



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES  
COMMITTEE

**Reference: Effectiveness of Australia's military justice system**

THURSDAY, 29 APRIL 2004

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**SENATE**  
**FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE**

**Thursday, 29 April 2004**

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

**Substitute members:** Senator Bartlett for Senator Ridgeway, Senator Chris Evans for Senator Marshall, and Senator Payne for Senator Sandy Macdonald

**Participating members:** Senators Abetz, Bartlett, 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 Chris Evans, Hutchins, Johnston and Payne

**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.

**WITNESSES**

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**Committee met at 9.03 a.m.**

**CHAIR**—I declare open this meeting of the Senate Foreign Affairs, Defence and Trade References Committee and I call the committee to order. Today the committee will conduct its fifth 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.

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 given 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 that evidence. The media should check with the committee as to whether any evidence given today has 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 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.

When witnesses are first called upon to answer a question, they should state clearly their names and the capacity in which they appear. 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.

[9.07 a.m.]

**GEE, Mr Kenneth James, (Private capacity)**

**GEE, Mrs Myra, (Private capacity)**

**SHIELS, Mrs Antoinette Louise, (Private capacity)**

**SHIELS, Lieutenant Commander Paul St John (Rtd), (Private capacity)**

**CHAIR**—The committee welcomes the witnesses. We have received your submission, which has been made submission No. 23. Do you have any alterations to make to that submission?

**Lt Cmdr Shiels**—Yes, we do. We had a phone call last week from the Senate committee regarding correspondence that the committee, I understand, needs to have before it. We wish to add 12 enclosures of correspondence to our submission. I have listed them all here. They particularly relate to records of interview that Nicholas had with his platoon sergeant on 9 June 1992 and another interview on 3 December 1992—I have it listed here. There is the Deputy Chief of the Army's letter to the *7.30 Report*, three letters from the Minister Assisting the Minister for Defence, a letter from Nicholas's former operations officer at 1 Commando Regiment, his march-out record from 1 Commando Regiment, his record of service, and we have also included two higher duties approvals to indicate that after he left 3RAR he actually was posted to a sergeant's position as a private, which increased his responsibility. Although his record of service says that he was a lance corporal, in fact he was in a sergeant's billet and paid as a sergeant. We just want to prove that to the Senate, and we have included that.

**CHAIR**—Do you want to add all that to your submission?

**Lt Cmdr Shiels**—Yes. There is a SCMA Melbourne message dated November 1993 regarding his application to the Royal Military College and also a response from Defence Force recruiting. In my statement, I will reflect on this correspondence, if I may, so you have an understanding of where it all fits in. I would like to add that documentation, which was prompted by the call from the committee in Canberra.

**CHAIR**—No problems, that can be added.

**Lt Cmdr Shiels**—The only thing I did not add were my letters to my local member. I do not know if you need them at all because I think my submission should be enough.

**CHAIR**—We will leave that up to you. If you would like to supply them to us, we will add them to your submission.

**Lt Cmdr Shiels**—I just thought of that then, in fact.

**CHAIR**—Do you understand the remarks about parliamentary privilege and adverse comment? That has probably been explained to you.

**Lt Cmdr Shiels**—Yes.

**CHAIR**—Do you have any questions on that?

**Lt Cmdr Shiels**—No.

**CHAIR**—Would you like to elaborate on the capacity in which you appear today?

**Lt Cmdr Shiels**—I am the father of Nicholas Shiels, whom we are here to talk about today.

**Mrs Shiels**—I am Nicholas's mother.

**Mr Gee**—I am the grandfather of Nicholas Shiels.

**Mrs Gee**—I am the grandmother of Nicholas Shiels.

**CHAIR**—Thank you. Would you like to make an opening statement?

**Lt Cmdr Shiels**—Thank you, senators, for allowing us the opportunity today to talk to you about Nicholas and about how we feel. Our reasons for appearing today are to clearly demonstrate the mistreatment and failure by Army of the duty of care of our son and grandson, which set in train events that resulted in his untimely death. Our primary concern is with Army's failure in its duty of care and ongoing support towards him following Exercise Cultana Warrior at Whyalla in May 1992. We want to emphasise the major factors in Nicholas's demise as being the failure to diagnose PTSD, the abysmal lack of follow-up medical treatment, poor or flawed man management by superiors and, in particular, the appalling negligence of Army psychologists, all of which ultimately contributed to his death. However, the fact that Nicholas resigned from ADFA prior to joining the Army due to bullying we feel also needs to be addressed, and that is why it has been included in the submission.

Following the accident at Whyalla we found Nicholas severely traumatised and experiencing extreme shock. We found a young man in total disbelief trying desperately to rationalise the tragic circumstances that had just occurred. He could not fathom that Private Cave was dead. Nicholas was brought in from the field. We presume that he was seen by an emergency department doctor and admitted to Whyalla hospital. It was patently obvious that he was traumatised. It was disappointing that he was not accompanied by one of his mates for support. He was completely alone.

Army states, contrary to what we saw and heard, that Nicholas's only concern was what his peers thought after the accident. This was the reason Army said he volunteered to participate in another live firing the following day. This is a very pertinent example of the way Army has manipulated and represented the facts. Of course he would have been concerned about his peers. He was shocked and traumatised and unable to rationally process the situation. Importantly, in our presence he was told, not asked, to undertake the same live firing exercise just two days after the accident—the instigator being the on-scene Army psychologist.

You must remember that here we have a young private—bottom of the rung—involved in an accident, the consequences of which were that his mate was killed. Army hierarchy were in

damage control. He relived the accident over and over, with questions and statements from both Army and state police. As a private you are powerless and subject to the Defence Force Discipline Act. He was not in a position to refuse an order. We were absolutely staggered. However, we knew that we had absolutely no say. We expressed our reservations because of his already fragile state. We saw Nicholas pressured to undertake the same live firing exercise again. The handling of the situation emphasised the outmoded idea: if you fall off your horse, get back on it and get over it. A prominent psychiatrist, Dr Tony Davis, a specialist in suicide prevention said, 'Such a move was both extraordinary and alarming.' Dr Davis told us that this action would have been the catalyst that pushed him over the edge towards depression and, ultimately, death. In a record of interview with his platoon sergeant on 9 June 1992, two weeks after the accident, in his summary the sergeant stated, 'His skills were still shaky on weapons, understandably.'

A similar record of interview was conducted on 3 December 1992 with similar remarks. This is obvious proof that he was still traumatised, yet the Army psychologist failed to see it. For Major General Roberts, in a statement to the *7.30 Report*, to say that Nicholas was not medically unwell and/or suffering the initial symptoms of PTSD, is absolutely and totally false. Nicholas's behaviour indicated extreme stress and trauma. He was entitled to, and needed, proper medical support. The Army psychologist had seen him and suddenly was able to make a medical assessment. As we have shown in our submission, post-traumatic stress disorder is a psychiatric illness—that is, a medical problem. On what basis did the Army psychologist make his unqualified assessment? He had not received a psychiatric report from a medical specialist. How could he be permitted to make a medical decision that compounded the trauma and shock our son was obviously experiencing? As Dr Davis has pointed out, where is the precedent for this decision?

Through ministerial statements, which I have tabled, the Army has absolved itself from any responsibility, stating that Nicholas was not experiencing a medical condition. We contend that this is a crucial failure Army made in relation to our son. This did not accord him the normal rights to natural justice—that is, they did not provide him with appropriate medical assessment and treatment commensurate with the event he had just experienced. It would also seem that the Army psychologist in attendance at Whyalla made a determination that Nicholas was medically fit to carry on—that is, an unqualified medical assessment which could be classed as quackery, a matter which now must be open to investigation. There was no medical doctor on the scene so who in the Army assessed him as not medically unwell?

Throughout ministerial correspondence and in Major General Roberts's statement to the *7.30 Report*, reference is made that my wife and I were continually consulted on matters relating to Nicholas's treatment on site at Whyalla. We just want to make one thing very, very clear: we were never—repeat never—consulted. We were present on occasions when matters were discussed but never consulted. We, like Nicholas, were told of decisions made. The Comcare report lists no less than 24 contraventions of a duty of care imposed under the occupational health and safety act. No senior officer was held accountable, yet a soldier died. Instead, we understand that two courts martial were held involving a junior officer and a non-commissioned officer. This raises the question: why wasn't the then CO 3RAR Director of Infantry and/or Chief of Army court-martialled? Weren't they responsible for anything? It seems that senior officers within the defence forces are a law unto themselves and are not held accountable for tragedies and loss of life and/or mismanagement. This is why it is imperative that the military justice system is seen to be supportive and transparent. These service chiefs interpret the rules



and develop policies and procedures, which when applied are dangerous and life threatening. They absolve themselves, placing blame on those implementing such actions.

A few weeks after the accident I was invited to meet the then Chief of Army, Lieutenant General Grey. The brief meeting concluded with General Grey advising me that 'the Army would look after Nicholas'. This was never followed down the line. The Army board of inquiry, coronial inquest and courts martial were traumatic events for Nicholas through which he had to relive the distressing events of the accident. This further deepened his already depressive state. Shortly after the accident Nicholas's B Company was posted to Malaysia for three months. He was given no counselling and was thrown into challenging situations—hardly supportive treatment. On return, Nicholas transferred to the Army Intelligence Corps and was posted to 1 Commando Regiment. At the time we could not understand why he was sent to a high-pressure unit after what he had been through. A letter we received from his former operations officer, who happened to be a senior SAS officer, gives an insight into Nicholas as a soldier. It says:

I have no doubt that Nick was under immense pressure when he arrived at our headquarters, however, this quiet young man fitted in quickly with his pleasant and professional manner, gaining the respect of all.

I might also add that an obituary written in the *Bridges Review*—the Army's annual intelligence magazine—by Warrant Officer Kennett determined Nicholas ended his life as much a victim of the training accident as his friend Adrian Cave.

While at 1 Commando, he filled a sergeant's position as a private. This shows the responsibility entrusted to him within months of the accident. Thirteen months after the accident, he called home very distressed. We contacted Captain Phil Kirkman, his immediate supervisor. Nicholas was admitted to Concord hospital. He had had a nervous breakdown. It was not Army psychologists who initiated Nicholas's admission; it was as a result of our phone call to Captain Kirkman. Nicholas's admission to Concord clearly demonstrates that, through the preceding counselling sessions, the Army chose not to acknowledge the severity of the depression he was suffering.

In January 1994, as a lance corporal, Nicholas was posted to Townsville to another sergeant's position within the Deputy Chief of the General Staff Division. He worked for a warrant officer, who shortly after resigned and was not replaced, leaving Nicholas to work on his own virtually unsupervised. Yet again, an example of the Army's care and support! He was encouraged by officers to reapply for officer training, which he did. In a message from SCMA Melbourne, Nicholas was recommended for officer entry subject to eligibility. Three months later, whilst in Townsville, he received a letter from Defence Force Recruiting rejecting his application because of age—absolutely amazing! The Army knew how old he was and made the offer until 31 July 1994. They led him to believe he had a future in the Army as an officer. Age waivers are available and Nicholas knew that. He was only 24. Why didn't the Army tell him from the outset he was too old instead of raising his hopes? It caused his depression to deepen. He believed that this was a direct result of the accident.

This brings me to Nicholas's service as a midshipman at ADFA. He was bullied, mistreated and bastardised by third year cadets under the watchful eye of ADFA staff. Whilst the military may deny that any such events took place, a retired military police warrant officer contacted me after our appearance on the *7.30 Report* last December and told me that he served at ADFA in

1988 as a drill sergeant. He said it was a well-known fact amongst staff that when cadets were left unattended between 6 p.m. and 6 a.m. senior cadets would bully junior cadets. The staff, he said, turned a blind eye and ignored it.

At the time Nicholas was at ADFA I was still a serving officer. I had had representations from other cadets' parents regarding bullying. Nicholas's calls to us confirmed them. I called ADFA staff and asked for explanations, but nothing changed. Following a parents' meeting in Adelaide, Nicholas and another midshipman, whose father was also a naval officer, were interviewed. Nicholas was very distressed that I had called ADFA and he said that the third years would now be after him. He told me that when interviewed by the adjutant he had said very little because he feared the reprisals that were likely to eventuate—and they did. He subsequently resigned because of his mistreatment and joined the Army because he believed he could make a contribution and be of service to the nation. Had he not been mistreated, he may still have been serving in the Navy today.

I would like to comment on Army policy regarding leaps and bounds live firing exercises. It is incumbent upon the Army to prove the need for such exercises. We believe that it is an abrogation of the duty of care in that they deliberately put their personnel in situations that endanger their lives. Nicholas's grandfather has been in action and under live fire and can speak with knowledge of such actions. What is the measure by which such procedures are determined to be the most appropriate means of preparing personnel for action and how have these been arrived at? What control is used in measuring the efficacy of such procedures? How do they know whether leaps and bounds live firings really achieve anything at all? In the age of virtual reality, where simulators are used for training, we see absolutely no need for such exercises that risk lives and, in so doing, diminish every one of us.

In conclusion, the Army failed to look after Nicholas in his work environment during peacetime training. Comcare found that the Army contravened 24 areas of its duty of care under the occupational health and safety act. No senior officer was court-martialled for this. Why not? In the initial aftermath of the accident it was crucial that Nicholas be given support and counselling commensurate with his trauma. Because he did not receive this, he commenced a downward spiral that resulted in his death. There is an implicit comparison between the treatment normally available to civilians and that which was given to our son. It is not up to us to prove that the Army failed in its duty of care for our son: it is indisputable. The evidence is clearly outlined in the Comcare report, the coronial inquest findings and ultimately in his death.

