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SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES
COMMITTEE

Reference: Effectiveness of Australia's military justice system

THURSDAY, 22 APRIL 2004

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SENATE
FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE

Thursday, 22 April 2004

Members: Senator Hutchins (*Chair*), Senator Sandy Macdonald (*Deputy Chair*), Senators Hogg, Johnston, Marshall and Ridgeway

Substitute members: Senator Bartlett for Senator Ridgeway and Senator Evans for Senator Marshall

Participating members: Senators Abetz, Boswell, Brandis, Brown, Carr, Chapman, Collins, Conroy, Coonan, Denman, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Forshaw, Harradine, Harris, Knowles, Lees, Lightfoot, Mackay, Mason, McGauran, Murphy, Nettle, Payne, Santoro, Stott Despoja, Tchen, Tierney and Watson

Senators in attendance: Senators Bartlett, Chris Evans, Hogg, Hutchins, Johnston and Sandy Macdonald

Terms of reference for the inquiry:

To inquire into and report on:

1. (a) the effectiveness of the Australian military justice system in providing impartial, rigorous and fair outcomes, and mechanisms to improve the transparency and public accountability of military justice procedures; and
(b) the handling by the Australian Defence Force (ADF) of:
 - (i) inquiries into the reasons for peacetime deaths in ADF (whether occurring by suicide or accident), including the quality of investigations, the process for their instigation, and implementation of findings,
 - (ii) allegations that ADF personnel, cadets, trainees, civilian employees or former personnel have been mistreated,
 - (iii) inquiries into whether administrative action or disciplinary action should be taken against any member of the ADF, and
 - (iv) allegations of drug abuse by ADF members.
2. Without limiting the scope of its inquiry, the committee shall consider the process and handling of the following investigations by the ADF into:
 - (a) the death of Private Jeremy Williams;
 - (b) the reasons for the fatal fire on the HMAS Westralia;
 - (c) the suspension of Air Cadet Eleanore Tibble;
 - (d) allegations about misconduct by members of the Special Air Service in East Timor; and
 - (e) the disappearance at sea of Acting Leading Seaman Gurr in 2002
3. The Committee shall also examine the impact of Government initiatives to improve the military justice system, including the Inspector General of the ADF and the proposed office of Director of Military Prosecutions.

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Committee met at 9.11 a.m.

CHAIR—I welcome everybody here this morning. I declare open this meeting of the Senate Foreign Affairs, Defence and Trade References Committee. Today the committee will conduct its third public hearing into the effectiveness of Australia's military justice system. The terms of reference were referred to the committee on 30 October 2003 and the report is due to be tabled in the Senate on 5 August 2004. Copies of submissions from today's witnesses have been published by the committee and are available from the secretariat.

Today's hearing is open to the public. However, I warn the audience that the committee may ask for the room to be cleared to hear evidence in camera if a witness makes that request and the committee agrees. However, the committee prefers, as far as possible, to hear evidence in public. I should point out that the hearing of evidence in camera does not preclude its publication later by the Senate or by the committee, but witnesses should be advised of such action in advance. Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. It is important for witnesses to be aware that the giving of false or misleading evidence to the committee may constitute contempt of the Senate.

With regard to the public hearing, if the committee has reason to believe that the evidence about to be given may reflect adversely on a person, the committee will immediately deliberate in private session and give consideration to the hearing of that evidence in private session. Examples of adverse reflection on a person would include allegations of incompetence, negligence, corruption, deception or prejudice. The committee is bound by the procedures laid down in the parliamentary resolutions of the Senate to provide opportunity for a response to such allegations of an adverse nature. It would be most unfair and contrary to the spirit of privilege resolution if specific allegations were discussed in a public forum.

Where a witness gives evidence reflecting adversely on a person and the committee is not satisfied the evidence is relevant to the committee's inquiry, the committee shall give consideration to expunging that evidence from the transcript and to forbidding the publication of the evidence. The media should check with the committee as to whether any statements uttered today have been expunged from the record, as the use of expunged words would not be covered by parliamentary privilege. If adverse evidence is given and not expunged, the committee will provide reasonable opportunity for that person to have access to the evidence and to respond to that evidence by written submission. A request to appear before the committee will also be considered. The committee wishes to strike a fair balance between receiving legitimate information that will enable it to fulfil its terms of reference and receiving information that may prejudice individuals.

Officers of a department of the Commonwealth will not be asked to give opinions on matters of policy. However, they may be asked to explain government policy, describe how it differs from alternate policies and provide information on the process by which a particular policy was arrived at. Witnesses will be invited to make a brief opening statement to the committee before the committee embarks on its questions. I would like to note the assistance of the Defence Community Organisation and chaplains throughout the committee's inquiry. Officers of the DCO and chaplains are available for defence personnel and their families should the need arise.

[9.15 a.m.]

BEHM, Group Captain Anthony Patrick, (Private capacity)

CHAIR—The committee welcomes to the hearing Group Captain Behm. Your submission was received and numbered 25. Do you have any alterations to make to that submission?

Group Capt. Behm—No.

CHAIR—Do you understand the remarks I have made about parliamentary privilege and adverse comment?

Group Capt. Behm—Yes, I do.

CHAIR—Do you have any questions on that?

Group Capt. Behm—No.

CHAIR—I invite you to make an opening statement before we proceed to questions.

Group Capt. Behm—Thank you. The investigating officer is appointed by Command to investigate matters on behalf on Command but is independent of Command. The investigating officer might uncover matters that were critical or adverse to Command and must report those matters free of any interference. An investigating officer cannot have the same legal advisor as Command. I see Command as being that part of the organisation which has responsibility for and control of a discrete function and range of activities within the Australian Defence Force.

The issue as I see it is that there is a disconnect between the right of an appointing authority to appoint an investigating officer and determine the methodology of that inquiry and the power of the Defence Legal Service to refuse to exercise the financial delegation to pay any legal officer appointed by Command under the defence inquiry regulations, as it did in this case. It is my view that there is potential for the Defence Legal Service to undermine the decision of a commander from running an inquiry as he sees fit just by refusing to provide or pay the legal advisor. Command determined that I, as an investigating officer, should have dedicated legal assistance separate from Command available for the duration of the three inquiries, which involved approximately 50 days for the work to be done in. As well as dedicated legal support there was to be administrative support, as the intention was to have all interviews triple-taped and transcribed by Auscript.

I am not a lawyer, and I do not intend to be. My task was to make the findings of fact and recommendations on the proper application of the law. The legal advisor was to be on hand to provide me with strategic litigation advice. The expectation was that a number of RAAF members would have adverse findings made against them, which would be deleterious to their careers, so all care and attention was required to ensure that all requirements for the procedural fairness were met. The legal advisor was also required to identify the critical allegations—my recollection is that there were 233 allegations—to establish an evidence matrix; to identify

witnesses, including those who might be potentially adversely affected by any adverse finding; to draft template legal letters for the collection of evidence; and to draft legal letters to advise persons called before the inquiry of their rights as witnesses and the nature of the matters to be put to them at the inquiries.

In addition, the legal advisor was required to provide ongoing technical legal advice on law, procedure, the demarcation between administrative and Defence Force Discipline Act related matters and the application of the critical rules of evidence relevant to procedural fairness, as well as advice as to jurisdiction, advice on the use of which evidence can be put, advice on the legal test to be met—in this case the Briginshaw test—as to whether an allegation has been substantiated or otherwise, and whatever other legal advice I required in the course of the inquiry. The legal advisor was to be a critical part of a dedicated team working on the inquiry. It was not expected that the legal officer would attend the inquiry every day, but it was expected that the legal officer would be available on call and to attend on scheduled days.

The Defence Legal Service denied the appointing authority the legal assistance in the manner I required. The appointing authority was advised that the tasks outlined above were administrative rather than legal in nature and tasks for the investigating officer to undertake. The Defence Legal Service was prepared to make a legal officer available on an ad hoc basis, to answer over the phone any legal questions I may have had. It saw no need for the legal officer to be on hand or to participate in the interview of key witnesses. The Defence Legal Service approach presupposes that I can identify that I have a legal issue and that I know what legal question to ask. The ad hoc legal advisor would not be apprised of the issues being investigated or the evidence collected and would be required to give legal advice in a vacuum. The Defence Legal Service approach does not allow for the strategic management of an inquiry.

It is also my preferred position that all persons appearing before the inquiry be afforded legal representation if requested. There is a discretion that an investigating officer can exercise under defence inquiry regulations, taking into account the case of *X v. McDermott*, where it was said that the investigating officer did not propose to allow the applicant to be represented by counsel at the hearing before him. That, of course, is entirely a matter for the investigating officer, but reflection on his part and on the part of those responsible for his employment may suggest it would have been wise for the investigating officer to be assisted by a person who is legally qualified and to allow legal representation of the applicant by an appropriate legal practitioner so long as the assistance provided by the practitioner is given in a constructive way.

Again, the Defence Legal Service denied the granting of legal representation on the view that it was not necessary. The ultimate result was that I, as an investigating officer, was not provided with legal advice which was independent of Command and there was interference by Command in the conduct of my inquiries. This opening statement is based on correspondence between me, the Commander Combat Support Group and the Defence Legal Service last year.

CHAIR—Thank you, Group Captain. How long have you been in the service?

Group Capt. Behm—Twenty-seven years.

CHAIR—What is your position now?

Group Capt. Behm—My position is a project officer at Combat Support Group, RAAF Base Amberley.

CHAIR—What does a project officer do?

Group Capt. Behm—I am a serving reservist. I was full time up until the year 2000. Basically, as the commander sees fit, I work on any projects that are coming up. In this case, I was appointed as an investigating officer on two investigations, one that I took over from an investigating officer who took ill. These investigations are the second tranche of investigations.

CHAIR—So up until 2000 you were full time and now you are a reservist?

Group Capt. Behm—That is correct.

CHAIR—What sorts of things do you investigate as an investigating officer—legal things, accidents?

Group Capt. Behm—All of the above. It could be any investigation that is required by the commander. It could be an accident, it could be in relation to operational training matters or it could be in relation to adverse findings that have been made against a person. So the commander would appoint an investigating officer under strict terms of reference to investigate the matters.

CHAIR—Do you investigate alongside civilian authorities on occasions?

Group Capt. Behm—No, Senator.

CHAIR—So there are separate investigations conducted by the service and perhaps by the police or the Roads and Traffic Authority?

Group Capt. Behm—If there were an investigation in relation to a criminal act, that would be handed over to the state or federal authorities.

Senator CHRIS EVANS—Group Captain Behm, I am very much interested in the issues you raised, in part because one of the concerns the committee has had raised with it by witnesses is about the standard of investigations and the qualifications of investigating officers. To be frank, at first blush my opinion has been that there has been quite a variance in the quality of the investigating reports. This is not a personal question to you, but I am interested in the qualifications that you have for being appointed as an investigating officer or, in general terms, in what sorts of qualifications are required before someone is chosen to be an investigating officer on a particular case.

Group Capt. Behm—In general terms, there is an investigating officers course, which I have done on a piecemeal basis throughout my Air Force career, being the commanding officers law course, or there are other administrative courses like that. But certainly investigating officers do not necessarily have that training to be an investigating officer. I guess I was fortunate in my first investigation that I had good legal advice. In my second investigation I was not afforded that legal advice. You may also ask the question: why aren't investigating officers legal officers? Investigating officers are appointed and legal officers are to assist. But, certainly, as far as

investigating officers are concerned generally, I would suggest that the majority of them may not have appropriate investigating officer training.

Senator CHRIS EVANS—Before you took on these two investigations, one of which is obviously quite major—I do not want to go into the detail of it—had you had previous experience as an investigating officer?

Group Capt. Behm—I had very limited experience as an investigating officer. In relation to the first investigation, my legal assistant at the time gave me a lot of hands-on skill and training. It was basically learning on the job.

Senator CHRIS EVANS—Effectively, were you brought back onto active duty to take on this task because there was no-one else particularly qualified available to the commanding officer?

Group Capt. Behm—Probably because of my previous experience in personnel and experience in operational matters and the fact that I probably was the most appropriate person at the time, I was appointed by the air commander at the time, through to the Commander Combat Support Group, to be the investigating officer.

Senator CHRIS EVANS—Effectively, were you brought back from Reserve duty to full-time duties to do that job?

Group Capt. Behm—No, I stayed on Reserve duty. I came back on Reserve days to do the investigations.

Senator CHRIS EVANS—But was that full time?

Group Capt. Behm—It was not full-time duty, Senator. I transferred from the permanent Air Force to the active Reserve. When you are on the active Reserve you do training days or Reserve days to fill that particular project need.

Senator CHRIS EVANS—Are you full time now?

Group Capt. Behm—No, Senator, I am on active Reserve.

Senator CHRIS EVANS—So you did these investigations while on a part-time basis, effectively?

Group Capt. Behm—That is correct, Senator.

Senator CHRIS EVANS—We have talked about skills. Your main issue is the question of appropriate legal advice. I suppose, playing devil's advocate, the one thing we know about legal advice is that it is not cheap. No doubt, the military would have an eye on what is the appropriate amount of legal resources applied to particular investigations. Is it possible that your debate with the Defence Legal Service is a question of their trying to manage a budget and allocate tight resources?

Group Capt. Behm—I think it is two things. It is not only the budget but also the reading of the determination of how they apply that legal advice and what payment is made to the particular legal officer at the time. Certainly, budget plays a big part in anything in Defence, as you are well aware, Senator. If there is a large tranche of investigations, a board of inquiry certainly, as far as the Defence Legal Service is concerned, may cause a heavy drain on their budget in a particular year.

Senator CHRIS EVANS—Yes.

Group Capt. Behm—And it could well affect the ability to provide adequate legal advice for investigating officers.

Senator CHRIS EVANS—But your concern was that you did not get enough legal advice.

Group Capt. Behm—Absolutely, Senator.

Senator CHRIS EVANS—I assume that the Defence Legal Service, if they come before us, will say that you got enough. What is your major concern about operating with the amount of legal advice you got—that you just do not have the skills that are required?

Group Capt. Behm—I think the investigating officer is basically 98 per cent commonsense and two per cent application, and your legal adviser is there to take you through the pitfalls of the legal investigation of witnesses. In relation to this particular inquiry, the terms of reference stated that I had a particular legal officer appointed as part of the investigation. Once the approving authority appointed that particular person as my legal officer, I would have expected to have full use of that legal officer through TDLS.

Senator CHRIS EVANS—Can I touch on a subject that Senator Hutchins raised with you—interaction with police and other civil authorities. It is clear to me that—well, it is not clear to this inquiry after yesterday's evidence. It would strike us that if there were an allegation of a criminal offence you would refer the matter to the police and allow them to investigate it. Would you therefore stop investigating?

Group Capt. Behm—Yes, I would, Senator.

Senator CHRIS EVANS—But say it is a grey area or it is not clear that a criminal act has been committed, where do the police come in and you leave off? I am interested in that tension. For instance, if there is an activity on base where it is not clear that there has been a criminal offence, or say there has been an accidental death on base, where does the—

CHAIR—Or let us say assault.

Senator CHRIS EVANS—Assault is probably more clearly a criminal offence. I am never quite clear where the investigating officer starts and the police or other civil authorities stop.

Group Capt. Behm—If I was faced with that predicament in an investigation where I was not quite sure whether it would come under military law or civilian law, obviously my legal advice would be to consult with TDLS, the pre-eminent legal people, and they would have to make a

decision as to the jurisdiction of a particular act or incident, in relation to whether it be state or Commonwealth jurisdiction or under military law.

Senator CHRIS EVANS—What would you suggest as the alternative to the Defence Legal Service making the decision, given that you accept that budgets will not have an unlimited amount of money for legal advice for investigations?

Group Capt. Behm—I think that the approving authority who appoints the investigating officer and the investigating officer team should have the authority, when scoping the inquiry, to determine what legal advice is needed and how that legal advice will be maintained through the budget. Once that is determined, the approving authority should, through TDLS, have that approval, whether it be 50 days, 60 days or 100 days. The actual funding for that particular inquiry should be identified then. That funding should transfer from the Defence Legal Service along the respective route to the approving authority so that he can manage the funding and the legal support for the investigating officer. Because, while ever the Defence Legal Service is outside of the actual investigation, with respect, I do not think they can understand on an ad hoc basis what the terms of reference are and what the investigating officer may come up with.

Senator JOHNSTON—Group Captain Behm, thank you very much for bringing this submission forward. I think you raised some very important issues, and I am very pleased that you have raised this, because I think this is the first time that we have had a look at the process of establishing the level of legal advice that investigating officers are afforded. In your circumstances as you describe them, did the matter to be investigated carry any penal sanction with respect to the very large number of people you were investigating?

Group Capt. Behm—In my first investigation, where I had the legal advice afforded to me, I had 71 witnesses and over 4,700 pages of transcript. For the second investigation, which I am referring to here, I had about 32 witnesses and about 2,500 pages of transcript. But, as far as the question you have asked goes, I could not determine that until I actually got into the investigation.

Senator JOHNSTON—So it was an event where property was damaged.

Group Capt. Behm—It was a number of events in relation to operational training.

Senator JOHNSTON—So the level of performance and the level of proficiency of certain people were in question.

Group Capt. Behm—Yes, Senator.

Senator JOHNSTON—That is good. So there were a number of very technical issues relating to, probably, defamation and privacy—a whole host of technical things like this.

Group Capt. Behm—Yes, Senator.

Senator JOHNSTON—You were afforded a legal adviser by the appointing authority, and you could not get him.

Group Capt. Behm—I had the legal adviser but, when we made the request for the number of days we needed, it was determined by the Defence Legal Service that we did not need that many days because obviously they did not consider the seriousness of the allegations that were made. Of course, those allegations came out during the investigation, and it was very hard to second-guess what was coming down the track.

Senator JOHNSTON—Certainly. So you needed some experienced legal advice to help you understand where the various threads of this inquiry might lead.

Group Capt. Behm—Yes, Senator.

Senator JOHNSTON—Do you think this was about Caesar having a view—and I use the words ‘Caesar having a view’ in the context of the expression ‘Caesar judging Caesar’? Did you in your process feel like you had received the hospital handball—that you were put in a position where you were set up to go through the motions, yet you were not given the tools to do the job properly?

Group Capt. Behm—No, I do not think that was the case initially at all.

Senator JOHNSTON—Initially?

Group Capt. Behm—Initially. I was given the tools to do the job and, as the job proceeded, the carpet was pulled out from underneath me.

Senator JOHNSTON—As things became too intense, too hot, the inquiry started to expand and obviously it became larger and larger in terms of its effect.

Group Capt. Behm—All inquiries start out very simply. As the inquiry goes through its machinations and you start investigating different witnesses, it becomes more complex. At the very start of the investigation it appeared that it could have been very simple.

Senator JOHNSTON—Straightforward.

Group Capt. Behm—Straightforward. But, as in all investigations, you overturn one rock and something else turns up. The two investigations that I have done followed the same pattern.

Senator JOHNSTON—And that expansion of the field of investigation stayed within the terms of reference?

Group Capt. Behm—Yes.

Senator JOHNSTON—When you made your request for better legal advice or more legal advice who did you make that request to?

Group Capt. Behm—Going back to the terms of reference, the legal adviser was appointed as part of the reference. I said to the commander at the time that I would conduct this inquiry exactly the same way and using the same methodology as the previous inquiry I had conducted.

Senator JOHNSTON—Was he the appointing authority?

Group Capt. Behm—He was the appointing authority. When the problem started to happen in relation to the number of days that we had been allocated I wrote to the approving authority, who was the commander at the time, and then he took the matter up with Defence Legal Service. That is the basis of my submission here.

Senator JOHNSTON—So is it fair to say that he himself had the carpet ripped out from under him by being denied the capability of a legal adviser in accord with what he anticipated was necessary?

Group Capt. Behm—Yes.

Senator JOHNSTON—That is a pretty poor situation, isn't it?

Group Capt. Behm—It is, but I can understand where the Defence Legal Service are coming from if they were having problems with budgeting and there were a number of other very major investigations going on. They possibly could have determined that this investigation as it was proceeding did not require the support that it probably needed.

Senator JOHNSTON—Is it fair to say that at the outset the appointing authority needs to ascertain the capacity of the legal service to provide the perceived level of advice before we even do our appointing part of the inquiry?

Group Capt. Behm—That is part of the scoping process. As the terms of reference have been developed, the investigation could be scoped to see how wide ranging and how complex it might be.

Senator JOHNSTON—So you need lawyers in at that stage and you need input?

Group Capt. Behm—That is correct.

Senator JOHNSTON—And you did not have that?

Group Capt. Behm—We had that but, unfortunately, as this investigation started to proceed, it was a very complex investigation and it got more complex on the way. So I get back to the point that you can scope the investigation and know what you may have to investigate but, as the witnesses come forward, there may be other things well within the terms of reference that you need to examine. If there is anything outside those terms of reference, the investigating officer is supposed to advise the approving authority, or the appointing authority, that he has found something outside the terms of reference and that may be subject to a different investigation again.

Senator JOHNSTON—What mechanism do you see working? Whilst your matter was to some extent administrative—it was looking at process and the integrity of process, training and performance—there could be a whole host of more serious issues that are directly life and death matters that need a fail-safe technique to provide an investigation officer with a guarantee of legal advice in the process of his investigation. How do we establish that—or is it already

established and we just do not adhere to it? What do you think we should do to make sure that an investigating officer, particularly where he has an appointing authority giving him legal advice, gets that advice?

