

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

SUBMISSION COVER SHEET

Inquiry Title: Effectiveness of Australia's Military Justice System

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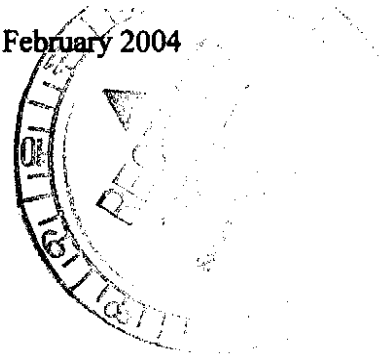
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**SUBMISSION TO SENATE INQUIRY INTO
"EFFECTIVENESS OF AUSTRALIA'S MILITARY JUSTICE SYSTEM"**

The following submission is forwarded with respect to the Senate Inquiry into the "Effectiveness of Australia's Military Justice System". Specifically, the Term of Reference covering allegations that ADF personnel, cadets, trainees, civilian employees or former personnel have been mistreated is relevant.

I am a Totally and Permanently Incapacitated Ex-Serviceman with over 20 years service in the RAN, including Operational Service. My military background provides me with at least a general understanding of the military.

Family and Friends believe our son, Nicholas StJohn Shiels was mistreated by the Army in its failure to provide adequate medical management and supervision for severe depression and anxiety disorder state. This medical condition, incorrectly disputed by Army, was the result of an Army accident and without doubt lead to his death.

Nicholas was discharged from the Army in February 1995. He suicided on 29th December 1996 and died on 31 December 1996. His death is directly linked to a tragic Army accident that occurred near Whyalla on 26 May 1992. The circumstances were that whilst undertaking a live firing exercise with 3RAR (Army Parachute Regiment) he accidentally killed another soldier. At the time of his death the attending Neurologist at the Royal Prince Alfred Hospital Sydney, Dr G. M. Halmagyi said that the Army accident had caused Nicholas to develop depression and anxiety so severe that if he hadn't taken his own life when he did, he would have found another time and place to complete.

Following the accident in Whyalla, Nicholas was not placed on sick leave, nor did he receive proper medical treatment in the days immediately after the tragedy. The one exception was an overnight stay in Whyalla Hospital the night of the accident. Instead he was instructed to undertake the same "live firing" exercise two days after the death of his colleague. A clarification here - in Ministerial correspondence the impression given was that Nicholas was "asked". A Private in these extraordinary circumstances would not be "asked". There would be no choice - as the lowest ranking soldier he would have been

told what was to occur! This instruction was on the recommendation of an Army Psychologist who had arrived on the scene from Adelaide. My wife and I had also arrived from Adelaide a few hours earlier and found Nicholas to be in an extremely distressed and traumatised state, obviously needing proper medical attention from a qualified medical practitioner. The Army failed to provide this and has continually told us through Ministerials or in statements to the media, that an Army Psychologist (i.e. a non-medical practitioner) assessed Nicholas to be medically fit. A Psychologist is not a medical practitioner and therefore is not qualified to make medical assessments.

In a statement to the "ABC 7.30 Report" concerning Nicholas' death that was aired on 10th December 2003 (Video CD attached separately as Enclosure 1 with written transcript at Enclosure 2), the Deputy Chief of the Army, Major-General F. Roberts stated in correspondence that Nicholas was provided with appropriate support after the accident. We dispute this categorically. We observed him in a very distressed state needing proper Psychiatric Medical Care. At the time, we were told by an Army Social Worker who also was in attendance that Nicholas could possibly be suffering Post Traumatic Stress Disorder. We understood this and acknowledged that the Government itself through the Repatriation Medical Authority defined *Post Traumatic Stress Disorder* in a 'Statement of Principle' (SOP) under the Veterans' Entitlement Act 1986 (full instrument attached as Enclosure 3) as a psychiatric (i.e. medical) condition that meets a number of criteria. Enclosure 3 is the current SOP and differs little to the original instrument, both of which can be obtained from the RMA Web Site (www.rma.gov.au). One of the listed criteria is that:

the person has been exposed to a traumatic event in which the person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others

The SOP is quite clearly defined by the five eminent Medical Professors who comprise the Repatriation Medical Authority. However, according to Major-General F. Roberts, in correspondence to the "ABC 7.30 Report", Nicholas' transfer to the Army Reserve in 1995 was with no record that he fulfilled the clinical requirements for PTSD. Do the Army requirements, therefore, differ from the RMA definition and, if so, why?

