he joined the AAT has a non-presidential member. He was a mate of the AAT members who adjudicated on Warren's three FofI applications to the AAT. They would have had to rule against him. Despite the weight of evidence they chose not too. Hence Warren was unsuccessful in his application to have annotations placed on Hooper's 1980 documents that he had raised to fabricate charges against Warren. And Snowdon and his department also knew this.

Snowdon's letter of 23 September 2008 stated that Warren's case had been subject to a "*Ministerial Inquiry*." In fact there were several ministerial investigations of the case by former Labor Party ministers – by Kim Beazley, then Minister for Defence in 1983, twice by Bob Hawke, then Prime Minister in 1986 (done by then Senator Gareth Evans) and twice by Bill Hayden, then Governor-General, in 1990. When Hayden was made aware that Bilney had corrupted process to destroy natural justice to Warren, Hayden used his second decision to shut down any further examination of the case. Meanwhile, MAJGEN Jeffery and LTGEN Coates had been busy attempting to destroy, or feign destruction, the entire set of Defence records of Warren's termination from army. The ministerial inquiries, including Hayden's, were all part of a disgusting government cover-up mentality and process, including Defence's "*independent investigations of itself"* and its corruption of FofI Act law. ‘

The 1994 AAT FofI Act annotations to Warren's personal history records were damning of army. After reading the AAT findings, Senator J Woodley (Democrat, Queensland), wrote a scathing letter to Senator Ray criticising Warren's immediate superior officers in 1980. These two events triggered the Labor Government to again do yet another cover-up ministerial investigation of the case. It seems that Snowdon has now singled out this 1994 "M*inisterial Inquiry"* initiated by the Minister for Defence, Robert Ray as the Rudd Government's best tool to maintain the Labor Party's cover-up of their former ministers' failings. LTGEN J C Grey, now promoted to Chief of the General Staff, oversaw this investigation which came after the AAT's damning findings against him. He needed to rebut Warren's redress so as not to expose the generals' improbities.

The Investigating Officer (IO) appointed by LTGEN J C Grey to carry out Senator Ray's independent ministerial inquiry was LTCOL Ben Salmon QC. Salmon knew BRIG J A Hooper was a member of the AAT at the time of doing his investigation and that Hooper was at the centre of grievances in Warren's Ministerial Representation to Senator Ray. Salmon QC's report was army's definitive cover-up report on itself to find that there was no wrongdoing against Warren. Salmon QC's poor and improper report proved Defence is incapable of giving frank and fearless advice to the minister because the generals are caught up in their own culture of impropriety and incompetence. This is turn has breed a culture of fear and distrust within the officer corps whereby professionalism and competency has been purged from the MJS down the chain of command.

The army generals exercise enormous power and authority over the lives of subordinates so they can order them to die in battle. With these go the general's obligations of fidelity to duty, their loyalty to government and their duty of care to subordinates. If they choose to hold these duties in contempt and abuse their powers then they must not be permitted to retain leadership over our service men and women.

It is alarming for members of parliament, or indeed anybody, to even suggest that the generals should not, or cannot examine or investigate their own organization. It defies

everything the western world knows and understands about the legitimate functioning of an institution of state with its in-built checks and balances that are meant to prevent it falling into a state of abuse, chaos and disrepair. Yet in antithesis, these are what the generals have brought to the rule of law within Defence that has made it impossible for them to properly investigate themselves or be investigated and to be made accountable to the minister and parliament. To date, portfolio responsible ministers have acted improperly and have acquiesced in this abuse of power in the MJS by their subordinate generals.

The downfall of the rule of law within Defence has not come about because of the size or the complexity of Defence or the diversity of its operations. Nor is it about the inexperience of the generals or lack of resources available to them. But these are the excuses they and their supporters are currently proliferating as part of their '**can't do mentality'**. This attitude puts their conduct, abuses of power and corruption of authority above the state and makes them unaccountable to parliament. The Warren case reveals that at each stage of abuse of power and cover-up the top generals have used their most experienced senior legal officers and subordinate generals - and spent large sums of public money - to support their cowardly cunning in hiding their corrupt decision making.

On 14 May 2008 Prime Minister Kevin Rudd used the LTCOL B Salmon QC Report and previous Department of Defence investigations of itself to deny Warren both a proper and honest review of the circumstances of his forced termination from army and a review of the improper ministerial investigations that have covered up the case to date. This was despite Warren having previously written to Rudd with details of why and how the Salmon QC Report is poor and improper.