Group Capt. Behm—Basically it is about who controls the almighty dollar. If the approving authority could ascertain in the scoping process that there was a need for so many days of legal support and make a request for that money to be transferred to his control, he would control the asset and the payment of that asset. That is probably the way of the future. There are administrative inquiries and there are boards of inquiry. The boards of inquiry are different.

Senator JOHNSTON—I was talking in a generic sense, rather than technically, about the difference between an inquiry officer and a board of inquiry et cetera.

Group Capt. Behm—If the approving authority could have the authority to pay the legal officer, based on the days that were required in relation to the scope of the inquiry. As the approving authority he knows exactly because the investigating officer has to provide him with regular updates of how the inquiry is going. Those updates are not provided to the Defence Legal Service by the way; they are provided to the approving authority and go no further until the investigation is finished. When the investigation is handed to the approving authority with the recommendations the approving authority then determines how far he takes those recommendations. He is the sole owner of that investigation from the time it starts until the time it finishes; therefore, he should have control over how his legal advice is to be used.

Senator JOHNSTON—The fact that we are talking money, and my perception is that we are talking in-house legal advice—in other words, the tri-service Defence Legal Service—these lawyers are obviously not full-time members of the ADF.

Group Capt. Behm—That is correct. Most of them would be reserve officers.

Senator JOHNSTON—So they are being paid fees that are commensurate with the opportunities they are losing by not being in private practice in civilian life.

Group Capt. Behm—That is correct.

Senator JOHNSTON—We will get to the bottom of this, I hope, at some future stage; but, obviously, from what you are saying there is a defined budget for that legal service, so they are apportioning, they are watching and they are controlling how much they are spending on these lawyers all the time. I take it that is the case.

Group Capt. Behm—That is my understanding, yes.

Senator JOHNSTON—Do you see any positives or negatives—let's be general about this—in your command having the capacity to appoint and to negotiate the fee rate of private practitioners on site? For instance, the SPO at Amberley goes out and buys nuts and bolts. They are obviously of a technical quality, but he goes out and buys them. Can we apply the same sort of approach to an on base investigation where you need a lawyer and you cannot get one so he goes and gets you one? I think the advice at the end of the day is going to be of the same quality. Why can't he go out and get one and take it out of his own budget?

Group Capt. Behm—There is no reason why he cannot as long as he has an allocation for, say, legal support for the financial year. The problem is that you may get a group or an organisation that has a number of legal investigations through the year which may drain his budget. The point then is that you have to go back and ask for more money. But certainly, as the SPOs do it, the approving authority—in this case Commander Combat Support Group—could go out and negotiate the sessional fee that has to be paid with the reserve officer, be they a solicitor or a barrister. There is a set rate of sessional fees that is paid. In relation to my investigation, training days were offered at about \$220 a day. To be quite frank, I do not think barristers answer the phone for \$220.

Senator JOHNSTON—You mean \$220 an hour.

Group Capt. Behm—Sorry, \$220 a day.

Senator JOHNSTON—I was being facetious.

Senator CHRIS EVANS—I should warn you that Senator Johnston ran a very successful legal practice before he entered the Senate, so you are on dangerous ground!

Group Capt. Behm—I know. Anyway, that is the point I would make. The appointing authority could have that bundle of money, to put it quite frankly, to go out there and seek legal advice in relation to investigations. Let's get back to the point. He appoints the investigating officer to investigate a certain set of incidents in his command and he expects recommendations from there. Those recommendations are obviously for the better of Command and he should have full legal support to run that investigation unfettered by any other organisation.

Senator JOHNSTON—Remembering that in order to have the inquiry the appointing authority has had an event which fits within the regulations that stipulate an inquiry of some form, depending on the seriousness of the term of reference—so we have a threshold breach at the front-end such that we are going to have an inquiry—the point is whether we proceed with the full benefit of the inquiry officer, who, as you clearly made the very important point, is not a lawyer and is dealing with private and personal rights, as you are. Having got that far, do we undermine the process by depriving the investigative officer, who is battling along in adversity with potentially complex legal matters, of free and open access to lawyers? How many hours do you think you would have needed to sit down with a barrister? Let us say that the legal service said: 'We cannot give you a lawyer; we will instruct a barrister. Just give us the term of reference, give us the questions that you want answered, give us a brief and we will brief someone in Brisbane.' You were obviously in Queensland at the time?

Group Capt. Behm—That is correct.

Senator JOHNSTON—How far out of Brisbane were you?

Group Capt. Behm—I was at RAAF base Amberley but I was operating out of Victoria Barracks here in Brisbane.

Senator JOHNSTON—So you jumped in a cab, and 10 minutes later you were sitting in a barrister's chambers in Brisbane. How long do you think you would have needed with the barrister to brief him on the issues that you were confronting?

Group Capt. Behm—Initially, I probably needed three days to brief him over the whole range of investigation that I had found, but the problem is that this investigation did not only run in Brisbane; it ran up at Shoalwater Bay. You just cannot pick up a phone in Shoalwater Bay and ring your barrister in Brisbane, because you may be out of comms. When you are investigating people in the military you do not necessarily do it in one geographic location—you may do it all over Australia. That is another problem; you just cannot jump in a car and see a barrister in Brisbane when you are doing an investigation in Shoalwater Bay. Again, there are other complex matters in the process of your investigation that might come up in less than an hour.

Senator JOHNSTON—So you needed people there with you while you were interviewing witnesses?

Group Capt. Behm—Absolutely.

Senator JOHNSTON—Okay, I accept that. If you can, give me a broad idea—and we do not want any names or pack drill—of the sorts of legal issues that you were looking to have advice on?

Group Capt. Behm—In relation to the operational matters that I was investigating, I would not be here if those matters were the result of a coronial inquiry. They were very serious matters.

Senator JOHNSTON—So from what you are saying I take it that you are looking at a management issue that had the potential to cost lives?

Group Capt. Behm—Yes.

Senator JOHNSTON—So, as I said before, there were allegations of nonperformance of duty—

Group Capt. Behm—Yes.

Senator JOHNSTON—which involve defamatory issues and privacy issues—

Group Capt. Behm—Yes.

Senator JOHNSTON—Particularly if you were ultra vires the terms of your reference in dealing with anything, you could have been personally liable, as could the department and the Commonwealth. Were you dealing with officers?

Group Capt. Behm—I was dealing with officers, senior NCOs and NCOs.

Senator JOHNSTON—Approximately how many?

Group Capt. Behm—In this particular inquiry about 32.

Senator JOHNSTON—Goodness. So when you made your request for the sort of legal advice that I perceive you did need, which we have clearly established, the answer was that they could not afford it.

Group Capt. Behm—The answer was that the Defence Legal Service at the time—and probably the ‘cannot afford it’ people were behind it—considered that the legal advice that I wanted was administrative advice, not advice to Command. However they determine the requirement of administrative advice and higher legal advice, they did not agree with my request as to the particular legal advice I needed. As I said, I went back to the approving authority and said, ‘Could you please help me out on this?’ He took it up with the Defence Legal Service, and they decided that I did not really need the higher level legal advice that I originally requested through the allocation of 50 days. Some of those 50 days could have been administrative advice and some could have been higher legal advice.

Senator JOHNSTON—Have you retired from the Air Force as a regular? Do you have another job now?

Group Capt. Behm—I have retired from the Air Force as a regular and I am now a Reserve officer. I have two part-time jobs. I am state chairman of the Defence Reserves Support Council, which is a ministerial appointment; that is my civilian job. I am former Director of Reserves, Air Force and former Deputy Assistant Chief of ADF Reserves.

Senator JOHNSTON—So risk management, corporate governance and liability issues are at the forefront of your mind in the day-to-day conduct of these new jobs that you now do?

Group Capt. Behm—Yes.

Senator JOHNSTON—That is very important. I have had enough questions. If there is anything else you want to add on those subjects, feel free. Thank you very much.

Senator HOGG—I want to touch on a couple of points about the qualifications of being an investigating officer in the broadest sense. Is it a plus not being a legal person but being a person who has field experience so that you can relate more readily and more easily to the investigation? Is that the tension that exists in the choice of the investigating officer, in your view?

Group Capt. Behm—I think that in appointing an investigating officer it is all of the above. You need someone who has had operational experience and wide experience in their military discipline. Also, as I said, to be an investigating officer—and I do not say this lightly—it is probably 98 per cent commonsense and two per cent application. It is very important for an investigating officer to have a background in administration, operational things or human resource management. I am not saying that an investigating officer necessarily needs to be trained as an investigator. I think those sorts of things, if he is not trained as an investigator, presuppose that the legal support that the investigating officer gets will cover those issues.

Senator HOGG—In your particular case, you said that you did not have the full use of a legal officer. Can you quantify that in some way for us?

Group Capt. Behm—I expected that when I needed it a legal officer would be in my office to advise me on a number of issues in relation to allegations and the forming of questions to witnesses; I was not afforded that.

Senator HOGG—So that means you went without advice on how to proceed as the investigating officer.

Group Capt. Behm—Yes.

Senator HOGG—As a result of that legal advice, did that in any way impair the quality of the investigation that was being carried out?

Group Capt. Behm—In relation to this particular investigation, when it became clear to me that I was not going to be afforded adequate time for an investigating officer and I had broadly identified Defence Force discipline matters, I gave an interim report to the appointing authority stating those matters and I handed the rest of the investigation to the appointing authority. I understand the appointing authority has now tasked service police to look at the various matters. I am not aware of the actual outcomes of those matters.

Senator HOGG—Did it in any way impact upon the quality of the investigation, in your view?

Group Capt. Behm—It did.

Senator HOGG—Did it, therefore, impact upon the quality of the report that you were able to generate?

Group Capt. Behm—It did.

Senator HOGG—If it impacted on the quality of the report that you generated, did you in your report put in a qualifying statement?

Group Capt. Behm—I did.

Senator HOGG—What was the response of your superiors to that qualifying statement?

Group Capt. Behm—The response of my superior to that qualifying statement was that he understood the situation I was in. He considered that situation and, as a result, handed my broad recommendation in relation to certain matters to the service police to investigate.

Senator HOGG—If you had been given the full support that you claim you required, would that have led you to not qualifying your report and being able to carry the investigation all the way through yourself?

Group Capt. Behm—Yes, that is correct—with the qualification that as part of the terms of reference if I identified any offence that had DFDA implications I was to hand that off separately to the approving authority.

Senator HOGG—I accept that.

Group Capt. Behm—Also, if I had had full legal support I would have come up with recommendations in relation to the various terms of reference matters that I was investigating.

Senator HOGG—Do you know if this led to any duplication of process? Would there have been duplication of process as a result of you having, first of all, conducted an investigation and then handed down an interim report which was then acted upon in another manner?

Group Capt. Behm—Yes, there would have been duplication of process up to a point.

Senator HOGG—Are you aware of how often investigating officers have had to qualify their reports?

Group Capt. Behm—I am not aware of any investigating officers having to qualify their reports, but I have heard that investigating officers have been uneasy about the level of support they have been given but have gone ahead and finished off the investigation. Whether or not those investigations were good investigations is not for me to say. Having spoken to a number of investigating officers, I am aware that they are of the same opinion as me that there may have been situations where they were not afforded adequate legal support and had to struggle on themselves.

Senator HOGG—Is there an independent audit done of investigations such as yours?

Group Capt. Behm—I understand the Inspector-General's department can call forward particular investigations and look at them to see if they have been conducted in the manner that their policy obviously sets out. I have handed my first report to the Inspector-General's department. He requested that. That was the first report, where I referred to 4,700 pages of transcript.

Senator CHRIS EVANS—Why did he request that?

Group Capt. Behm—I do not know.

Senator CHRIS EVANS—It was not the result of an approach from you?

Group Capt. Behm—No, it was not.

Senator CHRIS EVANS—He requested a copy of your report?

Group Capt. Behm—That is correct.

Senator CHRIS EVANS—That, presumably, was because he had received a complaint or wanted to redress some issue. It was not by way of this audit process that he is about to commence?

Group Capt. Behm—It could well have been by way of this audit process. There was not any redress or anything that came out of the first investigation that I conducted, so I presume he was

looking at the methodology I used in that first investigation and at how appropriate it was. Certainly he asked for a copy through the approving authority, because the approving authority has ownership of the investigation report until he hands it on.

Senator HOGG—Following on: you do not know if there was an independent audit done of the particular inquiry you are talking about?

Group Capt. Behm—No.

Senator CHRIS EVANS—I think the evidence from the Inspector-General is that that process is only just beginning or about to begin.

Group Capt. Behm—That is correct.

Senator HOGG—I accept that. Did you raise concerns in other places?

Group Capt. Behm—No. I raised my concerns through my appointing authority through the chain of command.

Senator HOGG—Do you know what happened with your concerns when they were raised?

Group Capt. Behm—Yes. The appointing authority wrote to Defence Legal Service. As I said in my opening statement, they came back and said that they would not approve the appropriate support for the investigation.

Senator HOGG—So this is at the conclusion of your investigation?

Group Capt. Behm—Actually, it was halfway through the investigation.

Senator HOGG—What about upon the conclusion of your investigation?

Group Capt. Behm—That happened some months soon after that, because I guess there was a *repechage* from the commander to sort out the situation. But he did not have any success.

Senator HOGG—Thanks.

CHAIR—Thank you very much for coming along today, Group Captain.

Group Capt. Behm—Thank you, Senators.

Senator CHRIS EVANS—You have been very helpful. Thank you.

[10.00 a.m.]

FORD, Mr Jonathan Robert, (Private capacity)

GIFFEN, Ms Coral Anne, (Private capacity)

STURGESS, Mrs Yvonne May, (Private capacity)

CHAIR—I welcome our next witnesses. You are reminded that the evidence given to the committee is protected by parliamentary privilege. It is important for you to be aware that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. With regard to the public hearing, if the committee has reason to believe that the evidence about to be given may reflect adversely on a person, the committee will immediately deliberate in private and give consideration to the hearing of that evidence in private session. Examples of adverse reflection on a person would include allegations of incompetence, negligence, corruption, deception or prejudice. Where a witness gives evidence reflecting adversely on a person and the committee is not satisfied the evidence is relevant to the committee's inquiry, the committee shall give consideration to expunging that evidence from the transcript and to forbidding the publication of the evidence. Mrs Sturgess, your submission was received as No. 14. Do you have any alterations to make to that submission?

Mrs Sturgess—No.

CHAIR—Do you all understand the remarks that have been made about parliamentary privilege and adverse comment?

Mrs Sturgess—Yes.

Mr Ford—Yes.

Ms Giffen—Yes.

CHAIR—Do you have any questions on that?

Mr Ford—No.

Ms Giffen—No.

Mrs Sturgess—No.

Senator CHRIS EVANS—Chair, earlier I mentioned to committee members that Mr Ford is a personal friend of mine and an MLC in the WA state parliament and is Mrs Sturgess's brother. I want it recorded that I know the witness so that there is no suggestion that that is not clear to people.

CHAIR—We will not hold that against you, Mr Ford.

Mr Ford—Thank you.

Mrs Sturgess—I am the mother of Corporal Jason Sturgess, who was killed on the escarpment of Hervey Range Road in Townsville on 22 February 2002.

Mr Ford—I am appearing as Jason Sturgess's uncle.

Ms Giffen—I am Jason's aunt and I was with his mother for the board of inquiry, through the eight days.

CHAIR—I now invite you to make an opening statement, if you would like to.

Mrs Sturgess—Just a small one. I would like to thank you first for the opportunity of being here. As my submission is fairly full, I suppose, I would just like to say a little bit about my son. Jason was not an unhappy soldier; he was in fact a professional soldier, and the pride that he had in being a member of B Squadron was like a beacon. The reason for my submission is the fact that nothing having been found to have caused the accident is something that just does not sit well with me as a mother. I am not a mechanic or a professional person as such but I am not stupid either. I know that on Friday, 22 February 2002, Jason and his driver did not wake up and say, 'Today we're going to throw a spanner in the works and drive our vehicle off the escarpment.' That just would not be him. He was not suicidal; he was just so green in being in the Defence Force.

I feel that the Command and the government failed Jason and his driver by not providing the best equipment that they could. The vehicles are too old and there are so many other things that members of the Defence Force have to cope with. The 'can do, you will do' attitude goes right through to the men and women who are prepared to put their lives on the line for their country. That is why I have made my submission.

Mr Ford—I want to say something along the same lines as what Yvonne has said. None of us are experts in this field. We were hoping as a family to have some answers from the board of inquiry into Jason's death, but it did not, at least from the family's perspective, achieve that end. I have some history in heavy industry. Prior to this job, I worked in the oil and gas industry. Prior to that, I worked in mining. Prior to that, I was in the Air Force. Specifically I have some experience in safety investigations and audits, and in reporting to statutory authorities. I was quite happy with this report until I read the conclusions. I do not think there is any suggestion that the Army tried to cover anything up, because it is all there in the report. They talk about the brakes on the vehicle being unserviceable from a maintenance perspective. They talk about record procedure inadequacies. They talk about a number of deficiencies, but at the end of it they say that none of that was causal to the accident. It seems astounding to me that they could reach that conclusion, not so much in that technical deficiencies were the cause of the accident but in that there was no comment, other than with regard to all the deficiencies from a maintenance perspective, that this needed to be part of a separate inquiry. They made some orders to have some immediate effects on those deficiencies, but it seems to me that the inquiry should have gone further up the line and had a look at the underlying reasons why those issues had not been addressed.

As Yvonne says, these are young men and women who were dedicated to serving and laying their lives down for their country. However, this was a peacetime exercise. In any other industry, you would expect them to have the right to come home to their families. In the mining industry or the oil and gas industry, if you have a vehicle that is unserviceable you just do not operate it. There are no ifs or buts. In the service you have a culture of 'can do' and that is necessarily so, but it seems to me that there is a great incumbency on Command to have a duty of care and to supply a safe working environment. That just did not seem to be addressed in the inquiry.

CHAIR—Would you like to add anything, Ms Giffen?

Ms Giffen—I would like to add something on a more personal note from the family. It has been over two years. It has been a very long and difficult time. I have watched the family struggle with some issues that nobody in their lifetime ever wants to comprehend. We are the people who should have been there when Jason came home and we are the people who should have been able to bounce his children on our knees. That has been taken from us. We ask only for some answers. We ask only for people to look us in the eye and tell us what happened. My nephew did not just die. A 13-tonne piece of machinery turned left on a mountain road for no reason. So that that does not occur again, and for the mothers, aunts, wives and children who wave goodbye to their family members who go into the ADF and are proud to do a good job, we want to know what happened.

Jason was a professional, competent, happy soldier. He loved what he did, and what he did killed him. We want to know that it was not unnecessary. We want to know that somebody learnt something from what happened. We want to know that the people we vote in, the people who allocate the resources to these fine young people who put their trust in them, will be aware that their lives are as valuable as the lives of anyone else in the community. Being in the ADF should not mean that there is an acceptable death rate from accidents or failure of equipment. If anything, under peacetime circumstances, under normal circumstances, because of the very job that we ask them to do when we ship them overseas, when we deploy them, we should be even more respectful of the need to keep them safe when they are at home. How awful to think that our young people may find that the worst enemy that they face in their career in the defence forces is actually their own government, their own command and the people who vote those people in.

Senator CHRIS EVANS—Mrs Sturgess, I would like to start with a couple of questions about your son. How long had Jason been in the Army?

Mrs Sturgess—Ten years.

Senator CHRIS EVANS—So he had been there long term.

Mrs Sturgess—Yes.

Senator CHRIS EVANS—You say he enjoyed being in the Army and was happy in the service.

Mrs Sturgess—Absolutely.

Senator CHRIS EVANS—How long had he been on armoured personnel carriers?

Mrs Sturgess—He initially started at the 2nd/14th, in the reserves, in Enoggera. Then he went to Kapooka and did the training there. Luckily, he was selected to go to armoured corps. Then he was posted from Kapooka to Townsville, to B Squadron, and that is where he has been.

Senator CHRIS EVANS—I would like to take you now to the day he died. How did you find out about his death?

Mrs Sturgess—Watching the six o'clock news on the TV.

Senator CHRIS EVANS—So it came on and said there had been—

Mrs Sturgess—Family members were in the lounge room watching the TV and a report came on that a soldier had been killed—a member of B Squadron, in Townsville. My other son said to me, 'You'd better give Jase a ring, Mum, to see who it is.' I just leaned forward and dialled the number. In actual fact I had dialled the unit, which was something that I never did because Jason always spoke to me when he came back from High Range and debriefed—because he was also my friend. I had inadvertently rung the unit, not consciously. When I realised that I had rung the unit, I knew that it would be in disarray, so I said to the young corporal who answered the phone, 'It's okay. Sorry. I'll ring Jason at home.' He just said, 'Mrs Sturgess, Major Libby would like to speak to you.' Major Libby had to tell me that it was actually Jason who had been killed. Then a padre and a captain from Enoggera came out—at what time?

Ms Giffen—About nine o'clock that night. The first news flash was at about 10 to five before the five o'clock news. Then I took the phone from Yvonne to try to get some of the details. Army representatives arrived some time after nine o'clock that night. They spent some time with us. They left just before 10, and then the 10 o'clock news informed us that a soldier had been decapitated which, in fact, was not true. As the army support left, another flash came across the television telling us that Jason had been decapitated.

CHAIR—The first report that you heard on the television specifically said 'B company', did it?