Dr. Tony Davis, MBBS, FRANZCP, a prominent and well respected Psychiatrist who is acknowledged within the Royal Australasian College of Psychiatrists for work in suicide prevention examined correspondence from Mr Bruce Scott, MP, Minister assisting the Minister for Defence, in a letter to my local MP dated 17 October 2001. He also took into account correspondence and information provided by my wife and I. Dr Davis' report is critical of events contained in Mr Scott's letter and considered Nicholas' return to a "live firing" exercise within two days of the accident to be both extraordinary and alarming. Dr Davis Report is attached at Enclosure 4.

Dr Davis also questioned statements that there was no evidence of PTSD after it had been mentioned in a report from Concord Hospital. Nicholas was admitted to Concord

Hospital 12 months after the accident. This will be discussed later in this submission. Dr. Davis further questioned the “counselling” provided over an 18 month period following the initial trauma, as did the “ABC 7.30 Report”. The “ABC 7.30 Report” detailed that three “counselling” sessions so long after the event were inconsequential as effectively the “damage was done”. Hence, his admission to Concord with anxiety disorder and depression.

Returning to the accident, it was this same Psychologist who directed that Nicholas could return home to Adelaide, stay overnight, but must return to Sydney the next day by civil airline to be present for a mass counselling of all soldiers who were present when the accident occurred. When I tried to explain to this man that the other soldiers were different in that it was not their weapons that killed their colleague, my remarks were dismissed. I was told that Nicholas would be better off receiving psychological counselling along with his peers from 3RAR. This, again, is contrary to both the Minister Assisting the Minister for Defence and Major-General Roberts statements that we were consulted. We reject this as totally and absolutely untrue.

We were present at several impromptu meetings in Whyalla and Port Augusta, but never consulted. We, like Nicholas were TOLD what would occur. As for Major-General Roberts stating Nicholas was sent on “convalescent leave”. I’d like his interpretation of “convalescent leave”! If you call from the time we left Port Augusta at 4.00 p.m. in the afternoon until a Commonwealth car picked Nicholas up to take him to Adelaide Airport at 6.00 a.m. the next morning, “convalescent leave”, then he must be right! But don’t most Defence personnel go home after work in the afternoon and start again the next morning? Then again, I suppose they could be on “convalescent leave”? It was almost 7.00 p.m. by the time we arrived in Adelaide from Port Augusta. Nicholas had dinner and went to bed. He was still in shock, even after being forced to undertake another “live firing” after the death of his colleague. Our conversation was limited to our total support to him. We were also in shock, with all of us trying to come to terms with what had occurred.

The Minister Assisting the Minister for Defence letter of 17 October 2001 or 22 October 2001 (two date stamps) stated that Nicholas’ admission to Concord Hospital was due to a break up with a girl friend. Furthermore, the correspondence makes it appear Army Psychologists assessed him at that time and decided he should be admitted to hospital. This, once again, is totally false. Army Psychologists may have done something after Capt. Phil Kirkman his immediate supervisor found him, but they didn’t do a thing beforehand.

