

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

SUBMISSION COVER SHEET

Inquiry Title: Effectiveness of Australia's Military Justice System

Submission No: P51

Date Received: 23.04.04

Submitter: Captain Mackelmann

Organisation:

Address:

Phone:

Fax:

Email:

Name/Contact: Captain G D Mackelmann SC

Date Authorised: 3 May

CAPTAIN G.D.MACKELMANN.S.C.

23rd APRIL 2004

SENATOR S.HUTCHINS
CHAIRMAN INQUIRY - MILITARY JUSTICE SYSTEM
FOREIGN AFFAIRS, DEFENCE & TRADE
SUITE S1.57
PARLIAMENT HOUSE
CANBERRA
A.C.T.2600

Dear Sir,

RE : SUBMISSION RAAF MIRAGE - CRAIG DOUGLAS MACKELMANN

Thank you for your telephone contact on 22-04-04. Your request is covered as follows -

Please refer to my further submission dated 5th APRIL 2004, which includes the 27 questions placed on NOTICE 2668, dated 03 November 2003, to the Minister for Defence. - As you were advised, there is total refusal by the Minister to answer those questions.

Please find copy (just to hand) of the single answer to those questions, placed on the record by Mr. BROUGH M.P. - The same line adopted by his predecessor being TOTALLY WRONG and DECEPTIVE.

THOSE INQUIRIES -

(1) ACCIDENT INVESTIGATION - different radio transcript to that in the BOARD of INQUIRY. NOTE this A.I.T. report was not produced to the CORONER, was supplied to me 6 years later. THE CORONER WAS DECEIVED.

(2) The BOARD of INQUIRY was deliberately wrong and deceptive. THE RANGE BREACH was OMITTED totally. - Further, the CORONER found that all findings in the B.O.I. relating to alcohol were totally WRONG.

(3) The OMBUDSMAN inquiry was rendered WRONG by the now proven false testimony of AIR COMMODORE NICHOLAS FORD.

(4) The PETER DURACK Q.C. inquiry was rendered WRONG by the now proven false testimony of FORD.

(5) The D.S.T.O. report is a useless document. It is totally based on supposition, which favours the RAAF position. I hold sufficient evidence to say that Mirage A3-40 was in operation with known cracks to the wing spar and proper inspections, as required for known high 'G' exceedances, were never carried out.

(6) I was instrumental in calling for a THIRD

page 2

STAGE F.O.I. application grievance, which placed the matter before the A.A.T. in the Brisbane Federal Court. The transcript of the FOUR day hearing clearly proves that AIR COMMODORE FORD did destroy the value of all of the previous inquiries. - Read my submission, the RAAF tried to prevent my procurement of the tape recording between DURACK and FORD which proved that he had lied and/or misrepresented to all inquiries. - NOTE - THE TRIBUNAL, Mr. Beddoe found that AIR COMMODORE FORD was an 'UNRELIABLE WITNESS'.

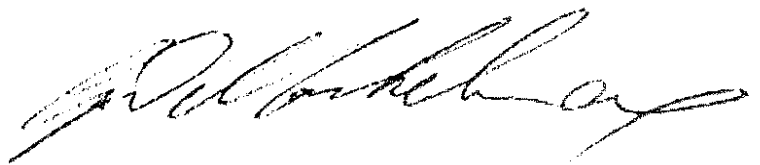
Now, Sir, your COMMITTEE is faced with a matter fully within the terms of reference at 1(a) and 1(b)(i) and 1(b)(iii).

The matter is still current after 18 years, with the actions of the RAAF and the MINISTERS (many) in QUESTION. It is my firm opinion that MINISTERS were deceived by RAAF Chiefs from FORD up, but there is no excuse for the continuance to the present time. The current MINISTER is aware of the exposures on FORD, but still refuses to answer questions.

The real fact, Sir, is that those 27 questions CANNOT BE ANSWERED, by the Minister, without amounting to a FULL ADMISSION of the REAL TRUTH. The correct answers will clearly prove that the RAAF has lied, frustrated and with-held proper justice, denegated the name of our SON, caused grief to the MACKELMANN family, and un-necessary high monetary costs to the Commonwealth for 18 years. -And it continues.

THOSE QUESTIONS MUST BE ANSWERED.

Yours Sincerely,

A handwritten signature in dark ink, appearing to read 'Peter Durack', written in a cursive style.