Mrs Sturgess—It said a soldier was killed on the escarpment coming back from the High Range. I knew that Jason's unit was up on High Range on exercise prior to the second deployment to Timor.

Senator CHRIS EVANS—You concluded, therefore, that it had to be his unit.

Mrs Sturgess—I didn't, no. The boys said to me, 'I'll ring Jase, because Jase would know.' We are like a family, we know quite a few, and it was like an automatic response to one of your own.

Senator CHRIS EVANS—Obviously, you were very shocked. What happened after that? Did you go to the base the following day?

Mrs Sturgess—No. The DCO from Toowoomba, Gina Rasmussen, came down. I have no complaint with the response from the DCO; it was excellent. All the members of B Squadron were terrific in providing me with support and comfort. I do not have a complaint at all about any of that. It was brilliant.

Senator CHRIS EVANS—After Jason's death, what did they tell you in the early days about the accident? Did they tell you there would be a board of inquiry? Did they tell you how he died? I am trying to get your side of what happened, how they handled it and what you found out.

Mrs Sturgess—Firstly, I do not know—

Ms Giffen—From that time until the funeral, Yvonne has—

Mrs Sturgess—I have very little recollection of—

Ms Giffen—Bits and pieces of information would come down, some of it via DCO, some of it via people whom we knew, but there was no-one available who could explain what had happened, maybe because there was nobody who knew exactly what had happened. Plus I know that Jason's workmates were already being debriefed and already being told not—

Mrs Sturgess—They did not know either. It was just one of those things.

Senator CHRIS EVANS—At some stage did they tell you there was going to be an investigation or a board of inquiry?

Mrs Sturgess—I would be lying if I said to you, 'On this day, this occurred,' but I have correspondence from Army legal in Townsville, from Major Worstead and from the DCO Gina Rasmussen. She was a rock for me. If she did not know the answer to any question I had, she would find out. She worked very closely with the unit to be informed as to what was going on. Obviously, at some stage they said, 'There's going to be a board of inquiry.'

Senator CHRIS EVANS—And they invited you to attend that, did they?

Mrs Sturgess—No, not initially. A member of Army legal came out to my place from Brisbane and informed me that it was not really necessary for me to be there and that it would be all right. It was just something to look into. I said, 'I am sorry but I have to be there because I need to know why.' Three times they said to me that it was not necessary for me to be there. But when they realised that I was going to be there anyway they then said that they would provide a legal officer if it came about that Jason needed legal representation. I thanked them very much and said that I had my own lawyer, who would not actually be at the inquiry but was aware that it was on.

Senator CHRIS EVANS—And you attended the whole inquiry?

Mrs Sturgess—Coral and I attended the whole inquiry.

Senator CHRIS EVANS—I think you said it went for eight days.

Mrs Sturgess—Yes.

Senator CHRIS EVANS—I am sorry to put you through this but we are keen to get a sense of how the families are treated and their experience of the system. What was your impression of the inquiry and how it proceeded?

Mrs Sturgess—The inquiry was extensive in that there were very few members of B Squadron from RAEME that were not questioned—all the technical support people were there. I did not feel at the time that there was anything being hidden. It was not until the actual report came out that I was thrown. It seemed to be contradictory. It said that Mr Dean Martin from Materiel in Victoria, the Army's expert on the M113As, said that he found four things that were wrong with the vehicle. The vehicle was considered untaskable. Then the response to this was that this was not causative to the accident. What the hell was? I am sorry.

Mr Martin, in my eyes, lost his credibility as an expert because when he was asked by a member of the board whether diff lock and brake grab occurred in the M113As he sat in the court and said it was an urban myth. Thankfully, one of the other members of the board, who was a member of the armoured corps, leaned forward and said to him, 'Mr Martin, diff lock and brake grab do occur. It has happened to me.' From that moment, in my eyes, anything else that Mr Martin had to say had no credibility. His credibility went. He went from being the expert to being like a salesman: 'These vehicles are the best and there is absolutely nothing that they cannot do.'

Since the inquiry I have done a bit of investigating myself, talking to past members of armoured corps about the sorts of experiences they have had. We all know that machines just do things, and sometimes physically you cannot see that—there is nothing that can be found. But to categorically state in a board of inquiry on the death of a young soldier that these vehicles just could not possibly do it and that that is an urban myth was just, I thought—

Ms Giffen—It was also painful to have the same expert witness describe the people who controlled those vehicles as gorillas. I do not mean guerrillas as in fighting guerrillas; I mean gorillas as in apes. One of the things I remember very clearly from that day, because I actually raised it with the board of inquiry, was that I thought it was really inappropriate, in a situation where we were looking for answers and sharing information, that the men who operate that machinery could be described as gorillas jerking the sticks.

Senator CHRIS EVANS—It seems to me that your central concern is that, effectively, the board of inquiry heard all of the evidence but then did not have the courage to come to the right conclusion. Is that what you are saying?

Mrs Sturgess—Yes.

Senator CHRIS EVANS—You felt that all of the evidence came out—you were not concerned that anything was hidden?

Mrs Sturgess—No, although, I suppose, contradicting myself, the more times I read the report, I start to wonder whether there was something. I do not know. It just does not seem right. There is just no honesty. I do not know.

Ms Giffen—There is no transparency. You have to remember too that we were a family going into an environment where we did not understand much. You can bet your bottom dollar that we understand a whole lot more now. I understand about split differentials and I understand that, if you have a braking and steering system in the same component and it goes wrong, you can have a catastrophic failure. I am a layperson—an ordinary person. I sat in that inquiry and, although I do not have 20 years' experience in any of this stuff, I learned, listened and took notes. Just from what I was hearing I learned that there is something inherently wrong in either the design or the function of that vehicle and perhaps others as well. It was very disappointing to see a report that did not acknowledge that there was a risk involved with that vehicle that could have been eradicated or minimised.

Mrs Sturgess—I myself have had a reasonable amount of experience with the Defence Force. One of my brothers was actually an artificer at B squadron in the seventies—he spent 27 years of his life in the Defence Force—and my husband was a nursing officer, so I have had the opportunity of being in officers' messes and ORs' messes and so forth for nearly 30 years. I have a little bit of knowledge on the ethos of the Defence Force. The other thing that concerns me in regard to these inquiries is impartiality of the members on these boards of inquiry. Whilst they are highly professional people—I am not doubting that—these people are in the ADF and they have a career to protect. I should imagine that there are expectations from Command for a proper outcome. So it sort of puts a slant on the whole process of the ADF making inquiries about themselves by themselves. Impartiality really would be an extreme state to be able to keep overall, I would imagine. That is another concern for me in regard to this.

Mr Ford—The board went down a route of looking at whether speed may have been a contributing factor. They received expert evidence from a very experienced Queensland police officer who stated that speed was not a contributing factor and that the vehicle was not speeding. They questioned him about this. In the report, there were all these issues with regard to maintenance, procedures and risk management that were brought up and commented on. But when they came back to writing their findings, they still managed to speculate that speed, for instance, was a contributing factor but none of the issues to do with procedure and risk management maintenance were. It just seems to be, like I said earlier, that everything is there but the conclusions are just crazy—certainly from a family's perspective.

Senator SANDY MACDONALD—Mrs Sturgess, you are quite generous about the way that Defence reported to you and treated you after the accident. That is particularly telling in view of the fact that you have obviously a very strong connection with the military, having had a husband there and that sort of thing. Putting the board of the inquiry and the accident itself to one side and talking now about the way that you were looked after post the accident, are there any suggestions you can make that we can recommend to improve the system even more than when you saw it?

Mrs Sturgess—How the Defence Force reacted and supported me?

Senator SANDY MACDONALD—Yes.

Mrs Sturgess—No, I cannot, in all honesty, give any complaint in that area. That goes right through to Jason's unit. The support that I still have from Jason's unit is very strong. For that particular question, no. In my case, nothing needs to be changed, because—

Ms Giffen—Except the time lines for how people are told. They have a protocol where the Comcare officers have to be notified immediately. I would like to say that I think that six hours is inappropriate. To have someone take a 40- or 45-minute drive to let Jason's mother know in person what had happened would have been more appropriate. Perhaps in future instances we can aim for some measure of protection—and for some measure of protection for families from the media and regarding how the media release information. I understand that they believe that they have a job to do and that they need to get information out, but they also need to be aware that sometimes the information that they are piping out causes intense emotional distress and damage.

Senator SANDY MACDONALD—Perhaps in these sorts of circumstances it should be that, the instant that something like this happens, there is one contact point that can assist. In terms of handling the media and counselling the family, that one person is the contact point in an instant.

Ms Giffen—I do know that the media made it extremely difficult for the ADF to protect the family, up to and including things like, when they were told not to come to the scene—being aware that a family member of ours was lying crushed between a tree and an armoured personnel carrier—there were actually members of the media who went bush, up a creek, to try and film Jason in situ where he was dead. I think that put an awful strain on the other members of his unit to rein in their own emotion and control the situation. They had a workmate, a colleague and a really good friend who had died in horrific circumstances. They were not able to cover the body. They were not able to remove Jason for a long time. It was hot, it was not a pleasant scene and the idea of anyone thinking that it was suitable to film that kind of—

Mrs Sturgess—But that was not the—

Ms Giffen—No, that was not the ADF. That was directed at the media. They were probably the most difficult people to restrain in the whole process.

Senator SANDY MACDONALD—I have read the BOI report. One thing I cannot recall is whether the vehicle was driveable after the accident. The repairs were quite modest in terms of the sort of vehicle it was. I think there was \$8,000—

Mrs Sturgess—The track had come off. It had to be recovered.

Ms Giffen—There was a protocol about how it was recovered. There was actually a dispute at the scene about who took charge at the scene, who had control and who made the decision. From a family point of view, in terms of dignity and respect, there are some areas that need to be looked at.

Senator SANDY MACDONALD—That is certainly something that can be looked at. Would you like to expand on that?

Mrs Sturgess—One of the recommendations in the report is that the Queensland Police Service, the ADF and Comcare get together at least every year to work out and discuss these types of scenarios, which I imagine would be great for them. When these sorts of accidents happen it is not just one person who is involved; it is a collective of people. That would be important. But the fact is that, on the day that Jason was killed, his unit, the Queensland Police

Service and the military police were all eventually able to say to Comcare, 'No, we're here. We're going to afford this man some dignity in his death. You're in Brisbane; we're here now,' and they did it.

Senator SANDY MACDONALD—That is right. It took quite a considerable amount of time before Comcare arrived.

Mrs Sturgess—Yes.

Ms Giffen—Too long.

Mrs Sturgess—That just adds—

Ms Giffen—Just the idea that it is a family member—

Mrs Sturgess—I actually thanked the—

Ms Giffen—The police for their decision.

Mrs Sturgess—Yes, and sent a letter to the Police Commissioner for the police action, when they said, 'No, this man has to be afforded dignity.' There was a suggestion at one time that Comcare wanted his body to be left in situ while the vehicle was recovered.

Ms Giffen—Which would have meant that the APC was righted and dragged up the embankment, with Jason dead.

Mrs Sturgess—And there was enough devastation, emotionally and so forth, at the time. The fact, though—getting back to the report—is that I do not feel that I have been honestly answered. Somebody has to have the guts to say—

Senator SANDY MACDONALD—What the cause is.

Mrs Sturgess—Yes.

Ms Giffen—To say, 'This is what happened.'

Mrs Sturgess—'Your son was in an old vehicle. We're sorry. We'll try and correct that.' This unit is a deployable unit, and in my opinion the government has a responsibility to every member of the ADF to provide them with the best training and the best equipment that they can. In this case they have failed. The vehicles are too old. I just hope that no other mother or wife, or whatever, has to lose someone.

Mr Ford—In looking at how the inquiry went, we think the parliament or the government should have a greater role in ensuring these inquiries are carried out. I think it would take the pressure off the ADF and those members. Because of the cultural reasons, even if you are professional enough to put it aside and think that nothing you have said will be taken in a blame culture and it will not affect your career, it has to have an underlying effect. Regardless of what the media might think, people—certainly our family—would have greater faith if there had been

either a ministerial inquiry or supervision by a ministerial inquiry or the parliament itself. At least then there is an honest, objective appraisal of the whole accident. That is why we really welcome this inquiry.

Senator CHRIS EVANS—I must admit that, the first time I read the report, I came to the same conclusion: I thought somebody else had written the conclusions. The report is a fairly damning criticism of a range of safety issues to do with the vehicles, the training et cetera, and the recommendations seem to miss that. I start by asking: do you know what happened to the recommendations that came out of the report? It effectively recommended that an independent investigation be conducted into the servicing and maintenance of the vehicles, and it has almost put that issue to one side. Do you know if a report occurred and did you ever see that report?

Mrs Sturgess—No. Brigadier Kelly was the initial head when the accident occurred—it is now Brigadier Morrison. I spoke to him in early January regarding his recommendations. The only thing he said had occurred was that Captain Seares had been reprimanded.

Senator CHRIS EVANS—You do not know whether a separate independent investigation was conducted into the servicing and maintenance of E Squadron?

Mrs Sturgess—No.

Senator CHRIS EVANS—You do not know whether it happened and you have not seen a report?

Mrs Sturgess—No.

Senator CHRIS EVANS—We have talked a bit about the liaison between Comcare and the Army. One of the other recommendations was that the M113 upgrade project be funded to include a seating and restraint system for passengers as well as for crew. Do you know whether that has happened?

Mrs Sturgess—No.

Senator CHRIS EVANS—I am not saying that you should know; I am just trying to ascertain whether you have had follow-up since the report.

Mrs Sturgess—I did talk to Brigadier Morrison about that. That is so important because the general population—and even people within the Defence Force itself—do not know what the requirements are for armoured vehicles. At the time of the inquiry, they did not know whether it was considered a light or heavy vehicle. With regard to the restraints, a crew commander has to actually stand in the turret to be the eyes for the driver, because the driver can only see so far.

Ms Giffen—And he is on the left-hand side.

Mrs Sturgess—So how can you have a seat belt or the current restraints that are there? It just does not work.

Senator CHRIS EVANS—The report says that the seat belts were taped up, so obviously they were not used as part of practice.

Mrs Sturgess—When the RSM of Armoured Corps at Puckapunyal was questioned on that, he said that they looked good in 1962. In actual fact they are taped up now because the people who drive these vehicles and live and work in them consider them dangerous.

Ms Giffen—When soldiers are with full pack and carrying weapons, they are dangerous.

Senator CHRIS EVANS—The report deals with that. It says:

The perception resulted in no operator confidence in the current seatbelts, and therefore seatbelts were not used.

So it was not just the case of Jason; it was clearly the practice that seatbelts were not used.

Ms Giffen—You also have to understand the mechanics of the tow rope. To drop down the tow rope to be safe, if they use the seat that is available they have to stand up, unhook it, drop it and then drop down. If you have a seatbelt on when they try to do that—

Senator SANDY MACDONALD—It makes you a target: you stand up to be shot.

Ms Giffen—Yes; my nephew was nearly six foot five. He was a fine, big, strong man.

Mrs Sturgess—So I would imagine the seatbelt would have to be a separate engineering thing.

Senator CHRIS EVANS—I accept that there is obviously an argument that the seatbelts on them did not work, so they made a decision not to use them. I do not know whether that decision was made as far back as 1962, but it obviously was at some stage along the way. But the reality is that that meant there was no restraint system. One of the recommendations of the report was that there should be and that they ought to upgrade it to include one. Obviously, one of the issues is to check whether or not that has occurred.

Ms Giffen—The refit was a continuing thing that came up in the board of inquiry. It would be really good if you could look at the fact that that refit has been in many white papers. How long have they been waiting for that refit?

Mrs Sturgess—A long time.

Mr Ford—They decided in the report that they were going to give it to Major Libby, because he was responsible for ensuring that people wore their seatbelts. But he had only been there for a short period of time. These are cultural things which they must have known about for a very long time.

Ms Giffen—More than 10 years.

Mr Ford—There was evidence heard that the unit itself had made requests for support to deal with the issues of competency for the troops maintaining these vehicles, but none had been received so they just kept on operating.

Senator CHRIS EVANS—One of the findings is that the vehicle was considered to be unserviceable in technical terms at the time of the accident but the board found that ‘the areas of unserviceability were not causal to the accident’. I gather from what you are saying that you find that very hard to accept.

Mr Ford—In the mining industry, if you have a vehicle that is unserviceable and later on it is involved in an accident—or even not involved in an accident and statutory inspections find that as the mine manager you allowed that to occur—you would be exposing yourself and your company to severe penalties. Depending on the deficiencies, those could be up to the loss of your production licence. That is the civilian standard. Can you imagine what would happen if there was a 250-tonne oil truck that did not have brakes and ran down a hill and the inquiry at the end of it said the brakes were not actually causal to the vehicle running away? You would think that was ludicrous.

Senator HOGG—Do you know if there were other vehicles in the squadron that were unserviceable at the time, and if so how many?

Mr Ford—In the report they said they could not determine that because it was practice to destroy the records after the parade servicings. One of the recommendations is to deal with the reporting of maintenance. Not only were the technicians regarded as not having the adequate training; they did not have enough records to determine whether the servicing had been carried out or by whom.

Senator HOGG—Apart from the official records, which are obviously deficient in this case, was there any general knowledge within the group as to how many vehicles were unserviceable or had a dubious record of performance?

Mrs Sturgess—No, it was not discussed. Jason’s vehicle was the only vehicle that was in question at the time. If members of a unit send signals to Command that they need support—qualified staff, equipment and so forth—and the response is, ‘Can’t do,’ then that unit cannot just say, ‘We’re sorry, we can’t go to Timor for you for the next three months.’ That is the thing I feel the government and Command are responsible for. You cannot send a specialised unit like B Squadron into a war zone in the equivalent of a matchbox, can you? They have to be supplied as well as they can be. In civvy street they can strike; they can say, ‘We’re just going to sit down now.’ But because these people are professionals and they want to be there and do their job, the culture is that a more experienced sergeant or warrant officer in a unit says, ‘Perhaps we can try this,’ and they do, and they do it all the time. They need to be given more assistance with proper, good quality equipment and personnel.

Senator HOGG—Do we know if Jason was aware that this vehicle was unserviceable or that there were faults with it? Was it the normal vehicle that he drove in?

Mrs Sturgess—I really could not tell you that. I would say that he had driven in most of the vehicles, because they are in sections. He was not a mechanic. He was initially a driver and then

became a crew commander. But the two people in charge of this vehicle were trained to know how to change tracks and do their oils and all of that sort of thing. As I understand it, that is something they were trained to do every single day to look after it. I can assure you that, if Jason had found something he felt needed to be looked at by RAEME, then he would have notified that.

Senator CHRIS EVANS—The other issue, apart from the seatbelts, is the whole question of maintenance. The records and the procedures all seem very haphazard. As you say, the report finds that that did not contribute. But from the evidence at the inquiry it seems that there was a widespread problem with the maintenance of, and support for, the vehicles. Is that right?

Mr Ford—That is a conclusion in the report. It was not the finding; they commented on it.

Senator CHRIS EVANS—And this just went to issues of resources, did it? Was it about resources available or was it about the pressure of having to get so many APCs out?

Mrs Sturgess—To be deploy ready?

Senator CHRIS EVANS—Yes.

Ms Giffen—With equipment of that age—

Mrs Sturgess—No staff, or not enough qualified staff.

Ms Giffen—Lack of availability of parts. These men are really resourceful and really clever and work to the best of their ability. They would go to great lengths to secure what they needed to make their vehicle operate. Sometimes the Defence Force was not very helpful in ensuring that those things were readily available.

Mrs Sturgess—Good old Australian soldiers.

Mr Ford—That is what I am saying: these are very high motivated people who have a can-do attitude and who are willing to put their lives on the line. I made the comment in my opening statement that, on that basis, there is a greater duty of care in my view in regard to Command—and I am not talking about their immediate command; I am talking about further up the tree—to ensure that they are backed up. These people just go and do the job.

Senator CHRIS EVANS—So effectively you are saying that that culture meant that they were actually relying on vehicles which in a normal work situation under workplace health and safety regulations they would not have driven.

Mr Ford—Certainly based on the evidence taken in regard to Jason's vehicle it would not be acceptable in industry.

Senator CHRIS EVANS—So there is that tension between the encouragement of resourcefulness and a can-do attitude versus providing a safe working environment. There is a clash between those two ideals.

Mrs Sturgess—Yes.

Mr Ford—Yes. When I was working in the oil and gas industry work practices became much more flexible and open, and people could take on boarder responsibilities. Whilst that was a great thing, it presented particular challenges for supervision in that you would actually have to police highly motivated people harder and say, ‘Look, you need to go to bed,’ or ‘You shouldn’t actually do this. We need to supply training for you.’ I see this as the same sort of environment. So you actually have to have stronger management looking over the top of them to ensure that they are, indeed, working in a safe environment.

CHAIR—I would like to thank you, Mrs Sturgess, Ms Giffen and Mr Ford, for coming along today. It has been very helpful to us.

Senator CHRIS EVANS—Yes, thank you very much. We appreciate you coming.

Proceedings suspended from 10.57 a.m. to 11.21 a.m.

