

**DRAFT INSPECTOR GENERAL (IG) INQUIRY INTO
THE WEAPONISATION OF THE MILITARY JUSTICE SYSTEM (MJS)**

Submission by Ex-Major Allan Warren

14th May 2025

1. The IG of the Australian Defence Force (ADF) has commenced an independent inquiry into allegations and perceptions that the MJS has been, or has the potential to be, “weaponized” or abused such that it may cause harm to ADF members. It will examine the extent of any such abuse and any features of the MJS that may allow for such abuse. But it will not investigate individual case submissions to it that allege such abuse.

2. The need for this inquiry into the Defence Department’s (DD) abuses of its MJS is well grounded, particularly as abuse of power by the generals and their legal officers is involved¹. This is the most destructive matrix and feature of the abuse in the MJS and the most covered up.

3. The Military Justice System is meant to allow the chain of command to establish discipline, morale, and efficiency within the military and hence control subordinates. National security depends upon this system being upheld with honesty and competency by the generals so that ADF members can trust it to protect their human rights. The MJS has a strict code of discipline and ADF members have no union to protect them against abuses of power by superior officers. Hence protecting the integrity of the MJS is paramount.

4. The first question that must be answered is, ‘Why have multiple past inquiries failed to lead to adequate outcomes to arrest systemic abuses of law within the DD, despite portfolio responsible ministers being aware for too many years?’ The cumulative evidence points to these past inquiries not being up to the task or lacking the will to recommend enforceable accountability standards expected of the generals. There clearly is an embedded unethical cultural problem within the higher echelons of Defence that conspire to conceal improbity and corruption.

¹ In this submission ‘general’ refers to brigadier and above.

5. I hope this current IGADF Inquiry's findings and recommendations will help alleviate the harm being caused to ADF members, their families and veterans. Protecting ADF members from the corruptions of the MJS by senior officers should be treated as a government priority. It also affects the public's trust in the DD as an institution of state. My concern is that the culture of deceit that prevails over the MJS will simply adapt to circumvent any new laws, reforms or procedures recommended by this inquiry, as it has done in the past to date.

6. I am also concerned about this IGADF Inquiry's Terms of Reference (TofR). Any inquiry into concepts of accusations and perceptions in the pursuit of justice is onerous. Such a task can result in poor findings and recommendations, as many wrong court decisions can attest. No doubt inquiry members will be alert to the vortex they will encounter during their investigation into the MJS based on the TofR being used. An inquiry can fail if its TofR are not genuinely aligned to the true cause and need for the relevant inquiry.

7. This inquiry's TofR into 'allegations' and 'perceptions' that the MJS has been or has the potential to be abused reads like the findings have already been decided upon. Of course any justice system is prone to abuse and has been abused. Of course this does harm to victims of it, including ADF members. Of course there have been multiple reforms and oversights of the MJS but abuses continued. Of course there is insufficient evidence to prove abuses of the MJS have been 'weaponised', or so Defence can be expected to argue.

8. Finding and weighing evidence to determine conflicting perceptions about what is right or wrong, or what is just or unjust in an objective manner is problematic. This IGADF Inquiry risks being duped by Defence's attempts to twist its perpetrators of corruption into victims and real victims into inept accusers even though senior military officers have been exposed as being liars and fabricators of evidence. If it was not for complainants, these abuses of power would rarely come to light. Whistleblowing is rare within the military culture for obvious reasons.

9. Within the ADF complainants often pay a heavy price by stepping forward because of the strict leadership structure. They are left exposed to reprisals and repercussions should they complain. This is despite formal procedures and laws in place to support and allegedly protect them. ADF members predominately do not make complaints within the services unless the complaints are sound and focused. Complainants have

predominance in truthfulness in their complaints against the lies of officials they complain about. However, these members often lack detailed knowledge of military law. Defence legal officers, and to a lesser extent commanding officers, do have this legal knowledge and hence can outwit a complainant. Whilst being abusive they can and do argue that they acted strictly according to the letter of the law and were procedurally correct.

10. Oral evidence given to the 2004 Senate Inquiry into the Effectiveness of the Military Justice System by Neil James, Executive Director Australian Defence Association is just as relevant today as it was then because of the continuous culture of denial and cover-ups by the generals. In reference to abuses of human rights of ADF members, transcripts from 9 June 2004 report James as stating,

“We have a number of careerists reaching high rank. Some of these people are of the moral integrity that perhaps we would not have had in the past. They proceed against people administratively in some cases because they know that if the member was proceeded against in a disciplinary forum he would probably get off and their own role would be cross examined.