The fact that Nicholas performed his duties satisfactorily and did not show any signs of depression can be easily explained. Anyone who has been in the services will tell you that service personnel will cover up medical and personal problems so as not to affect their careers. This was confirmed in a letter dated 18 September 2002, which we received from the then Minister Assisting the Minister for Defence, a copy of which has been provided to the committee. Nicholas was encouraged by his superiors to apply for officer training. Following his rejection, he realised the ramifications of the accident for any career that he had hoped for in the Army; his disappointment was crushing. Nicholas was a vibrant, intelligent, yet sensitive and very loving son, brother and grandson. We miss him greatly. We mourn the loss of a much loved and caring young man whose potential will now never be realised. We also mourn the death of Nicholas's friend Private Cave.

**CHAIR**—Thank you, Mr Shiels. Mrs Shiels, would you like to add anything?

**Mrs Shiels**—I would like to say what we feel should have happened. We believe that Nicholas should never have been sent out to repeat the exercise. His overnight stay in Whyalla hospital should have been followed by a psychiatric medical assessment, and sick leave should have been approved. He should have been monitored by medically qualified doctors, particularly after his admission to Concord and his breakdown. A counselling program and treatment should have been set in place. General Grey's promise to have him looked after should have been followed through. He should have been advised of his rights to compensation. He should never have been given false hope as to his officer candidacy. The rescinding of the offer, with age given as the reason, was spurious, as age waivers were available. We believe that a cover-up occurred. It was clear that Nicholas was suffering from PTSD. The Army refused to acknowledge this. Once age was eliminated, logically the only conclusion to be drawn was that the accident, and his subsequent PTSD, was the real reason for his rejection for a commission. Nicholas should never have been subjected to this stressful situation after what he had been through.

We would like the result of this inquiry to be that the Army accepts complicity and fault in the death of our son; that the military justice system be seen to be open to scrutiny and be transparent and accountable; that the Army ceases to carry out leaps and bounds live fire exercises as part of their training; that the Army be open to new initiatives and improves its methods of training in keeping with technological advances; that Army psychologists are required to be accountable to justify their positions and that medical and/or operational personnel can override decisions that cannot be justified or are deemed prejudicial to a serving member; that service personnel involved should have automatic access to medical records in the event of traumatic experiences; and that service personnel and families should be entitled to independent civil medical assessments so as to ensure assessments carried out by Defence are correct, justifiable, and can be corroborated. If you like, I can leave this with you.

**CHAIR**—That would be good. Mr and Mrs Gee, would you like to add anything?

**Mr Gee**—Yes, I would. I would like to make my remarks entirely on this exercise. Paul stated that I served in World War II on a destroyer and saw a lot of service. I can understand the Army doing such exercises but it is my proposition that it could have been done a lot more safely. One of the components of action that I remember is the incredible noise, unbelievable noise, particularly if you were being attacked by aircraft and all of the ship's guns were firing at that aircraft. The noise is absolutely astounding. It is mind boggling and it is mind deadening. It deadens the mind and it activates the physical. The Army has brought noise into this exercise. It states in the coroner's report that they had a machine-gun firing over the heads of the two soldiers—whether they were firing live ammunition or blanks, I do know. Irrespective of that, they just made a lot of noise, which is what the Army wanted. The rifles were firing—whether they had bullets in them or whether they did not, they made a noise which created a battle atmosphere.

They also had two safety officers in that din screaming out orders. What did the Army do? They put plugs in the two soldiers' ears. They are creating an atmosphere of battle and they put plugs in the two soldiers' ears so that the orders they were getting were muffled. In the report it says there is some doubt as to whether my grandson, Private Shiels, actually heard some of the

orders, particularly regarding stopping, when he should have put on the safety catch. If you read the coroner's report, it is a muddle. They do not know whether he heard the order, whether the order was given, whether the safety catch was on and his hand slipped down and took the safety catch off and activated the gun, or whether the safety catch was not put on and he just slipped and the gun fired.

In this day and age you do not have to do those sorts of things. If you are going to have live firing, when you have got a loaded gun you do everything in your power to stay behind it. You do not get in front of a loaded gun whether it is on safety or not. The result is that there were two soldiers there doing the firing exercise and throughout that exercise each soldier was showing his back to the other soldier. As soon as someone got in front there was a risk attached to it. If the Army says that it is an absolute necessity that you have live ammunition in such an exercise, then do it safely. Can you do it safely? Of course you can. You just have to use your head.

Everything is simulated today. One of my grandsons is an airline pilot and he has got to do his exercises every now and again to make sure that he is doing his job and that he knows his job. He does not do those exercises in an aeroplane in the air; he does them on the ground. There are so many areas that you can simulate. It is all right for me to say what the Army has done wrong, but I am going to tell them that, if they think, they can do it right. That exercise could be easily simulated. The Department of Defence has an extremely competent, scientific engineering section at Salisbury. They are very clever and they are doing lots of things. Surely to goodness those engineers and scientists out there can create an exercise like this. One soldier is in that battlefield—only one. The other one is a robot which can be controlled exactly—moved forward, moved back, fire blank bullets—and no-one gets hurt. If the Army cannot do that, if they want some advice—and I do not say this facetiously—why don't they get in touch with the movie industry? They have been simulating firing in movies for years and they do it well and they have not lost anybody yet, and I say that sincerely. Think!

**CHAIR**—Thank you, Mr Gee. Private Cave's death resulted in a board of inquiry, a coronial inquest and two courts martial; is that correct?

**Lt Cmdr Shiels**—We understand that there were two courts martial. We have never heard anything from the Army. The only thing that we have received is the coronial inquest report and the Comcare report. We have seen nothing. We don't know what went on in the Army, but we have heard through sources that there was a board of inquiry and, if you read the coronial inquest, you will see that it refers to the Army's board of inquiry, so there must have been one.

**CHAIR**—Have you asked the Army for information regarding this inquest at all, Mr Shiels?

**Lt Cmdr Shiels**—I did everything through my local member and through Senator Schacht. We just got responses back which were purely negative.

**CHAIR**—This is the courts martial where you understand junior officers were reprimanded?

**Lt Cmdr Shiels**—Yes, we understand—and I stand corrected on this—that it was the 2IC of B Company, an Army captain, that was court martialled, and a young NCO. But I am not sure. You would have to ask the Army about that.

**CHAIR**—The concept which we have heard on another occasion is that, if you fall off the horse, you have to get back on it. You say the Army says that Nicholas volunteered to go back into this situation?

**Lt Cmdr Shiels**—That is what they were saying in correspondence. But we were there. We know what they said.

**Mrs Shiels**—He was told.

**Lt Cmdr Shiels**—He was told. He was pressured into doing it.

**Mrs Shiels**—We were just incredulous.

**CHAIR**—How many days after the incident?

**Lt Cmdr Shiels**—Two days after the incident he had to return to do the same—exactly the same—exercise. In fact, they put him in front of the 200 troops and said, ‘Who will volunteer to be Private Shiels’s partner?’

**CHAIR**—The same NCOs, the same officers?

**Mrs Shiels**—That is right.

**CHAIR**—The same place?

**Lt Cmdr Shiels**—Yes, the same place—all the same. That is what Dr Davis implied in the *7.30 Report* interview when he said he was put back in exactly the same environment that he had been involved in two days before.

**Mrs Shiels**—It is incredulous. Commonsense would say you don’t do that. It is a traumatic event. I cannot understand how they could have even contemplated it. Of course he would not question it. He was told. As we said, he is a private: you do what you are told. We knew we couldn’t have any influence—Paul’s service background.

**Mr Gee**—There is another aspect of that: the Army could be thinking, ‘We will have this exercise again and if everything goes all right, it is a perfectly safe exercise.’ They could think along those lines—I don’t know. They could.

**CHAIR**—You understand that there has been a courts martial and a board of inquiry. You do not have information about—

**Mrs Shiels**—No, and we do not know what the findings were.

**Lt Cmdr Shiels**—We do not know anything about the courts martial or the board of inquiry.

**CHAIR**—But surely Nicholas must have been involved in the board of inquiry?

**Lt Cmdr Shiels**—He was involved in them all. That further depressed him because during the coronial inquest—I did not put it in the statement there—the father of the other soldier stated that his son had been deliberately shot. You will read that in the coronial inquest. He said that it was a deliberate act. The coroner in his findings found that the statement by this chap was bordering on being libel.

**Senator CHRIS EVANS**—And obviously the family of Private Cave were deeply distressed.

**Lt Cmdr Shiels**—They were upset, and we understood that. But what we are saying is that that would have added to the pressure on Nicholas. The other thing that added to the pressure—and I have alluded to it in the documents—was that he was posted as a private to a sergeant's position at 1 Commando Regiment. His record of service will state that he was a lance corporal, but I have provided you with the higher duties approval forms to show you that he was in a sergeant's position and being paid as a sergeant. Normally, you only get paid two ranks above your initial rank. Nicholas was getting paid three ranks above—from private to sergeant. So he was put under more stress by giving him more responsibility. And, blow me down, if they do not post him to another sergeant's job in Townsville, as a lance corporal, then.

**Mrs Shiels**—And virtually on his own.

**CHAIR**—How close were Nicholas and Private Cave?

**Mrs Shiels**—They were good friends. The Easter before the accident neither of them could go home to their respective states, so they spent the time together. Nicolas rang—he always used to ring—and I spoke to Adrian as well. I said, 'Look after yourselves.' They were good mates.

**CHAIR**—It must have been very traumatic for Nicholas to go to his funeral.

**Mrs Shiels**—It was horrendous. But it was a measure of the courage that he had. It was very hard for him. This is why with all of these things that he had to do—the extra pressure of the sergeant's positions—he felt he had to keep going. And he put up a front all the time. Underneath he was a very sensitive and caring boy.

**CHAIR**—I see from this obituary that he must have been a service child if he started off his schooling at Nowra. He must have been posted there.

**Mrs Shiels**—He did. And that is what we were saying: he wanted to contribute. He liked the service life and he saw a role for himself there. And it was just taken away. When he was knocked back for his commission it all of a sudden hit him and he realised that there was no career—there was nothing for him in the services.

**Lt Cmdr Shiels**—We could go more into the story of ADFA—I have more documentation—but our primary concern today is the treatment he received whilst he was in the Army. We just wanted to mention ADFA briefly. We have quite a bit of information about the bullying and bastardisation at ADFA. I will only mention that briefly, and I do not want to go further into that because our primary concern is service in the Army.

**Senator CHRIS EVANS**—Thanks very much for coming along today. I appreciate how difficult it is for you, and we express our sympathies for the loss of your son and grandson. I want to go back to the night of the accident. He was admitted to Whyalla Hospital. Did you speak to him that night?

**Mrs Shiels**—No, we did not get up there until the following morning.

**Senator CHRIS EVANS**—So you did not get a phone call?

**Mrs Shiels**—No. We were all at home. It was our younger son's 21st birthday—which is another thing. It was his 21st and every year his birthday is the anniversary of Adrian's death. It is just horrific. To say that he would not have PTSD and would not be suffering depression after all of that is just ludicrous. But I heard on the news on television and I said at the time—

**Senator CHRIS EVANS**—What did you hear, sorry?

**Mrs Shiels**—I heard that there had been an accident as part of the exercise in Whyalla and that a soldier had been killed. I thought, 'God, I hope it is not Nick.' And then I thought, 'The poor lad who was killed.' But, more so, I thought, 'The poor lad whose gun had discharged.' There was not one death; Nick started to die from that day on.

**Senator CHRIS EVANS**—How did you find out that Nicholas was involved?

**Mrs Shiels**—I rang Keswick and spoke to the duty officer. He said that it was not Nicholas who had been killed and that he was not involved. Then Paul came home, and about half an hour later the phone rang and it was the duty officer again. He said that Nicholas had been involved—he had not been killed but he had been involved and he had been admitted to Whyalla Hospital. That was all we knew. We are in Adelaide, so we got in the car early in the morning—

**Senator CHRIS EVANS**—Did they tell you why he had been admitted?

**Lt Cmdr Shiels**—For observation.

**Mrs Shiels**—For observation. That was all.

**Senator CHRIS EVANS**—So you did not know at the time that his rifle had fired the shot?

**Lt Cmdr Shiels**—No.

**Mrs Shiels**—No. We knew nothing.

**Lt Cmdr Shiels**—They just said that he had been involved.

**Mrs Shiels**—It was his company and he was involved and he was in for observation in the psychiatric ward. That is another thing: they put him in Whyalla Hospital in the psychiatric ward; yet they said that there was nothing wrong, that he did not have PTSD, that there was no depression and that he would not have a reaction.

**Senator CHRIS EVANS**—So you got in the car the next morning.

**Mrs Shiels**—We went straight up there. When we saw him he was totally devastated.

**Lt Cmdr Shiels**—We had never seen him like that.

**Mrs Shiels**—The eyes.

**Senator CHRIS EVANS**—What happened then? Did they discharge him that morning?

**Lt Cmdr Shiels**—There was a nurse there. We did not see any doctors—

**Mrs Shiels**—No, we did not see any medicos.

**Lt Cmdr Shiels**—There was only a nurse who was looking after him and she said he had been reliving the experience and trying to rationalise it. Then we left the hospital and booked into a motel.