PELLY, Mr Bernard Andrew, (Private capacity)

PELLY, Mrs Christine Anne, (Private capacity)

PELLY, Mr Lyndon Ross, (Private capacity)

CHAIR—Welcome. You are reminded that the evidence given to the committee is protected by parliamentary privilege. It is important for you to be aware that the giving of false or misleading evidence to the committee may constitute contempt of the Senate. With regard to the public hearing, if the committee has reason to believe that the evidence about to be given may reflect adversely on a person, the committee will immediately deliberate in private session and give consideration to the hearing of that evidence in private session. Examples of adverse reflection on a person would include allegations of incompetence, negligence, corruption, deception or prejudice. Where a witness gives evidence reflecting adversely on a person and the committee is not satisfied the evidence is relevant to the inquiry, the committee shall give consideration to expunging that evidence from the transcript and to forbidding the publication of the evidence. Mr Pelly, your submission was received as No. 30. Do you have any alterations to make to that?

Mr L. Pelly—Yes, I do. Firstly, I would like to correct some errors in my submission to the inquiry. On line 4 of page 4, under ‘Treatment of PO Francis’, ‘(BOI pages 1461-1463)’ should be just ‘(BOI page 1469)’. On page 4, in the last paragraph of ‘Conclusions Toward Dead Sailors’, ‘(See Coroners Report page 23)’ should read ‘(See Coroners Report page 24)’. On page 5, under ‘Request for Assistance’, the last sentence, ‘Five months after the inquiry started on 4 June 2002’, should read ‘Five months after the inquiry started on 14 June 2002.’ To my knowledge, they are the only inconsistencies in that.

CHAIR—Thank you. Do you understand the remarks I made about privilege and adverse comment?

Mr L. Pelly—I do.

CHAIR—Do you have any questions on that?

Mr L. Pelly—No.

CHAIR—I now invite you to make an opening statement, to be followed by questions from the committee.

Mr L. Pelly—Thank you for the opportunity to give evidence before this inquiry. After several years fighting the Defence bureaucracy to get to the truth behind the HMAS *Westralia* fire, it became obvious that there was a common link between Mr Brian Smith, the father of Petty Officer Shaun Smith, and me. That common link was that we are both ex-servicemen. Brian served with the RAAF and I served with the Army, we both had technical backgrounds and we were both proud that we had served our country. When we received the BOI report on 17 December 1998, we both knew instinctively that something was wrong. The report was more

interested in reducing damage and embarrassment for the Navy than in giving an accurate assessment of what happened on 5 May 1998. Within a matter of weeks we had both asked the Navy for the full 16 volumes of the BOI report. We needed to confirm the findings of the board ourselves.

For five years after the fire aboard HMAS *Westralia* the families of the four dead sailors constantly had to fight to get any assistance from the Navy or the federal government. Government ministers appeared to be reluctant to get involved with family members and the Defence hierarchy—until the media got involved. It appears that the only way a family of Defence Force personnel can get any assistance from a government or its Defence Force is through involvement by the media. The Navy and the Australian Government Solicitor did everything in their power to prevent the WA coroner conducting an inquest into the deaths of our children. Once that failed, they then deliberately obstructed the coroner at every opportunity.

Why is it that the federal Government Solicitor's office can refuse to supply a state coroner with the contact details—phone numbers and addresses—of serving and discharged personnel to allow that coroner to interview and/or subpoena these people to give evidence in his court? Are these people exempt from the laws of this land? Speaking of these people brings me to one in particular, a Mr Richard Millar. Mr Millar appears to be in charge of the Department of Defence legal position regarding HMAS *Westralia*. In a letter to me dated 15 November 2002, the Minister for Veterans' Affairs, Mrs Danna Vale, wrote:

Assistance will be provided for the cost of air travel and accommodation for immediate family members so that they may attend the inquiry convened by the Western Australian State Coroner.

Travel and accommodation is to be organised by the Department of Defence, who will make all necessary bookings through its established arrangements with airlines and appropriate hotels.

The contact person was Mr Mick Peris, yet the number quoted was Mr Millar's direct line to his office. When the Carroll family in Melbourne rang to arrange their travel, Mr Millar talked them out of going to Perth on 2 December, as the hearing would only be for a couple of hours. This prompted me to write another email to the honourable minister, asking that her staff or department heads refrain from giving unsolicited advice to the families.

When the families again informed the Department of Defence of their intentions to attend the coronial inquest in late April 2003, I received an email from them saying that the department would not supply meals for the families while they were in Perth. The minister's letter stated that we were only to receive assistance for the cost of air travel and accommodation, meals expenses were not included. When I rang the author of the email and asked if it was Mr Millar's decision to deny us a meal allowance, they did not confirm my suspicions but they would not deny them either. I sent another email to the minister asking for clarification. There was no reply from Mrs Vale, but I did get an email from Defence outlining a generous meal entitlement.

During a recess at the coroner's inquiry in May 2003 our counsel, Mr Bernard Collaery approached the Commonwealth's counsel, Mr Wayne Martin QC, to clarify some issues under discussion. Richard Millar was overheard to angrily tell Mr Collaery to 'fuck off'—a statement quite unnecessary at the time or location and this prompted an apology from Mr Martin. Mr Millar's conduct towards the families and our legal representatives has been quite disgraceful for

an officer of the government. Yet Mr Millar is representing the government in paying Mr Collaery's remuneration for representing us at the coroner's inquest. CC LAW is still waiting for their cheque.

One wonders if this is a deliberate ploy by the government to dissuade lawyers from taking on such cases. There seems to be no logical reason why the Navy belittled Petty Officer Francis's testimony at the BOI. During the past six years, I have had many conversations with Max Francis and at no time has he ever lied to me or exaggerated the events of the *Westralia*. For five years Linda Francis could not understand why her husband had been treated so badly by the Navy or why his heroism was not recognised at the bravery awards ceremony, until she had the opportunity to read the BOI transcripts one year ago. After reading Captain Peter Callaghan's closing address to the board, it was quite obvious why. Captain Callaghan's remarks relating to Petty Officer Francis's notebook disappearing could not have been an oversight or mistake. A senior Sydney QC does not make such a mistake. Callaghan's position at the *Westralia* BOI was that of counsel assisting the BOI. His duty was to organise and bring forward all the available evidence to the board. It appears Captain Peter Callaghan's real motives were to manipulate the evidence and to protect the Navy's position.

I strongly believe that there should be a BOI process. I also believe this process should be open, accountable and truly independent. Such a process can never work while the organisation under investigation is the one doing the investigating. An investigating authority needs to be at arm's length when any organisation is under investigation. Only then will the public have any confidence in the results from military boards of inquiry.

Finally, where is the justice when a government department, Comcare, has the power to charge the Australian Defence Industries under the Workplace, Health and Safety Act, yet no such act allows a peacetime defence force or its members to be charged for the same offence? Why hasn't the Navy laid charges or court-martialled those military personnel responsible for the deaths of our children aboard HMAS *Westralia*? In the light of the coroner's findings in December 2003, why hasn't there been a review of the recommendations for honours and awards by the Navy? Are their heads still firmly fixed in the sand waiting for all this to go away? I will not go away until the bravery of Midshipman Megan Pelly, Leading Seaman Marine Technician Bradley Meek and Petty Officer Ray Max Francis is appropriately recognised. I believe I have the documentation to give you some insight into my reasoning behind that.

CHAIR—Mrs Pelly or Mr Bernard Pelly, would you like to add to that submission?

Mrs C. Pelly—No, I do not have anything to say. I just support my husband in what he said.

CHAIR—Do you have anything to add, Mr Bernard Pelly?

Mr B. Pelly—I just want to say how the whole business affects me now. I am her grandfather. I like old time music and when I play a tape or something like that I have to be careful what I play. I cannot play some tapes if Lyndon is about because I am afraid it might start him off again. I like the sounds of the ocean and that sort of thing, but I would not play that when Lyndon is about. I can imagine how all that must affect him throughout his life. That is all I have to say about it.

Senator JOHNSTON—Mr Lyndon Pelly, did you attend the coronial inquest in Western Australia run by His Worship Mr Hope, the State Coroner?

Mr L. Pelly—I did, yes.

Senator JOHNSTON—What were your feelings about the outcome of the conclusions drawn by the coroner?

Mr L. Pelly—I thought the coroner's conclusions were probably as accurate as could be expected, given the time frame for the inquest. The inquest originally was to go for two weeks in December and then it was postponed again until April for three weeks. Then they had to add on another week and really rush through their last week just to try to get to the important items that were still on the agenda. So I think the coroner did a fair summarisation of the evidence that was put forward, yes.

Senator JOHNSTON—He had all the BOI information before him?

Mr L. Pelly—Yes.

Senator JOHNSTON—Did you attend the board of inquiry?

Mr L. Pelly—No, I did not.

Senator JOHNSTON—Have you read the transcripts?

Mr L. Pelly—I have read as much of the transcript as I could take in.

Senator JOHNSTON—There were very many volumes involved.

Mr L. Pelly—You do understand that the BOI started before we had actually buried our daughter. The time frame of the BOI meant that it was absolutely out of the question for any family members to attend it.

Senator JOHNSTON—I understand that. It was almost immediately.

Mr L. Pelly—Yes. It started within five days of their deaths.

Senator JOHNSTON—Yes. Have you read the many volumes of the board of inquiry's report?

Mr L. Pelly—I would say that I have probably read volume 1 of the board of inquiry report from cover to cover. I have read vast sections of the transcripts of the board of inquiry.

Senator JOHNSTON—You may not be able to answer this very well, but what do you perceive to be the difference between the approach taken by the coroner and the approach taken by the board of inquiry?

Mr L. Pelly—I think, to put it bluntly, it is probably an openness—an unbiased view. I think on a few occasions I was probably a bit annoyed with the coroner, when I suppose I was pushing my line or my points—

Senator JOHNSTON—Tell me, what was your line and what were your points?

Mr L. Pelly—I could not really go into detail on them. There were just issues that I was hoping to bring forward at certain times. I know at one stage I think I wrote a letter to the coroner—this is actually before the inquest even started—

Senator JOHNSTON—Did you have legal representation before the coroner?

Mr L. Pelly—We did, yes. Finally, yes.

Senator JOHNSTON—Your lawyer was unable to establish the points that you wished him to establish?

Mr L. Pelly—No, we are getting off on another tangent, I suppose, where I would have had a few arguments with my lawyer, Mr Collaery, over what I wanted to bring forward—

Senator JOHNSTON—Was he your lawyer or was he a lawyer that was your lawyer but was funded by the Navy?

Mr L. Pelly—He was the lawyer representing the families as a whole and he was, supposedly, funded by the government. He is still waiting on their cheque, but yes, he was—

Senator JOHNSTON—You do not carry any personal liability with respect to that legal representation?

Mr L. Pelly—Probably not officially, no.

Senator JOHNSTON—You did not retain him; he was retained for you by the Navy.

Mr L. Pelly—No, we retained him. I suppose we would have retained Mr Collaery in February 1999.

Senator JOHNSTON—Did you actually choose him or was he assigned to you by Navy?

Mr L. Pelly—No, we chose him.

Senator JOHNSTON—From private practice in Brisbane?

Mr L. Pelly—No, through contacts and the assistance that Mr Collaery was providing to us pro bono. From there, through Minister Danna Vale, we eventually got the government to reimburse his expenses at the inquest.

Senator JOHNSTON—Was there any contractual documentation that you were aware of going between the Department of Veterans' Affairs and Mr Collaery?

Mr L. Pelly—Not that I would be aware of, but I am sure there must have been. It was not officially announced in parliament by the minister that the government would do this. The wording will be in the letter that the minister sent, which you would have a copy of, hopefully. I am trying to find it. It might be better if I start reading from the *Hansard*. Minister Vale said:

I thank the honourable member for her question and I acknowledge her ongoing care and support for the families involved in this tragedy. The *Westralia* fire in May 1998 was one of Australia's worst peacetime tragedies in recent years. The fire claimed the lives of four sailors, while others suffered a range of physical and mental injuries. The government is sensitive to the impact of this tragedy on the shipmates and their families and has provided counselling, medical and compassionate care services. Additionally, ready access has been made available through a comprehensive range of benefits and support under the Military Compensation Scheme, which is one of the most generous compensation schemes in Australia. While I do not intend to comment on individual cases, I can advise the House that the government has already made over \$1 million in compensation payments in respect of the *Westralia* fire, and in many cases ongoing incapacity payments will continue over a claimant's lifetime.

The Western Australian coroner has announced that he will conduct an inquiry into the tragedy, although the form of the inquiry has not yet been determined. I am pleased to advise the House that the government will provide legal and other assistance to the families of those who died in the fire so that they may be represented at that inquiry. I am currently considering the form and the amount of that assistance and will be in a position to advise the families very soon.

Senator JOHNSTON—That representation was not available to you or the families with respect to the board of inquiry?

Mr L. Pelly—No.

Senator JOHNSTON—Have you had any difficulty obtaining information with respect to the board of inquiry?

Mr L. Pelly—Yes.

Senator JOHNSTON—What is the nature of that difficulty?

Mr L. Pelly—The main difficulty is with volume 16, the in camera evidence given to the board. I still do not understand why I, being as close as I am to this, or other family members should not be privy to all the evidence that was in camera, providing that information is not of a secret nature. I do not believe that privacy laws should conflict with our need to know the facts.

Senator JOHNSTON—Was the coroner privy to volume 16?

Mr L. Pelly—I could not tell you that.

Senator JOHNSTON—Was there anything to your knowledge that was kept from the coroner or not discussed?

Mr L. Pelly—Unfortunately, because I do not have the full volume 16, I do not know.

Senator JOHNSTON—Did your lawyer advise the coroner that there was a volume 16 that was in camera evidence?

Mr L. Pelly—The coroner should have known. I certainly advised the coroner of that.

Senator JOHNSTON—You did advise him?

Mr L. Pelly—Yes.

Senator JOHNSTON—Was there not some discussion about volume 16?

Mr L. Pelly—It would have been in one of my original letters to the coroner, complaining about how we were not privy to a lot of the information in that volume. I did get a part of volume 16, with many, many blank pages in it.

Senator JOHNSTON—Was a specific issue made by your counsel, to the coroner, with respect to volume 16?

Mr L. Pelly—Not that I am aware of.

Senator JOHNSTON—Do you know why that was?

Mr L. Pelly—No.

Senator JOHNSTON—Let us go back to the original question. Did the coronial inquest satisfy you as to the transparency of the process of investigation into the tragedy, the incident? At the end of the coronial inquest did you think, ‘They still haven’t looked at a whole lot of things’?

Mr L. Pelly—At the end of the inquest I thought—and I still believe—that there were issues unresolved.

Senator JOHNSTON—Did you advise your lawyer of that, and were submissions made to the coroner with respect to those issues?

Mr L. Pelly—Yes, and those issues were dealt with in the coroner’s court. Some of those issues were either agreed to by the coroner or ruled out of his jurisdiction.

Senator JOHNSTON—Can you remember what issues were ruled out of his jurisdiction?

Mr L. Pelly—I think a lot of it was to do with maritime law. I believe the coroner was interested in looking into the aspects of the position of the ship—what adequate steps were taken to ensure that the ship did not run aground and so forth. I think the Australian Government Solicitor’s office argued successfully that it was outside the coroner’s jurisdiction.

Senator JOHNSTON—It strikes me from what you have said that there has been a very thorough, two-pronged investigation—one was a naval board of inquiry; the other was a coronial

inquest in Western Australia—and that, broadly speaking, you are satisfied with the intensity and thoroughness of the inquiry.

Mr L. Pelly—Which inquiry are we talking about?

Senator JOHNSTON—The combination of the two inquiries into the incident giving rise to the tragedy. Correct me if I am wrong, but that is what I am getting from what you are saying. The principal area of concern is that retributive action appears to have been taken by Navy with respect to witnesses and participants in the inquiry, in terms of commendations and other things, that you feel has been unfair, unjust and leaves you concerned, as a parent. Is that accurate?

Mr L. Pelly—That is one area of disappointment to me, yes.

Senator JOHNSTON—Can you summarise what the other areas are?

Mr L. Pelly—Yes. The other area, as I have said numerous times and intimated earlier, is the need to be open at an arm's length. I have no hesitation in saying that I believe the board of inquiry into the fire on HMAS *Westralia* was nothing more than a farce. Although there was a lot of in-depth investigating, there were also a lot of obvious oversights. Why they did not look into other areas or bother to spend more time on certain areas defies logic.

Senator JOHNSTON—Did your counsel make detailed submissions to the Western Australian coroner regarding those matters?

Mr L. Pelly—I do not know about detailed submissions. Unfortunately, I am not a lawyer, which is one of the reasons why we had a solicitor there representing us.

Senator JOHNSTON—Did he raise what you have just said?

Mr L. Pelly—To the best of my knowledge, yes.

Senator JOHNSTON—So the coroner was aware that you believed there were shortcomings in the board of inquiry?

Mr L. Pelly—Yes.

Senator JOHNSTON—What other matters were there? You mentioned commendations and shortcomings in the board of inquiry. What other issues were there?

Mr L. Pelly—That is basically most of it. In my opinion the board of inquiry was not run as an open investigation; it was run as a partially open attempt to reduce the impact of any embarrassment to the Navy.

Senator JOHNSTON—So how do you think those problems could have been handled differently such that your concerns would have been addressed?

Mr L. Pelly—By having independent board members who were not involved with the Navy and by having an independent counsel assisting that board who was not employed by or

responsible to the Navy. I have no doubt that Captain Peter Callaghan did not act in an honourable manner in the way he conducted that board of inquiry. There is no doubt in my mind about that. I might be wrong; I might be right. I am not an expert on military law or law in general, but my gut feeling—as an ex-serviceman with a lot of experience in mechanical engineering—is that there were obvious oversights. I looked at those and was dumbfounded.

Senator JOHNSTON—But these matters were in fact put to the coroner?

Mr L. Pelly—Yes, most of them.

Senator CHRIS EVANS—Mr Pelly, we very much appreciate you and the other members of your family coming forward today. One of the key issues the committee are trying to come to grips with is the issue of boards of inquiry and investigation and whether they serve the needs of members of the ADF and their families. I notice one of your submissions goes to the question of no representation at the board of inquiry. I note what you said about how quickly that happened and that you were still dealing with the loss of your daughter et cetera, but I just want you to tease out for me why you thought they were disadvantaged by not being represented at the board of inquiry.

Mr L. Pelly—There was nobody there who bothered to defend the four dead seaman. There were statements made, and I still believe that some of them were derogatory; one, in particular, towards my daughter. In a normal legal sense, had there been somebody there to protect my daughter's interest, I am sure that that would have been fixed up at that board of inquiry. I believe that the Navy did not think it was in its best interest to defend her.

Senator CHRIS EVANS—Do you think by having a sort of formal inquiry like that that there is a risk that those who are unrepresented could have observations or conclusions drawn against them which might not be fair or which might not be sustained if they had legal representation there?

Mr L. Pelly—It happened in my daughter Megan's case. I did have a lot of information—copies and whatnot—to give to senators.

Senator CHRIS EVANS—That is fine. We will have all that paperwork. I just wanted to use this opportunity to let you say on the record what you want to say. I want to concentrate on the board of inquiry for a second.

Mr L. Pelly—I am. This is the area where I began to fight, when I noticed the way that my daughter had been maligned at the board of inquiry. It was not done openly. To me, it was bloody underhanded. From the way I read the information in the board of inquiry, an observer would have got the impression that (a) my daughter had disobeyed a lawful command and gone into the engine room and (b) had panicked and contributed to her own demise. Both of those things were completely wrong. I had gut feelings about them because I knew my daughter and her character very well and it completely went against her character, so I started to investigate those things. It took me five years to finally get somebody to admit—and it was during the coroner's inquiry—that my daughter was ordered into the engine room.

Senator CHRIS EVANS—Did the coroner make a finding to that effect?

Mr L. Pelly—He did, yes.

Senator CHRIS EVANS—On that aspect, do you think that the conclusion of, or the evidence to, the board of inquiry was overturned by the finding of the coroner?

Mr L. Pelly—I certainly hoped it would be. I believe that the coroner's conclusions—

Senator CHRIS EVANS—No, I am not asking that. I think it is fair to say that the coroner's statement is now taken as being the definitive statement about what happened. Did you feel that you received satisfaction from the coroner's inquiry because he dealt with that issue and came to a different conclusion?

Mr L. Pelly—That is right. I believe that the coroner had a more open view of the circumstances and also he had a lot more information that was not given to the board of inquiry. That information was always there; it was just that nobody bothered to look for it, because it was not in their best interests to find it.

Senator CHRIS EVANS—I will come to the timing of the board of inquiry, because that is obviously an issue now. You made the point that you had not even had your daughter's funeral, so you were in no condition to take an interest in the board of inquiry or in some of the issues that arose, and everyone completely understands that. I suppose Navy will say to us, 'We have our board of inquiry quickly, so we can deal with witnesses while matters are fresh in people's minds, and while the issues are still there we want to get in.' It is a quick and early investigation while it is fresh, and no doubt there is some logic behind that. What do you say about all that? Is it reasonable that they do an early and quick investigation?

Mr L. Pelly—Definitely not. You just have to look at any courtroom setting and, again, you will see there is a lot of similarity between a coroner's court and a board of inquiry, as far as they are both generally trying to achieve the same outcome.

Senator CHRIS EVANS—I am playing devil's advocate here, but I think Navy's or defence's response would be, 'No, we've actually got a responsibility to find out what went wrong on the *Westralia*, so we can make sure that it is not a systemic problem that might affect one of our other ships. There was a major fire, we lost four very young sailors and we've got to find out whether this will happen on the *Success* or something else, quickly.' As I say, I am playing devil's advocate, because this is the argument.