The way you get around this and ping somebody you don't like is to proceed against them administratively. I can think of several notably examples where gutless and cowardly senior officers proceed against people administratively because they know that if they attempted to use the Defence Force Disciplinary Act their gutless and cowardness would be exposed. Cover ups can and do occur.”

11. In contrast on the same day then Lt. Gen. Peter Cosgrove told the Inquiry,

“I don't care what happens. We are going to keep control of the military Justice system.”

12. Mr James Grant, barrister and a LtCol with 39 years service (including Regular and Reserve gave evidence,

“Military justice will remain deficient as long as there are Defence lawyers involved.”

13. To be clear, this submission is not suggesting that the MJS is totally corrupted – not at all. Nor does it suggest that the ADF as a whole does not attempt to uphold high professional standards. This inquiry and past inquiries are not concerned that, say 85% plus of formal MJS cases are handled fairly. The issue is that when corruption interferes in the remaining cases, the generals act to protect it and not arrest it. And decades of inquiries have failed to come to terms with this serious abuse of power.

14. Lack of evidence is a problem for this IGADF Inquiry. There is **NO** evidence for the majority of the abuses of the military laws that this inquiry purports to examine! So how can it evaluate existing protective factors and recommend improvements in the majority of cases where the aggrieved ADF members cautiously decide not to seek redress against a superior's wrongdoing within the MJS because they don't trust it?

15. Members of the ADF are unlikely to make a complaint against abuses of power against themselves without good reasons. They know it is an unwise career move to initiate a complaint against a superior's wrongful treatment. Retaliation can be subtle and more difficult to prove than the reasons for the initial complaint. Being past over for promotion; being forced to do additional work; not approving leave when requested; not being considered for training courses', being labelled as 'bucking the system'; or 'not being a team player', etc. – all risk being isolated and targeted. It is wiser not to complain and be subservient to the abuse and suffer silently the subsequent stresses. I am confident to say that more than half of abuse cases within the military are not reported, hence are officially unknown. Therefore, there are no complaints and so there is no evidence. It is a case of the absence of evidence is not evidence of the absence of abuse of power. This IGADF Inquiry does not have all the necessary data to cover the majority of cases that ought to be the foundation for its findings.

16. Defence staff who abuse the MJS are not going to report or document their own wrongdoings. Officers who are duty bound to examine a formal complaint have an associated problem. When a case arises that reveals an improper action or decision by a senior ranker or peer group member, they are faced with the dilemma of either backing the wrongdoers or compromising their own careers. Protecting the system means protecting themselves, thus allowing corruption to fester. 'Closing of rank' and 'group think' mentalities promote and assists this destructive cycle. Nor, as a result of past inquiries into the MJS, is there anything to indicate that this misconduct has been curtailed within Defence.

17. The evidence that the Defence Department has and does weaponize Australian laws to corrupt the MJS and violate ADF members and veterans is irrefutable. The ex-Major Warren case (my case) has tracked and documented this systemic and systematic abuse of power for decades. I formally updated portfolio responsible ministers of these abuses of power. But they perversely used Defence's misfeasances in their own personal decision making against me. They all chose to defend Defence's perpetual lies that no one in Defence acted unfairly against me. Backed by these Ministers of the Crown, Defence has been able to maintain its cover ups of my case 1981 to date! The Australian Government considers the Warren case closed and not be to reopened – being the ultimate cover up tactic. This has emboldened the generals to maintain their improper abuses of the MJS.

18. Detailed facts and evidence on the ex-Major Warren case can be found by Google search: bmartin.cc/dissent/documents/Warren This includes details of improper decision making by a Governor-General, Prime Ministers, Ministers for Defence and the generals. This evidence exemplifies how Defence and Australian laws are systemically weaponsied to subvert the rule of law. It is a classic case in its detail, longitudinal profile and is worthy of examination.

