

# Chapter 2

## Issues

### Background

2.1 Defence referred a matter regarding inappropriate use of the Defence information and communications technology system and the activities of Mr Hastings Fredrickson, a member of the Army Reserve, to Victoria Police in October 2011. It was reported that Mr Fredrickson had been a civilian contractor with Thales in Canberra. He was accused of being part of a group of up to 17 individuals who allegedly shared and circulated sexually explicit videos and photographs. He was dismissed for using the contractor's computer system in breach of their computer usage policy.

2.2 Some members of this group to themselves as the Jedi Council. It was alleged that the material was circulated via the Defence Restricted Network email system. It is believed that a further 172 soldiers may have received some of the emails without being active members of the core group.

2.3 According to Defence:

This referral followed an Australian Defence Force Investigative Service [ADFIS] investigation into the matter. Due to civilian law jurisdictional limits, Victoria Police referred the matter to the Australian Federal Police which, in 2012, referred the matter to the New South Wales Police for investigation. New South Wales Police subsequently initiated Strike Force CIVET.<sup>1</sup>

2.4 In the absence of a submission from NSW Police the committee has relied on the Defence submission for background information and a chronology of events. In April 2013, the Australian Defence Force Investigative Service (ADFIS) initiated its own investigation called Operation JARRAH. It had a broader scope than the Strike Force CIVET inquiry, investigating the group of 17 individuals who identified as the Jedi Council. Operation JARRAH ran concurrently with Strike Force CIVET.

2.5 It is standard practice for NSW Police to prepare a post-operational assessment report at the conclusion of a major investigation, and this appears to have been the case at the conclusion of Strike Force CIVET. Apparently, these reports are provided to the relevant police commander who makes an assessment as to whether further action is required. According to Defence:

New South Wales Police has neither referred the Strike Force CIVET post operational assessment to defence nor requested that Defence investigate or take action with respect to its assertions regarding Australian Defence Force Investigative Service misconduct.<sup>2</sup>

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1 *Submission 7*, p. 2.

2 *Submission 7*, p. 4.

2.6 The Inspector-General Australian Defence Force (IGADF) conducted two inquiries in 2013 into the management of unacceptable behaviour within the ADF as they related to the Jedi Council matter. The first inquiry focused on whether Defence's investigation and management of the incidents of unacceptable behaviour in the Army was 'timely and appropriate'. The second inquiry was a comprehensive professional standards review of the original ADFIS investigation. According to the IGADF submission:

Both the first IGADF inquiry and the second IGADF inquiry are rigorous and detailed inquiries conducted according to law. They are evidence-based work, the reports of which speak for themselves. In both instances their conclusions are logical and supportable. Both inquiries made findings of shortcomings on the part of ADFIS. The second IGADF inquiry contains recommendations where appropriate to address identified shortcomings<sup>3</sup>

2.7 In June 2013, the then Chief of Army, Lieutenant General Morrison, made a public statement relating to the conduct of this group. The Defence submission stated: 'Action taken against the Defence members associated with...Operation JARRAH investigation was initiated following this statement'.<sup>4</sup> The then Chief of the Defence Force, General Hurley, made the final determination in each case where Lieutenant General Morrison had issued a notice proposing the termination of a member's service. At the conclusion of the process:

...General Hurley decided to terminate the service of nine members and to retain the service of the other seven. Of the seven members retained, six were issued with a censure. Lieutenant General Morrison relieved the remaining individual...of command of his unit.<sup>5</sup>

2.8 According to Defence, the situation of the 176 additional Defence members and employees identified in the second phase of Operation JARRAH was independently assessed by each person's chain of command. In the majority of cases action taken against them involved administrative sanction.

### **Contested evidence**

2.9 The most serious allegations included in the terms of reference are that:

- ADFIS staff and others within Defence deliberately lied, withheld evidence and fabricated evidence in its dealings with NSW Police; and
- Defence leaked the personal information of ADF members to the media without regard for their physical or mental wellbeing.

2.10 The terms of reference also include a number of other allegations against ADFIS: that its investigation into the Jedi Council did not contact or interview any members, was limited in scope and reached conclusions that were inconsistent with the evidence available to it.

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3 *Submission 6*, p. 3.

4 *Submission 7*, p. 2.

5 *Submission 7*, p. 7.

2.11 The committee received in camera evidence from several of the individuals who had received notices proposing the termination of their service, based on the final determinations made by General Hurley. Submitters recounted their experience in the Jedi Council affair and told the committee they were wrongly accused of being associated with the Jedi Council, with serious personal and professional consequences. They commented on each of the allegations made against ADFIS and were of the view that Defence was responsible for leaking personal information to the media which publicly identified one or more them. The submitters overall accepted the allegations referred to in the CIVET post-operational assessment report.

2.12 The IGADF submission questioned the provenance and status of the CIVET report given that the document in its possession bears each of the following dates: 24 June 2013, 20 April 2014, 16 April 2015 and 20 April 2015. Furthermore, the submission noted the 'paucity of evidence within the document to support its many serious allegations' and highlights its author's 'significant misunderstanding and misrepresentation of Defence and IGADF processes'.<sup>6</sup> The submission concluded on an emphatic note:

The IGADF as an independent statutory officer takes very seriously the execution of his statutory functions at the highest professional standard. The serious and unfounded allegations contained in the SF CIVET document threaten the reputation and standing of the Office of the IGADF, and confidence in the important work undertaken impartially by that office.

The suggestions of impropriety of any sort as made against the IGADF...in the SF CIVET document are without foundation, are rejected by the IGADF and ought be rejected by the Senate inquiry.<sup>7</sup>

2.13 The Defence submission also raised serious questions about the CIVET document and the allegations it made. It observed that the basis of the inquiry's terms of reference appears to be a document more than three years old which makes unsubstantiated allegations of serious misconduct that have not been tested. At the time of making the submission to committee's inquiry in January 2017, Defence neither had in its possession a signed copy of the post-operational assessment for Strike Force CIVET (apparently signed by the Commander of Kings Cross Local Area Command on 9 September 2015) nor at any stage had NSW Police discussed with Defence the 'factual inaccuracies...misunderstandings and misrepresentations of Defence processes' in the unsigned copy of the CIVET report.<sup>8</sup> In fact, Defence only became aware of the CIVET report in June 2016 as a third party to an application for public access to New South Wales Government information.<sup>9</sup>

2.14 Defence stated that it is not aware of any evidence to support the allegations raised in the terms of reference. The submission noted that NSW Police had:

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6 *Submission 6*, p. 1.

7 *Submission 6*, p. 9.

8 *Submission 7*, p. 2.

9 *Submission 7*, p. 3.

...informed Defence that it considered in 2015, when the Strike Force CIVET investigation was finalised, that the matters raised in the post operational assessment 'had already been addressed'.<sup>10</sup>

2.15 The submission stated that the administrative actions taken by Defence, in conjunction with the prosecutions brought by NSW Police, were fair and considered: '[t]he outcomes reflected the different nature of the evidence about the behaviour of each individual involved and the various levels of responsibility each was expected to take for their actions'.<sup>11</sup>

2.16 The Defence submission also rejected outright the allegation that Defence had provided the personal information of ADF members to the media:

Defence at no time in its public announcements regarding the investigation and resolution of this matter named any individuals involved, whether as an alleged participant, witness or victim...

Defence's internal inquiries and investigation did not identify any Defence member or individual who may have disclosed this information to the media.<sup>12</sup>

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10 *Submission 7*, p. 2.

11 *Submission 7*, p. 3.

12 *Submission 7*, pp 6-7.