Mr L. Pelly—The copy of the document in your file was written in 1991 by Lieutenant Commander David Sadler and sent off to the director of naval safety, Russell Offices, Canberra.

CHAIR—Is that the one that has just come in?

Mr L. Pelly—That is right, yes.

Senator CHRIS EVANS—Perhaps you could describe the document.

Mr L. Pelly—It is a 10-page document written by Lieutenant Commander Sadler RANR. The first paragraph reads:

During a recent visit of HMAS *Westralia* to the port of Geelong to load fuel prior to deployment to the gulf, I was able to assist the RANR with pilotage advice and Shell terminal operating procedures. Prior to departure, I had the opportunity to walk around the deck and what I saw concerned me enough to prompt this letter.

This letter is headed 'HMAS *Westralia*: a tanker casualty waiting to happen'. That was issued in 1991 and, to my belief, nothing ever came of that 10-page report by a lieutenant commander who is a pilot in Western Port Bay.

Senator CHRIS EVANS—Thanks for that. I will have a close look at that. Can I take you back, though. Our job on this committee, if you like, is to try and come to terms with the military justice processes and to work out how they can be done better. We are not going to fix what happened with the *Westralia*; we are not going to fix what happened with anything else. We are relying on people like you to give us evidence so that we can work out what recommendations to make, so I am really trying to tease out with you what investigations we should do quickly and what investigation we should do slowly. I get the sense that what you are saying to me is that, while it would be appropriate to have a quick investigation, something as formal as a board of inquiry ought to be delayed until there is proper legal representation and some time has elapsed. Is that what you are saying?

Mr L. Pelly—That is correct. I do not believe that it is in the best interests of the Navy personnel or anybody else to have a quick investigation. I believe there have to be quick decisions made on safety issues if there is an obvious safety concern resulting from an accident or whatever but, as you say, a formal board of inquiry does need to be properly and adequately investigated before it starts.

Senator CHRIS EVANS—The coroner's inquiry was initiated five years after the accident only as a result of pressure from the families and ongoing concern. Would the board of inquiry have been the final military justice word on the accident?

Mr L. Pelly—Had we not had the coroner's inquiry, the board of inquiry would have stood as the only inquiry into the fire and any of the conclusions of that inquiry would have become fact.

Senator CHRIS EVANS—How did you come to hear of the death of your daughter? How were you informed of the death of your daughter?

Mr L. Pelly—I think it has been fairly well documented, but we found out our daughter was dead from a five-to-six news bulletin on Channel 0. We had been informed prior to that that our daughter was missing or unaccounted for.

Senator CHRIS EVANS—So the first contact you had with Navy was when someone from Navy contacted you to say your daughter was missing?

Mr L. Pelly—The first contact we had was as a result of us getting in touch with the Navy.

Senator CHRIS EVANS—Why? Was that because you had seen a news report that there had been a fire? Would you just take me through the stages?

Mr L. Pelly—This is all off the top of my head at this stage. I have a younger sister in Brisbane. She rang me at approximately 3 p.m. She knew that Megan had just gone over to the west for sea training. She said, ‘There has just been a news flash on the Channel 9 News’—or whatever—‘that there is a Navy ship on fire over in Perth.’ I did not have a lot of concern at that stage. I thought, ‘Well, there are 15 Navy ships over in Perth.’ Knowing what I know about the military and the safety aspects of the military, I really did not have a big concern about it. To appease her I said, ‘I’ll ring up the Navy and find out what’s going on.’ Luckily—and I must give one bouquet to the Defence Force, the Navy or whatever for this—when I opened the phone book there was a 1800 number for Defence family information. I thought, ‘Oh, that’s good,’ and I rang that number. As soon as I mentioned my name, I was put on hold and the next thing I knew I was talking to HMAS *Stirling* in Rockingham. I was then informed that, yes, there was a fire on HMAS *Westralia* and that there were four sailors still unaccounted for or missing, who had not made rollcall, and that my daughter was one of them. They said they would contact me with more details when they knew something.

It probably took about 30 seconds for the seriousness of the situation to sink in. My first instinct, being ex-Army, was that Megan had probably missed rollcall—they had had a fire, and the first inclination was to call the roll to find out where everyone was—and was in the latrines, or whatever. Then I thought, ‘No, it has to be more serious than that,’ so I arranged for staff to come in and for Chris and me to go home and await any news.

We again rang HMAS *Stirling* at about half past five, or something like that. I believe, at that stage, we spoke with Commander Johnson, the CO of *Stirling*, and did not get any more news. It was all just, ‘You’ll just have to wait and see what happens.’ It was not long after that that a newsflash came over Channel 0 news, saying that it was being confirmed that there were four dead sailors on board HMAS *Westralia*. You do not have to be Einstein to know that if there are four sailors unaccounted for and there are four dead bodies on *Westralia* your daughter is one of them. We again rang *Stirling*, and, over the phone, my wife had to virtually beat it out of Commander Johnson that Megan was dead. She kept insisting, ‘You tell us now: is my daughter dead or alive?’ On about the third go, Commander Johnson finally said, ‘She’s dead,’ and that was the way we were informed.

Senator CHRIS EVANS—Did you fly to Perth the next day?

Mr L. Pelly—Yes. As soon as we got that confirmation, I called some friends around to give us a bit of support. I cannot remember whether we did it while they were there or whatever, but I got straight onto the phone and rang up an airline and booked the first available flight. At that stage our older daughter was living in Perth on her own. She was of major concern to us, as she was completely by herself.

Senator CHRIS EVANS—You make a couple of comments about other families and BOI investigations in your submission. We have had quite a lot of evidence from families about this process which seems to indicate that families want more personal information, and that military reports are quite good at describing—

Mr L. Pelly—They are quite good at covering up whatever they went to cover up.

Senator CHRIS EVANS—Other witnesses have put to us that reports can describe the ship, the time and whatever but they do not actually provide the sort of information that the families are looking for in terms of answers about what happened to their particular family member—more personal things.

Mrs C. Pelly—We had to get that from the sailors themselves. Lyndon had to track down a lot of people to get answers.

Senator CHRIS EVANS—You felt you got more from talking to the other sailors and friends about those sort of things?

Mrs C. Pelly—Yes, definitely.

Mr L. Pelly—I do not want to harp, but, really, we got the truth from the sailors. We got their impressions, their thoughts, their experiences firsthand and, as you were alluding to, in layman's terms that we could understand. There was just so much—again, this is why I referred in my opening address to Mrs Smith and me being ex-servicemen. We could read the terminology and we knew the system, and that is why we immediately knew that it was not right—that it is not the way the military works, not the way it is done. As we investigated, talking to crew—in dark alleys sometimes, because crew and Navy people were warned off talking to us—we started to piece together a more accurate picture of exactly what happened. I have gone into detail in my submission with Petty Officer Francis, who I believe is going to give evidence at some stage. That poor man has gone through hell over the last six years, and he has done absolutely nothing wrong. He has just been crucified.

Senator JOHNSTON—Mr Pelly, with respect to the way you were informed of your daughter's death, I take it you are aware there is a protocol with respect to how next of kin are informed in such circumstances and that the telephone is not the most appropriate way.

Mr L. Pelly—I am aware that there is a protocol. I am not exactly sure what that protocol is. It had been explained to me at the time, but at the same time—again it is because of my military background, I suppose—I could not understand how people could have been so bloody stupid in that situation. I understand how it happened. What I do not understand is why it was allowed to happen.

Senator JOHNSTON—Because you were not told properly sooner.

Mr L. Pelly—We know the story behind it. We had long discussions with our DCO—

Senator JOHNSTON—And what was the explanation given to you?

Mr L. Pelly—That they were kept in the dark until it was too late to get to Dalby to tell us personally.

Senator JOHNSTON—Is that because the vessel was severely restricted?

Mr L. Pelly—No; because it was kept under wraps by the Navy. The DCO in Brisbane was put on standby that they had to go and see a family. I am not sure if she actually knew that the

sailor had died or it was a serious casualty or whatever. She was put on standby about three o'clock. It was not confirmed and she did not get a name and address until after 5 p.m., and it was not long before the minister or the Chief of Navy was to make public appearance to give details. She was in Brisbane and we were in Dalby; we were three hours away. They had plenty of time to let her know who the family was or the location. She could have immediately said, 'Hang on, that is in the bloody country.' The military is made up of people from all around Australia. Within that office, or wherever, whoever was doing that, you are almost swear there would have been somebody in there who probably lived within 100 miles of Dalby. Had they been aware, they could have said, 'Megan Pelly, her parents are in Dalby; that is in country Queensland.' The officer in charge surely would have had enough commonsense to look up a map to find out where the next of kin of these deceased people were. Nobody bothered to do it.

Senator JOHNSTON—Are you aware whether, at the time of your discussion with Commander Johnson, *Westralia* was back at *Stirling*?

Mr L. Pelly—No, I was not aware at the time, but I am aware that the names of the deceased were forwarded to *Stirling* prior to the ship getting back—I believe by mobile phone, because that was the safest communication at the time—and that they were well aware of it hours before the ship docked.

Senator JOHNSTON—All right.

Mr L. Pelly—I do not know whether you are aware of this, but during that afternoon—and I probably need to correct what I said earlier when I was asked if we had any more contact from the Navy—we in fact did have a phone call from the Navy, probably between 4 p.m. and 5 p.m. I took the call, and I believe it was a young female sailor ringing us to advise us not to worry and that our daughter was safe and well. At that stage I had to inform the young sailor: 'I have contrary information to say that my daughter is unaccounted for, so is this new information or can you go back and check the information?' She was obviously fairly embarrassed and said, 'I'll get back to you.' I think she rang back within five minutes to say, 'I'm sorry. Your daughter is still unaccounted for.'

Senator JOHNSTON—Where was she ringing from?

Mr L. Pelly—I believe it was from Russell Offices. I believe that they had set up a phone ring-around from Russell to inform all the next of kin of the condition of the crew.

Senator JOHNSTON—So they rang the next of kin of each member of the ship's company, of the 98 crew, that evening?

Mr L. Pelly—Yes. How much commonsense would it have taken for somebody to cross off that list not only the names of the four deceased but possibly also the other three or four injured people who were sent to St John of God Hospital? You do not have to be a rocket scientist to know that. It was pure incompetence on somebody's behalf. To my knowledge, that has never been addressed.

Senator JOHNSTON—All right.

CHAIR—Thank you very much for coming along today.

Senator CHRIS EVANS—Thanks very much for coming. It was great.

Mr L. Pelly—Thank you, on behalf of my family. I hope that the committee does get a chance to peruse the information that I have given, because there is some important information in amongst that stuff. Thank you.

CHAIR—Thank you.

[12.20 p.m.]

CAMPBELL, Mrs Michelle Lee, (Private capacity)

GOODMAN, Mrs Cheryl Lenore, (Private capacity)

LIDDELL, Mrs Dulcie Kathleen, (Private capacity)

CHAIR—Welcome. You are reminded that the evidence given to the committee is protected by parliamentary privilege. It is important for you to be aware that the giving of false or misleading evidence to the committee may constitute contempt of the Senate. With regard to the public hearing, if the committee has reason to believe that the evidence about to be given may reflect adversely on a person, the committee will immediately deliberate in private session and give consideration to the hearing of that evidence in private session. Examples of adverse reflection on a person would include allegations of incompetence, negligence, corruption, deception or prejudice. Where a witness gives evidence reflecting adversely on a person and the committee is not satisfied that the evidence is relevant to the inquiry, the committee shall give consideration to expunging that evidence from the transcript and to forbidding the publication of the evidence. Mrs Campbell, I gather you are going to be speaking.

Mrs Campbell—Unless Mum cannot speak.

CHAIR—Are you going to speak, Mrs Liddell?

Mrs Liddell—Yes.

CHAIR—Mrs Liddell, your submissions were received and numbered 13 and 13A by the committee. Do you have any alterations to make to those submissions?

Mrs Liddell—Another section was faxed off about two weeks ago. I have it here.

Senator CHRIS EVANS—We have both of those. That is why the Chair said ‘13 and 13A’—they are the two bits.

Mrs Liddell—Okay.

CHAIR—Are you clear about the statement I made about privilege and adverse comment?

Mrs Liddell—Privilege, yes.

CHAIR—Do you have any questions on that at all?

Mrs Liddell—No.

CHAIR—I now invite you to make an opening statement.

Mrs Liddell—I would like to thank the Senate inquiry for inviting me to these proceedings. My son Matthew committed suicide last November at the Toowong Private Hospital. He was undergoing treatment for post-traumatic stress disorder, which was a direct result of the *Westralia* tragedy in May 1998. My concerns revolve around what I have written in the submission about the lack of care taken from the beginning of all his problems. Matthew should not ever have got to the point of no return at any one time during the six years that elapsed. It is criminal, in my opinion, that Matthew's path in life led to his death. If he had had full-on proper care and treatment from the start, a different outcome would have been achieved—and I truly believe this. It shoots down in flames Admiral Ritchie's claims that Matthew was given the best of care and medical treatment. Maybe he should read Matthew's med documents; he might come to a different conclusion, especially when one of Matthew's doctors in Stirling told me: 'Matthew was throwing tantrums. He didn't have post-traumatic stress disorder.'

I think this commander needs to go back to medical school. This was towards Christmas 1998. The Navy had plenty of time to do something constructive then. It is abhorrent that Matthew's mental state deteriorated to such an extent that he gave up on life and suicided. I would like to know why, on admission to hospital—and he is still under government care; doesn't Veterans' Affairs pay for this medical care?—Matthew was left with items to hurt himself with when the doctor had diagnosed Matthew as suicidal. This is another question that will not be answered. Why was this allowed to happen?

Matthew's psychological treatment was a joke from the very beginning. His clinical psychologist in Perth, after the *Westralia* tragedy, discontinued his visits after the third visit, because Matthew was 'within the range of normality'. Something is dramatically wrong when, after three visits, Matthew, who had been diagnosed with post-traumatic stress disorder, can be assessed as almost normal. You see the dilemma: no treatment of any value was given. It could only get worse.

Seventeen months later or thereabouts, after badgering people, I finally got the help Matthew needed from 2 Field Hospital at the Enoggera Army base. The medical officer there took Matthew's problems seriously, and proper treatment was undertaken. But this was not soon enough, and that is painfully obvious now. Before this had been effected, Matthew had finally, after my intervention, been transferred to *Penguin*. Through the local medical care he ended up with more problems. He started to have alcohol problems. He was using alcohol as an antidote for depression and to induce sleep. For nights at a time he could not sleep. This aggravated his stress levels, so he ended up in trouble. He faced the captain's table on two counts of prejudicial behaviour.

This started with the disgusting behaviour of three of his superiors in rank calling him fag, gay boy et cetera, insinuating that he was homosexual. This harassment and intimidation went on until he snapped. Most members were in the workshop when this behaviour was going on, and he was physically abused by leading seamen. He was given 'dead legs and arms'—that is, punching. Now Matthew faces the captain's table and, what is worse, he has to apologise to these disgusting excuses for human beings, and he cops fines and confinement to base. Where is the justice? He was not gay nor did he ever have those persuasions. This episode is unthinkable, inexcusable and cruel. To make it worse, he was being abused by his divisional officer, who was one of those poor excuses for a man.

Matthew had had enough problems in his life with post traumatic stress with all this garbage. In this so-called military justice system, where was the justice in this situation? If there was a system in place, why was something not done about these people? I was under the impression that if you were having problems you went to your divisional officer. How could my son do that when his divisional officer was one of the abusers? I spoke to the captain in charge of *Penguin* and she was blissfully unaware of why Matthew was at *Penguin* in the first place. What is more, I do not think she really cared.

I did not know until a couple of weeks ago about what was behind the events that happened. Matthew had never told me. He never complained about any of the things that happened to him. I found his journal, and all this was written down, amongst a lot of other issues. Matthew came home on leave in August 1999 and he was suffering with deep depression and was admitted to 2 Field Hospital. It was at this time that the medical officer there did something about the problems. I believe the post traumatic stress course cost in the vicinity of \$16,000, which the Navy was not happy about.

The Defence Force does not really put much value on our kids' lives, does it? Matthew not only lost his health and wellbeing; he also lost his career and income and the will to do something with his life. Then he also lost his life. I tried so hard to help him and make his life easier, but all the love and care, even from me, was not enough. His struggle started on 5 May 1998 and ended on 23 November 2003. When he left me and our family, part of me died with him. It was such a tragic waste of life and of a very worthwhile and caring human being.

Nothing can ever fill the empty void in my life: the sense of desolation and panic I feel when absentmindedly I look from him and realise he is not there anymore. I miss him so terribly. My life is forever changed. Stop all these bad things happening to others. It has to be addressed, and now, before we lose more of our children. After all, they are supposed to be our future, aren't they? We all need to take care of our kids.

There is just one other part to this. Peter Cosgrove stated on 16 February 2004 that he did not want this inquiry to lead to the Defence Force losing control of their internal justice system. As far as I am concerned, we—all the families—would not be in this situation if the system had been under control in the first place. His comment, 'The dead don't lie,' is an insult to our intelligence. Are we, the families, lying? Am I lying about what happened to my son? I say to Peter Cosgrove and the hierarchy of the other branches of the Defence Force and Robert Hill, the Minister for Defence, walk a mile in my shoes; lose a son in these tragic circumstances; feel the pain and misery and the sense of hopelessness and emptiness. Every day of my life Matthew is in my thoughts. I feel desolate knowing I cannot give him a hug and I cannot talk to him. The loneliness follows me everywhere I go. I have lost my soul mate, for he was my truest and most loyal friend and a caring and loving son. I do not want condolences; I want answers to make some sense out of my misery. Why and how was Matthew let slip through the cracks? I have lost part of my life and for no damn good reason.

So I say to Cosgrove and the rest of the hierarchy, 'Listen. You just may learn something out of all these avoidable tragedies of the families concerned. Do your jobs with wisdom, heart and care. You are not above God's law. You are not a power unto yourselves. If you cannot do this right for every member, step aside for someone who can. Everyone down in the humble ranks is important. You would not have your jobs if it were not for the lower ranks. Treat them with the

respect they deserve. As previous serving members have said, if officers did their jobs with wisdom and care a lot of incidents could be avoided, so the buck starts with them. You the hierarchy should be formatting guidelines and procedures for them to follow and therefore the buck stops with you. You have to be accountable as leaders and in my humble opinion you have all failed duty of care.'

CHAIR—Thank you. If no-one wants to add anything, we will go to questions.

Senator BARTLETT—Firstly, thank you for giving evidence today. I am sure it is difficult for you but, as you said, the aim of this inquiry is to see if there are lessons to be learnt. I am sure your contribution will help with that. As you referred to in your statement, Navy have said that they did provide treatment for Matthew, both before and after his discharge. Obviously, you feel that treatment was not adequate or sufficient. Could you elaborate just a little bit further on what ways it was deficient?

Mrs Liddell—On the third visit to the first psychologist after the *Westralia* tragedy he was deemed as being within the normal range of normality. So he was virtually cured in three visits. But he had post traumatic stress and there is a lot still they do not know about post traumatic stress. The doctor may have been a clinical psychologist but obviously he did not have the means to provide any more treatment for him. That is how I see it.

Senator BARTLETT—Was there any assistance, advice or information given to you or the broader family about how to help someone with depression?

Mrs Liddell—No. The DCO from Mitchelton dropped off pamphlets at my daughter Michelle's house in Keppera. There was no conversation, no talking about it; nothing was explained. It was not until I had a suspected heart attack in 1999 and the cardiologist at the hospital arranged for me to visit a psychologist—it was all the stress of living with Matthew on a daily basis. Now I have forgotten what I was trying to say. I am doing this a lot lately; I am sorry. What was the—

Senator BARTLETT—It was whether there was broader support, particularly after his discharge.

Mrs Liddell—We had no support. My psychologist made arrangements to get my family together to explain the repercussions of post traumatic stress, but that did not happen for some time.

Senator BARTLETT—After his discharge, did you have any type of contact from the Navy other than Matthew's medical treatment?

Mrs Liddell—No; not that I can remember anyway.

Senator BARTLETT—Was depression something that Matthew suffered from in any way prior to the HMAS *Westralia* tragedy?

Mrs Liddell—No, he did not have any problems. He was happy-go-lucky. He had a very keen sense of humour. He had no problems whatsoever psychologically. I sent you a reference—I do

not know if you have read it—that was written for him when he was in the Reserves, before he changed over to the Navy. That was what Matthew was like.

Senator BARTLETT—From the time he was discharged in May 2000 until last year, was he living with you?

Mrs Liddell—Yes, he was at various times.

Senator BARTLETT—So you would have had fairly continual, regular contact with him in terms of the state of his mental health?

Mrs Liddell—I visited him every day when he was not at home, until I got so tired. We even sold our house to move closer to where he was for those few months that he was in it. We made sure that we were popping in and out on a regular basis, but doing it so that he was not aware that we were keeping a close eye on him. I think deep down he knew because he used to leave the washing-up for me to do.

Senator BARTLETT—So he did not spend much time in hospital other than the time of his death?

Mrs Liddell—No, he had a couple of visits to hospital that I remember—that was out at 2 Field Hospital at Enoggera Army base. Then he had to have his nose reconstructed—I think that was done before discharge too—but the Army hospital sent him home for me to look after.

Senator BARTLETT—If it is not too difficult for you to answer, was it a conscious fear of yours or the broader family that he might try to harm himself?