What actually occurred was that it was close to the anniversary of the accident, on a Saturday night, when Nicholas called home very distressed about the accident saying that the accident was constantly on his mind and he was experiencing great difficulty getting to sleep. We were so concerned that he might harm himself that night, that I called Capt. Phil Kirkman his immediate supervisor who went to his room and found him in a foetal position and monosyllabic. He was then admitted to hospital. It had nothing to do with a break-up with his girlfriend (we continue to have contact with her). He would often ring

home while in hospital and say to his mother "Get me out of here Ma – they're all mad". Having had considerable military service myself, it is a well known fact that personnel try to minimise illnesses as they are very aware of the affects this can have on their career prospects. The Minister Assisting the Minister for Defence supports this in her letter dated 18 September 2002, paragraph 15 where she states: "It is possible that he chose not to submit any claim for compensation during his service due to concern that the recognition of an injury or illness may have a detrimental impact on his service career." Therefore, it is understandable that Nicholas gave a "break up with a girl" as a reason.

However, this "excuse" was superficial and should have been picked up by those treating him. Again the fact that he would elect to offer other alternative explanations for his state instead of attributing it to the accident evidences the incredibly inept and deficient treatment he received. He had no adequate psychiatric counselling to guide him through this trauma so that he could see why he was in the state he was. That Army Psychologists were unable to help him was obvious and proven by his admission to Concord Hospital.

So, after Nicholas' initial call home in a distressed state it was an Army Intelligence Officer (Capt. Phil Kirkman) who acted as a result of our alerting him, not an Army Psychologist!

It is evident from Dr Davis report that our son was **NOT** medically fit at the time of discharge from the Regular Army, let alone during his other Army Service following the accident. Notwithstanding, Major-General Roberts's states that Nicholas had at least three comprehensive medical examinations before he transferred to the Reserve. As a former Naval Officer, we had medical examinations every 12 months as a normal procedure. So, I would expect Nicholas to have medical examinations as stated. However, these would have been the normal requirement and not specifically specialist psychiatric examinations. There is no indication in any Ministerial or Army correspondence that Nicholas was even referred by Army doctors to a Psychiatrist, except when he was admitted to Concord Hospital.

It should be understood the most Regular Defence Force doctors have the basic medical training and yet, can undertake unsupervised medical duties directly after completing their Internship. All other doctors must undergo further training programs as Resident Medical Officers (RMO) in major hospitals under supervision before then electing to undertake specialist training which may take a further several years. This includes General Practitioners who must now complete a three to four year course after service as an RMO. The military doctor has limited training and primarily deals with fit men/women. So, any medical examination by one such military doctor could be open to question unless that doctor has the backing of a specialist or qualified GP. An example is our youngest son who has been a registered medical practitioner for six years (one as an intern; three as an RMO and two as an Emergency Medicine Registrar). Yet in the medical system he is still a junior doctor under training without a Medicare Provider No., But, he is far more experienced than the average regular military doctor

For the Minister Assisting the Minister for Defence and the Army to say that Nicholas was "Fit Everywhere" for military service is ludicrous as Dr Davis queries. If Army Medical Officers and the Army Medical Board reached a conclusion similar to Dr Davis and realised a medical problem existed, then the outcome may have been different and our son may well still be with us. The evidence of the Army's method for handling traumatic events was shown as recently as 7 March 2002 (Adelaide Advertiser) where soldiers told of their lack of support after service in East Timor. This is our concern – nothing has change since the death of Private Cave and our son Nicholas. This "head in the sand" attitude on the part of the Army diminishes our son's death and indeed the Army itself!!

The deductions made by Dr A. Davis, with respect to the death of Nicholas are relevant, regardless of the advice the Minister has received about Dr Davis being unfamiliar with related documentation. Dr Davis is a specialist consultant in suicide prevention and this can be easily substantiated. He assessed that it was highly likely that the significant psychological changes observed by our family, between 1992 and 1996 were indicative of an inadequate resolution of the traumatic experience of May 1992. This lead to an emergence of severe depression that culminated in suicide.