MINISTER FOR DEFENCE

HOUSE OF REPRESENTATIVES

QUESTION

(QUESTION NO. 2668)

Mr Rudd asked the Minister representing the Minister for Defence, upon notice, on 3 November 2003:

- (1) Further to the answer to question No. 2031 (*Hansard*, 8 September 2003, page 1983), in respect of the Review of Structural Management, is it the case that 'G' meter print outs for the Mirage show that tolerances were exceeded and not reported and that major cracks to the old wing spar were not inspected within the hourly limit set by the RAAF extension of life program.
- (2) How many Freedom of Information (FOI) requests by Captain Mackelmann, Craig Mackelmann's father, were refused and why.
- (3) Is it the case that documents obtained under FOI by Captain Mackelmann reveal evidence which was not produced to the inquiries; if so, (a) why was this evidence not produced, and (b) why will it not be reviewed now.
- (4) Why was the Accident Investigation Team (AIT) report not made available to the Coroner and to Captain Mackelmann during the coronial inquiry.
- (5) Why was the AIT report withheld from Captain Mackelmann for almost 6 years and then provided only after intervention by the Ombudsman.
- (6) Were two differing transcripts of the same tape recording made by the AIT and were both withheld from the Coronial inquiry.
- (7) Is the Minister aware that Captain Mackelmann claims to have evidence indicating that the tape has been manipulated in a way which would explain the seven second time difference.
- (8) Can the Minister explain how the transcript of the tape used at the Board of Inquiry (BOI) and provided to the Coroner put F/Lt Riley further back behind Craig Mackelmann than he was in the transcript used by the AIT.
- (9) Has the possibility that F/Lt Riley committed a breach of Air Force Orders and was being protected been investigated; if not, why not.
- (10) Is there actual evidence which supports the RAAF assertion that no guns were fired; if so, why does the RAAF refuse to provide it to Captain Mackelmann.
- (11) Did the RAAF witnesses interviewed by the Ombudsman regarding the downloading of the returned ammunition unload F/Lt Riley's aircraft; if not, who did and why were they not interviewed.
- (12) Did the BOI inquire into whether proper radio procedures were being followed at the time of the accident; if so, what were its findings; if not, why not.
- (13) Has the Minister personally reviewed the transcript of the Administrative Appeals Tribunal (AAT) proceedings.
- (14) Was Air Commodore Ford represented at the AAT hearing by Barrister Logan and Solicitors from the Crown Law Office at Commonwealth expense.
- (15) Was similar legal assistance offered or provided to the Mackelmann family; if not, why not.
- (16) In what ways did Air Commodore Ford's evidence to the AAT differ from the evidence he had given to the Ombudsman and the Durack review.

- (17) Why did Defence try to prevent Captain Mackelmann obtaining a copy of Air Commodore Ford's interview with Senator Durack.
- (18) Was Air Commodore Ford's interview with Senator Durack instrumental in challenging Air Commodore Ford's testimony to the AAT.
- (19) Did the AAT ask the RAAF to conduct a further search for the gun camera cine film from the returned aircraft.
- (20) Was this film provided for and viewed by (a) Air Commodore Ford when he was President of the BOI, and (b) another member of the BOI named Alexander; if so, what happened to it.
- (21) Is the Minister able to explain (a) whether a breakdown in radio procedures occurred prior to the accident, (b) whether it is correct procedure for a pilot to hear an "off safe" from the previous pilot on a banner before calling "in live", and (c) what the purpose is of the "off safe" and "in live" calls.
- (22) Does the AIT transcript of the radio calls show F/Lt Riley "in live" 32 seconds after Craig Mackelmann called "in live" with no "off safe" call made by Craig Mackelmann; if so, will the Minister explain whether this is a breach of range safety standing orders.
- (23) Has the possibility that F/Lt Riley had made an incorrect "in live" call and been too close to Craig Mackelmann been investigated; if not, why not.
- (24) Has Captain Mackelmann's hypothesis in respect of the accident been considered; if so, what evidence (a) supports it, and (b) contradicts it; if not, why not.
- (25) Do the Range Standing Orders state that it is preferable for the Range Safety Officer to be a non-participating pilot.
- (26) Was F/Lt Riley the Range Safety Officer at the time of the accident and what authority, if any, did the civil pilots in the tug aircraft "with Range Safety Officer responsibilities inherent in its role" have over F/Lt Riley.
- (27) Should the civil pilots have reacted when F/Lt Riley called "in live" before Craig Mackelmann called "off safe"; if so, how; if not, why not.

Mr Brough —The answer to the honourable member's question is as follows:

The information sought in the honourable member's question is not readily available. To collect and assemble such information solely for the purpose of answering the question would be a major task and I am not prepared to authorise the expenditure and effort that would be required.

Mr Mackelmann, the father of Pilot Officer Craig Mackelmann, who was killed in the accident, has corresponded for the past 17 years with Defence. Defence has done everything possible to assist Mr Mackelmann with his requests for information so that he may have closure on the matter.

I am satisfied that the loss of the Mirage aircraft A3-40 has been adequately investigated. The Mirage accident has been the subject of an Accident Investigation; Board of Inquiry; Coronial Inquest; Ombudsman Investigation; Review of Structural Management Practices; Senator the Hon Peter Durack, QC Review; Defence Science and Technology Organisation Aeronautical Maritime Research Laboratory Structural Integrity Review; and Administrative Appeals Tribunal (AAT). The matter has also been the subject of a considerable number of Freedom of Information requests.