Mrs Liddell—It did not even dawn on me that that would happen—that is as true as I sit here. I was absolutely amazed the day he was admitted to Toowong Private Hospital that his psychiatrist told me that he was suicidal. I had no inkling whatsoever before that. He used to get very depressed. He was very irritable and all that type of thing because he did not sleep for nights on end. It was nothing for me to go into his room at daybreak and turn the light off; that probably happened hundreds of times during that time.

Senator BARTLETT—I do not want to overdramatise things, but would it be fair to say that the period following his discharge was fairly draining for you and the wider family?

Mrs Liddell—It was very draining. I went downhill then, but I managed to pick myself up. But then, when he died, I just went to pieces and I have been that way ever since.

Senator BARTLETT—Have you had any contact or assistance from Defence since Matthew's death?

Mrs Liddell—No. The only thing I have had is letters of condolence from Admiral Ritchie and from the skipper of the *Westralia*—both of them—and that is about the only contact I have had.

Senator BARTLETT—If it is too general a question, you do not have to answer it, but is there any one thing in amongst all of the concerns you want to highlight that you think really must be done differently in the future?

Mrs Liddell—They need to understand a lot more about post-traumatic stress because that evolves from a major number of incidents that can happen in your daily life—car accidents, in peacetime with what happened with Matthew, in the field and all sorts of things. They have got to look for those symptoms early. They have to be treated full-on from the start because, if they are not, that is manifested in their mind. They have feelings of insecurity—there is a whole range of things that happen to them plus the fact that they do not look after themselves: they do not eat properly or sleep properly. That only creates other problems. It creates a lot more psychological problems. They have a feeling of rejection—I could go on forever about the consensus of what happens after post-traumatic stress. You do not know where to start, but I think there needs to be more knowledge. There need to be things put in place so that these kids do not have to go through this sort of thing, and it has to be done from day one instead of mucking them around.

If a kid is having problems and throws a tantrum—you have all had children, I suppose—what do you put their bad behaviour down to? A lot of times something is wrong, isn't it. Something has happened through the day that has upset them. You come home from work and you do not really realise: 'Oh, he's just being a little stinker.' But what did happen today that upset him? We are talking about adults here. If people whinge enough there has to be a reason for it, but Matthew never did that either. He kept so much to himself. Like I said in my opening statement, I never knew about a lot of things until I started reading his journals and everything. He wrote a lot of stuff down. It was not very complimentary, a lot of it. I would not repeat some of it, actually. But that was his way, I suppose, of getting it out of his system. How do you get your frustrations out?

CHAIR—Mrs Liddell, in your additional submission you talk about an incident where Matthew was bashed by a number of people—submariners.

Mrs Liddell—That is right.

CHAIR—Would you like to describe what happened? How were you advised of that? Did Matthew tell you that or were you told afterwards?

Mrs Liddell—Actually, he made a phone call and made light of it. He rang his father, and Bruce said to him, 'You know what you do: you attack the biggest bloke first, then you go after the others.' He did that but he ended up in the gutter. This was because he did not like submarines at all. He felt claustrophobic—

CHAIR—Did he apply to transfer to submarines?

Mrs Liddell—He joined as a submariner. He never listened to any advice. His uncle was a chief coxswain on submarines and his brother was also in submarines, but Matthew had a mind of his own and would not be told. He went ahead with that, and we were not the slightest bit surprised that he did not like subs at all. So he tried to transfer to surface ships, which was effected eventually. But there is a paranoia that submariners have: they are the only branch of the service—you know that, don't you? They think that they are gods ruling the seas. My brother-in-

law who was a chief coxswain was like that. He was from the old school: 'Do it tough. You're tough.'

CHAIR—In this incident where he was bashed, did they allege he was gay in this one as well?

Mrs Liddell—No. This was because he had left submarines.

CHAIR—So they found him at some pub somewhere?

Mrs Liddell—Yes. I think it was just a case of them all being out at a nightclub. They all just happened to be there at one particular time. The young lady that the last part of this submission is about rang me after she got our submission off the Internet and said, 'Every word of what you said was true, because I was there that night. They left him for dead.'

CHAIR—So she was there while he was being bashed or after?

Mrs Liddell—No. She had left just prior to that, but she knew that there were problems brewing because of the way they were talking.

CHAIR—Had she heard the statement 'We fix our own problems and we'll fix you,' which is in your statement?

Mrs Liddell—Yes, I think she did.

CHAIR—And so she said that that is what she heard?

Mrs Liddell—She told me, 'Everything you said was true.'

CHAIR—Was that incident reported to a petty officer or an officer in charge?

Mrs Liddell—No. He was treated by a medical officer.

CHAIR—A naval medical officer?

Mrs Liddell—Yes, but that was never reported. It is not even on his medical files either.

CHAIR—To your knowledge, did he report to the medical officer?

Mrs Liddell—You do not do that.

CHAIR—Pardon?

Mrs Liddell—You do not go and report a fight. Why would you do that? The next thing you know, they are going to punch you out again.

CHAIR—It is just interesting that it seemed to me that they said they were carrying out a bit of justice.

Mrs Campbell—Yes, because he left submarines. That is why.

Mrs Liddell—He left submarines. That was it—pure and simple.

Senator CHRIS EVANS—Thank you very much for coming in today. I know it is very difficult, but it is really very helpful for us. I go back to the *Westralia* and those incidents. What was Matthew's reaction to the fire? I know he went into hospital for about a week. What was his state of mind after that, do you think?

Mrs Liddell—Bruce went to Perth a couple of days after that happened, and Matthew was in la la land.

Senator CHRIS EVANS—Was that the drugs he was on or shock?

Mrs Liddell—That was the medication he was on. He did not even know Bruce when Bruce walked in.

Senator CHRIS EVANS—Bruce is his father?

Mrs Liddell—Yes. He did not even know him. And Matthew was sitting there smoking a cigarette—or a rollie, I think Bruce said—and he did not smoke. He hated smoking. He would leave the room if you lit a cigarette. That is what happened. That was a couple of days after the *Westralia*. He took up a habit that he abhorred for all of his growing up years—that is as true as I sit here.

Senator CHRIS EVANS—What sense did you get over the next few weeks about how the fire had affected him early on?

Mrs Liddell—Matthew did not speak to me until he came home on leave. I do not know how accurately I can remember this. It was probably a few weeks afterwards. He came home with a friend whose grandmother had died, and we went and picked him up from his friend's parents' house and brought him home. Matthew said to me, 'Can we go down to the pub on the way home?' and I said, 'If that's what you want to do.' He sat there for three hours and talked and talked. I said to him, 'You must've been saving this up.' He said, 'Yes, Mother, because I wanted to tell you about it.' That is all I can say.

Senator CHRIS EVANS—Was he traumatised by it?

Mrs Liddell—Yes, he was.

Senator CHRIS EVANS—He was very upset about it?

Mrs Liddell—Yes. He was particularly upset about Phil Carroll because Phil Carroll's fiancée was having a baby. Matthew said to me that that made him very unhappy because that baby would never know its father. That really upset him. It cut him up really badly.

Senator CHRIS EVANS—You talked about his going back to the *Westralia*. We heard evidence in Tasmania yesterday about another sailor like that. You mention in your submission that the sailors were told they could transfer off if they wanted to. What did he want to do? Did he want to stay or did he want to go?

Mrs Liddell—He did not want to go back to the *Westralia* but he felt that he had to because he wanted to see the ship fixed up. This must have been a thing with him, because 12 months before this happened Matthew was home on leave and he said to Bruce and me, ‘The *Westralia* is an accident waiting to happen.’ Bruce said to him, ‘Why do you say that?’ He said, ‘Because there are lines running from one place to another and we don’t know where they’re coming from or going to.’ Those were his exact words about the *Westralia*.

Senator CHRIS EVANS—So, although he probably did not want to go back, he went back. We heard yesterday that some of the sailors were saying, ‘You ought to go back because your friends died there,’ and a bit of a sense that they owed it to them to go back to the ship. Was that his sort of attitude?

Mrs Liddell—Yes. He had that attitude, but that was not what he wanted. He felt a need to do that but he was not happy being there.

Senator CHRIS EVANS—Did he apply for a transfer in those early months?

Mrs Liddell—I do not know if there was anything on paper. Matthew used to ring me quite a lot saying, ‘I want out of here but no-one’s going to help me.’ He went to his DOs—divisional officers. I think he had eight of them at one stage; I think some of them were reserves.

Senator CHRIS EVANS—What did he tell you then about the treatment he got in the first few months? I am not asking about the medical treatment after the fire but about what sort of counselling or psychiatric support he got in those first few months after the fire.

Mrs Liddell—He had three treatments with a psychologist.

Senator CHRIS EVANS—Were these on his own? I know there was some group counselling just after the fire but I guess he would have been in hospital during that.

Mrs Liddell—He was in St John of God, yes. This young psychologist walked into the guys’ room and said to them, ‘I know how you feel,’ so they all got up and walked out. That is what I remember someone saying about that. How can someone that young who has never had any experience realise how someone feels? That was an insult.

Senator CHRIS EVANS—Were the three sessions he had with a psychologist post the fire group sessions or on his own?

Mrs Liddell—He went to one and I think they ended up taking him back out because he was sick. I cannot remember.

Senator CHRIS EVANS—It is all right; I am not really after the details. I am trying to get a sense of whether he was getting treated because they recognised he had a problem or whether it

was part of the group sessions, debriefings, they had. Do you know whether or not he was being treated as an individual because they had identified a problem? I notice that you and, I think, Navy say they did not identify post-traumatic stress disorder till much later in the year.

Mrs Liddell—They said it was post-traumatic stress but they did not treat him for post-traumatic stress. He had the three visits with the psychologist in Perth. His treatment was discontinued. I have the letter here. It says ‘completion of treatment’. This was to the medical officer of HMAS *Stirling* on 13 November 1998.

Senator CHRIS EVANS—Was that saying that he has completed his treatment?

Mrs Campbell—They said there was nothing wrong with him.

Mrs Liddell—‘Completion of treatment.’

Senator CHRIS EVANS—Wasn’t he hospitalised around then for depression?

Mrs Liddell—Yes, that was when he got to Brisbane. Actually he went into hospital over in Perth, too. That was at Christmas time in 1998.

Senator CHRIS EVANS—You were saying there was letter from the Navy, dated 13 November, 1998 saying he has completed his treatment. What did it say about his condition?

Mrs Liddell—It notes in his report, his final assessment, that he continues to have some avoidance symptoms. It says:

This is consistent with a verbal report to me from Able Seaman Liddell regarding his negative reaction to returning to HMAS *Westralia* and to serving as a stoker in general. In a telephone conversation with the psychologist, he concurred with me that posting AB M.T. Liddell off the ship is most likely to help with his recovery. The converse therefore applies also.

That was dated 13 November 1998.

Senator CHRIS EVANS—So in 1998 Navy had concluded that he had some psychiatric, mental health issues or that he had issues that meant it was better that he was transferred off the *Westralia*?

Mrs Liddell—This says that it means the symptoms now come within the normal range, but not that he is necessarily symptom-free. That was the last report—‘completion of treatment’—and that was in November 1998.

Senator CHRIS EVANS—Did he transfer off the *Westralia* following that?

Mrs Liddell—He broke his leg. *Stirling* set it wrongly. They sent him home on leave. He had to go to 2 Field and have it redone under general anaesthetic. He was home for about 10 days. Then they sent him back and he went to the accommodations block at *Stirling*, in the office. That is where he was. He was on crutches at that stage.

Senator CHRIS EVANS—When was he hospitalised for depression?

Mrs Liddell—I think it was in December 1998.

Senator CHRIS EVANS—But, according to that time line, he had a broken leg. Was that at the same time?

Mrs Liddell—No, this was months prior to that—prior to Christmas.

Senator CHRIS EVANS—We have the medical report from the end of November 1998. There was only a month until Christmas. So he had a broken leg and then came home?

Mrs Liddell—No, he broke his leg six weeks after the *Westralia*, which was in May. Then he came home on leave. He went back to Perth and he continued at the accommodations block. He worked in the office there for nearly five months.

Senator CHRIS EVANS—When was he hospitalised for depression?

Mrs Liddell—That was over at *Stirling* at Christmas time. My other son is a fire brigade officer in Perth. I spoke to Christopher and he picked him up from the hospital and took him home for Christmas that year. No, sorry, they let him out just before Christmas. This is getting confusing.

Senator CHRIS EVANS—It is all right. We will try and piece it together. I am just trying to understand. So, despite the report saying he was within normal range, within a few weeks he was in hospital. How did he come to be in hospital? Did he submit himself?

Mrs Liddell—He was hospitalised with severe depression. That was before Christmas in 1998.

Senator CHRIS EVANS—Did he put himself in, did you put him in or did someone from the Navy put him in?

Mrs Liddell—This happened in Perth.

Senator CHRIS EVANS—Yes.

Mrs Liddell—We never put him in. I do not know how he came to be in there; all I know is that he was hospitalised with severe depression.

Senator CHRIS EVANS—Was that in a Navy hospital?

Mrs Liddell—Yes, this was at HMAS *Stirling*.

Senator CHRIS EVANS—So he was actually in HMAS *Stirling*'s medical facility.

Mrs Liddell—Yes.

Senator CHRIS EVANS—Obviously, young people have a whole range of other influences on their mental health—breaking up with boyfriends, girlfriends and those sorts of things. Do you think the core of his issues was the *Westralia* incident? Do you think that is what was driving most of his issues?

Mrs Liddell—He was a perfectly well-adapted, easygoing, happy-go-lucky person before that. He dramatically changed. He did have a girlfriend at that stage. Some weeks after he came home on leave, after his leg had been broken, Nicole came over to take him out for coffee. She rang Michelle the next day and said to her, ‘I don’t know what to do about Matthew,’ and Michelle said, ‘What’s the matter?’ Nicole said, ‘I don’t know him anymore; he is so totally different.’

Senator CHRIS EVANS—Michelle was the girlfriend at the time.

Mrs Liddell—No; Nicole was his girlfriend. Obviously, they did not remain together. I do not think that Matthew was ever the same. But he still loved her a great deal. I found things amongst his stuff. He used to write his thoughts down. That is rather heartbreaking because he would have loved to have got back with her but, the way he was, it was impossible.

Senator CHRIS EVANS—After he was diagnosed with post-traumatic stress disorder were you satisfied that he got the sort of treatment he needed?

Mrs Liddell—He was still going to his psychiatrist right up until September—I think that was his last visit before he died. But what I think about what happened after he was discharged really has nothing to do with this inquiry, does it?

Senator CHRIS EVANS—It does, I suppose. It is partly about how we make sure we care for people who have been involved in incidents. We are not inquiring into the general medical system, if that is what you are saying. But we are interested in whether he got the support he needed after his problems were identified and what we can do to make those things better. It is not so much about military justice; it is about making sure that the ADF does what it can for people. So, if there is something you want to tell us about that, I am happy to hear it. I am interested in how you felt about his treatment.

Mrs Liddell—When I think about it, you cannot put someone who has been active in sport, physical fitness and all those types of things—an accident happens and physically they are okay but mentally they are not—into a situation where they get their pension every fortnight but there is nothing arranged and there is nothing else they are doing about being involved with life itself. You cannot just leave someone at home day after day. This is what happened to Matthew. This was the end of him because he was active mentally and physically. When this happened and he ended up being medically discharged he went from being active mentally and physically to someone who sat at home all the time.

He was told that he was not allowed to pick up a book to study; he was only allowed to read for leisure. This is where the other government departments come in. They would not give him courses—only three-month ones. But how can you build a brand new career on three months at a technical college? Could you build your career on that? I am damned sure that I could not. He wanted to go back and finish the last half of grade 12 and he wanted to join the fisheries

department. That would mean that he was still on boats, which he loved, but not working in an engine room, which is what destroyed him in the first place. What he needed he never got.

Before he died, Senator Evans, do you know what happened? He and I were in my lounge room at home. He was sitting there—this is not long before he went to hospital—and he said to me, ‘Mother, I’m not going to get any help from Slipper’—that is, Peter Slipper—‘so I am thinking seriously about applying for Austudy.’ I said: ‘Well, good for you, matey. What are you going to do—travel into Gympie?’ We were living up in the Tin Can Bay area. He said: ‘It’s not a problem—the high school buses go in and out of there every day. I’ll go back and do what I have to do. They can bash their medical pensions as far as I am concerned. This is what I want to do.’ That was right up until probably a month before he died. Bruce and I were quite prepared to look after him and feed him. He had his own room and he had everything set up in there. He had a little run-about—it was like a little tinnie with a pair of oars. He used that a few times. He would go out and fish for a bit of leisure and stuff like that.

Matthew never asked for anything, but he never found peace in his soul. All he wanted to do was make something of his life. What makes me so mad is that he had the intelligence to do something and it was all taken away from him. That is what happened to him. It was just all taken away. If he had had all that help he could have achieved the things he wanted to. That was all stopped by bureaucracy. What it is too is legislation covering legislation. In other words, these departments are covering their backsides all the time. If he had been an officer, these departments would have been falling over themselves to grant him what was due to him. Why is it not granted to the lower ranks too? That is one of my pet hates.

Matthew was very much underestimated. He was intelligent and caring. This is not because I am his mother. He was one of the most interesting young men I have ever met in my life. You could sit and talk to him for hours. He was never boring. His general knowledge was astronomical. All this is wasted. It could have been put to use and he could have had a fulfilling, good life if he had had help. That he never got. That is what I am angry about.

Senator JOHNSTON—Mrs Liddell, what precisely were the injuries that Matthew sustained as a result of the fire on the *Westralia*?

Mrs Liddell—His injuries were misquoted in the paper. He was never burned. He had smoke inhalation. That cleared up in a matter of a couple of days, as far as I understand it. Apart from that there were no physical injuries.

Senator JOHNSTON—So he had smoke inhalation, but the main event as far as he was concerned was that he was in the region of the engine room where the four sailors lost their lives?

Mrs Liddell—That is right.

Senator JOHNSTON—You have his journal. How did you come by his journal?

Mrs Liddell—It was amongst his paperwork.

Senator JOHNSTON—Is it fair to say that he took things to heart but, as you said, he wrote them down to get them out of his system?

Mrs Liddell—Yes.

Senator JOHNSTON—How long had he been in the Navy all up?

Mrs Liddell—Until discharge I think it was probably about eight years.

Senator JOHNSTON—So he obviously enjoyed the Navy.

Mrs Liddell—He did.

Senator JOHNSTON—After the broken leg, his girlfriend, Nicole, said he was not the same person. Obviously that was a blow to him, psychologically.

Mrs Liddell—That is right.

Senator JOHNSTON—She terminated the relationship, I take it.

Mrs Liddell—No. Actually, they remained good friends.

Senator JOHNSTON—But the relationship changed.

Mrs Liddell—Yes. Her father was a millionaire. He wanted Matthew out of the Navy to work for him, so that caused friction. He had his own business.

Senator JOHNSTON—We know that he was admitted to hospital for depression in Western Australia towards the end of 1998. Do you know what gave rise to that admission? Was there an event? Did he go and see a doctor? Did something happen whereby he was admitted to hospital? It is not common that someone is admitted to hospital for depression unless something happens. Do you know what happened?

Mrs Liddell—Is this when he came home? I was the one who had him admitted to 2 Field. I rang the chaplain at 2 Field.

Senator JOHNSTON—He was not in hospital in Western Australia for depression?

Mrs Liddell—Yes, he was, but this was after that.

Senator JOHNSTON—Do you know what happened in Western Australia?

Mrs Liddell—I do not know what happened there that he ended up in hospital.

Senator JOHNSTON—Do you have his medical documents?

Mrs Liddell—Yes, I have them.

Senator JOHNSTON—Was he serving in the Navy at the time of that admission in Western Australia?

Mrs Liddell—Yes.

Senator JOHNSTON—And the documents do not disclose why he was admitted?

Mrs Liddell—They probably do, but offhand I cannot answer that question because I do not know.

Senator JOHNSTON—You had him admitted here in Brisbane.

Mrs Liddell—Yes.

Senator JOHNSTON—Why was that?

Mrs Liddell—He came home after lunch one Saturday. He called me out past the rumpus room, because we had visitors. I said to him, ‘What is wrong?’ He was sobbing. He said to me, ‘I don’t feel anything anymore. I just want my life back.’ These outbursts had happened a few times. I said to Matthew, ‘Are you angry?’ He said, ‘No. I don’t feel anything.’ I said, ‘Start getting angry, because when you don’t feel anything you leave a void in your life and that never fills. So do anything, but don’t feel nothing.’

Senator JOHNSTON—So did he go to hospital on that occasion?

Mrs Liddell—I rang the chaplain out at 2 Field and I spoke to him. They sent an Army vehicle out for him and they admitted him there. That was when the medical officer out there started to do a bit of thinking about things and started to realise that things were serious and something had to be done.

Senator JOHNSTON—Whom did you ring? You rang the chaplain at where?

Mrs Liddell—At 2nd Field Hospital at the Army base at Enoggera.

Senator JOHNSTON—Did you know the chaplain?

Mrs Liddell—No, I did not.

Senator JOHNSTON—So you just introduced yourself and talked about your son.

Mrs Liddell—Yes, of course I did that.

Senator JOHNSTON—And he just said, ‘All right,’ accepted everything you said and sent an ambulance to pick him up?

Mrs Liddell—Why wouldn’t he?

Senator JOHNSTON—That is right.