In providing a general overview in suicide prevention, Dr Davis is more than competent to come to this conclusion. *(To suggest otherwise is like saying that Police are unable to call an expert witness in Ballistics (or Profiling) because this witness was not at the scene of the crime; or, that an expert in metallurgy is not able to provide expert witness testimony into investigations into an airliner crash because he wasn't on board the aircraft.)*

The Army psychologist, who interviewed Nicholas just after we arrived in Whyalla immediately following the accident, was less than open about this interview. Instead of stating that he needed to interview Nicholas alone, he chose to have an Army Social Worker take us aside so that he could speak to our son. This was totally unnecessary and demeaning.

The Army had an obligation of "Duty of Care" towards our son. The evidence is provided in the "*Report of Investigation by Comcare*" dated 31 August 1993 into the accident where the Investigating Officer, Mr R. J. Gherardin (Manager Occupational Health & Safety SA/NT) found on the evidence before him, **contraventions of the "DUTY OF CARE" imposed under the Occupational Health & Safety (Commonwealth Employment Act 1991)**. A total of 24 issues were found to have been breached by the Army. The Comcare Report is included at Enclosure 5.

Similarly, in the "*Finding of Inquest*" into the death of Private A. D. Cave on 2, 3, and 19 of February 1993, the Coroner of the State of South Australia, Mr Garth M. Thompson stated in his report (Enclosure 6):

"The Army Board was critical of the planning and supervision of 'Cultana Warrior'. Undoubtedly some of the orders, regulations and instructions applicable were not complied with"

and

"Again, the (Army) Board found that some participants were not qualified to act as safety officers according to Army Regulations"

So, in addition to the Comcare Report, the Army Board of Inquiry itself made it clear that Nicholas' superiors failed in their responsibilities towards him as quoted by the Coroner above. Yet, the Army cannot admit to its failure of "Duty of Care" when all evidence, external and internal state it as fact!

The Army's negligence is demonstrated in both these reports. The Army had a responsibility to continue that "Duty of Care" towards our son in assisting him following the accident.

In correspondence, we have been through question and answer exercises to our dissatisfaction. Therefore, I propose to make factual statements, evidence for which is clear in the aforementioned correspondence:

- a. *There was no medical basis for the decision to send Nicholas back to carry out the same 'live firing' exercise because a specialist medical assessment had not been made. Dr Davis found that sending Nicholas back for this 'live firing' to be both extraordinary and alarming.*
- b. *Nicholas was instructed to return to Sydney for counselling by an Army Psychologist for a group session de-brief, but was not sent on sick leave nor given immediate specialist medical assessment/treatment, when it was clearly evident that as the only other soldier directly involved in the death of his comrade, he was in a state of total shock and trauma.*
- c. *Nicholas was not counselled nor advised to submit claims under the Veterans' Entitlement Act 1986 and Commonwealth Compensation Scheme (as it then was). Being a Private soldier at the time he was not aware of his entitlements. Therefore, Army Officers' responsible for his management and welfare did not act to ensure the necessary documentation was completed.*
- d. *Nicholas was discharged from the Regular Army as 'medically fit' when it was clearly evident and confirmed by his suicide that he was suffering Post Traumatic Stress Disorder. The Army failed to have him psychiatrically treated immediately following the accident. The exception, when he was admitted to Concord Hospital over 12 months after the accident. And, then it was instigated by us calling his immediate supervisor to check on him and was not originated by Army Psychologists.*

- e. *Nicholas was accepted into the Army Reserve with on going Post Traumatic Stress Disorder. (Many times he was distressed and clearly displaying behaviours as stated in the 'Statement of Principles' where any minor occurrence could have tipped him over the edge. On Dec 29 this was the case and resulted in his suicide. He died two days later on New Year's Eve 1996). He was still a member of the Army Reserve at the time of his death.*

I believe the Army has a real problem with its "culture". This culture stems from the training of junior officers, initially through the Royal Military College, Duntroon and now through the Australian Defence Force Academy (ADFA). Every few years we see investigations into basardisation, mistreatment and bullying of young cadets by senior cadets. But they still continue. Why? It is my belief, the bullies graduate and when they reach units, instill their methods into NCO's who visit it on soldiers. The late Private Jeremy Williams is a prime example. These bullies then move up the line and become Generals – and that's where the problem starts!

