

**Senate Foreign Affairs, Defence and Trade
References Committee**

SUBMISSION COVER SHEET

Inquiry Title: Effectiveness of Australia's Military Justice System

Submission No: **P16B**

Date Received: 21.04.04

Submitter: Vice Admiral Ritchie;
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Date Authorised: 30 Apr

**Inquiry into the Effectiveness of Australia's Military Justice System:
Submissions (P13 and 13A) by Ms Liddell**

Ms Liddell provided two submissions (Submission Nos: P13 and P13A) to the Senate Foreign Affairs, Defence and Trade References Committee Inquiry into the Effectiveness of Australia's Military Justice System. At the request of the Committee the following Additional Submission is provided with a view to assist the Committee's consideration of the issues raised by Ms Liddell.

Ex Able Seaman Matthew Liddell was a member of HMAS WESTRALIA's crew who had been involved in fighting the fire and handling of deceased personnel on 05 May 1998. Matthew was recognised at being *at risk* of developing Post Traumatic Stress Disorder (PTSD) immediately after the fire. He was monitored and supported throughout the later part of 1998 but was not formally diagnosed as having PTSD until September 1998. He subsequently underwent a treatment program, which was completed in November 1998.

At that time Matthew was assessed as being suitable to transfer to the Clearance Diver Branch at his own request. In March 1999 Matthew was posted to HMAS PENGUIN and was due to commence a Clearance Diver Acceptance Course in late June 1999. He withdrew from this course prior to its commencement date and indicated he was no longer of volunteer for transfer to the Clearance Diver category. The day after withdrawing from this course Matthew "self referred" seeking repeat PTSD treatment. He again "self referred" for PTSD treatment in July 1999 and treatment continued until he discharged from the Navy in May 2000. After discharge, he received further ongoing PTSD treatment through support provided by the Department of Veteran's Affairs.

It is deeply regretted that, despite all the treatment and care Matthew received both during and after his naval career, he committed suicide. Navy has great sympathy for Ms Liddell and her tragic loss.

**Inquiry into the Effectiveness of Australia's Military Justice System: Submission (P15)
by Chief Petty Officer Hyland**

Chief Petty Officer Hyland has provided a submission (Submission No: P15) to the Senate Foreign Affairs, Defence and Trade References Committee Inquiry into the Effectiveness of Australia's Military Justice System. At the request of the committee the following Additional Submission is provided with a view to assist the committee considerations of the issues raised by Chief Petty Officer Hyland.

In his submission Chief Petty Officer Hyland questions the lack of effective action by the Navy's Military Justice System and questions the quality of the associated inquiry by Navy. As advised in Chief of Navy's opening statement to the Inquiry on 1 March 2004, the alleged assault on Chief Petty Officer Hyland was separately investigated on three occasions: by the Air Force Security Police; by the Victorian Police; and by the Naval Investigative Service. All three investigations have concluded insufficient evidence exists to support either civilian or Defence disciplinary charges being laid.

Nevertheless, following an application for Redress of Grievance from Chief Petty Officer Hyland, a further independent examination of his allegations has been requested from the Director of Military Prosecutions.

Chief Petty Officer Hyland has been provided full medical care, psychological and legal counselling and support since he sustained the injuries in May 2002. Navy has met its obligations for Chief Petty Officer Hyland's health and welfare to date and will continue to do so.

Senator S. Hutchins
Chair
Senate Foreign Affairs, Defence and Trade Reference Committee
S156
Parliament House
CANBERRA ACT 2600

Dear Senator Hutchins

**Inquiry into the Effectiveness of Australia's Military Justice System:
Submission (P25) by Group Captain Behm**

I note that Group Captain Behm provided a submission (Submission No: P25) to the Senate Foreign Affairs, Defence and Trade References Committee Inquiry into the Effectiveness of Australia's Military Justice System. At the request of the Committee the following Additional Submission is provided with a view to assist the Committee's considerations of the issues raised by Group Captain Behm.

In his submission Group Captain Behm states that the inability or refusal of The Defence Legal Service (TDLS) to provide him with appropriate legal assistance constrained his inquiry and implies that TDLS determined the level of legal support to be provided to him in his role as an inquiry officer.

Group Captain Behm was appointed by the Commander Combat Support Group as an investigating officer under the Defence (Inquiry) Regulations. A Squadron Leader reserve legal officer was appointed to assist Group Captain Behm. Pursuant to a Determination made under section 58B of the *Defence Act 1903*, a reserve legal officer receives different amounts of remuneration depending on the type of duty to be performed. The three usual rates, in descending order of quantum, are known as the 'sessional rate', the 'half sessional rate' and the 'training day rate'. In accordance with the Determination, the reserve legal officer was approved some duty days at the 'half sessional rate' of pay and some duty days at the 'training day rate' of pay, despite a request by Group Captain Behm and the Commander Combat Support Group who argued that the 'sessional rate' was appropriate for all the duty days.

Also, fewer days than initially requested were approved (25 instead of 50), but this was subject to approval for further days if the initial allocation proved insufficient. This was because the total number of 'Reserve days' across the ADF is not unlimited (for sound funding reasons) and therefore must be managed in accordance with proper financial and management practices.

Subsequently, the Squadron Leader reserve legal officer submitted an account for professional fees for the 'sessional rate' of pay for the duty performed up to that time. That account was rejected by the Director General of The Defence Legal Service on the basis that in accordance with the Determination it did not accord with the approved rates of pay described above. The Squadron Leader reserve legal officer then withdrew her services as an assistant to the Investigating Officer.

The rate of payment to the reserve legal officer is the subject of a redress of grievance, and accordingly, it would not be appropriate for the ADF to provide a concluded view on the correct rate of pay.

Group Captain Behm has not made it clear how the inquiry was frustrated when legal advice was still available from other reserve legal officers and from permanent Defence Force legal officers. It appears as though the actual problem is over the amount of remuneration for a particular legal officer, and not over the level of legal support provided to an investigating officer.

In summary, TDLS does not seek to determine or control the level of legal support provided to an Investigating Officer. However, as part of good financial management, TDLS is bound to ensure that duly authorised Reserve legal officers are remunerated in accordance with the provisions of the relevant financial Determination.



P.A. CREHAN, CMMIAF

for **S.J. HARVEY (AOL)**
Air Commodore
Director General
The Defence Legal Service

15 April 2004