**Senator CHRIS EVANS**—Did you have Nicholas with you or was he still in hospital?

**Mrs Shiels**—He came with us.

**Lt Cmdr Shiels**—He was discharged. He came with us.

**Mrs Shiels**—They gave us a chaplain.

**Lt Cmdr Shiels**—We got there and then later that day a chaplain, the Army psychologist and a social worker turned up. It was quite interesting. We thought it was a bit uncalled for, but the chaplain grabbed us and moved us aside, and the psychologist grabbed Nicholas and moved him aside. Instead of him just saying, 'I'd like to have a word to Nicholas,' it all appeared to be done underhandedly. Before that, we had to go to the Whyalla police station. It was there that I met the 2IC, Captain Whithycombe, and the company sergeant major. I sat in on the state police interview with Nicholas. They interviewed him, which they had to do. Then we went back, and it was later that evening that the psychologist, the chaplain and the social worker turned up. It is interesting to note that the social worker at that time gave us some pamphlets and said, 'You'd better be aware that he might experience post-traumatic stress disorder.' He actually gave us pamphlets on it.

**Senator CHRIS EVANS**—So you spent the day with him. He had interviews with the social worker, the police et cetera. Then he spent that night with you at the motel?

**Mrs Shiels**—Yes.

**Senator CHRIS EVANS**—Then what—he reported for duty the following morning?



**Lt Cmdr Shiels**—The next morning the company sergeant major said that Captain Whithycombe had said that Nicholas had to do the live firing again and the company sergeant major would pick him up at seven o'clock the next morning from the motel.

**Senator CHRIS EVANS**—So they told you on the first night that he would have to undergo that?

**Mrs Shiels**—Yes.

**Senator CHRIS EVANS**—So you were aware that that was going to happen?

**Lt Cmdr Shiels**—Yes. They came around then and picked him up. The psychologist said, 'We will meet you at the BP service station at 12 o'clock.' He turned up at half past two with no apology, which annoyed us.

**Senator CHRIS EVANS**—I know it is hard to go back, but what did you think at the time about the live firing exercise?

**Lt Cmdr Shiels**—We thought it was—

**Mrs Shiels**—Totally unnecessary.

**Senator CHRIS EVANS**—Did you have a discussion with the psychologist about that at the time?

**Lt Cmdr Shiels**—No. I cannot fully recall, but I think I made a comment to the CSM and the captain like, 'Do you really have to go down that line?' I think that is what I said.

**Senator CHRIS EVANS**—So they came and picked him up in the morning and took him out to the live firing range?

**Lt Cmdr Shiels**—They picked him up at 7 o'clock and we next saw him at about 2.30 that afternoon.

**Senator CHRIS EVANS**—What sort of state was he in that day?

**Lt Cmdr Shiels**—He was still distressed.

**Mrs Shiels**—He was agitated.

**Lt Cmdr Shiels**—He could not stop; he was walking around all the time.

**Mrs Shiels**—Yes, and he was talking. He was nervous.

**Senator CHRIS EVANS**—Was he better after the live firing thing and since he got it out of the way?

**Mrs Shiels**—No. He was worse.

**Senator CHRIS EVANS**—What happened after that?

**Mrs Shiels**—We drove back to Adelaide.

**Lt Cmdr Shiels**—We drove to Adelaide on his convalescent leave. As you will see, Major General Roberts—

**Senator CHRIS EVANS**—He came down to Adelaide with you?

**Lt Cmdr Shiels**—Yes, and he stayed overnight. The psychologist told us at the BP service station that he could come back to Adelaide and remain overnight but he was to get a 6 a.m. flight out the next day for Sydney.

**Senator CHRIS EVANS**—This was so that he could be part of the group counselling?

**Lt Cmdr Shiels**—Yes.

**Senator CHRIS EVANS**—I do not understand why the group counselling occurred in Sydney if they were all in Whyalla.

**Lt Cmdr Shiels**—They had flown back to Sydney. We drove him home and he virtually went straight to bed. Then a Commonwealth car picked him up for whatever the flight time was in the morning—it was very early. The car picked him up and he was gone.

**Senator CHRIS EVANS**—Did you speak to him on the phone after the group counselling episode?

**Mrs Shiels**—Yes, he would ring home and he was very distressed.

**Senator CHRIS EVANS**—You felt he was anxious and distressed in the days after all that?

**Mrs Shiels**—Of course he was. Yes, absolutely.

**Lt Cmdr Shiels**—Yes.

**Senator CHRIS EVANS**—Then he had to endure the funeral—

**Mrs Shiels**—Yes.

**Senator CHRIS EVANS**—and the board of inquiry.

**Mrs Shiels**—Yes.

**Lt Cmdr Shiels**—and the coronial inquest.

**Senator CHRIS EVANS**—That was the coronial inquest into Adrian Cave's death?

**Lt Cmdr Shiels**—Yes.

**Senator CHRIS EVANS**—Did he have to give evidence at that as well?

**Mrs Shiels**—He did.

**Lt Cmdr Shiels**—That was the one where I spoke about the father.

**Senator CHRIS EVANS**—Yes. Did he have to participate in the Comcare report or was that just done?

**Lt Cmdr Shiels**—I am not sure.

**Mrs Shiels**—He was not advised of his rights.

**Senator CHRIS EVANS**—I assume from what you said he was not charged or had any action taken against him arising out of the accident?

**Lt Cmdr Shiels**—No.

**Senator CHRIS EVANS**—Did he have to appear at the courts martial?

**Mrs Shiels**—We presume he did. We do not know.

**Lt Cmdr Shiels**—We do not even know whether there was one. We only understand that.

**Senator CHRIS EVANS**—But from talking to him you do not remember him saying he had to appear at one?

**Mrs Shiels**—I think he did at one; I am not sure whether it was both.

**Senator CHRIS EVANS**—Your submission is very comprehensive. I feel as if I am flitting through but it is because I want to get from you in the time that is available the stuff that fills in the holes for us.

**Mrs Shiels**—Fair enough.

**Senator CHRIS EVANS**—I do not want you to feel that I am ignoring parts of the story. Your submission is very good. I want to concentrate on the time between the accident and his admission to Concord Hospital. I think 13 months had passed.

**Mrs Shiels**—That is right.

**Lt Cmdr Shiels**—Yes, 13 months.

**Senator CHRIS EVANS**—He had had the funeral, the boards of inquiry and all of that stuff going on. What was your sense about his mental state during that year? Did he pick up? Obviously he was getting on with his job. He had been transferred and he was doing things.

**Mrs Shiels**—That is right. He was being kept busy.

**Senator CHRIS EVANS**—Did you feel that he was—

**Mrs Shiels**—You could tell. He rang all the time.

**Lt Cmdr Shiels**—He was ringing home. He rang all the time saying he couldn't sleep and he couldn't get the accident out of his mind.

**Mrs Shiels**—He was having flashbacks.

**Senator CHRIS EVANS**—So all of that accumulated—I just want to be clear—and you were so concerned about it you rang the Army. Is that right?

**Lt Cmdr Shiels**—No. It was a weekend when he called home one evening in a very distressed state. He could hardly speak. I was so concerned that he might harm himself that night that I called his immediate supervisor, Captain Phil Kirkman.

**Senator CHRIS EVANS**—This was in 1993?

**Lt Cmdr Shiels**—Yes. Phil said, 'I'll go around and see him.' When he got around there he found him—

**Mrs Shiels**—He found him all curled up. He could not even say one word—nothing fitted together. He could not tell him his name, the day or anything. So Captain Kirkman had him admitted to Concord. I think that is the first time he would have seen a psychiatrist.

**Senator CHRIS EVANS**—So you think that was actually the first time he saw a psychiatrist?

**Lt Cmdr Shiels**—We are not sure on that.

**Senator CHRIS EVANS**—I said that. How long did he stay in Concord and what was the diagnosis?

**Mrs Shiels**—He stayed in for four days.

**Senator CHRIS EVANS**—And what was the diagnosis?

**Mrs Shiels**—We were given to believe that there was a possibility—that is what was stated—of PTSD. I do not know—I am not medically qualified—but I cannot see how you can have the possibility of a medical condition. Either you have it or you do not.

**Senator CHRIS EVANS**—What did they recommend in treatment when they discharged him?

**Lt Cmdr Shiels**—We do not know.

**Mrs Shiels**—None.

**Senator CHRIS EVANS**—This is the Concord Hospital psychiatric and medical treatment, not the Army treatment. Is that a fair statement?

**Mrs Shiels**—Yes.

**Lt Cmdr Shiels**—He may have seen the psychiatrist that he saw at Concord on one occasion afterwards. I am not sure. I think he mentioned it once in passing but I cannot be sure on that.

**Senator CHRIS EVANS**—I had better let someone else have a go.

**Senator JOHNSTON**—Thank you very much for coming in. Your son did some time at ADFA. He left ADFA, but it appears there was some sort of break before he rejoined or did he naturally—

**Lt Cmdr Shiels**—Yes. He went back to university.

**Senator JOHNSTON**—Tell us what happened. He did not like ADFA or ADFA was—

**Lt Cmdr Shiels**—He was bullied and mistreated.

**Mrs Shiels**—And, as a result, he left.

**Lt Cmdr Shiels**—As a result he decided it was not for him and he resigned.

**Senator JOHNSTON**—Do you recall whether that affected him adversely?

**Mrs Shiels**—Yes, it did. He was very disappointed.

**Lt Cmdr Shiels**—He was disappointed more than—

**Senator JOHNSTON**—When you say ‘disappointed’, was he depressed?

**Mrs Shiels**—No, he was not depressed; he was disappointed.

**Senator JOHNSTON**—What did he study and where?

**Mrs Shiels**—He studied at Flinders. He did arts and he majored in strategic studies. He hoped that he would be able to make a career in intelligence.

**Senator JOHNSTON**—How many years was that course for?

**Lt Cmdr Shiels**—He did not complete it. He did only two years and then he joined the Army. When he was discharged from the Army, he went back to Flinders University and completed this degree, majoring in strategic and defence studies.

**Senator JOHNSTON**—It strikes me that from May 1992 through to the time of his death he would endeavour to persevere with the issue that was confronting him and occupying his mind, and would try and get on with his life as best he could. Did he disclose to you what the diagnosis was? It seems that you do not have any idea, and I take it that you would have asked him, ‘What has the doctor said?’

**Lt Cmdr Shiels**—After he was discharged from the Army, on occasions we tried to get him to see a psychiatrist.

**Mrs Shiels**—I begged him to go to counselling because he had flashbacks and he was hyper-alert.

**Senator JOHNSTON**—Hypersensitive?

**Mrs Shiels**—Hypersensitive and hyper-alert. He just did not sleep or eat. He had no regular eating patterns. One time, we took him to Flinders Hospital—this is after he left the Army—and he had what we thought was a severe migraine. He could not speak and we took him there. They gave him some medication and it took him three days—

**Senator JOHNSTON**—Do you know what they gave him?

**Mrs Shiels**—Maxolon to stop the vomiting.

**Senator JOHNSTON**—That is a sedative, isn’t it?

**Mrs Shiels**—It was to settle the stomach and stop the vomiting. It was also for the migraine. They did not keep him overnight. We brought him home and he stayed with us for a week. At that stage all of our boys were living in a unit close to the university.

**Senator JOHNSTON**—How many boys do you have?

**Mrs Shiels**—Three—we had three. We have two now; two living.

**Senator JOHNSTON**—You had asked him what the doctor said. He saw a psychiatrist at Concord. Did he give you details about his prognosis or diagnosis?

**Mrs Shiels**—No, he didn’t.

**Senator JOHNSTON**—Why wouldn’t he tell you about these things?

**Mrs Shiels**—He alluded to them in that he was telling us how he felt and what was happening—that he could not sleep and all those sorts of things.

**Senator JOHNSTON**—Did he tell you about the symptoms?

**Mrs Shiels**—Yes. He told us about the symptoms but he did not say anything about what the psychiatrist had said.

**Senator JOHNSTON**—Why was that?

**Mrs Shiels**—I do not know. I do not know whether he knew—whether he had access. That is why in one of my statements I said that they should have access to this. They should know what is being written about them.

**Senator JOHNSTON**—Do you think that he was concerned that if Army were to find out about the symptoms they would discharge him?

**Mrs Shiels**—That is absolutely it.

**Senator JOHNSTON**—You have given us the *Bridges Review* article. I note that Warrant Officer Kennett writes about the accident. He said:

In May 92, Nicholas was involved in a training accident that resulted in the death of a close friend. He suffered severe depression as a result, although he would not let this interfere with the efficient performance of his duties. With a typical soldier's attitude, Nicholas refused help even from his family, and attempted to deal with his burden himself.

He goes on to say that the burden became too much. Is that accurate?

**Lt Cmdr Shiels**—That is accurate because, as we said, we tried to get him to see psychiatrists after he was discharged from the Army but he would not go. After his death, we did find a card, didn't we?

**Mrs Shiels**—He had made an appointment.

**Lt Cmdr Shiels**—He had made an appointment to see somebody but he did not want to go on our recommendation, it must have been.