19. This IGADF Inquiry may not want to use the Warren case as evidence on the grounds that it pre-dates its desired time scope for post 2020 cases. But its relevance to this inquiry is significant. The generals and Defence legal officers used false allegations and fraudulent evidence to dupe the Governor-General to dishonourable terminate my career appointment from Army. From 1981 to date they then fabricated several improper investigations to allege that my forced resignation in disgrace was proper and strictly according to the letter of the law. They corruptly asserted that no one had acted unfairly against me. No responsible minister or inquiry has had the decency or ethics to properly call the generals to account so as to resolve this case. But this has allowed festering corruption to thrive. **The political establishment is too embarrassed to acknowledge its wrongdoing and omissions.**

20. The following is factual argument by analogy about perceptions and allegations. It's reasoning applies to the dilemma this inquiry faces and the concerns I have about its mission. On 22nd February 2021 Military Advocate, Dr. Stephan Karsai, OAM, submitted to the DD a Retrospective Medical Discharge Claim (RMDA) for me. He has many years of experience as an advocate with a university degree that includes Justice. He waited patiently for more than two years without a word from Defence. On 19th April 2023 he enquired about my RMCS's progress. Defence claimed it had never received this

application from him. Dr Karsai resubmitted it to Defence on 5 July 2023. On 4 March 2025 he again made enquiry into its progress. He was again told that Defence had never received this renewed RMDC or that 'it may have been lost'. By then 4 years had lapsed since Dr Karsai first lodged the claim. On the same day, 4 March 25 he submitted the same claim for the third time.

21. It is improbable that Australia Post lost the first RMDC of the 22/2/2021, though anything is possible. Dr Karsai had dealt with the relevant branch within DD for years. He also considers it improbable that DD did not receive it. He believes there is a rotten smell about his second RMDC being '**not received or lost**' by Defence. This case overlapped the time frame that DD and the Department of Veteran's Affairs (DVA) were under scrutiny by the Royal Commission (RC) into Defence and Veteran Suicidality. My RMDC matter was not raised in my submissions to that RC.

22. In conjunction with Defence's claim Warren's RMDC's were 'not received or lost', the DVA also appears to have a problem in processing Dr Karsai's Permanent Impairment (PI) claims for ex Major Warren. He first submitted this claim on 14 December 2020. He was not advised of any decision on this claim. He followed through with claims dated 9 May and 28 August 2023. On 28 March 2025 Dr Karsai contacted DVA which advised him that Warren's claims 'are now ready to be determined and are in waiting to be allocated to a delegate to be determined'. More than four years have passed since Dr Karsai first submitted Warren's DVA claim. It beggars belief that this case, plus the RMCD can be excused away by claims of 'never received', 'lost' or 'backlog' for over 4 years each. And Defence and DVA's post Royal Commission solution is – If you have a complaint, process it through our wonderful complaints review system.

23. Whilst this IGADF Inquiry can easily decide that my RMDC claim matter is outside the ambit of its MJS topic it does however demonstrate the problematic nature of evidence and perception. It exemplifies what is at stake in this inquiry. I am now confronted with the dilemma of making the accusation that DD is willfully obstructing or delaying its processing of my RMDC. Alternatively, do I accept as truthful DD's assertion that It never received either the 22 Feb'21 or the resubmitted 5 July 23 RMDCs? Which way would a reasonable person judge on this case? More importantly, how would that person judge if they had a longitudinal knowledge of my army case history 1981 to date? And how would this IGADF Inquiry judge on both questions? On the surface it would be a clear accusation, with no evidence from a biased complainant who has merely a 'perception' of Defence wrongdoing. And without any investigation that is where the

matter would rest. The case would then be statistically used by this inquiry to support a finding of no maladministration by Defence and the complaint would be deemed unfounded.

24. Maladministration within DD is endemic and systemic. It is not just restricted to the MJS. It inflicts the Freedom of Information Act, Defence procurement systems and Defence Legal. Recently, the Auditor General referred Defence to the National Anti Corruption Commission (NACC) with 'evidence of unethical conduct' (SMH 7/4/25 page 12). Note the word usage – 'unethical' comes 'improper', becomes 'corrupt' (see para 38).

25. A former Minister for Defence, Linda Reynolds has called upon the generals to take greater responsibility for Defence wrongdoings. She stated that there is still resistance to recognise military ethical failures. "We need far more transparency beyond the criminal justice system", she said. Reynolds has 29 years as an army reserve officer, achieving rank of brigadier. 'Defence hierarchy has not been held to account for failing to act on widespread rumours of unethical behaviour', she added. In matters relating to Afghanistan she concluded, "There are certain indications all was not well within the military justice system but a blind eye was turned", she said. (SMH 10.6.23).