Snowdon's reasons for decision also included the statement that Warren had previously made six submissions to the 2004 Senate Committee Inquiry into the Effectiveness of the ADF's MJS. Snowdon is wrong. In fact Warren had made eight submissions. Submissions Nos 7 and 8 were damaging to the generals and to the politicians who have acquiesced with them for years to undermine the MJS.

Submission No 7 detailed the how and what senior officers had fabricated to bring about improper charges against Maj Warren. It revealed how they had pushed aside his sound defence against their charges. It also detailed how portfolio responsible ministers were able to feign investigation and review of the case so as to deny RofW, procedural fairness and closure to Warren and his family. The senate committee members refused to accept the submission by falsely claiming that it was irrelevant to its inquiry into the MJS and hence outside its Terms of Reference (TofR). Thus senate committee members avoided any scrutiny of the ministers' legal responsibilities and duty at the head of the MJS. For years the generals, including LTGEN Peter Cosgrove, have claimed that it was the minister(s) who repeatedly gave decision to uphold the charges against Maj Warren that he was grossly incompetent and unprofessional. Submission 7 clearly fell within the TofR for the Senate's MJS inquiry.

Submission No 8 involved criticism of COL Hevey, former Director of Military Prosecutions. As a legal officer in 1979, with rank Major, Hevey was involved in dealing with Major Warren's RofW submitted against the improper and unlawful stoppage of his pay allowance. The pay RofW documents were one of thirteen items subject to AAT hearing adjudication on Warren's FofI Act application to the AAT in 1992. The three member AAT hearing took only a few minutes to examine the pay allowance documents and in an outburst declared that army's handling of MAJ Warren's 1979 RofW was "disgusting" Senior Counsel, Rhonda Henderson, representing Defence jumped to her feet and yelled: "*I submit that those involved at the time didn't now that they were doing anything wrong".* The AAT hearing president dismissed counsel and said he wasn't interested in hearing anything more from Defence. It dismissed MAJ Hevey's actions as "misconceived" and ruled that the power exercised against MAJ Warren should not have been so exercised. Prior to the 1992 AAT hearing army had internally and 'independently" investigated MAJ Warren's pay allowance RofW a number of times. They used the most senior and experienced officers to do so. The generals used time to destroy equity. One investigation took several months. Defence could find no maladministration involved in the matter. The AAT took only minutes to see through

these lies. Warren's submission No 8 to the Senate was suppressed from public examination and held "In Camera". The 2004 senate committee members then heaped praise on COL Hevey for his contribution towards improving the MJS. Warren was never granted a Rof W for the illegal and improper stoppage of his pay allowance nor did he ever get paid his entitled allowance.

Snowdon's letter of 23 September 2008 failed to acknowledge that Warren also made five submission to the 1998 Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into 'Military Justice Procedures in the Australian Defence Force'. These submission gave convincing facts and reasons why the then existing military laws, regulations and administration were sound and were quite capable of supporting military leaderships' command over the MJS. However, Warren identified a major weakness was "the selective lack of accountability in its implementation" by the generals. In other words, the MJS was sound unless it was abused or corrupted from the top, down the chain of command. As this is the case, then no new laws or reforms to the existing legislation will stop the generals holding the MJS in contempt. And this is what they have been doing since the 1999 reforms to it despite Justice Burchett's supposed audit of these alleged reforms in 2001.

By 2004 the generals had so destroyed the integrity of the MJS that the senate committee members deemed it so broken as to be unworkable. The ex-MAJ Warren case exemplifies this breakdown. It appears that the Rudd Government is intent on continuing to acquiesce in the current abuses of the MJS by supporting the general's systemic lies. The Rudd Government is now generating its own falsehoods and denials. This is exemplified by Snowdon's reasons for his decision of 23 September 2008. This followed Prime Minister Rudd's decision of 14 May 2008 to refuse to re-open the case.

Warren's 1998 submissions gave the detail of how responsible ministers made improper decisions and lied about the thoroughness, impartiality and objectivity of their investigations into his case. Most of these 'investigations' took several months to a year to complete.