**Mrs Shiels**—He told me that he did go to a counsellor at Flinders University one time. I asked him if he thought that that was the best place to go, because how could they understand what he had been through? He said, 'I told them everything.' I said to him, 'Do you think that they would be able to understand the enormity of what you've been through?' He said, 'I don't know.'

**Senator JOHNSTON**—There is some suggestion—I do not know where I have got the suggestion from; I think it is in your very detailed submission, which I thank you for—that the reason he gave to his MO or to anybody who was in the service looking after him was that it was about his girlfriend.

**Mrs Shiels**—No. I do not know where that—

**Lt Cmdr Shiels**—We do not know where they got that. We still know this girl and keep in contact with her. Again, they are getting the facts mixed up. He may have used that as an excuse.

When he was admitted to Concord hospital he would ring up from there. On occasions, as Toni will tell you, he would say, 'They're all mad in here, mum; get me out of here.' So he could have been using any excuse to get out. He might have just told them, 'The reason I've gone like this is a break-up with a girlfriend.' But he did not want to allude to the accident.

**Mrs Shiels**—Because he knew that the result of that would be that he would be discharged.

**Senator JOHNSTON**—I see that he has a recommendation. You have given us the recommendation for officer entry. Subject to eligibility, he was recommended for officer entry. That offer was valid until 31 July 1994. Did he take up the offer?

**Lt Cmdr Shiels**—Yes, he did. He wanted to accept it. In fact, when you read through the ministerials, you will see they sent him for a medical examination on 30 November 1993 for the Royal Military College. So he passed the medical.

**Senator JOHNSTON**—He passed the medical?

**Lt Cmdr Shiels**—He passed the medical.

**Senator JOHNSTON**—How do you know that?

**Lt Cmdr Shiels**—Because it is in the ministerial letter. In January, three months after that message from SCMA—

**Senator JOHNSTON**—So in January 1994—

**Lt Cmdr Shiels**—He got a letter from Defence Force Recruiting in Townsville telling him that he was too old. The Army knew how old he was in the first place.

**Mrs Shiels**—So why did they put him through all of that? They gave him false hope.

**Senator JOHNSTON**—Did he take a nosedive—if I can use that colloquial expression—after that?

**Lt Cmdr Shiels**—Yes.

**Mrs Shiels**—Yes, he did. He realised that it did not matter what he did; from then on everything would go back to the accident. He just could not keep up this depression.

**Senator JOHNSTON**—He believed that the reference to age was not the actual reason; it was about the accident?

**Lt Cmdr Shiels**—That is exactly right.

**Senator JOHNSTON**—And he said that to you?

**Lt Cmdr Shiels**—Yes.



**Senator JOHNSTON**—So all roads led back to the accident?

**Mrs Shiels**—That is right.

**Lt Cmdr Shiels**—He understood—and it happens in the services—that they have age waivers, and he was only 24 at the time.

**Mrs Shiels**—After he had left the Army—and I think he did them a favour in doing that—in the June before he died, he came into my school. He sat on the table and he said: ‘I have got no hope, Mum. Who will give me a job? Everything goes back to the accident.’

**Senator JOHNSTON**—When was this?

**Mrs Shiels**—This was in June 96.

**Senator JOHNSTON**—And he was discharged in 95?

**Mrs Shiels**—He looked dreadful—yes. He was not looking after himself. He was not eating and not sleeping, he had all the indicators of PTSD, and he had been to counselling that month.

**Senator JOHNSTON**—Throughout the period between May 1992 and when he was discharged in February 1995—just short of three years—you were urging him to get professional assistance?

**Mrs Shiels**—Yes.

**Senator JOHNSTON**—Was he taking your advice?

**Lt Cmdr Shiels**—We do not know. We presume that he only took what the Army gave.

**Senator JOHNSTON**—It seems very unlikely that he would tell the Army the full story.

**Lt Cmdr Shiels**—Exactly.

**Mrs Shiels**—Exactly, and you know the reasons why.

**Senator JOHNSTON**—Yes.

**Mrs Shiels**—So he was damned if he did and damned if he didn't.

**Senator JOHNSTON**—In those circumstances—and I know this is very difficult—how do you think the Army could have better handled the situation when he was unwilling to disclose to them the full extent of his psychological damage?

**Mrs Shiels**—If they could order him to go back and do the exercise again, they could order him to undertake treatment.

**Senator JOHNSTON**—So you think that it was a clear situation where the Army simply needed to say, ‘You need to go and have specialist psychiatric treatment.’

**Lt Cmdr Shiels**—Yes, exactly.

**Mrs Shiels**—They needed to acknowledge that it was a huge thing.

**Senator JOHNSTON**—I have no further questions. Thank you very much for coming today.

**Senator PAYNE**—Mrs Shiels, you said that when he left the Army—and I think I am quoting you correctly—he did them a favour by doing that. What did you mean?

**Mrs Shiels**—The fact that they knocked him back on the commission was an indication that he did not have a career in the Army. That was how he felt. So when he resigned, it made it easy for them because this person who could have been a problem was now longer a problem.

**Senator PAYNE**—But for Nicholas it meant something completely different, in your family’s view.

**Mrs Shiels**—What do you mean?

**Senator PAYNE**—He obviously had long-term career aspirations—

**Mrs Shiels**—Yes; it was a passion.

**Senator PAYNE**—that were derived from both his grandfather’s and his father’s service.

**Mrs Shiels**—In a letter that he wrote, he said, ‘I’ve just left the Army, and that was so hard.’

**Senator PAYNE**—He wrote that to you?

**Mrs Shiels**—He wrote it in a letter.

**Senator PAYNE**—I have read a couple of times, while I have been listening to my colleagues, Major General Roberts’s letter in response to matters proposed, at the time, to be aired by the ABC. For me it reinforces some of the observations we have been making during this inquiry about how psychological and mental health issues are managed within the defence context. We have met many people in your very tragic situation—I cannot imagine how difficult it is for you to bring yourselves before us, and we appreciate that enormously—who basically, when they are describing their feelings and their experiences, are filled with an enormous sense of frustration about how you persuade the organisations we are talking about to manage mental health problems in a way that you would believe would be more effective. Is that a reasonable assessment of your position and your views?

**Mrs Shiels**—Absolutely, yes. We feel that in so many instances the attitude is ‘we have done it this way; there is nothing wrong with it, so we will keep on going’ instead of being open to all of the new research that is being done on mental health issues and saying, ‘It does happen.’ Personnel are people. Because they happen to be in the service does not mean that they should

not be accorded the same rights as civilians. It is even more incumbent upon them, I think. They should be even more aware of it.

**Senator PAYNE**—Given that your children are in their care.

**Mrs Shiels**—Exactly—and they are. That is what I believe—in loco parentis.

**Senator PAYNE**—The changes that you call for in your submission are particularly about what opportunity there is for, you say, the public and families, but it is clear to us that the challenge of getting information for families about what has happened to their children and the experiences they are going through is particularly difficult. How would you describe your efforts to obtain information both before and since Nicholas's suicide?

**Lt Cmdr Shiels**—We have found it very frustrating, to be quite honest, when you have been there and know what happens in a particular area. We were at Whyalla. We saw what happened at Whyalla. You get information back. You write to your local member and your local member goes to the minister and the minister goes to Defence. I used to do ministerials in Defence. But most of the information we found in the ministerials we received back was inaccurate. I kept writing letter after letter. That is why there are three there—and there are more. There are hasteners. At one stage we had to wait nearly 12 months for a letter.

**Mrs Shiels**—We wanted to stay within the protocols.

**Lt Cmdr Shiels**—We felt it was better for us to do it through our local member, who could go through the minister. The local member did his job, in writing to the minister, but the minister, we found, did not question the defence department. They were just coming back with information which we found to be totally inaccurate.

**Mrs Shiels**—And it was not questioned. It was just accepted.

**Lt Cmdr Shiels**—It was not questioned. It was like the minister had just accepted—because she must be getting numerous letters or whatever—everything the defence department said. It was like the defence department was the minister. So yes, it has been very frustrating.

**Senator PAYNE**—Did you ever seek access to Nicholas's medical records?

**Lt Cmdr Shiels**—No, we haven't.

**Mrs Shiels**—But even then, our idea was: how much would we have been given? What would we have been given?

**Lt Cmdr Shiels**—We seem to find, with freedom of information, that if you go and get freedom of information from Defence, which I have done before, they blank out a lot of things. So we do not know what they would blank out and what they would not blank out.

**Mrs Shiels**—We thought: how much information would we get?

**Senator PAYNE**—I was wondering how Dr Davis, to whom you refer in your correspondence, has made his assessments. He has not seen any of the records, but he has made his assessments based on the facts of the event and his expertise.

**Mrs Shiels**—Exactly.

**Lt Cmdr Shiels**—He has based his assessments on interviewing us and on what has been written in the ministerial letters.

**Mrs Shiels**—I rang and spoke to him in February 1996—the year Nicholas died—because there seemed to be a pattern in Nicholas’s depression. He would get through Christmas and then he would have what we called a downer in about February or March. He would then cope with Kieran’s birthday and the anniversary and then go down again in June/July. You will note that he was admitted to Concord in June. Then he would have another downer in October. This was a pattern that we saw develop.

So I rang Dr Davis in February 1996 and asked him what we could do. I said, ‘I want him to come and see you, or can you recommend someone?’ He said, ‘He could come to me, but I can’t make him come if he doesn’t want to.’ I used to try and work out ways that I could have him go perhaps by accident. He said the only way we could get him to have treatment was if we had him committed. I am sorry, but I could not do that. Nicholas placed an awful lot of importance on trust. His whole thing was trust and, if I had done that, I would have betrayed his trust. I would never do that, even though I knew he was so sick. I did not know what to do. So I tried and kept on encouraging him and talking to him. He would often ring when he came home and we would talk for hours. I would say: ‘How are you going? What about going and seeing someone? It would be good to talk about and share these things. People will be able to support you. They’ve got skills. They can help you get through this.’ He would say, ‘I’m okay, Ma.’

**Senator CHRIS EVANS**—When you had those discussions a couple of years on, was he still focusing on the accident?

**Mrs Shiels**—Yes, all the time. He would have flashbacks and say, ‘I can’t sleep, Ma.’

**Senator PAYNE**—I just wanted to conclude that question by saying that your contention is that, if it had been handled properly in the first place, it would not necessarily have been causing the same level of pressure and problems three years down the track and, whilst no-one ever knows whether you can stop someone who is determined to take their life from taking their life, your contention is about having it handled properly in the first place.

**Mrs Shiels**—Exactly.

**Lt Cmdr Shiels**—Exactly.

**CHAIR**—Thank you very much for coming along today and giving us an opportunity to hear at first-hand what you have experienced. We will certainly take it into account as we consider our report.

**Mrs Shiels**—We really appreciate your time.

**Proceedings suspended from 10.18 a.m. to 10.39 a.m.**

**KNIGHT, Mrs Debra Joan, (Private capacity)**

**KNIGHT, Mr Leslie, (Private capacity)**

**CHAIR**—I declare this session open again. The committee welcomes Mrs Debra Knight and Mr Leslie Knight. Mrs Knight, we have received your submission and made it No. 18. Do you have any alterations to your submission?

**Mrs Knight**—No.

**CHAIR**—You have been provided with information about privilege and adverse comments?

**Mrs Knight**—Yes.

**CHAIR**—Mrs Knight, would you like to make an opening statement or go straight into questions?

**Mrs Knight**—I think we will go straight into questions.

**Senator CHRIS EVANS**—Thank you, Mr and Mrs Knight, for coming. How did you find out about Jason's death?

**Mrs Knight**—From the police.

**Senator CHRIS EVANS**—The police came to see you?

**Mrs Knight**—They knocked on the door at 7 o'clock in the morning and told me.

**Senator CHRIS EVANS**—What did they tell you when they came?

**Mrs Knight**—When Mark knocked on the door I actually asked him, 'Have you come here to tell me something about my son?' I expected him to shake his head, but he said yes.

**Senator CHRIS EVANS**—You knew the police officer?

**Mrs Knight**—He lived next door. The police station was next door to the house.

**Senator CHRIS EVANS**—Did he tell you that Jason had taken his own life?

**Mrs Knight**—Yes, that he had committed suicide. But I knew Jason was going to do it anyway. He rang me the night before at 10 o'clock. I actually thought he was drinking. He was very distressed—he was screaming, he was yelling—but I really thought it was just a drinking episode and that he would wake up the next morning, tail between his legs and head down, saying, 'What did I do?' I told him I was going to ring the Army, and he said, 'Don't do that, you'll get me into trouble.' He reckoned he had found the missing part to the jigsaw and he was

going to be my guardian angel. I could not make sense of it and I told him off. I said to him, 'Don't do anything stupid.' You never, ever think your children are going to do this—and it happened.

**Senator CHRIS EVANS**—When did you first know that he was getting depressed or that he might be going to go through a tough time?

**Mrs Knight**—I cannot remember dates, spans, the time or anything, but to me he went on a downer. First of all, he was on a real high because he was going to get his wings for parachute jumping. He was on this major high and then when I rang him to find out whether he had got them, he said, 'Oh, yeah,' and he was on a major downer. I said, 'Jay, what's the matter, what's wrong? You got your wings. That's what you wanted to do. This is so great.' He said, 'All it proves, Mum, is that I'm stupid enough to jump out of a plane.' I said, 'How could you go from that to that in a week?'—and he did.

