

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

SUBMISSION COVER SHEET

Inquiry Title: Effectiveness of Australia's Military Justice System

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From: Andrew McNess |
Sent: Monday, 16 February 2004 10:54 AM
To: FADT, Committee (SEN)
Subject: Effectiveness of Australia's military justice system



F-111C A8-127 ACCIDENT - 1993

I wish to make a submission to the Senate Inquiry into the military justice system with regard to the death of my son, FltLt Jeremy McNess and his navigator, FltLt Mark Cairns-Cowan on 13 September, 1993 near Guyra in New South Wales, when their F-111C aircraft crashed while on military manoeuvres.

There were a number of aspects of the investigation carried out by the RAAF Accident Investigation Team that we felt were inadequate and, although some have apparently since been addressed by the Air Force, we believe our son, as pilot of the aircraft, missed out on the justice which should have been afforded him.

a. No Board of Inquiry

Most difficult in an extremely difficult time for us was the RAAF's decision not to hold a Board of Inquiry following the accident that killed our son and his navigator. To us, this decision appeared to downgrade the accident. Our son and his navigator were of no importance. Their deaths did not even warrant a Board of Inquiry. This would mean that no evidence would be taken under oath and no opportunity would be available for public examination of squadron procedures and systems that led to the accident or to the events that followed, thus allowing theories to be based on personal opinions, hunches, etc. As a consequence we were left with unanswered questions, no possible redress and an unsatisfactory finding of 'probable loss of situational awareness', with too little emphasis on lack of currency, poor crewing, poor choice of exercise for a largely uncurrent Squadron, and too much emphasis on pilot fault – a point that remains unprovable.

This accident was the only aviation fatality in the seventy-three-year history of the RAAF not to have been immediately followed by a Board of Inquiry. It is interesting to note that within days of this accident, a very public Coroner's Inquest began into the deaths of five RAAF airmen killed when their Boeing 707 went down in the sea off Sale, earning the Air Force much poor publicity from the coroner and the families of those killed, over lack of adequate training, systemic problems and lack of currency. At the same time, there was a Commonwealth Ombudsman's investigation under way into the adequacy of the RAAF response to the loss of Nomad A18-401 in South Australia and the death of its pilot. Once again, the Air Force was aware that further bad publicity was inevitable. It is quite impossible not to wonder how much those events influenced the decision against holding a BOI.

In the Chief of Air Force's official Report on the accident, he stated that a Board of Inquiry would be mandatory in future, but for us that directive came too late.

b. No Coroner's Inquest

The final straw for us after the disappointment of the lack of a Board of Inquiry was to be advised by the Coroner that he had decided against holding a public inquest. He was aware

that we had requested one be held, as our daughter-in-law had originally notified him soon after the accident, as had the Cairns-Cowans family. We had also written to him several months later advising him of numerous concerns we had and contacted him again after hearing of his decision but he was uninterested. In a subsequent letter to us, he stated -

'It does appear to me that a Coronial inquest into the deaths is unlikely to take the matter any further. I have no doubt having regard to the tragic loss of two young pilots, together with the destruction of an expensive aircraft, that an inquiry into the accident would have been far-reaching and every effort made to ascertain the truth of what occurred.'

To us, this explanation was naïve in the extreme because of the many well-documented accounts of military cover-ups in the past – the Defence Forces not having been noted for their openness and willingness to acknowledge inadequacies and mistakes. In the past, they were able to convince themselves that this was for the protection of those still serving. However, the community has moved on from this atmosphere of secrecy but the Forces generally appear to still struggle with the more open society in which they now function.

Immediately after the accident, our families were advised we were entitled to request an inquest if we felt it was necessary. Following discussions, it was agreed it would be an opportunity for the internal systems of the RAAF to be scrutinised by a dispassionate though respected outside party, particularly in view of the fact that a Board of Inquiry had not been held. We, therefore, requested that an inquest take place.

This was our last hope for justice and, for the Air Force, it was an opportunity to acknowledge publicly the great difficulties that faced the final flight of A8-127, (lack of crew night flying currency, poor crewing selection, inappropriate choice of exercise, possible mechanical problems, etc.) Unless we chose to 'go public' with the information we had, with the attendant emotional and financial cost, which we could ill-afford, the Air Force would effectively keep its systemic problems hidden, avoid the issue of the possible need for disciplinary action and our son and his navigator would carry full responsibility. To us, it was as though the RAAF and the Coroner were in league, both anxious to allow nothing to sully the Air Force or its aircrafts' reputation, with little consideration for the dead officers or their families.

The coroner needs to be seen as a free agent with no affiliation whatsoever to government bodies. I believe any Defence Force death should be automatically followed by a public inquest. This is necessary for the community to maintain faith in the credibility of the Defence Forces. It would also alleviate the suspicion and dissatisfaction so often felt by grieving families.

c. The investigation procedure

While it is difficult for us to comment on the overall thoroughness of the investigation, there were many aspects that left us unhappy and disappointed.

We believe there were very significant eye-witnesses who were not interviewed by the RAAF or the police, yet were seen and heard regularly in all areas of the media in the days immediately following the accident. Often their stories conflicted with what we were hearing from the RAAF, yet these people were on the spot and very much closer to where the accident occurred, so we were left wondering if this was because their stories did not fit the theory the Accident Investigation Team had already decided on.