Mrs Campbell—Matthew was a serving member.

Mrs Liddell—I am sorry. Did I misunderstand you then?

Senator JOHNSTON—No.

Senator CHRIS EVANS—He is used to operating as a bullying lawyer.

Senator HOGG—He is not getting a fee for the day.

Senator CHRIS EVANS—You are giving as good as you get. Good. I am enjoying it.

Mrs Campbell—We will; don't you worry.

Senator JOHNSTON—So the ambulance turned up and took Matthew off to hospital.

Mrs Liddell—That is right.

Senator JOHNSTON—That is when he started to get some attention and the doctor at Enoggera—

Mrs Liddell—Yes, that was Dr Ash. He was a wonderful doctor.

Senator JOHNSTON—Was he a medical doctor or a psychiatrist?

Mrs Liddell—He was the MO out at 2 Field.

Senator JOHNSTON—He started to take some interest and things started to happen.

Mrs Liddell—That is right. He was the one who was instrumental in getting him on the post-traumatic stress disorder course. That was nearly 18 months after the fact. Do you know where I am coming from?

Senator JOHNSTON—Yes. It should have happened earlier.

Mrs Liddell—He went from three visits and sporadic bits and pieces to seeing someone who finally realised that something had to be done. Dr Ash did that.

Senator JOHNSTON—Was there an improvement?

Mrs Liddell—He got him on the course at Toowong Private Hospital. That was when everything started at home. Bruce was getting to the stage where he was going to hit him one day, because of his attitude. He became arrogant. We did not understand any of this.

Senator JOHNSTON—He was difficult to deal with?

Mrs Liddell—I had to talk to the coordinator at Toowong Private Hospital, Jackie. She started explaining the different mood swings—the things that happen to them, the way they react. You are on pins and needles all the time in case you say the wrong thing.

Senator JOHNSTON—This did not cost you any money at the Toowong Private Hospital? Was it all met by the ADF?

Mrs Liddell—As far as I understand it, Veterans' Affairs were paying for that.

Senator JOHNSTON—Were you kept fully informed as to the symptomatology and what they thought Matthew was suffering from so that you had a clear picture of what he was going through?

Mrs Liddell—No, we did not get any literature on it. It was my psychologist, later down the track, who helped me and talked to the family as a group to explain. Everyone was losing their patience with Matthew.

Senator JOHNSTON—Because he was frustrated and taking it out on everyone around him.

Mrs Liddell—He used to have showers. He would leave the shower running in the middle of the day with the lights on. I was running around after him all the time, turning off the taps. He would have the lights on, and I would say to him, 'Why on earth do you need the light on in the middle of the day, in broad daylight, while you are having a shower?'

Senator JOHNSTON—Was he taking any medication?

Mrs Liddell—At that stage he was not, no.

Senator JOHNSTON—He took some later?

Mrs Liddell—He was on and off medication there for quite a while.

Senator JOHNSTON—What sort of medication was it?

Mrs Liddell—I honestly do not know. It was probably antidepressants, I would imagine. I have a whole box of them at home but, if you were to ask me what they are, I really do not know.

Senator JOHNSTON—What was the nose reconstruction prior to *Westralia* about? Did he get a punch in the nose or something?

Mrs Liddell—No, that was not prior to *Westralia*; that was after *Westralia*. That was before he was discharged.

Senator JOHNSTON—So he broke his leg and had a nose reconstruction after the *Westralia*.

Mrs Liddell—Yes, but he had a problem with his nose for quite a long time. It had been busted up at different times from playing sport.

Senator JOHNSTON—What sort of sport did he play?

Mrs Liddell—Football.

Senator JOHNSTON—Do you mean Australian Rules or rugby?

Mrs Liddell—Rugby.

Senator CHRIS EVANS—The real code.

Mrs Liddell—Yes, the real one.

Senator JOHNSTON—So he in fact had three operations—one to fix his broken leg, another one to refix it and then one for his nose—as a background to all of these other matters?

Mrs Liddell—Yes.

Senator JOHNSTON—Right. Thank you for all of that. I really do appreciate it.

Mrs Liddell—I am glad I am finished with you.

CHAIR—You know how we feel.

Mrs Liddell—I do not mean that as an insult.

CHAIR—He can take it. Ladies, thank you very much for coming along this afternoon and sharing your story with us. We have certainly noted your submissions and we will take them into consideration as we form our report.

Proceedings suspended from 1.18 p.m. to 2.22 p.m.

HARTSHORN, Mrs Corinne Jane, (Private capacity)

HARTSHORN, Mr David Alan, (Private capacity)

CHAIR—Welcome. I will now read a statement which is read out at all hearings, so do not be intimidated by it. Should a witness expect to present evidence to the committee that reflects adversely on a person, the witness should note that the committee is obliged to draw to the attention of the person any evidence which in the committee's view reflects adversely on that person and to offer that person an opportunity to respond. Examples of adverse reflection on a person would include allegations of incompetence, negligence, corruption, deception or prejudice. Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. It is important for witnesses to be aware that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee welcomes to the hearing Mr David and Mrs Corinne Hartshorn. Mr Hartshorn, your submissions have been received confidentially. Do you wish to make any alterations to those submissions?

Mr Hartshorn—No.

CHAIR—Do you understand the remarks made about parliamentary privilege and adverse comment?

Mr Hartshorn—Yes.

CHAIR—Do you have any questions on those?

Mr Hartshorn—No.

CHAIR—I would like to now invite you both state the capacities in which you appear today.

Mr Hartshorn—I am appearing here as a confidential witness to this inquiry.

Mrs Hartshorn—I am here as an observer.

CHAIR—Thank you. Mr Hartshorn, would you like to make an opening statement?

Mr Hartshorn—Thank you for the opportunity to provide evidence to this military justice inquiry. Although now a civilian, I am still interested in fair justice in the military. It was not a pleasant experience for me being a whistleblower in the Army and it showed me how hard Army tries to stop a grievance, once received from a complainant into the system, from proceeding. As background information, up until I initially submitted my grievance I was at the top of the merit list for my rank and trade in the Royal Australian Signals and had served for 17 years. This high merit directly influenced my selection for service in the Middle East. My merit slipped on submission of my redress of grievance about a hit and run in the Middle East and I had a lieutenant colonel tell me that it was pointless progressing my grievance to Army office because the only people who would see it would be the Chief of Army staff, not the chief himself. The same lieutenant colonel also signed off on my 1996 annual confidential report, which contained

a comment that there was opposition to my grievance. The report also stated that my grievance was a drawback to my commitment to the Army. I have a copy of that report.

I have always believed it is illegal for the military to oppose a valid grievance. A legal officer told me that I could not submit the same grievance because it did not affect my service, but I had been ordered to keep quiet about a hit and run by the most senior warrant officer in the Australian contingent. My grievance asked the question, simply: why was I ordered to keep quiet? An investigating officer who had been appointed to investigate my grievance, by instrument of appointment with official terms of reference, told me during my first interview with him that he was a very busy man and I was wasting the Army's time. I regard that behaviour by a commissioned officer appointed to conduct an administrative inquiry as intimidatory, inappropriate, unprofessional and possibly illegal. My fear of retribution from the Army was so great that I initially made an anonymous complaint about the hit and run to the duty officer at Randwick Barracks in April 1995, three months after my return to Australia. I followed that up with a signed formal grievance, once I was satisfied that military police had established that the incident actually occurred.

It took involvement by the Commonwealth Ombudsman for those trying to stop my complaint to do a backflip and accept it, but ultimately no charges or any type of penalty resulted from either my complaint or the military police investigation. What made this incident smell even more was that the senior warrant officer who committed the hit and run was the appointed disciplinarian for an Australian contingent serving in a foreign land. He was also a representative of the Australian government and should have set an impeccable example of good conduct for the rest of the contingent.

CHAIR—Thank you, Mr Hartshorn. Would you like to say anything, Mrs Hartshorn?

Mrs Hartshorn—No.

Senator CHRIS EVANS—Thank you very much for coming in today. From what you are saying I gather that this effectively ruined your career. You got caught up with your moral concerns about the whole thing and it ended up eating away at you. Is that fair?

Mr Hartshorn—It was the straw that ended my career. I took voluntary discharge but this is what stopped any future, I would say.

Senator CHRIS EVANS—There were others in the car as well, weren't there?

Mr Hartshorn—That is right, yes.

Senator CHRIS EVANS—What was their attitude to it all?

Mr Hartshorn—When it happened, I was fairly stunned. I did not see the person again. They were flung away from the vehicle. But I did hear a comment from somebody else in the vehicle that she had bounced off another car, although I did not see that. We had Kiwi soldiers following behind. They were a fair way behind. We found out later that they had seen people gathered around someone as they went past. I was a cryptographic specialist over there, so I was not in an infantry or armoured unit. I was in the signals unit—not so much in the front line. The guys that

were in there with me were infantry, armoured and artillery. The general attitude that I felt was: 'It's only an Arab so why worry about it?' That is the feeling I got, which I did not think was right. There was not a lot of comment after the actual incident, other than, as I have mentioned, someone saying, 'Sir, do you realise you have just hit that woman?' That is the comment I remember quite clearly.

Senator CHRIS EVANS—Did you try to talk to someone in command in the first couple of days after the incident?

Mr Hartshorn—The person driving was the RSM. They are god. You do not approach an RSM.

Senator CHRIS EVANS—What rank were you at the time?

Mr Hartshorn—I was a sergeant and the others were all sergeants as well. We got together and said, 'Look. This was a hit and run. What are we going to do about it?' Basically the consensus was: 'Leave it alone. The RSM knows what he is doing. He's going to deal with it. He'll report it. We don't need to worry about that.' I guess I made an assumption that I was not to know that he had not reported it to the CO of the Australian contingent. As with a lot of investigations, he could have done that and we would not necessarily find that out. I had only been there a month. I did not really know how it worked. I had thoughts that he may have reported it. I gave him the benefit of the doubt. It was only after I came back to Australia that I realised that nothing had happened with it. It is just not right that people do this sort of thing.

Senator CHRIS EVANS—I am going to play devil's advocate here. I want to make it clear you understand that. The first question someone trying to test you on this would ask: did you have a bad relationship with the RSM? Was there any personal animosity between you before the incident?

Mr Hartshorn—No. I have the report that he wrote about me, which was written three months after that incident. It is a fairly glowing report.

Senator CHRIS EVANS—So you had not had much to do with him? There was no personal—

Mr Hartshorn—I had not had a lot to do with him, no. Between that incident occurring and the end of my time there, we were fairly busy so, once the incident occurred and I had gone through thoughts about if he had reported it or not, I was really too busy to worry too much about it until I got back. As I said, he has written a report of my performance over there. No, I did not have a bad—

Senator CHRIS EVANS—You were not sure whether or not he had reported it. I understand the military justice system moves in mysterious ways, so you might not necessarily have been told. But, when you got back, what was it that brought on your doing something about it—was it a pang of conscience?

Mr Hartshorn—When I got back to Australia?

Senator CHRIS EVANS—Yes.

Mr Hartshorn—I guess it was playing on my mind. You come back and there is not a lot of support when you get back. You are then going through everything that happened—there are other things as well as that, so you are going through all of that—

Senator CHRIS EVANS—What sorts of other things?

Mr Hartshorn—Deaths—people in the force being killed. We were right near the Gaza Strip, at the border, and there were a number of skirmishes there. So the normal type of operational incidents that would occur were still going on. The pace of work while you are there is such that you really do not have a lot of time to think about things or analyse them until you get back. We did have a psych debrief, prior to leaving to come back, where I guess I could have offloaded some of this but I did not do that because we had been basically told to keep quiet.

Senator HOGG—Was that a collective debrief or an individual debrief?

Mr Hartshorn—Collective, and then we had an individual one.

CHAIR—What happens when you serve overseas? Are you given advice on what you are to do in, say, a circumstance like this?

Mr Hartshorn—No. We had briefings prior to going over, along the lines of the culture of the Egyptians and the culture of the Israelis, Islamic culture, how to tread carefully as far as cultural sensitivities are concerned and all that sort of thing. But there was nothing specific about what to do if this type of incident happened, other than being told that if you are charged over there you would probably be covered under Australian military law, rather than being charged under the local legal system.

CHAIR—Did you hear any more about the actual hit-and-run from the Egyptian authorities?

Mr Hartshorn—No, there was nothing further that I am aware of.

Senator HOGG—Did the local civil authorities get involved?

Mr Hartshorn—Not that I am aware of.

CHAIR—To take up the cudgels from Senator Evans and be a devil's advocate: for all we know she might have got up and walked away?

Mr Hartshorn—She may have. I have no doubt she was injured. The vehicle would have been doing about 40 kilometres an hour. I was sitting directly opposite the driver in one of those American tank sorts of things with a bullbar. She was struck by the corner of the vehicle and flung away. I would not want to speculate that she got up. Certainly there would have been injuries, but to what extent I would not know.

Senator CHRIS EVANS—You decided to pursue this. I notice from your submission that yours is a good example of all the paperwork involved in the way the system works, and so I

find it a little confusing because that is how the system works. You got talked out of making a redress of grievance a couple of times—you describe it as ‘talked out of it’. Why is that? Were they basically saying to you: ‘Don’t make trouble. You’re only going to hurt yourself’?

Mr Hartshorn—Along those lines. I submitted a grievance, asking why did this happen? They appointed an investigating officer. When I sat down to give evidence he basically said, ‘I’m too busy to do this.’ In a unit, being an investigating officer is only one aspect of many other responsibilities. Quite often the officers are inundated with what are termed ‘extra regimental duties’ and this is just yet another thing which they have to do. Therefore, with administrative inquiries, investigating officers sometimes do not give the required amount of attention they should to an inquiry because they have got so much else on their plate. It is not a dedicated task. They are doing that as well as doing a stocktake and running a troop; they might have a range shoot and have to write a practice for that; they might be doing intelligence reports out at Cabarlah, where I was. This is just another thing they have had offloaded onto them from the commanding officer, so they think, ‘I can’t dedicate 100 per cent of my time to this.’ That is what I think was behind it. The culture has been that way for a long time. The CO does not appoint an investigating officer whose sole job is to come in and conduct an investigation; it is yet another task on top of many others.

Senator CHRIS EVANS—But obviously, on a couple of occasions, you did not pursue it.

Mr Hartshorn—When I asserted that I was going to keep the complaint in, he said, ‘The military police report has not been finished,’—I now have a report from the Ombudsman saying that it had been—but, on that basis, I accepted that and withdrew the complaint. When I was posted out to the Army Aviation Centre a few months later, I resubmitted it out there and got the same tactic with the legal officer telling me I had no right to put it in—and she gave that to me in writing—because it did not affect my service. I just wanted an answer. I had been in the mess and heard about other cover-ups and things like that, but this was the first time I had actually been involved in one myself. I thought, ‘Right, I’m going to ask questions.’ Being a serving member—because I did not do it after I had discharged—it really showed me how you are isolated as soon as you think outside the square. That is it, you are finished because you are not in with how everybody else thinks.

Senator CHRIS EVANS—So eventually you got into the process and they refused to redress of grievance. Since then you have been through the whole shooting match, by the looks of it. We now have the Inspector-General to add to the mix. It ended with the Ombudsman. What observations would you make about how the system works? Putting aside the core issue, I am interested in your sense of how the system works.

Mr Hartshorn—The system was most definitely not transparent at the time that that happened. The whole feeling coming through was that they tried to stop it at each level—they did not want it to go through. I put a submission to the joint inquiry where I said what they need is something independent between the military and the Ombudsman, some sort of review. I do not know whether the Inspector-General is now fulfilling that role, although that is still a fledgling—

Senator CHRIS EVANS—They report directly to the chief; that is the issue there.

Mr Hartshorn—That is right. So whether that is totally independent, I do not know. That is what I suggested: there needs to be more independence. I guess that is what I am looking at. That is the main thing I was concerned about: the lack of independence and transparency. You have Caesar judging Caesar. I have helped some of my soldiers over the years submit grievances. I have helped write them for them. All the way there are obstacles trying to stop those grievances from getting through.

Senator CHRIS EVANS—Did you find it easy to get the process though in the sense that you did not require any legal skills?

Mr Hartshorn—Not me personally. I am probably fairly literate in that respect. I knew how the system worked. I guess the only advantage of knowing how the system worked was that I knew how to progress it. So when somebody stood over me to stop me getting it through at one level, I did not give up. I have seen soldiers give up in despair. Basically I just wanted the question answered: why did this happen? Why can people who are in a very senior position order something to be kept quiet and that be the end of it?

Senator CHRIS EVANS—It seems that in many cases they have relied on the argument that no avenue was available to redress the possible unlawful command. That seems to be the legal defence for this.

Mr Hartshorn—Yes, that is a fairly common response that you get by the time it gets to the Army office.

Senator CHRIS EVANS—What was your experience of dealing with the Ombudsman's office?

Mr Hartshorn—That was much better. They were definitely more independent. I was reasonably satisfied with them. They looked at the whole process and basically agreed that the whole thing was handled inappropriately and should not have occurred. But there was not much more they could do, due to the fact that some paperwork had been destroyed and they were not able to review all the evidence from Defence. The paperwork was not available for them to make a value judgment on how the whole process had occurred.

Senator CHRIS EVANS—I suppose the lack of an investigation of the original incident would have made the whole thing quite difficult, in the sense that there was no report of the incident from day one.

Mr Hartshorn—That is right.

Senator CHRIS EVANS—I am not trying to defend anyone, but it does strike me that, without that, the things that flow from it are a bit harder than they would otherwise be.

CHAIR—Why was the paperwork destroyed?

Mr Hartshorn—I do not know. I have no knowledge of why but I have a letter from the Ombudsman in which they said that a document was destroyed. Defence, I guess, would have to answer that question.

CHAIR—You said that over the period when you were serving you had assisted a number of your soldiers with handling grievances. Is it unusual for paperwork to go missing?

Mr Hartshorn—No. In my 20 years I found that it is definitely not unusual for paperwork to go missing.

CHAIR—But not to be destroyed?

Mr Hartshorn—It goes missing; you do not know whether it is destroyed.

CHAIR—In military life, are there a lot of grievances being submitted up and down the chain of command?

Mr Hartshorn—There are more than people probably realise, and there would be a lot stopped. They might get as far as a commanding officer and then the person might get satisfaction at a very low level. There might be counselling or some sort of meeting set up between the aggrieved person and the person they are complaining about, and they might get a result at that level. I would say that a fair few go in but a lot are stopped or resolved.

Senator CHRIS EVANS—The Ombudsman's letter talks about an anonymous complaint about the former RSM and concerns that you were not advised of the outcome of that investigation. Were you the source of the anonymous complaint?

Mr Hartshorn—Yes, I was. My fear was that if I made a signed complaint after a number of months I would be leaving myself open to defamation because of the fact that, as you have already alluded to, there was no report from the Middle East. Infantry people and the whole Defence Force tend to—I was not to know whether everybody would close ranks and say, 'The incident did not occur,' which would leave me defaming the RSM. So I thought that if an anonymous complaint was made and it started a military police investigation and the others all made a statement saying it occurred I could then put in a signed complaint asking why it occurred—which is what I did.

Senator CHRIS EVANS—So there was an investigation and they issued a show cause notice against the former RSM in relation to the incident, so they obviously ended up taking it quite seriously.

Mr Hartshorn—That is right—a show cause as to why he should not be censured. But that was all; there was no other action. I personally believe censure is a fairly minor thing for an incident like that.

Senator CHRIS EVANS—I would probably agree with you, but as I become more experienced in these things I know that even getting Army to that stage is sometimes difficult. It means prima facie that the colonel had decided that there was behaviour that needed to be answered, so they obviously investigated to that extent.

Mr Hartshorn—That is right.

Senator CHRIS EVANS—Following the RSM's response they decided not to proceed with the censure.

Mr Hartshorn—That is right. That is where the documents were destroyed. If you read on you will see that the Ombudsman says that, as a result of that decision, the RSM's response to the notice to show cause was destroyed. So they did not have that to use to make a decision as to whether the decision not to censure him was reasonable.

Senator CHRIS EVANS—What was your seeking an apology from the Chief of Army about?

Mr Hartshorn—Being put through all of that, because the best word to describe their whole attitude towards the incident would be callous—'Hit a woman in the Middle East. She's only an Arab. Who cares?' One guy even made the comment over there—and, as I said, I am not an infantry soldier; I was a signals specialist—'I am only here for one reason: to take Arab scalps.' To me, that is not right. I do not care whether they are infantry or armoured, but that comment was made. Regardless of your being on operations in a foreign country, you still show respect for the people in that country. It was the whole thing of being put through that. It has been very hard on my wife, because I have been pushing this and that is why I have got her here today. To me this is a bit cathartic, because, with respect, you are the only ones that have ever asked me to tell the story. Most people have fobbed me off and wanted it to go away. For me to sit down and get this off my chest, and to have been invited to do so, is a cathartic experience, and I wanted my wife to share that.

Senator CHRIS EVANS—We understand that. We have had quite a deal of feedback about that. The military justice system does not seem to allow people their day in court that allows them, even if they do not get the result they want, to feel that they were given a fair hearing and that the issues were addressed and to move on, in a sense. You are expressing that, are you?