**Senator CHRIS EVANS**—So you had been concerned about him for at least a couple of weeks beforehand?

**Mrs Knight**—Yes.

**Senator CHRIS EVANS**—But before that he was quite happy in the Army and enjoying it?

**Mrs Knight**—Yes. His graduation was an absolute buzz. He got the most improved recruit trophy on the 11th of the 11th. I was told by the veterans that the trophy is not given out lightly, that they do not give it out at every graduation, so Jason earned it.

**Senator CHRIS EVANS**—Had he had any fits of depression or any other mental health issues before joining the Army?

**Mrs Knight**—Nothing like that. He was just a teenager with teenage problems. He was a teenager who had his ups and his downs. You try to keep your kids on the straight and narrow and when they veer off you just hope and pray that you can get them back on the straight and narrow—and he did that himself. He got himself from there to there—from the Army.

He wanted to join the police force. He had not done year 11, so his next step was the Army. When he told me that he had joined the Army, I couldn't believe it. I said, 'You've got to be joking!' He said, 'No.' I said, 'You got in.' He said yes. My boy was six foot five and he used to stoop. I used to say to him, 'Jay, stand up tall and straight. Pull your shoulders back. Don't be ashamed of your height.' He joined the Army and stood tall. He stood strong. He was proud of himself.

**Senator CHRIS EVANS**—You say in your submission that you became aware at some stage that he had made a couple of previous attempts at suicide. How did you find that out?

**Mrs Knight**—Who told me? It was after his funeral. I had gone back home to Queensland. I honestly cannot remember who told me now.

**Senator CHRIS EVANS**—Was it someone from the Army?

**Mrs Knight**—No-one in authority or anything like that.

**Mr Knight**—Didn't you read it in the Army statements?

**Mrs Knight**—Was it in the Army statements or the police statements?

**Mr Knight**—I am not sure.

**Mrs Knight**—I cannot remember.

**Senator CHRIS EVANS**—It was some sort of official source, was it? Did you ever get any detail about those earlier attempts?

**Mrs Knight**—In one attempt he tried to go through a plate glass window and got cut. He was always looked after by—there was Bradley—

**Senator CHRIS EVANS**—These are old army mates.

**Mrs Knight**—Yes. He was always supposed to be looked after by them. They were always supposed to keep an eye on him at those times. The first and second attempts were leading up to when he actually put the noose around his neck.

**Senator CHRIS EVANS**—So they were fairly recent.

**Mrs Knight**—Yes. It was all to do with him being in the jail. I did not know about that, and he would not tell me why.

**Senator CHRIS EVANS**—He had been jailed in the Army, had he? You do not know why he was jailed. Do you know how long he was in the jail for?

**Mrs Knight**—No.

**Senator CHRIS EVANS**—Was he in the jail shortly before his suicide?

**Mrs Knight**—It was in that same time period.

**Senator CHRIS EVANS**—The immediate period before. But hadn't he just got his wings? So he must have been out and training.

**Mrs Knight**—He must have been out. I do not know. That is what I mean—I do not understand. Also, the day that he killed himself—or the night—he had put his car, which was his pride and joy, in for a service and to get it fixed up. If you are going to kill yourself, why would you do that?

**Senator CHRIS EVANS**—Do you know whether Jason had been drinking a lot the night of his death?



**Mrs Knight**—Apparently he had not been; it was not drink according to the coroner.

**Senator CHRIS EVANS**—Did the coroner have a blood alcohol level reading on him?

**Mrs Knight**—They must have. It was not in there. I searched and searched for it—the drugs and everything else—but it was not there.

**Senator CHRIS EVANS**—After the police told you about his death, did you go to the base? What happened next?

**Mrs Knight**—No, I jumped the fence onto an oval.

**Senator CHRIS EVANS**—What was the first contact you had with the Army?

**Mr Knight**—They came up the day that he died.

**Senator CHRIS EVANS**—The Army came around to your home.

**Mr Knight**—We lived at Dimbulah, which is about 140 kilometres inland from Cairns. They came up that afternoon.

**Senator CHRIS EVANS**—Did they give you more detail then about Jason's death?

**Mr Knight**—I think they told you a bit more, didn't they?

**Mrs Knight**—I actually said to them, 'How can a kid go from up here to down here in that amount of time?' Whoever the officer was—he was in a white formal uniform—he was the one that told me that sometimes if soldiers big-note themselves or feel like they have done something fantastic like 'I've got my wings', they get slapped down. I wrote to the Defence Force about that. I got a letter back which I only just read yesterday—I had forgotten I had even done it. That did not happen; that sort of stuff does not go on in the Army.

**Senator CHRIS EVANS**—So after Jason's death there was a coroner's report.

**Mrs Knight**—Just the report. It was all I got.

**Senator CHRIS EVANS**—Was there an Army investigation into his death?

**Mrs Knight**—No.

**Senator CHRIS EVANS**—Did you ask for one?

**Mrs Knight**—No, because of what I had been told when those guys came out. There was a lady as well. When they came out it was all supposed to have been over the fact that Jason had been caught with marijuana and one of the other recruits had dobbed him in. He had had a urine test or a blood test or something and he was waiting to find out if he was going to be discharged or not.

**Senator CHRIS EVANS**—So the Army or Defence told you that when they came out to tell you about his death?

**Mrs Knight**—I think it was them.

**Senator CHRIS EVANS**—Did they suggest that he might have been anxious about the drug test?

**Mrs Knight**—About being discharged, yes.

**Senator CHRIS EVANS**—I see.

**Mrs Knight**—But when I asked that question again down the track—I think it might have been at Jason's funeral that I asked another officer—they said, 'No way. He would not have been discharged.'

**Senator CHRIS EVANS**—Did you ever find out what the result of that test was?

**Mrs Knight**—No.

**Senator CHRIS EVANS**—Did Jason talk to you at any stage about the drug test? Did you know about that before?

**Mrs Knight**—No. I was confused, because I have letters at home that Jason wrote to me. Jason had smoked dope before he went into the Defence Force. He knew that you were not allowed to smoke dope or do drugs in the Defence Force. When he was home on leave and went back to his mates they were all still doing their thing—trying to get jobs and trying to work and all that. He wrote to me and said, 'Mum, I don't want to be like that anymore. I'll never be like that ever again. I can see I've got a future, and I am so proud of myself that I have done this.' So if he did do it, what made him start doing it? To me, marijuana is solace, the same as grog. It is to have a good time and it is for solace. If people are stressed or whatever, they smoke dope. People smoke for recreation and stuff like that; they do not do it to blow their brains out.

**Senator CHRIS EVANS**—Since Jason's death you have seen the coroner's report but you have not seen any Army investigating report. You mentioned privately, just before we started taking evidence, that there is now an inspector-general's report. Can you tell us what has happened there?

**Mrs Knight**—I rang the inspector-general and he came out to my place and interviewed me for three or four hours.

**Senator CHRIS EVANS**—Was this recently?

**Mrs Knight**—Yes.

**CHAIR**—So you rang him; they never contacted you?

**Mrs Knight**—Yes. I got his phone number from another family who put in a submission.

**Senator CHRIS EVANS**—I see, and they suggested you might ring the inspector-general.

**Mrs Knight**—Yes. Everything just came at me. If I can keep going and finding answers, I will try anything. So I took the inspector-general's number, I rang and he came out and interviewed me for three to five hours. It was a long time.

**Senator CHRIS EVANS**—And that was in the last month or so?

**Mrs Knight**—No. When did I have to put the submission in? February. It was before that.

**Senator CHRIS EVANS**—So it was very early this year, perhaps?

**Mrs Knight**—Yes, and they have been investigating it.

**Senator CHRIS EVANS**—So you made a complaint to the inspector-general and he came out and interviewed you. Have you received a report yet from him?

**Mrs Knight**—That is meant to be today. On either Friday or Monday I got a phone call from Robyn, who is the inspector-general's secretary.

**Senator CHRIS EVANS**—And they said the report should be available to you today?

**Mrs Knight**—Yes.

**Senator CHRIS EVANS**—So you are waiting on that.

**Mrs Knight**—They said they had to interview over 20 people. They are out of the Army now and they are all living in different states. That is what is taking so long.

**Senator CHRIS EVANS**—I just want to be clear. Do you know whether or not the Army did a report on Jason's death at the time?

**Mrs Knight**—No, I do not know.

**Senator CHRIS EVANS**—Thank you.

**CHAIR**—Mrs Knight, I have just a few questions. I may have missed this, but where did they find Jason?

**Mrs Knight**—This is what I have been led to believe: he was on the second floor of the barracks.

**CHAIR**—So he was on that base, was he?

**Mrs Knight**—And he was supposed to be being watched. I do not blame Bradley at all, and I do not blame the young girl who was there. I spoke to both of them at the funeral because I did not want them ever to think that I blamed them. I told them that at the funeral. I asked for them

to be brought forward to me and I just said to them that I did not blame them. But they were supposed to be keeping an eye on him—well, Bradley was, anyway.

**CHAIR**—So Bradley and the young woman were asked—

**Mrs Knight**—The young girl was in the barracks. Because Jason was screaming and yelling she was swearing at him, telling him to be quiet, and in the background I could hear Bradley telling Jason that he should not be talking to me the way he was talking to me. And then the last thing I heard was Bradley saying, ‘It’s okay, Mrs Gutteridge’—because I was Mrs Gutteridge back then—‘I will look after him; it will be all right.’

**CHAIR**—And you said they had to keep watch on him, or Bradley had to keep—

**Mrs Knight**—I do not know if he was supposed to—

**CHAIR**—Was Bradley doing that himself or was he asked to?

**Mrs Knight**—I do not know whether Bradley was doing it for himself or whether he had been asked. I do not know.

**CHAIR**—But your son was clearly very distraught.

**Mrs Knight**—It was unbelievable!

**Mr Knight**—This was in the actual phone call, wasn’t it? You could hear this in the background—

**Mrs Knight**—Yes.

**Mr Knight**—when he told her he was going to—

**Mrs Knight**—It was when he was talking to me on the phone.

**CHAIR**—You said that you regret that you did not ring the Army.

**Mr Knight**—Yes.

**CHAIR**—And you said you found out subsequently that there were two other occasions when Jason had tried to take his life. What was that period?

**Mrs Knight**—Before he actually did it?

**CHAIR**—This was in September 1997, wasn’t it?

**Mrs Knight**—Yes.

**CHAIR**—So how long before that were the other two occasions on which he tried to take his life while he was in the Army?

**Mrs Knight**—Before September, but close to that.

**CHAIR**—Do you have any idea? For example, was it a few weeks beforehand?

**Mrs Knight**—A couple of weeks, yes.

**Mr Knight**—Yes.

**CHAIR**—And a few weeks before that as well?

**Mrs Knight**—Yes.

**CHAIR**—Was this after he got his wings? Do you know at all?

**Mrs Knight**—I do not know.

**Mr Knight**—Around that time, yes, as far as we know.

**CHAIR**—So after he got his wings there were the attempts at suicide.

**Mr Knight**—It could have been a bit before.

**CHAIR**—And you said that you spoke to someone who said that if they tried to big-note themselves they were slapped down. Is that a suggestion that Jason was big-noting himself and may have been subject to some sort of scrutiny by others? Is that your suggestion?

**Mrs Knight**—Yes.

**Mr Knight**—What about the fire extinguisher?

**Mrs Knight**—Yes, there was a fire extinguisher let off in his barracks room, and he had to get it all cleaned up, his uniform and everything, because they have to come out in the morning—

**Mr Knight**—For inspection.

**Mrs Knight**—and be inspected. And he was packing it, because they had let off this fire extinguisher in his room.

**CHAIR**—‘They’ being other soldiers?

**Mrs Knight**—Other recruits. And the reason I know that is that I read it in a police statement.

**CHAIR**—So this police statement was out of the coroner’s report, was it?

**Mrs Knight**—It was a police statement.

**CHAIR**—Is that from Richmond police at Richmond in New South Wales?

**Mrs Knight**—I read it at the police station when I was writing my statement.

**CHAIR**—Do you remember whose statement that was?

**Mrs Knight**—No.

**CHAIR**—Might it have been Bradley's or—

**Mrs Knight**—No, I really do not know whose it was, but one of the other lads—I think his name is Mathers or something like that—had put down that Jason had been treated like a bastard. They were treating him like a bastard. I cannot be quoted on this because I cannot remember very much anymore, but that was in the police statement. I do not know if it was those exact words, but that is basically what it was saying.

**CHAIR**—Were they other recruits or NCOs?

**Mrs Knight**—No, they were other recruits.

**CHAIR**—He may have big-noted himself about his wings?

**Mrs Knight**—I really do not know. I still cannot understand how you can go from here to there in a week, and the next thing is that you are dead.

**CHAIR**—You mentioned his girlfriend and you said you still keep in contact with her.

**Mrs Knight**—Yes, but that had been off for a long time.

**CHAIR**—Was it suggested to you that there was a problem there?

**Mrs Knight**—There was no problem there. Young Katie was his—

**CHAIR**—Was it suggested to you by the military that the breakdown in this relationship may have been a contributing factor at all?

**Mrs Knight**—No, that was not even part of it. They did not even know that. It was not until Jason's effects were brought home that we saw that he had made a photo frame and put all the photos that were important to him in it, and the one of Kate was still there. Then I found all these letters in his personal effects that he had not actually sent to Kate but had wanted to send. They had been a non-event. Even when we went to live in Cairns, that was all finished.