26. Reynolds should have added that ethics and propriety are the core components of military leadership. But because there are no adequate standards of leadership accountability there has been no reason for the generals to raise their ethical or honesty standards. The ex-Major Warren case exemplified this failed leadership culture to date. And unless this IGADF is willing to confront this culture, abuses of the MJS will not be discovered or curtailed. Also in doubt are the standards of professionalism within the ADF leadership.

27. In response to past successive MJS inquiries the generals undertook not to reoffend in abusing this system. They claimed that reform recommendations have been implemented to arrest past failures. Actually, it was their duty to develop these reforms themselves but lacked the ethics and competency to do so. The reforms that had the most effect were the ones that stripped the generals of certain powers in their use of MJS laws. But they can still manage to conceal their abuses of power by feigned and fraudulent, allegedly independent investigation that clear them from wrongdoing – hence Reynolds' justified concerns.

28. Part of the generals' tactics to avoid accountability, responsibility and transparency, is not to fully co-operate with an inquiry into Defence's administration and leadership. This should be taken as an indicator or wanting to conceal something. The same applies when documents go missing or lost. Defence can be expected to seek to have this IGADF Inquiry find that misfeasances no longer permeates the MJS and that reforms have been effective. It will argue that abuses of the MJS are imaginary and based on ill-founded accusations based on misconceptions by complainants and malcontents.

29. It is fair to state that all complaints start as accusations or allegations as they do in law. Examination is then required to decide upon the validity and intent of the allegation. Some form of evidence is needed for this decision making process and this is where the real problem beings. Laws of evidence are complex. Evidence can be corrupted, fabricated, ignored, destroyed or simply not found. Investigations are time and dollar expensive and often not undertaken. Hence decision making comes in advance or in the absence of evidence or necessary facts. So, decision makers risk becoming perpetrators of their own prejudice, perceptions and motives. Many wrongdoings are never examined at all; complaints are simply put aside by agencies such as the Defence Force Ombudsman, as in the ex-Major Warren case several times over.

30. I assume this IGADF Inquiry, and perhaps Defence can obtain access to the thousands of submissions made to the RC into Defence and Veteran Suicidality. Privacy issues might limit Defence's access. IGADF Inquiry member, Dr Nikki Jamison should have a good overview of the nature and quality of these submissions as she was involved with the RC. Some, if not many of those RC submissions would be relevant evidence to this inquiry because of the correlations between unfairness in the MJS and trauma to the ADF member or veteran. I also assume this plethora of submissions includes those from the cohort of post 2020 that this inquiry prefers to focus on. But how could this IGADF Inquiry weight and judge these submissions if they contain no evidence and have not been independently investigated to determine their validity?

31. I don't know, but I will guess that many of these RC submissions demonstrated complainants' lack of understanding of what the MJS can and cannot do. Other RC submissions could be grouped as frivolous or trivial. Yet others could be grouped as lacking evidence or as having an exaggerated sense of entitlement. Defence would be the first to cherry-pick from this pool of submissions so as to skew them to prove

abuses of the MJS are merely 'allegations' and 'misconception's and complaints against it are unjustified!

32. Some submissions made directly to this IGADF Inquiry undoubtedly will fall into the same categories as for the RC submissions. More importantly, all submissions used by this inquiry, if lacking evidence and without being investigated, risk being inappropriately skewed as evidence of unsubstantiated allegations against the MJS. I believe it is important that this inquiry's final report provides a detailed explanation of how it weighed and used submissions and other data as evidence to support its findings.

33. Administrative Law and Disciplinary Law are the two components of the MJS. They purport to impose a balance between discipline and members' rights. Whilst justice is the purpose, it is the use and abuse of law that determines outcomes. Military justice is not just dependent on the MJS per se. Other Australian Government laws are involved, e.g. Freedom of Information Law. The most important law that ultimately determines the improbity or otherwise of public officials in the exercise of power is in the Administrative Decisions (Judicial Review)(AD(JR)) Act. Highly qualified legal members of the inquiry will know this act well enough. I do not wish them to suffer my inclusion of it in this submission, but I consider it important that other readers of it at least be aware of the AD(JR) Act's significance to determine if the MJS is abused by military staff.