Mr Hartshorn—Yes, exactly. You never get the feeling that you can close and move on. In my whole 20 years—right through most activities, including going away—my wife never knew when I was coming back. I could never tell her when I was coming back. She would ask, 'When will you be home?' I would say, 'A month's time.' She would ask, 'When? We need to plan social activities.' I would say, 'I don't know. Could be this week; could be next week.' Then I would ring her up and say, 'It won't be for another week.' That was even on exercises within Australia and peacetime exercises. You never really know where you stand. There is never real closure where you can move on with most aspects of things.

Senator CHRIS EVANS—I have similar conversations with my wife. They do not go well at all.

Senator HOGG—I am relating to everything that you are saying.

Senator CHRIS EVANS—Ours is only on a weekly basis, but it is much the same. Why did you get out of the Defence Force in the end? Did you voluntarily discharge?

Mr Hartshorn—Yes, I voluntarily discharged. I was disillusioned, probably. I was also coming up to the end of my 20 years. I would have served on, had I still felt that I had a career. I did not really feel that. Fortunately a position came up with the ambulance, working in their

communications—which is where I am quite happily now. I have made the transition. I have no agenda and I will receive nothing personal out of doing this, so why would I do it if I did not want to see some sort of improvement for other people to follow? I have a real feeling for the next generation, the guys who are over there now, to get a fair hearing. That is my sole reason for doing this. When I heard that this investigation was on, when the president of the peacekeepers association first told me about it, I thought, ‘Not another inquiry,’ and I viewed it with cynicism. But then, when I was actually invited to come, I thought, ‘I’ll tell my story.’

Senator CHRIS EVANS—You must have felt very strongly about this to go through all these hoops. We have run into a lot of people who have given up in the face of all the procedures. To be brutally frank here, is it because you felt some guilt about what happened in Egypt?

Mr Hartshorn—Yes. You have hit the nail on the head. A lot of people give up, and I did not want to give up. I wanted to try and get some sort of answer out of the military for me. I had been through an experience; I have seen many others go through experiences similar and give up. I thought, ‘I can’t do anything—it’s not my fight.’ You would be in the mess, you knew what was happening, you knew—

Senator CHRIS EVANS—It would be easier just to stop and give it away.

Mr Hartshorn—It probably would but, if I can turn one small cog in the system, who knows? I might make a bit of good, and that is what I thought I would try and do, because the military is so good at saying how well they are doing everything. The can-do attitude that I heard over there in the earlier public hearings is most definitely there. The commanders would say, ‘We’ll do this regardless of whether we’ve got the resources,’ and ‘I don’t want to hear that we can’t do it. Come back and tell me you can do it. I don’t care if that armoured vehicle is pulled apart; I want to know it’s ready by tomorrow and that you can do it.’

Senator CHRIS EVANS—Do you have any other broader suggestions about how we might improve the military justice system? As you have experienced, it is a fairly bureaucratically driven process. You talked earlier about maybe some independent assessment along the way, but are there any other practical things you have thought about that might make it easier for a serving ADF member to seek justice?

Mr Hartshorn—It should be mandatory that an investigating officer for any administrative inquiry come from another unit. At the moment, they come from within the unit and the unit is a closed shop. Say, for example, if I were at 72 Electronic Warfare Squadron at Cabarlah and I were the commanding officer and an investigation were to occur involving one of my soldiers, then the investigating officer should come from Brisbane or Oakey or from another service. They most definitely should come from outside the unit and I believe that should be mandatory. That is where a lot of the problems lie, because the investigating officer might be the drinking mate of the CO or they might play rugby together and he is worried about his career, and he is worried about the commanding officer signing off on his annual report.

In fact, thinking back to when I was in Sydney in the eighties I remember a specific example of an investigating officer who was continually going back to the commanding officer who was going to sign off on his report and say, ‘I concur with your findings,’ or, ‘I don’t concur with your findings.’ The commanding officer would look at the draft and say, ‘Go back and redraft

those recommendations until they are to my satisfaction,' because he did not want to look at them and then say, 'I don't concur,' and for it to be on the record. He wanted to read it the way he perceived and then say, 'I do concur.'

Senator CHRIS EVANS—So the investigating officer was ensuring that the commanding officer was going to give it the tick before he finished his report?

Mr Hartshorn—Exactly, and that is because it was an investigating officer from within the same unit. If you had a Navy person coming to an Army unit from another town, another unit, that would not happen to the same degree because that person's report—and it all boils down to the annual report; I can tell you that—will be written by somebody else. That is my view on one way to improve it. Listening to Mr Pelly's evidence, there probably should be more independent people on boards of inquiry rather than stacked with all Navy personnel and maybe one independent person. I am not sure how that worked, but I remember that there was, supposedly, one independent person.

Senator CHRIS EVANS—There was a fire brigade officer, I think.

Mr Hartshorn—There should be more independent people sitting on that board so it is not all Navy people or Army or whatever it might be.

Senator CHRIS EVANS—Thank you for that. That is helpful.

Senator JOHNSTON—Mr Hartshorn, you are currently in charge of communications for the Queensland Ambulance Service.

Mr Hartshorn—I am not in charge.

Senator JOHNSTON—Sorry.

Mr Hartshorn—I am working with them.

Senator JOHNSTON—You are hands-on and probably carry a lot of responsibility in that regard. Has this affected your work?

Mr Hartshorn—I do not think so.

Senator JOHNSTON—What sort of road were you driving along on that day?

Mr Hartshorn—It was in the city. It was a reasonable road for Cairo's conditions. It was bitumen and I would say—taking into account their potholes and all that sort of thing, which are worse than ours—as good as inner-city Cairo would offer.

Senator JOHNSTON—Was its two car widths wide?

Mr Hartshorn—Yes, it would have been.

Senator JOHNSTON—So it was a dual carriageway; is that the way we could describe it?

Mr Hartshorn—Yes.

Senator JOHNSTON—What was the weather like? Was it wet or rainy?

Mr Hartshorn—No, it was fine.

Senator JOHNSTON—So visibility was good?

Mr Hartshorn—Yes.

Senator JOHNSTON—What speed were you doing?

Mr Hartshorn—It would have been about 40 to 50 kilometres an hour.

Senator JOHNSTON—And there were four people in the vehicle?

Mr Hartshorn—Five actually.

Senator JOHNSTON—What sort of vehicle was it?

Mr Hartshorn—It was one of those large American vans, shaped like VW combi but an American version of it.

Senator JOHNSTON—It was a GMC or something like that, was it?

Mr Hartshorn—Yes, that it.

Senator JOHNSTON—Did it have windows or panels? Could everyone see outside?

Mr Hartshorn—It had windows. Everyone could see outside.

Senator JOHNSTON—So it was all very visible. Where did the vehicle strike the pedestrian?

Mr Hartshorn—It was a left-hand drive vehicle. The RSM was sitting in the driver's seat. I was sitting directly opposite him. She struck my panel.

Senator JOHNSTON—When you say opposite, do you mean in the passenger seat?

Mr Hartshorn—Yes, I was sitting in the passenger seat in the front.

Senator JOHNSTON—And she struck your side.

Mr Hartshorn—Yes.

Senator JOHNSTON—How did it eventuate that the vehicle, to your understanding, struck the pedestrian?

Mr Hartshorn—She stepped out. She suddenly appeared. I caught a flash of her coming from the right.

Senator JOHNSTON—So you did not even see her?

Mr Hartshorn—I did initially. I saw a flash. All I remember is a black figure, I think covered from head to foot, who stepped straight out. I remember the sound of the bang as it hit her, and then she flashed back away from me.

Senator JOHNSTON—Was there any damage to vehicle?

Mr Hartshorn—There was some damage. A slight—

Senator JOHNSTON—Indentation?

Mr Hartshorn—Yes, a slight indentation.

Senator JOHNSTON—Did you look back and see what was going on?

Mr Hartshorn—By the time he got through, there was a lot of traffic, I glanced back but I did not see her again. I did hear someone behind me say, ‘There goes a tooth.’ I remember that. Then there was a comment about hitting another car.

Senator JOHNSTON—When the person said, ‘There goes a tooth,’ do you mean an actual tooth from the mouth?

Mr Hartshorn—That is what I assume it to be, yes.

Senator JOHNSTON—Was there any sort of slang description ‘tooth’ relating to the people that you were with in that community at that time?

Mr Hartshorn—No. I took the word ‘tooth’ to mean a tooth flying out of that person’s mouth.

Senator JOHNSTON—So where was the pedestrian struck?

Mr Hartshorn—I would say on the side.

Senator JOHNSTON—On the left arm?

Mr Hartshorn—On the left arm and left side of the body—from my brief sighting of her coming from the right.

Senator JOHNSTON—With the post immediately to your right in the passenger seat there. The van had a flat bullnose; did it?

Mr Hartshorn—Yes, it had a flat bullnose with a bullbar on it I think.

Senator JOHNSTON—What sort of bullbar was it?

Mr Hartshorn—One of those heavy ones.

Senator JOHNSTON—Was it tubular aluminium?

Mr Hartshorn—No, it was more of a heavy one. I never examined it personally so I can not categorically say that it was not that, but it appeared to be heavier than just a tubular one.

Senator JOHNSTON—So she would have hit that?

Mr Hartshorn—Yes, she would have.

Senator JOHNSTON—But there was a dent on the actual vehicle?

Mr Hartshorn—Yes, on the panel side where the bullbar comes out. The panel was just back slightly so she hit directly on the corner.

Senator JOHNSTON—Hit on the corner, and she went back behind the vehicle, not the front—

Mr Hartshorn—Back down the side.

Senator JOHNSTON—There was a component of glance in the striking.

Mr Hartshorn—I felt a solid thud is the best way I can describe it.

Senator JOHNSTON—But she went backwards, not forwards.

Mr Hartshorn—Not forwards, out and back.

Senator JOHNSTON—What happened immediately after inside the vehicle? You say that someone in the back said, ‘Sir, you’ve hit that woman.’ What was the response?

Mr Hartshorn—To the best of my knowledge he said, ‘She’ll be right.’

Senator JOHNSTON—Then what happened?

Mr Hartshorn—We were looking at one another. Hindsight is a good thing, and I have often said to myself that I should have been more assertive. We all kept quiet because it was the RSM. If it had been one of us or one of the lower ranking soldiers, I have no doubt that the RSM would have taken charge and it would have been a different story. Because it was him—and you do not

see an RSM do this sort of thing; in fact, I have never seen it happen—your initial reaction is, ‘Gee, the RSM did this. What are we going to do now? We are waiting for direction from the leader, which is him.’ That is the best way to describe it. So nothing more was said at that stage.

Senator JOHNSTON—How long were you all in the car for after the accident?

Mr Hartshorn—It would have been another couple of hours. We were going out to El Alamein.

Senator JOHNSTON—That is a fair distance away.

Mr Hartshorn—We got out and stayed in a motel. I cannot remember whether it was there or at Alexandria.

Senator JOHNSTON—When was the first occasion that you and the other four members of the team, excluding the RSM, discussed the incident?

Mr Hartshorn—Standing around that night someone said, ‘Do you realise what the RSM did this morning?’

Senator JOHNSTON—Who said that?

Mr Hartshorn—One of the other guys in the vehicle.

Senator JOHNSTON—What was his rank?

Mr Hartshorn—Sergeant, same as me.

Senator JOHNSTON—So they are all sergeants plus the RSM?

Mr Hartshorn—Yes.

Senator JOHNSTON—So one sergeant said to the other three of you, ‘Do you realise what the RSM did this morning?’

Mr Hartshorn—Yes.

Senator JOHNSTON—And what was the response?

Mr Hartshorn—‘Yes, we do.’

Senator JOHNSTON—When you say, ‘Yes, we do,’ what did you say?

Mr Hartshorn—As part of the general conversation, I agreed and said, ‘Yes, I understand what happened.’ We did not really discuss it any more. Once again, we were waiting to see if he was going to do anything. You have to understand the culture, and that is the best way I can

describe it. I guess that is why we slept on it—I slept on it anyway—and then first up in the morning is when he raised the subject himself.

Senator JOHNSTON—After he suggested or stated, ‘We won’t talk of it any more’ or ‘That’s the end of the subject’—words to that effect—was there any further discussion?

Mr Hartshorn—No. He left it. I took it to be a little ambiguous. He said, ‘This is not to be discussed again.’ I am not sure he actually said, ‘I will deal with it,’ but I was left with that impression.

Senator JOHNSTON—The other three sergeants—no names, no pack drill—where are they now? Do you have any idea?

Mr Hartshorn—Yes. The last I heard one was in Canungra and he went to East Timor.

Senator JOHNSTON—Still a sergeant?

Mr Hartshorn—No, I believe he is a warrant officer. Another guy became a warrant officer. I am not sure if he is still serving and I do not know where the other one is.

Senator JOHNSTON—Have you ever discussed it with them since?

Mr Hartshorn—No, because we went all over the countryside. I have never met up with any of them even with the military police investigation. They came to us in Toowoomba and went to wherever each person was posted, but we never got together.

Senator JOHNSTON—The main problem is that you say that you should have been more assertive. When you say that you mean you should have been more assertive in prevailing upon the other three sergeants to do what you perceive now to be the right thing?

Mr Hartshorn—No. What I mean by that is that I should have gone to the RSM and said, ‘Sir, you struck a woman this morning. What are you going to do about it?’ or ‘Are we doing anything about this?’ I should have approached him.

Senator JOHNSTON—What if he had said, as he did the next morning, ‘We’re not going to mention it’?

Mr Hartshorn—I would have taken him on his word. I might have asked him if he was going to report it. Once again—I hark back to the culture—you do not start questioning those people. As soon as you do, you are put in your place and you are basically told, ‘Don’t question me. I’m dealing with this. Don’t imply that I’m some sort of incompetent that can’t handle it.’

Senator JOHNSTON—So your adherence to discipline was sorely tested by this incident?

Mr Hartshorn—Yes.

Senator JOHNSTON—You were betwixt and between.

Mr Hartshorn—Yes.

Senator JOHNSTON—At sixes and sevens, meat in the sandwich—to rattle off a few cliched phrases.

Mr Hartshorn—Yes.

Senator JOHNSTON—And that has been causing you some concern over a very long period.

Mr Hartshorn—It has, yes. I have let it go of late. Until this investigation sprang up again, I had put it behind me. I still felt that the whole thing had not been resolved, but I had gone on with my life.

Senator JOHNSTON—Had you ever made any attempt to ascertain what happened to the woman on that day?

Mr Hartshorn—Yes, I have. That is pretty hard to do—

Senator JOHNSTON—I am sure it is.

Mr Hartshorn—I have inquired through Defence, but nobody would ever tell me whether they took any action. I might have asked people I knew who served over there after me: ‘Did you hear about the incident? Did you ever find out—

Senator JOHNSTON—any report or any signal about anything out there that happened to a woman who was hit by a—what colour was the vehicle?

Mr Hartshorn—White.

Senator JOHNSTON—A hire vehicle, was it?

Mr Hartshorn—Very high, yes.

Senator JOHNSTON—No, ‘hire’.

Mr Hartshorn—No, it was a force vehicle. It belonged to the contingent.

Senator JOHNSTON—An ADF force vehicle?

Mr Hartshorn—No, it was an American vehicle, because it was a—

Senator JOHNSTON—Peacekeeping.

Mr Hartshorn—Multinational, yes. It was a peacekeeping vehicle.

Senator JOHNSTON—What was the name of the operation?

Mr Hartshorn—Operation Mazurka.

Senator JOHNSTON—So it was a Mazurka vehicle?

Mr Hartshorn—Yes.

Senator JOHNSTON—Do you think it would be helpful if you were to know what happened to the woman?

Mr Hartshorn—I would love to.

Senator JOHNSTON—If you write to Foreign Affairs they might be able to assist you. I think we have a mission in Egypt. If there was a deceased or injured woman there, there is bound to be some sort of record somewhere. Go and see your local member of parliament, and he might be able to help you.

Mr Hartshorn—That would be great. I never thought of that avenue, but it would help me to know what happened.

CHAIR—Or senator.

Senator JOHNSTON—Which state are you from? Queensland?

CHAIR—You have a Queensland senator here.

Senator JOHNSTON—See your Queensland senator. There is one on the end.

Senator CHRIS EVANS—I do not know whether you are very familiar with Cairo traffic conditions and the population there, Senator Johnston, but I suspect that their traffic reporting systems are fairly rudimentary, given the—

Mr Hartshorn—That is what I presumed.

Senator CHRIS EVANS—I remember reading the *Let's Go* book once about which bus you catch in the middle of Cairo and realising then that I needed to hire a taxi. It was bedlam—absolute bedlam.

Senator JOHNSTON—It does not hurt to ask.

Senator HOGG—At that stage you were part of a United Nations force, weren't you, Mr Hartshorn?

Mr Hartshorn—Yes. A multinational, yes.

Senator HOGG—But it was under the control of the United Nations?

Mr Hartshorn—Actually no, it was not. Russia did not agree with that particular one, so America had to create an independent multinational force, which does not actually wear the blue beret.

Senator HOGG—I was just trying to find out whether the fact that it was a multinational force made your task more difficult to pursue. Under whose command were you at that stage? Were you under the command of the Americans or were you still under the control of the Australian forces?

Mr Hartshorn—I was under the control of Australia for disciplinary matters and under the control of the multinational force for all other aspects. So the RSM himself, who was the chief disciplinarian, would have been under the command of his own commanding officer for disciplinary purposes.

Senator HOGG—If there had been a reportable incident, I presume that it would not have been reported to the head of the Australian forces as such. I presume that it would have been reported to the head of the multinational force. Is that a correct assumption?

Mr Hartshorn—Yes. An incident occurring to do with a representative of that force would have been reported to the force.

Senator HOGG—Did you ever approach the head of the multinational force to find out if there had been a report from the Egyptians?

Mr Hartshorn—No, because he was an Australian—General David Ferguson. So, even though he was not posted there with the Australian contingent, he was still an Australian and would be Caesar judging Caesar. The other two were Australians.

Senator HOGG—I was just trying to get that clear. In your view, was the incident an accident or was it intentional?

Mr Hartshorn—It was not intentional. It was an accident.

Senator HOGG—It was an accident.

Mr Hartshorn—It was an accident. My main concern is the aftermath—how it was dealt with by the military. It was an accident. She came out of nowhere. As people have alluded to, in Cairo the driving conditions are shocking and accidents will happen. But the issue is how those incidents are handled. If a white, Anglo-Saxon woman walking down the main street of Canberra was hit under identical circumstances, I would hazard a guess that it would not be viewed lightly.

Senator HOGG—My other questions go to the investigation itself and the investigating officer. Was that investigation hampered in the first instance by the fact that you were a disparate group of people? I presume you did not all come from the same signals corps or something—that the other four and you were from different units and corps.

Mr Hartshorn—Yes. When we came back to Australia I went to Cabarlah, Toowoomba. Someone else went to Kapooka, someone else to Townsville—

Senator HOGG—So they were all over the place.

Mr Hartshorn—That is right.

Senator HOGG—Was that seen by the investigating officer as enough of an impediment to say, ‘This is too hard because you people, whilst you were all in the car at the one time, have now all gone your own ways. Look, we really shouldn’t worry about it.’ Is that the sort of attitude? Was that one of the probable motives of the investigating officer?

Mr Hartshorn—As a gut feeling, I felt that coming across. They made the effort of sending military police to each location and I believe, although I cannot categorically state it, they also went to New Zealand to interview the two Kiwis who were following us. But, yes, because everyone was separated you could not conduct an investigation in close proximity—you were flying all over the countryside and taking days and probably weeks to get all the statements together.

Senator HOGG—I refer to the minute on the redress of grievance determination dated 2 April 1996. I like your handwritten comment on the sheet.

Mr Hartshorn—Yes, that is my comment. I guess that would sum it up, but I do not remember writing it.

Senator HOGG—My question is: do you know what they meant by ‘the incident may cause matters to get out of hand’?

Mr Hartshorn—He never mentioned anything about not thinking the woman was hurt. This has come out after he has been found out and interviewed and has had to come up with a reason why he kept it quiet. That is my reading of the whole thing. To me, ‘matters getting out of hand’ would be him having to be accountable and his career being on the line. I have no knowledge of what else he would have been referring to.

Senator HOGG—You described it as ‘typical regimental horse manure’—the word ‘manure’ being mine, not yours.

Mr Hartshorn—Yes.

CHAIR—Mr Hartshorn, thank you very much for coming along. Would you like to say anything further?

Mr Hartshorn—There is one thing I would like to add, having listened to the very courageous evidence of Ms Sturgess this morning. Between 1986 and 1988 I was troop sergeant of a mounted signal troop. We had a signals unit where everything was mounted on M113As. In relation to diff lock, I was in vehicles numerous times when it happened to me. Most of the time we were in the scrub area of Holsworthy, so when it happened you would be violently tossed around but nobody would be seriously hurt and so no more would happen.

I remember one specific exercise when we went from Holsworthy to Bungendore for an exercise. The vehicles were carried on trucks. The comment was made: ‘We do not want diff

lock to make us wipe out any civvies, do we?’ That was a common attitude. As I said, for two years I served in a mounted signals unit. When I heard her evidence this morning I just wanted to offer a bit of back-up there from personal experience.

Senator CHRIS EVANS—I very much appreciate that. I have had a number of people say the same thing to me but it is nice to get someone on the record saying it. Certainly anyone who has ever been in one has said the same thing to me. It is obviously well known to the troops who use them. I appreciate that.

CHAIR—Thank you both for coming in. The public session of the committee now stands adjourned. Thank you to everybody for coming along today.

Evidence was then taken in camera—

Committee adjourned at 5.00 p.m.