**CHAIR**—I have one final question. On the two occasions that he unsuccessfully attempted suicide, were you ever contacted by the military?

**Mrs Knight**—No. I knew nothing.

**CHAIR**—On 3 September, he rang you or you rang him?

**Mrs Knight**—He rang me.

**CHAIR**—That is when you heard Bradley in background say—

**Mrs Knight**—That was on 2 September. He rang on 2 September and it was about 10 o'clock at night.

**CHAIR**—That is when you heard Bradley in the background say, 'I'll look after him, Mrs Gutteridge.'

**Mrs Knight**—Yes.

**Senator PAYNE**—I have just a couple of questions. You had been in contact with the inspector-general and had the interview and everything. Is that the first time that you had tried to get information from the Army about this?

**Mrs Knight**—No.

**Senator PAYNE**—What happened before when you tried to get information?

**Mrs Knight**—I got a letter back. Like I said, I have only just read it. Everything is stored in a cane basket. All of Jason's effects—all his letters, everything—are in that cane basket. I pulled it out and I found that letter. Les read it the other night. I had actually written—

**Senator PAYNE**—Was it a long letter or a short letter?

**Mr Knight**—He had written to Amanda Vanstone.

**Mrs Knight**—Was that the one?

**Mr Knight**—Yes.

**Mrs Knight**—No, it was not Amanda Vanstone; it was Bronwyn Bishop. 'I wrote to Bronnie.'

**Senator PAYNE**—Did Mrs Bishop respond?

**Mrs Knight**—Is that the one I am talking about?

**Mr Knight**—Right now, I am not sure who it was. I have read the letter. It was from one of those two.

**Mrs Knight**—I rang Bronwyn Bishop's office and got her secretary or whoever. I remember that.

**Senator PAYNE**—She was probably the minister assisting at the time. She would have been in that role. Did the letter that you got back give you any of the information you had asked for? Did it tell you anything you wanted to know?

**Mr Knight**—She mentioned the two attempts of suicide.

**Senator PAYNE**—That was the first official notification you had about that?

**Mrs Knight**—I do not know. I went off the planet. I also have multiple sclerosis—spine and brain, basically. But the brain has a way of taking over. Where you lose something, another part of the brain takes over. It can be there and then it cannot be there.

**Senator PAYNE**—Thank you for trying to help us so much. The only other question I wanted to ask you is: when this happened, how did you get to Richmond? Did you go to Richmond?

**Mrs Knight**—No.

**Senator PAYNE**—Were you offered an opportunity to go to Richmond?

**Mrs Knight**—Never. We had to borrow some money and we flew from Cairns to Sydney and from Sydney to Adelaide. I remember sitting outside Sydney airport having a cigarette and all I kept thinking was, ‘Jason’s over there somewhere in the hospital, in the morgue.’

**Senator PAYNE**—I am sorry.

**Mrs Knight**—I could not get to him. When I asked why I had not been told, they told me that Jason was 21 and in the Army and did not need his mother anymore. He phoned that night—I have been fixing my children’s problems. I have been a single mum since they were five, off and on, and I have been fixing my children’s problems for them all those years—I have always fixed their problems. So when he phoned that night I said to him, ‘What’s going on? What’s the matter?’ I said, ‘Calm down, baby, Mum will fix it.’ He said to me, ‘You can’t fix it, Mum. You can’t fix it.’ To this day, I am still fixing my children’s problems. That is what I do—I am a mum. I am a lioness; I protect my cubs. I cannot help that and I do not apologise for it.

**Senator PAYNE**—Nor should you.

**Mrs Knight**—It is like that lady that went down the cliff the other day with her baby. I would do the same thing—I would die for my children. I did not send him into the Army—he did it himself—but you honestly think that if they go into the Defence Force they will be okay. You think they will be okay.

**Senator PAYNE**—Did the Army offer you anything—any support counselling or assistance with dealing with things after Jason died?

**Mrs Knight**—Yes, a social worker. I am not much good with them, though. They get very scared of me.



**Senator PAYNE**—Lions and social workers are maybe not such a good combination. Thank you.

**Senator JOHNSTON**—Mrs Knight, the director-general has informed you through his secretary that there is a report due to you this week that you were expecting. How do you feel about providing that to the committee when you get it?

**Mrs Knight**—Yes.

**Senator JOHNSTON**—I just mean a copy of it so that we can see what the director-general has said about it and so we get the facts that you cannot possibly find out and he can.

**Mrs Knight**—Yes.

**Senator JOHNSTON**—Have you discussed any of this with Bradley?

**Mrs Knight**—No. At the funeral Bradley asked me if it would be all right for his mum to ring me. I said, ‘Yes, no problems, whatever.’ His mum did ring me, because Jason used to go out and spend time off at Bradley’s mum’s—holidays or leave and whatever they had—and so she knew my Jason. Anyway, down the track a bit—I think it was after the tidal wave thingummyjig they had in Fiji—I kept thinking that if Jason was still with the air despatch he could have been involved in that. There was East Timor, and they all went over for that. I rang Bradley’s mum—I have forgotten her name now—to ask her how Bradley went and how she coped, because she is very much the sort of mum that I am. She said that Brad had come back a different sort of guy and he would not talk to her anymore. He talked about nothing—he would not talk.

**Senator JOHNSTON**—So none of Jason’s friends would discuss what actually happened with you?

**Mrs Knight**—I have spoken to no-one. No, they would not.

**Senator JOHNSTON**—Did you have an opportunity to ask them?

**Mrs Knight**—Not really, no—only at the funeral. As I said, I went off the planet for—

**Senator JOHNSTON**—It was not the first thing on your mind.

**Mrs Knight**—No. I did not even want to be here anymore. I have two other children and three stepchildren, but I really did not want to be here anymore. I could see nothing.

**Senator JOHNSTON**—He told you on the telephone on that day that he had been in jail for three days. Do you recall asking him what that was about?

**Mrs Knight**—Yes, I asked him.

**Senator JOHNSTON**—What was his attitude?

**Mrs Knight**—He would not tell me. He said, ‘Don’t worry about it, Mum.’ In the first photo he ever sent home to me he looked really depressed—he has his fatigues on or whatever you call them; the camouflage stuff—and that concerned me. In the letters he wrote back, he was going on about a certain corporal who was in his face all of the time and calling him names. He was ordered to do basic training. I have lived army. My first husband was army and my twin brother is army. So I know that you go in there and you go to where you learn how to do it—

**Mr Knight**—Recruit camp.

**Mrs Knight**—Yes. They give it to you—it is the sorting of the men from the boys and all of that sort of stuff. I know what others have told me. If you are strong then you survive and if you are not then you are out. One thing that Jason was really concerned about was being back-squadded or something. He was very concerned about that. He was trying so hard not to have that happen. Did I answer your question or not?

**Senator JOHNSTON**—Yes, it was good.

**CHAIR**—Mrs Knight, we would appreciate a copy of the report when it comes in so that we can have a look at it and pursue our inquiries with the military when they come back before us. Thank you both for coming along today.

**Proceedings suspended from 11.13 a.m. to 11.40 a.m.**

**HYLAND, Chief Petty Officer John, (Private capacity)**

**CHAIR**—The committee welcomes Chief Petty Officer John Hyland, whose submission was received as No. 15. Chief Petty Officer, do you have any alterations to make to that submission?

**Mr Hyland**—No.

**CHAIR**—You have been advised in relation to parliamentary privilege and adverse comment. Do you have any questions about that?

**Mr Hyland**—No.

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

**Mr Hyland**—I am in the Navy, where I have spent 23 years. I had an incident happen to me two years ago.

**CHAIR**—Would you like to read out this statement?

**Mr Hyland**—Yes, I would very much like to; thank you. As a brief background, I joined the Navy at 15 years of age as a junior recruit with HMAS *Leeuwin* in Western Australia. I then completed an aircraft technical apprenticeship at HMAS *Nirimba* in Sydney and was subsequently transferred to the naval air station HMAS *Albatross*, Nowra, New South Wales, where I have spent the majority of my career. I have attended RMIT University during that time and undergone aerospace engineering. I have been recommended as an officer, subject to finishing further RMIT study. My employment in the Navy has been challenging and fulfilling during my 23-year-long career. I consider my advancement to date a success and, given the opportunity, I would do it all over again. It has been an honour and a privilege to serve in the Australian Defence Force.

On 9 May 2002, while on duty at RAAF Base Laverton, I was seriously assaulted by another member of the RAN. Some two years has passed and no administrative or disciplinary action has been taken. I now seek assistance from the committee in accordance with paragraph 1(b) section 3 of the terms of reference, in that it recommends that administrative action or disciplinary action be taken against my attacker. I observed a fellow member was not fulfilling his role as class leader whilst on a Navy related course with me at RMIT University of Victoria. I took it upon myself as a ranking officer in the class and as a responsible senior sailor to advise him of his shortcomings and suggest he be more proactive. I believe I acted promptly and appropriately. I selected a private and quiet, interruption-free environment to commence counselling the member. Bearing in mind I had no office space available to me and that the classroom would not have been interruption free, I chose to speak with him whilst we were returning to our cabins in the accommodation block. I did not believe having a witness present was necessary. It would appear, however, that by doing so I have allowed the member the opportunity to be grossly insubordinate prior to launching an attack upon me.

The assault has left me with ongoing injuries that have required two surgical operations to my face, with metal plates inserted to correct my disfigurement. The effects of being assaulted whilst on duty and adherent to Navy guidelines on conduct has been detrimental to my health and fatal to my career. I consider the Navy has a duty of care to further examine this matter and to determine the facts and then take appropriate disciplinary or administrative action.

There are a couple of undisputed facts: I did speak to the fellow member on 9 May 2002 and I did sustain injuries to my head. There was also an independent witness who saw the member wrestling with me after I was beaten to the ground. The witness did not see punches thrown but did identify this individual to service police.

I want to make it clear that my need for answers rates much higher than any thoughts of retribution. It is inconceivable to me that anyone could be assaulted as I was and no action taken against the aggressor. I cannot accept that the Navy has carried out a full investigation when statements taken have not resulted in any cross-examination and the facts thoroughly tested. Medical evidence has confirmed that injuries to my head were consistent with receiving numerous heavy blows. Surely, then, my version of the incident has been backed up by medical opinion. How did I sustain these injuries if not as I have stated.

The incident has been detrimental to my health and career. I suffer from deep depression and anxiety. I have problems getting to sleep and staying asleep. There is not a day since the incident that I have not reflected upon the attack and suffered nightmares. I have problems with my memory and concentration, which have resulted in mood swings and have affected my relationship with my wife and family. The Navy has made me medically unfit for promotion and deployment and to go to sea. Recently, I was informed that I am now being recommended for medical discharge from the Defence Force due to my condition. Specialists have confirmed that I have received brain damage from the beating that was inflicted upon me. I am deeply saddened by this. However, I accept medical discharge as my future. What I cannot accept is that my attacker has still not been held accountable for his actions. I also cannot accept the lack of support from the Navy regarding this sickening incident.

I find it unacceptable that I have been denied an opportunity to face my attacker at a formal inquiry and that my attacker remains unaccountable for his actions and comfortable behind a shield of bureaucracy. The Navy's inaction in relation to my assault must surely be setting a poor example to my fellow members of the Defence Force. I would sincerely hate anyone to have to endure the same lack of protection and support and the Navy's inaction in appropriately dealing with this assault upon me. As the injured party, I now find myself in a situation in which I feel I have to prove I am telling the truth and therefore prove my attacker's guilt.

**Senator JOHNSTON**—With respect to your service career, could you briefly outline where you have been and what you have done over your 23-year history?

**Mr Hyland**—As I mentioned, I joined the Navy at 15 years of age, from high school, and went to HMAS *Leeuwin* as a junior recruit. I basically spent nine months and did pretty well there and got accepted for a technical aviation apprenticeship. I spent a further 2½ years in Sydney at HMAS *Nirimba* and then I was transferred to naval air station HMAS *Albatross* where I have been employed over the last 15 years or so. I have worked on aircrafts and, obviously,

squadrons. I have been to sea, and I have worked in the workshops with contractors and with logistics. I have basically done every job that I could have done as a technical sailor.

**Senator JOHNSTON**—Have you been to sea at all?

**Mr Hyland**—Yes.

**Senator JOHNSTON**—Which ships have you served on?

**Mr Hyland**—I have not had an actual full-time posting but I have had opportunities to do sea rides. So I have been on a submarine and on HMAS *Hobart* before it was decommissioned.

**Senator JOHNSTON**—Can you tell me the precise medical facts surrounding your injuries. Do you have any medical reports from your doctors?

**Mr Hyland**—Yes, I do. They are not on me but my file is full of medical evidence.

**Senator JOHNSTON**—Would you be prepared to make some of the more general summaries in that correspondence available to the committee?

**Mr Hyland**—Certainly.

**Senator JOHNSTON**—I would be obliged. Could you tell me briefly what injuries you sustained as a result of this assault.

**Mr Hyland**—I received a broken nose and multiple fractures across my cheekbone—I do not know how many but there were a lot.