34. The AD(JR) Act is for use by the courts to scrutinize the legality of administrative decisions made by public officials. The Act is final in that it operates despite anything in other existing laws, including Defence administrative laws. Its focus is on if decisions are made according to the law and not on the merits of the decision under question. Nor will it be used to examine frivolous or trivial complaints. It does include laying down the standards of law as to what constitutes proper or improper exercise of a power in decision making. This cuts to the chase in identifying abuses and corruption within the MJS.

35. The AD(JR)Act is long and detailed. A short example of the laws within it is relevant to this IGADF Inquiry include: ‘ an improper exercise of power shall be taken as including:

- . taking an irrelevant consideration into account in the exercise of power’;
- . failing to take a relevant consideration into account in the exercise of a power’
- . an exercise of power for a purpose other than a purpose for which the power is conferred’
- . an exercise of a power in bad faith;
- . an exercise of a personal discretionary power at the direction or behest of another person’
- . an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case’
- . an exercise of a power that is no unreasonable than no reasonable person would have so exercised the power’
- . an exercise of a power in such a way that the result of the exercise of the power is uncertain’
- . any other exercise of a power in a way that constitutes abuse of power.’

36. The above laws assist in clarifying preceding AD(JR)Act laws regarding the improper use of law and breaches of natural justice which:

- . “has occurred, is occurring, or is likely to occur, in connection to the conduct’; and
- . “that fraud has taken place, is taking place, or is likely to take place”;
- . “There is no evidence or other material to justify the making of the decision”.

37. The above brief excerpts of the AD(JR) Act demonstrates what an ordinary person would decide as being reasonable measures. Yet Defence legal officers and the generals lack the integrity and competence to know so. The ex-Major Warren case is riddled with multiple breaches of most of the dot point above and spanning decades in practice. And responsible ministers have persistently sanctioned these multiple

improbities. They hide behind their lies that no one acted unfairly against Warren but claim that some administrative errors occurred to destroy his career, livelihood and reputation.

38. It is hoped that the IGADF members will be guided by the spirit and intent of the AD(JF)Act when making decisions and findings. Corruption protects itself by degradation of official ethics. It can be identified by repetitive institutional wrongdoings, cover ups, pleas of feigned incompetence and mistakes etc. Most evil of all is how corrupt officials use the law as a means of violence to subvert justice and indeed democracy. It is my understanding that the NSW Independent Commission Against Corruption (ICAC) uses laws similar to the AD(JR)Act to determine if an official's conduct is corrupt. Hence the note in para 20 above' how 'unethical' becomes 'improper' becomes 'corrupt' in the legal sense.

39. Bad behaviour by senior officers that is not identified and expunged brings past improbities into the present and future. This inquiry states that it will examine the extent of abuses currently in the MJS. It states it will be mindful of the past though its focus is on the relative present (i.e. post 2020). What has not been made clear to the public is what evidence does it intend to rely upon to judge the past or the present without examination of case details? It does not bode well that this IGADF Inquiry will not dig deep enough to identify the real problems that plague the MJS.

40. In some respects this IGADF Inquiry is set up to act like a quasi court to make decisions on the accuracy of complaints against the MJS. It seems it intends to rely largely on submissions from ADF members past and present. My submission is 12 pages long. Stripped bare it is all allegations and zero evidence, except for referral to a Google site. I assume the majority of other submissions to this inquiry will also lack evidence and be left with only accusations. This inquiry made clear it will not examine individual claims or accusations. These submissions risk been degraded to below the value of say, witness statements or circumstantial evidence. Any inquiry findings needs to be based on evidence and analysis. Defence has a history of submitting inaccurate and fraudulent evidence to such inquiries. I suspect it will do the same for this inquiry.

41. Abuse of power and lying has been normalized by the generals and little has changed over the decades. It is arrogant and hypothetical for them to now argue that they are better than their predecessors. The failed culture of the generals won't be changed until they have an ethical change of mind. This failure of leadership culture is

the cause of failed competency and integrity in the MJS. They can prove otherwise by being asked to report to this inquiry on the multiple breaches of Defence probity in the Major Warren case 1980 to date. If Defence lacks the competency and integrity to comprehensively identify the maladministration and weaknesses in the system then that demonstrates their unfitness of ethical leadership. Four weeks would be more than ample time for Army to report back to this IGADF inquiry, including an explanation why the generals have covered up this case and continued to lie to the portfolio responsible ministers. Ministers also need to come clean as to why they persist in their collective determination to keep this case closed.

A K Warren

14th May 2025