The 1998 Joint Committee members sweep Warren's case under the political carpet. Their 1999 report then made the generalized finding:

> *"that vindictive or improper action against an individual would be unlikely to survive all processes of review and avenues of an appeal inherent in the current (military justice) system."*

The committee also claimed that "*it had received no compelling evidence to suggest that an individual's service had been wrongfully terminated*".

Prime Minster Rudd's 14 May 2008 decision also stated that Warren *"does not offer compelling reasons for a new investigation of his case and I do not support a review* of *the matter"*. In truth, Warren gave very compelling facts and reasons. The case is a chronicle of systemic lies and gross incompetenceis by key officials, including responsible ministers and the generals. It is a can of worms and Labor Party politicians are in the thick of it. Warren's right to know why he has been treated in such an appalling manner by the Labor Party needs to be made known and redressed. And the Australian public has a right to know why the generals are now attempting to claim that Defence, inclusive of its basic military administration and law, is too difficult for them to comprehend or manage. By feigning stupidity the generals are keeping themselves above the law but continue to demonstrate real stupidity by not redressing the Warren case and allowing it to degenerate into the political debacle it is today.

Snowdon asserts that the 2005 Senate Report recommendations to reform the MJS are being implemented. These (alleged) reforms are being audited by Sir Laurence Street and Air Marshall Les Fisher (Ret'd). Snowdon concludes in his reasons for decision with: *"I trust this information will help allay Mr Warren's concerns"*. No, it doesn't! Warren's concerns are heightened by the lies and duplicity used by Snowdon to shut down his case. Obviously neither Snowdon nor Rudd want the case honestly or properly investigated. Snowdon should be concerned by Rudd being compromised by his wholehearted embrace of the poor and improper LTCOL Salmon QC report. This

alleged independent ministerial 'audit' of Warren's case was used by the Labor government to cover-up the general's systemic malversations of the MJS and Defence administration.

And Snowdon ought to be concerned about the quality and integrity of Defence's alleged independent audit of the MJS by Laurence/Fisher. Warren has previously worn the full brunt of a similar audit by Defence when it allegedly had an independent audit of the reforms to the MJS arising from the 1999 Joint Parliamentary Committee Report. These reforms were useless and the audit, headed by Justice Burchett, a sham because the MJS continued its debauched downward spiral towards a total breakdown. In 2004 the Senate had to intervene in an attempt to arrest this chaos. However, the 2005 Senate Report evaded confronting the culture of deceit that is rampant amongst the generals and their legal advisors within Defence.

On 12 March 2001, by direct invitation from the Chief of the Defence Force, Admiral Chris Barrie, ex-MAJ Warren made representation to the independent inquiry headed by Justice Burchett. The body of this audit team was made up of two senior officers and one middle ranking officer. Despite the *judicial gloss* this alleged independent review was very much an internal Defence 'old-boy' game. Both during and after this audit the MJS continued its stunning collapse. Burchett refused to review Warren's case. His audit team alleged the case was outside its Terms of Reference. In fact it was not. Too many aspects of the Warren case fell within its TofR.

Page 2 of Warren's submission to Admiral Barrie's MJS audit team in part reads:

> *"Adjudicators and scrutinizers who have since 1981 to date, reviewed or audited the Warren case, have recklessly or indifferently failed to protect the safeguards against arbitrary perversions of military justice procedures and military administrative law. They have tacitly acquiesced in the manipulation of these procedures to protect and cover-up Army's malfeasance and nonfeasance in this case.*

> *To date evidence in the Warren case exposes Defence's increasingly tendency, especially since 1990, to use audits, not to reform military law administration, but to regain its manipulation over it".*

Snowdon's intent was to get Warren's case out of his office. This backed Prime Minister Rudd's decision not to have the case re-opened. This in turn is consistent with the Labor Party's determination not to touch the case and with the generals' refusal to examine their own improprieties.

It is time for both the Labor Party and Defence to get over their improprieties in decision making. They must be capable of moving forward and demonstrate standards of professionalism and competency that this nation expects from key officials if they are to fulfil their duties of office. The volume of evidence and the weight of that evidence on official records indicate a chronic incapacity of responsible ministers to deal with blatant and systemic Defence corruption and improbity.

This submission requests an open and transparent investigation into the circumstances leading to Major Warren's termination from Army, and a full Redress of Wrongs including redress for the injuries caused by the Australian Government's decades of bastardization of Warren in this case to date.

Allan Warren
26 March 2009