In my last job in the RAN in 1988, I was on the personal staff of the Assistant Chief of Naval Staff (Personnel), Rear-Admiral Cawardine, when a young Midshipman from ADFA brought in an AFDA "underground" magazine. This magazine described what senior cadets intended to do with junior cadets; cadets they didn't like; and female cadets. The Commandant ADFA, Major-General Day, had never heard of it – and that says it all!

In 1987, Nicholas was one such cadet who suffered bullying whilst at ADFA. He was effectively forced out because of this and incompetent officers and NCO's who knew of, yet chose to ignore the problem (just like the ADFA Commandant with the "underground" magazine). One of the problems was conveyed to me recently by a former Army Warrant Officer (Class 2) of the Military Police who was a Drill Sergeant at ADFA in 1988. He told me that cadets were left unsupervised from 6. 00 p.m. to 6 a.m. each night and it was a known fact amongst staff that during this time senior cadets victimised and targeted cadets in a classic bullying fashion. While things may have changed since then, I very much have my doubts.

The reason Nicholas re-enlisted as a Private and elected the elite Parachute Regiment (3RAR) was because he knew he had the makings of a fine serviceman and wanted to contribute to and serve his country. He transferred to the Army Intelligence Corps shortly after the accident, but was kept in a combatant role in a Commando Unit for sometime. As a tertiary qualified soldier, his contributions included a submission we made on his behalf to the Defence Force Journal (May/June 1997) after his death – a magazine whose normal contributors are senior officers and not necessarily junior ranked soldiers.

In summary then we see a desperate need for change in the juridic process for the Australian Defence Forces. We contend the public and families should have a fair and reasonable say with respect to military tragedies; mistreatment of personnel and medical follow-ups to accidents to ensure people are treated with dignity and respect, regardless

of rank. An avenue must be open where the public and families can have an input, without prejudice to those still serving.

In our case, had we been asked we would have told an inquiry the difficulties our son was experiencing. This, despite him being able to show to others that he could "cope". His coping, we believe, was a measure of his strength and courage while each day facing the incredibly debilitating and eventually life threatening illness he endured as a result of the "Cultana Warrior" accident. Any forum must be part of an inquiry and not associated with Social, Community or Psychological overtones and must have the power to direct authorities regardless of position or rank. The only way this could be achieved is through an Independent Judicial System, established to investigate tragedies, mistreatment of personnel and medical follow ups to accidents within the Defence Forces.

The Army has a systemic problem in dealing with personnel affected by tragedy, mistreatment or adverse medical problems caused by their service. This must change. It has nothing to do with the rank system. It comes back to individuals who seem to use the rank structure to mistreat and bully others. This is something that I never encountered in over 20 years service in the RAN, but strongly suspect, now, with ADFA graduates that it will creep into the other two services.

It is imperative the Parliament of Australia address this whole issue as much for the Army and Government as for the servicemen/women themselves; and their families. We are asking the Army to be brought into the 21st Century with regards its culture, values and ethics. Army needs to be judged not only in the way it treats its personnel, but also on the way it supports and values those who suffered as a consequence of military service.

I am available to appear before the Senate Inquiry.

Yours faithfully,



(PAUL StJOHN SHIELS)

- Encl:
1. Video CD of ABC 7.30 Report of 10/12/03 attached separately
 2. Transcript of 7.30 Report of 10/12/03
 3. RMA "Statement of Principle" for Post Traumatic Stress Disorder
 4. Report By Dr, Tony Davis, MBBS, FRANZCP dated 15 March 2003
 5. Comcare Report into death of Private Cave dated 1993
 6. SA Coroner's Report into death of Private Cave