**Senator JOHNSTON**—Requiring a plate?

**Mr Hyland**—Yes. It was across my cheekbone and also the actual eye socket. The side of the face was actually smashed, or pushed, in. I spent about a month in hospital and they had to do an operation through my mouth to push out the side of my face and attach a plate. Unfortunately, my eye socket had dropped and was lower than the other side so it left a disfigurement. Last year I received plastic surgery, had another plate inserted to lift up my face and had an implant to make the eye level with my other eye.

**Senator JOHNSTON**—What is the implant made of?

**Mr Hyland**—It is made of some sort of rubbery cosmetic material. The doctor showed it to me. The ongoing effect is that I have lost all feeling from this side of my face—

**Senator JOHNSTON**—Brachial nerve problems?

**Mr Hyland**—Yes, when my face got punched in, my nerve got damaged, and it still has not come back. My teeth got chipped, but they have since been repaired. Sometimes I get lockjaw. I was hit in the jaw, but it was not broken, just dislocated. My jaw dislocates and stays open,

which is quite embarrassing when I am eating. There are also psychological issues, which I do not want to discuss too deeply.

**Senator JOHNSTON**—I take it that these operations were performed off the base?

**Mr Hyland**—Yes. The first one was performed at Geelong Private Hospital and the second was performed at Westmead Hospital in Sydney.

**Senator JOHNSTON**—Do you have any idea how much has been spent on ministering to your injuries?

**Mr Hyland**—If you wanted to make an account, it would include the time I have had off work and all the drugs.

**Senator JOHNSTON**—How long have you had off work?

**Mr Hyland**—Since the incident I have had possibly half of my time off work. It has been a significant amount of time, a lot of time off work. I am actually off work now.

**Senator JOHNSTON**—So, for getting on towards two years, you have only worked about 50 per cent of the time but have been on full pay throughout?

**Mr Hyland**—Yes.

**Senator JOHNSTON**—You have been off base for two operations by specialist plastic surgeons, facial surgeons and what have you. Do you have any idea of the cost of all that surgery?

**Mr Hyland**—No, I have not been privy to that. I would say that it would be relatively expensive.

**Senator JOHNSTON**—The operations were in private hospitals?

**Mr Hyland**—Yes.

**Senator JOHNSTON**—How long have you spent in private hospitals?

**Mr Hyland**—Possibly three weeks. After I get to a certain state, they ship me back to the Defence hospital.

**Senator JOHNSTON**—Have you consulted a lawyer with respect to this?

**Mr Hyland**—I have sought a few legal opinions, and they have all come to the conclusion: ‘Why hasn’t this individual been charged?’ I have not done anything about it. I have just been trying to get on with my life.

**Senator JOHNSTON**—Has anybody advised you about criminal injuries compensation?

**Mr Hyland**—Yes, but I have not pursued it.

**Senator JOHNSTON**—Are you aware of the limitation period on that?

**Mr Hyland**—No.

**Senator JOHNSTON**—You need to get some advice on that very promptly because it is important. What is the perpetrator doing now?

**Mr Hyland**—I am not too sure exactly what he is doing now, but when I left *Albatross* last year he was working on the base, just going through his normal job.

**Senator JOHNSTON**—Had he been promoted at all?

**Mr Hyland**—I do not know. He may come out in the latest promotion signal. I am not sure.

**Senator JOHNSTON**—What was his rank?

**Mr Hyland**—Petty officer.

**Senator JOHNSTON**—You were a chief petty officer at the time, and he was a petty officer?

**Mr Hyland**—Yes.

**Senator JOHNSTON**—The witness gave a witness statement and identified him as the person wrestling with you, but did not see the blow struck?

**Mr Hyland**—That is correct.

**Senator JOHNSTON**—You have identified him as the person who delivered the blows?

**Mr Hyland**—Yes.

**Senator JOHNSTON**—Was that a clear and unequivocal identification?

**Mr Hyland**—Absolutely.

**Senator JOHNSTON**—So there is no memory deficit disorder, no question that you have mistaken him for anybody else or anything like that?

**Mr Hyland**—There is an area there where, probably after the second punch where I woke up on the ground, I am vague about what actually happened. I do remember waking up and he was standing over me yelling abuse. I do remember trying to sit up and a cleaner coming out of the toilets with all of the noise and commotion. The cleaner stood there and saw him over me. He saw that and realised what he had done and ran off. I approached the cleaner and said, ‘Did you see what happened to me?’ He said, ‘Yes.’ I had a piercing ringing in my ears, my nose was

bleeding and I felt nauseous. I felt really seriously damaged. I made my way to the hospital on the base which, luckily for me, was just across the road.

**Senator JOHNSTON**—Had you had dealings with this person before in your role as a chief petty officer?

**Mr Hyland**—Only mainly on course. The sad part about it was that I was quite friendly with the guy—he wasn't a bad bloke. I knew he had a bit of a temper issue, but I thought that—

**Senator JOHNSTON**—Did you approach him reasonably?

**Mr Hyland**—Absolutely, yes. When I first brought up the issue about his conduct and performance—I will not say the words he said—he became abusive and basically just thwarted my authority in front of me and turned his back on me and walked off. I said I am not taking that—I am a chief and he is a PO and I am trying to do my job. So I followed him and I said, 'No, you will take me seriously. Otherwise I will be taking this further.' Basically I guess the conversation got a little bit out of control, but that was mainly due to his insubordination. Then basically he lost his temper and beat me. I was just totally shocked and overwhelmed by it.

**Senator JOHNSTON**—Do you remember the first blow being struck?

**Mr Hyland**—Yes, I most certainly do.

**Senator JOHNSTON**—Was there any warning or prior indication that he was going to punch you?

**Mr Hyland**—What happened was I was standing outside his room trying to tell him to see my point of view and he actually slammed his room door on me. The door actually hit my feet, because I was just standing inside the doorway, and sprung back violently. Then I raised my voice to try and regain control of the situation. He then just launched out and king-hit me. That was probably the punch that smashed my face in. Then he continued on with it.

**Senator JOHNSTON**—You say he had a reputation for having a temper. Why do you say that?

**Mr Hyland**—I knew he was a bit fiery. He played football.

**Senator JOHNSTON**—What sort of football did he play?

**Mr Hyland**—Australian rules football. I also know he had had issues with conduct before. There had been a few reports about his attitude. I do not know specifically what was said, but I know that for a fact. I would see him just carry on—if he went to the football, he got a bit abusive and so forth. So I know he has got it in him to express himself.

**Senator JOHNSTON**—How old is he?

**Mr Hyland**—He is roughly my age; maybe a bit younger.



**Senator JOHNSTON**—Which is how old?

**Mr Hyland**—A very young 38. It was also a real concern to me when the police came to see me in hospital and gave me his name; they came to see me the next day and specifically said to me, ‘Are you aware that this individual has a prior criminal conviction for assault in New South Wales?’ I said, ‘No, I was not.’ They said, ‘He has.’

**Senator JOHNSTON**—Was that the state police or the military police?

**Mr Hyland**—It was the state police.

**Senator JOHNSTON**—What are his size and dimensions in comparison to yours?

**Mr Hyland**—He is a bit taller and a bit bigger.

**Senator JOHNSTON**—How much do you weigh?

**Mr Hyland**—Back then, I weighed probably 10 kilos less than I weigh now.

**Senator JOHNSTON**—Which is approximately how much?

**Mr Hyland**—About 92 kilos.

**Senator JOHNSTON**—He weighs over 100 kilos?

**Mr Hyland**—Yes.

**Senator JOHNSTON**—Have you ever been given a comprehensive and full explanation of why this man has not been charged with assault occasioning actual bodily harm?

**Mr Hyland**—I spoke to the commanding officer at HMAS *Albatross* last year, after repeatedly sending letters to him and trying to get this investigation going. He called me up to his office and said that he had done an investigation. His line of thought was that, because no-one had actually seen any punches thrown, there was no conclusive evidence to form a prima facie case, and he was not willing to charge him as an individual. I was pretty upset over that.

**Senator JOHNSTON**—I understand perfectly your being very upset. That is outrageous conduct.

**Mr Hyland**—He said, ‘We’ve done this, we’ve done that and I’ve got medical evidence.’ So I walked out of that meeting feeling very let down—just as though the Navy had turned its back on me—and thinking, ‘What have I done to deserve this?’ I said, ‘If you’re not going to sort it out internally, I’ll be going externally with it.’ I contacted the media and said, ‘This is what happened,’ and they did a short thing on me on Channel 7. I took no pleasure in that but I was very upset and demoralised.

**CHAIR**—Is it usual for senior NCOs to wrestle around the parade ground as it seems you and this other petty officer did?

**Mr Hyland**—Absolutely not.

**CHAIR**—Had this ever happened to you before?

**Mr Hyland**—No. I have never had a problem with any disciplinary action. I have never had a charge raised against me in my 23-year career.

**CHAIR**—After the incident, you went to hospital?

**Mr Hyland**—Yes.

**CHAIR**—Did you contact your immediate superior officer?

**Mr Hyland**—Yes.

**CHAIR**—Can you tell us what happened then?

**Mr Hyland**—This is something that shocked me to a certain extent. I went to hospital. They saw me, admitted me straightaway and started doing all the checks they do. Then 15 minutes later the Air Force police turned up at the hospital and came to see me. They said, ‘I believe there’s been an incident between you and another member.’ I said, ‘There certainly has been but I haven’t even reported this yet; how do you know this?’ This individual, after he had assaulted me and left me on the ground, had run off to the service police and made a statement saying that he had had a confrontation with me which I had started and that I might be injured. What sort of—

**CHAIR**—You see that sort of thing on television, don’t you?

**Mr Hyland**—Is that the action of an innocent person? Wouldn’t an innocent person at least help me or say sorry? I had quite liked this guy. Obviously he had been in trouble before and he—

**CHAIR**—Did you get any whacks in yourself?

**Mr Hyland**—I did not even have a chance to defend myself. I never touched him. The first hit was so hard it virtually stunned me.

**CHAIR**—So you were in hospital, and he went and reported that you had assaulted him?

**Mr Hyland**—Yes. It was extremely upsetting. The Air Force police interviewed me and said, ‘This doesn’t make sense.’ They asked further questions and came back and saw me about it later and said, ‘This is very serious.’ Then they took some more X-rays, discovered all these breaks through my head and said, ‘We’re going to refer this to Victoria Police.’ I said, ‘Righto,’ and then I went back to Nowra. Basically that was the last I heard of it.

**CHAIR**—What would you normally do in a circumstance where someone has been assaulted by another member of the armed forces? Is there a procedure—is it somewhere in a book?

**Mr Hyland**—I do not think there is a laid down procedure. Obviously they need to take witness statements and verify that it actually happened.

**CHAIR**—Did you give a statement to the Air Force police?

**Mr Hyland**—Yes, I did.

**CHAIR**—Who was your immediate superior?

**Mr Hyland**—I had a liaison officer who was at RMIT. He came and saw me the next day.

**CHAIR**—Was he a naval officer?

**Mr Hyland**—Yes. He was pretty concerned about it. I really do not know what to say, because when I went back to Nowra after I left Melbourne that was the end of it. Every time I put an inquiry to the legal officer at *Albatross* saying, ‘What’s happening with this? It’s been 12 months now and I’ve heard diddly-squat,’ they would say, ‘It’s in the hands of Victoria Police; it’s not with us anymore.’ Victoria Police get 50 or 100 assaults a day; it is probably just sitting in someone’s in-tray. So I made efforts myself to ring up and make inquiries. I was duckshoved from one officer to another. It was extremely frustrating. I was ringing up and seeing the legal officer at *Albatross*, asking him to make inquiries on my behalf. Basically all I got back from the Navy was: ‘It’s in the hands of the police. It’s a police matter now. That’s it.’ I said: ‘It happened to me on Commonwealth land while I was doing my job. Shouldn’t the Navy have a vested interest in following this up, at least?’

**CHAIR**—So nothing happened to this petty officer at all.

**Mr Hyland**—Nothing happened to him.

**CHAIR**—He was never charged—

**Mr Hyland**—He was never charged—

**CHAIR**—even with assaulting a senior officer.

**Mr Hyland**—with insubordination, prejudicial behaviour, assault—nothing. Scot-free. The hardest thing for me was that I had to walk around on that base. Everyone knew about it. Everyone knew I got the living daylight beaten out of me. Everyone knew he did it. It was just terrible. I just felt as though I had done something wrong, as though I deserved it. It was absolutely terrible.

**CHAIR**—So you were told it was in the hands of the Victorian police and that was where it should stay.

**Mr Hyland**—Yes. In 12 months time I got really frustrated with it. I got on the phone and it took me all day to track down the investigating officer.