There was considerable dissatisfaction and disillusionment at the time amongst the

townspeople of Guyra (the northern New South Wales town where the accident occurred) about the investigation, and this is still quite obvious ten years later. My opinion is that the Air Force would have improved its standing in the community had it called a public meeting in Guyra after the findings were released, to explain the outcome of the investigation. This would allow these people to understand the part their accounts played.

The RAAF advised us that at least twenty witnesses were interviewed, yet when we received copies of all the transcripts, there were only seven. We have had great trouble reconciling twenty with seven. Having since spent some time in Guyra, we have found that a number of people felt they were not given the opportunity to speak. Perhaps the RAAF needs to look at how it contacts possible eye-witnesses, also how it accepts or rejects their accounts.

d. Retrieval of remains and aircraft parts

Another disturbing aspect was the actual collection of remains and the clearing of the crash site. We understand that over a period of time, weather conditions could mean the uncovering of further material, however, within a fortnight of the accident, our daughter-in-law had discovered human remains lying quite exposed on the ground and some weeks later found more. Also, after we had been advised the investigators had finished their work at the site and that it was now completely cleared, our daughter-in-law went back to search for Jeremy's wedding ring, (they had been married only nine months when he was killed). She took with her a metal detector but it was completely useless, as the ground was littered with bits of aircraft. She gathered many plastic bags of the pieces and left in disgust. These two events impacted greatly on us and made it difficult for us to accept either the thoroughness or the intent of the investigation.

e. Members of the Accident Investigation Team

One of the investigators had recently returned from the USA in 1993 where he had been sent on a course to update his knowledge of accident investigation techniques, America being recognised as a world leader in this area. This officer was convinced there had been an in-board fire. He pointed out many pieces of aircraft at the crash site that showed very specific in-flight fire damage. This information plus eye-witness accounts apparently supporting it, appeared to be largely ignored. The officer left the investigation team some time later, was posted interstate and soon after left the Air Force. I managed to contact him a year or so after and though he was reluctant to talk about the accident, he did state that 'nothing he learnt during the course of the investigation had made him alter his original opinion'.

f. In-house investigations

We found it a disturbing feature of our son's accident that the investigation was so 'in-house'. With so many unanswered questions, it will remain impossible for us not to wonder whether we have heard the full story. When any bureaucracy or organisation investigates itself, it is left wide open to public criticism and suspicion. When the only information obtainable must come from the bureaucracy itself, then it is impossible to be sure it is all that is available. Any suspicion of cover-up is almost as damaging as a cover-up itself.

It is essential for any Defence Force investigation to include appropriately qualified civilian participants, with full participation rights, to give authenticity to the investigation and public confidence in the outcome. This was not our experience.

At times, we have had the uncomfortable feeling that perhaps Jeremy's greatest mistake

was in not colliding with another aircraft or ploughing into a house full of people, because it has seemed that what counts is 'quantity'. If the public is sufficiently outraged at the number of deaths at any one time, then there is a much better chance that the particular arm of the Defence Forces will be forced to carry out a proper investigation, in the public arena. The public nature of the inquiries into the Black Hawk accident, then later the *Westralia* fire were examples of this. Although I am aware that there have been other dissatisfactions with both these investigations, to us they seemed a lot more thorough and open.

g. Defence Forces' obligations to surviving families

It has been difficult to accept how little was done to help us at the time of the accident. For us there was no transport arranged to get us to Brisbane for the funeral, no counselling offered over Jeremy's extremely traumatic death, no help to come to terms with the death of a greatly loved child when there was no body left to view or to say any final farewells to, no counselling offered to our other two children who lost their elder brother, their great friend and role model and who still struggle to find meaning in life. - so different it seemed from what was offered, or at least reported to have been offered, with the Black Hawk collision and the "Westralia" fire.

I believe that peacetime accidents require specific and on-going support by the Defence Forces for the families involved. Perhaps the needs of these people are even greater because these deaths did not occur at war, fighting 'glorious battles for king and country' but because of accidents, which often highlight systemic and embarrassing problems for the Service involved.

h. The media

A last point I would like to make is on yet another breakdown that occurred for us. We believe insufficient consideration was given to us in the release of the Accident Investigation Report to the media. Again, the Air Force assures us this will not happen again, that families will be given sufficient warning to prepare themselves for renewed media frenzy but, unfortunately, we were not afforded that courtesy and so were totally unprepared.

It is extremely important that families be given prior warning to any information being given to the press. They need to know what the media is to be told and how to deal with the questions that will be flung at them. Often, what they need is protection from the media.

We do not believe justice was afforded Jeremy and Mark who most certainly gave their lives for their country. We were disappointed and disillusioned on many occasions in our dealings with the Air Force, and although we have come to some sort of terms with them over this, we believe there is considerable scope to improve the possibility of military justice being done while also being seen to be done. There is no greater tragedy in life than to lose a child, but the added damage done to us over the years following Jeremy's death, has greatly complicated the healing process for all of us.

We were never comfortable with the thought of singling out particular officers to carry the blame as we felt no single person caused the accident. It was more a break down in systems, insufficient care taken by those higher up the chain of command to ensure procedures were being followed by those lower down and a general relaxing of rules – a situation fraught with danger in such a high risk area. Perhaps, as was suggested on several occasions, it was a situation exacerbated by continuing cuts to the Defence base,

impacting on flights, fuel, aircraft maintenance, etc.

It was a tragic experience for our two families that will continue to affect us all, which could have been a little easier to bear had more thought gone into the aftermath.

Yours sincerely

JAN McNESS

16th February 2004