**CHAIR**—In the Victorian police?

**Mr Hyland**—In the Victorian police. It landed in the lap of a police sergeant who was actually a legal officer reservist. He had it because he was looking at military. I said, ‘Look, what’s happening with this?’ He said, ‘Haven’t you been told?’ I said no. He said, ‘It’s being handed back to the Navy, and we’re going to recommend that he get charged under DFDA.’ I said, ‘When was this decided? Who decided this?’ He said, ‘It was done two months ago.’ I said, ‘Why didn’t someone tell me?’ He said, ‘The guy who assaulted you knew about it. They contacted him.’ I said, ‘Hang on, I’m the victim here. Why didn’t you at least tell me?’ So then I phoned up the legal officer and said, ‘Do you know what’s happened?’ He said to me, basically, ‘Excuse me, Chief, this matter is in the hands of the Victorian police. I’ve just spoken to someone last week about it. Don’t you dare ring me up on the weekend. Stop wasting my time.’ I said, ‘Excuse me, sir, you need to make further inquiries, because I’ve been told by the police that it’s been handed back.’ He basically called me a liar on the phone—

**CHAIR**—What rank was this man?

**Mr Hyland**—He was a commander.

**Senator PAYNE**—When were these conversations taking place?

**Mr Hyland**—Last year.

**Senator PAYNE**—What month? Before September, obviously.

**Mr Hyland**—Yes, before September. Around May. It was around 12 months. Anyway, he said, ‘I’ve spoken to the legal officer at *Cerberus* about it. He said it’s in the hands of the police. That’s it.’ So I phoned the legal officer at *Cerberus*: ‘Chief who? Chief Hyland? I don’t know who you are. Sorry, I know nothing about you.’ That has been the story. I think the Navy has tried to do its best to a certain extent, but it just seems to me like there is a lack of resources, legal officers or investigating officers trained to do this. They can charge someone for not having their hair cut properly or not turning up in the right uniform. You can be charged for being five minutes late to work—no problems—but, when something serious happens, unfortunately I do not think the Navy at this point in time has the resources available to it to act on it appropriately. That is just my feeling on it, anyway.

**CHAIR**—So you do not think that there was any conspiracy in there. It must have been very difficult for you to wander around the base after you had been assaulted, as you said, and have this junior still wandering around untouched.

**Mr Hyland**—Yes. That is something that I spent a lot of time seeing a psychologist about. I was very upset about it. He basically said: ‘You know, you’ve just got to try and look at positives, at your family and your career, and just try to not focus on those negatives because there’s no such thing as justice. Justice is just a word.’ I do not expect to get justice out of this,

really. I am just here today to say, ‘Look, this happened to me and I hope it never happens again to another individual, because it has really floored me.’

**Senator PAYNE**—Have you seen any of the documentation that has gone back and forth between the various authorities and the Victorian police? Have you sought to see any of it?

**Mr Hyland**—Yes. As soon as the commanding officer of HMAS *Albatross* informed me that he was going to not recommend or pursue charges in September last year, I nearly put in a redress of grievance.

**Senator PAYNE**—What was the basis of your ROG?

**Mr Hyland**—First, I requested that an investigating officer be appointed. I have never been questioned about my statement. They have never questioned me about my statement.

**Senator PAYNE**—This is the statement you gave to the Victorian police?

**Mr Hyland**—No, to the Navy police.

**Senator PAYNE**—You gave it to the naval police, or the RAAF police?

**Mr Hyland**—No. This was a separate investigation. They said, ‘Right, we are doing our own investigation.’ I gave a statement. I was never actually questioned on it and I do not think the other guy was either. I said: ‘Obviously there are some differences between his statement and my version. The truth has to be there somewhere, surely.’ I was never questioned about my statement so I asked that an investigating officer be appointed. Secondly, I asked if I could see all evidence supplied to them so I could work out why they had not charged this individual. I asked three things. The third thing was probably that I asked that charges be laid against him, because it was not right. That was October last year. It is still sitting in Canberra somewhere. I received an update a few months ago from the senior officer in charge of South Australia. She basically said that it was still in Canberra and they are still looking at it.

**Senator PAYNE**—When did you get your update?

**Mr Hyland**—Around January or early February. In accordance with a redress of grievance, you are supposed to be given an update in writing every 30 days. That has not happened.

**Senator PAYNE**—In being advised by your CO in September 2003 that there was no conclusive evidence and that the Navy would not be taking any disciplinary action, did that advice provide you with any explanation as to how the Navy think you may have suffered a depression of your eye socket and multiple facial fractures, why you have had to undergo significant amounts of surgery—which, I understand, the Navy has paid for—and why you now find yourself at the point of medical discharge in relation to an event for which there is no evidence?

**Senator JOHNSTON**—And brain damage.

**Senator PAYNE**—And brain damage, thank you Senator Johnston. Did the navy provide any explanation to you in that correspondence?

**Mr Hyland**—I have requested information to find out how the investigation is going but they said, ‘If we give you any information, that could be to the disadvantage of the guy who attacked you, so we cannot give you anything at all.’ Once the investigation is over it is all staff-in-confidence anyway. I was asking, ‘How’s the investigation going? What’s happening? When am I going to go to the Defence Force magistrate to have my day in court?’ They would not tell me diddly-squat. They were saying, ‘We have another member here who we have to look after as well. If we tell you something, giving you inside information may be an issue for him.’ They have not really told me anything about the investigation.

**Senator PAYNE**—So you are waiting for a response to your ROG to see what evidence there is that they are basing their decisions on? That is, if they are prepared to give it to you.

**Mr Hyland**—That is right. I am still waiting, hopefully, for an investigating officer to be appointed. I am waiting to be at least questioned about my statement, which I have not been since I gave it. Also, I would like this to go into a formal report or something.

**Senator PAYNE**—In your opening statement—and thank you for providing us with a copy of that—you said:

The Navy has made me medically unfit for promotion, deployment and to go to sea. Recently I have been informed that I am now being recommended for medical discharge from the defence force due to my condition.

Is the basis of those two decisions—being medically unfit for promotion, deployment and going to sea, and medical discharge—this assault? Is there anything else?

**Mr Hyland**—It is mainly the drugs I was on. They said, ‘You’re on these drugs so we will downgrade your medical statements.’

**Senator PAYNE**—Are you talking about pain management medication?

**Mr Hyland**—No.

**Senator PAYNE**—I understand. Stress management.

**Mr Hyland**—Yes. Now I have lost my train of thought.

**Senator PAYNE**—I was asking you if those two decisions are related to the assault.

**Mr Hyland**—It is all related to the assault. I have no medical complaints besides that.

**Senator CHRIS EVANS**—I just want to be clear in my own mind about the course of events in terms of the inquiries. I am not clear, but I do not think that is that your fault; I have trouble with most of these military justice investigations. Originally, you were interviewed by the Air Force police because you were at the Air Force hospital; is that right?

**Mr Hyland**—Yes.

**Senator CHRIS EVANS**—Later on, you were interviewed by the Victorian police. Was that within a matter of days?

**Mr Hyland**—Yes. The Navy police from HMAS *Cerberus* turned up the next day, and then everyone turned up. Ultimately, the Victorian police turned up, and I gave another statement to them.

**Senator CHRIS EVANS**—So, as far as you were concerned, within days of it happening the Victorian police were the prime investigative body.

**Mr Hyland**—Yes.

**Senator CHRIS EVANS**—Did you ever see a Victorian police report?

**Mr Hyland**—No.

**Senator CHRIS EVANS**—So your information about it being handed back to Navy for DFDA proceedings et cetera was just a verbal thing from one of the sergeants.

**Mr Hyland**—It was a verbal discussion I had over the phone with the investigating sergeant.

**Senator CHRIS EVANS**—Have you ever had any confirmation in writing or seen anything that confirms that the Victorian police referred it back to the Navy?

**Mr Hyland**—I actually had an interview with the senior legal officer at HMAS *Albatross*, and I told him quite plainly that they wanted to refer it back to the Navy for DFDA. As far as I was concerned, I did my duty and he should—

**Senator CHRIS EVANS**—Did he later confirm that for you? You told us of other conversations you had. Has anyone from Navy ever told you that the Victorian police sent it back to them?

**Mr Hyland**—No.

**Senator CHRIS EVANS**—So, apart from the discussion with the sergeant of the Victorian police, you do not actually know whether that happened?

**Mr Hyland**—That is correct.

**Senator CHRIS EVANS**—Did the Navy ever complete a report into your incident? Have you ever seen a report?

**Mr Hyland**—I was requested to go to another police section last year. I went up there and was asked to supply a statement, which I did. I handed it to them. Basically, that was the end of it.

**Senator CHRIS EVANS**—Is this the Navy police?

**Mr Hyland**—Yes; I went and saw them a few weeks later.

**Senator CHRIS EVANS**—Was that after you had written to the commanding officer?

**Mr Hyland**—That was after I had requested that the commanding officer take this on board.

**Senator CHRIS EVANS**—You wrote to the commanding officer. After that, a further interview was organised with the Navy police.

**Mr Hyland**—He organised the CO's investigation, yes.

**Senator CHRIS EVANS**—Were you aware of who the investigating officer was?

**Mr Hyland**—There was not one appointed.

**Senator CHRIS EVANS**—I always thought that there was an investigating officer appointed.

**Mr Hyland**—As I understand it—and I could be wrong here—the naval police coxswains do all the ground work. An investigating officer goes around and questions, gets statements and does more of an IG role.

**Senator CHRIS EVANS**—But, as far you are concerned, there was not an investigating officer appointed.

**Mr Hyland**—Definitely not.

**Senator CHRIS EVANS**—So the Navy police started making some inquiries again and took a statement from you. Then in September, you got a letter from your commanding officer saying that there was no conclusive evidence to back up your allegations—

**Mr Hyland**—That is correct.

**Senator CHRIS EVANS**—and the Navy would not be taking any disciplinary action.

**Mr Hyland**—Correct.

**Senator CHRIS EVANS**—Basically, from their point of view, that was the end of the matter.

**Mr Hyland**—Yes. Although, in his defence, he did say that I had the right of appeal and could put in a redress of grievance.

**Senator CHRIS EVANS**—He advised you of your rights.

**Mr Hyland**—And I did that straightaway.



**Senator CHRIS EVANS**—Then in October of 2003 you put in a redress of grievance. You say that all you have heard since is a letter in January providing you with an update.

**Mr Hyland**—It was not a letter—it was a verbal update from a phone call.

**Senator CHRIS EVANS**—So someone rang you to say that we got your redress of grievance.

**Mr Hyland**—No. A person liaised with Canberra on my behalf and found out who was running with it, phoned me back and said that it was still with the redress of grievance area and that it was basically still under investigation.

**Senator CHRIS EVANS**—So, apart from that, you have had no contact from the Navy since October 2003 about your redress of grievance?

**Mr Hyland**—Correct.

**Senator CHRIS EVANS**—And you have had nothing in writing in relation to it?

**Mr Hyland**—No.

**Senator CHRIS EVANS**—Are you able to supply the committee with a copy of the letter from your commanding officer, when he replied to your request for an investigation?

**Mr Hyland**—That would be on my personal file. I could probably make inquiries to get that.

**Senator CHRIS EVANS**—You do not have a copy of the one he wrote back to you?

**Mr Hyland**—I did and I have lost it.

**Senator CHRIS EVANS**—That is fine. We can ask Defence for it. You would be happy enough for Defence to show that to us?

**Mr Hyland**—Yes, no problem.

**Senator CHRIS EVANS**—Thank you. It is a key letter, so I thought I would ask you. You have still got an active redress of grievance but nothing has been pursued on that. Did you ever get anything from the Victorian police in writing to confirm that they had finished their investigation?

**Mr Hyland**—No.

**Senator CHRIS EVANS**—Did you formally lodge a complaint with the Victorian police or was it just that they came in and interviewed you after the incident?

**Mr Hyland**—I actually phoned them, inquiring about where it is at. That is when they told me that the matter had been handed back.

**Senator CHRIS EVANS**—Originally, though—

**Mr Hyland**—I received no letter. I received a victim's impact statement to fill out, and then they asked for doctors' reports, which were sent off.

**Senator CHRIS EVANS**—But you never actually filed a complaint; they were just investigating the incident?

**Mr Hyland**—No. To tell you the truth, when the Victorian police force said, 'We're not going to run with it,' I said, 'Oh well, at least the Navy is going to sort it out for me anyway.' I thought I would get some justice because the Navy would hopefully do this and sort it out, but unfortunately that has not been the case. I did not bother making a claim because I thought the Navy was hopefully going to run with it and we would get it sorted out internally.

**Senator PAYNE**—The original referral to the Victorian police came from the RAAF police who saw you in a hospital at Laverton.

**Mr Hyland**—Yes.

**Senator CHRIS EVANS**—We are just trying to get the status right. It seems to me that if you filed a complaint then the Victorian police had an obligation to at least tell you something. So you have not seen any formal reports into the incident and the only thing you have in writing is the letter from your commanding officer saying that they did not have sufficient evidence?

**Mr Hyland**—Yes. When I wrote the initial letter to the commanding officer, I received a letter back saying there would be an investigation into it. Then three or four months later I received a letter saying that there was no conclusive evidence to form a case.

**Senator CHRIS EVANS**—When do you expect to be discharged?

**Mr Hyland**—It has happened very recently. I am still seeking advice on what is going to happen to me now. I suspect it will be anywhere between six and nine months before I have to go to the medical review board and work out what is going on.

**Senator CHRIS EVANS**—Thank you very much for that.

**CHAIR**—Did you finish the course at RMIT?

**Mr Hyland**—Yes. Fortunately it was towards the end of the course, so I had enough credits to get through. I managed to punch out my last song on a laptop on the bed. The guys gave me a bit of a push as well, so I got through it, which is good.

**CHAIR**—Well done. Thank you very much for coming along today.

**Mr Hyland**—A pleasure.

**CHAIR**—It has been helpful. I thank all the witnesses for their attendance.

*Evidence was then taken in camera—*

**Committee adjourned at 2.37 p.m.**