



**SENATOR THE HON LINDA REYNOLDS CSC  
MINISTER FOR DEFENCE  
SENATOR FOR WESTERN AUSTRALIA**

**Terms of Reference  
Afghanistan Inquiry Implementation Oversight Panel**

**Purpose**

1. The Afghanistan Inquiry Implementation Oversight Panel ('the Panel') provides independent oversight and assurance relating to the Department of Defence response to the Afghanistan Inquiry ('the Inquiry') and reports directly to the Minister for Defence.

**Background**

2. In May 2016, at the request of the Chief of the Defence Force, the Inspector-General of the Australian Defence Force established an independent Inquiry to determine whether there is any substance to rumours and allegations relating to possible breaches of the Law of Armed Conflict by members of the Special Operations Task Group in Afghanistan over the period 2005-2016 ('the Inquiry').

3. The intention of this administrative inquiry process was not only to ascertain whether there is substance to rumours and allegations of misconduct, but also to consider whether there was a cultural normalisation of deviance from professional standards, and if so, what underlying issues may have led to the development of this culture.

4. The Inquiry was led by Major General the Honourable Justice Paul Brereton AM RFD, a Judge of the New South Wales Supreme Court of Appeal who was appointed as an Assistant Inspector-General of the Australian Defence Force.

5. The Inquiry has concluded, and on 6 November 2020, the Inspector General of the Australian Defence Force delivered the Inquiry Report to the Chief of the Defence Force.

6. The Chief of the Defence Force has commenced a review of the Inquiry findings and recommendations in order to determine appropriate actions in response, which will be

documented in the form of an Implementation Plan authorised by the Chief of the Defence Force ('the Implementation Plan').

7. The Implementation Plan will be subject to usual monitoring and performance oversight, internal to the Department. Cognisant of the accountabilities to the Minister for Defence both jointly and individually for Defence's performance as detailed in the *Ministerial Directive to the Secretary of the Department of Defence and the Chief of the Defence Force dated 30 June 2015*, the Implementation Plan as authorised by the Chief of the Defence Force remains subject to review and amendment at the discretion of the Minister for Defence.

### **The Panel**

8. The Panel will provide assurance of Defence's delivery of the Implementation Plan, but also consider any wider implications and actions in response to the Inquiry.

9. The Panel will consist of three eminent persons who will work part-time and independently of Defence to oversee the Defence response to the Inquiry.

### **Appointment to the Panel**

10. Appointments to the Panel will be made by the Minister for Defence, or by the Secretary of Defence, on behalf of and with the approval of the Minister for Defence.

11. Initial appointment tenure will be for a period of two years, with provision for extension in the event that the Minister for Defence has not called for the Panel's Final Report within this period.

12. Members of the Panel may be replaced should they be unable to extend beyond the initial tenure of two years, or otherwise cease to be available as a Panel member.

### **Expert Consultants**

13. Should the Panel require expert consultant advice to support specific matters or elements of the work of the Panel, sessional engagement of such expert consultants may be approved by the Minister for Defence upon written request by the Panel. The Minister for Defence may delegate this approval to the Secretary of Defence.
14. For specific matters, other persons could be co-opted to the Panel with the approval of the Minister for Defence.

### **Scope of Work**

15. The Panel will report to the Minister for Defence on the following matters:
  - a. The thoroughness and effectiveness of the Implementation Plan directed by the Chief of the Defence Force in response to the findings and recommendations of the Inquiry. In this regard, the Panel may recommend additional actions not contemplated in the recommendations of the Inquiry, nor subsequently initiated by the Secretary of Defence or the Chief of the Defence Force.
  - b. The progress of the Implementation Plan directed by the Chief of the Defence Force in response to the findings and recommendations of the Inquiry, including whether internal oversight and resourcing are sufficient to respond to the Inquiry in a timely and comprehensive manner.
  - c. Whether appropriate welfare and legal support is being provided to persons affected by the Inquiry; including consideration of the support and services provided by the ex-service organisations and how these are complementary to, and integrated with, the services provided by both Defence and the Department of Veterans' Affairs.
  - d. The degree to which governance and cultural reform undertaken in Defence, Army and Special Operations Command since 2015 has already addressed elements of the findings and recommendations of the Inquiry; by way of a holistic review of previous reforms and reports on reform that have already been completed, including advice on the efficacy of actions arising from these recommendations, particularly associated with systemic issues, and any outstanding actions from those reforms.
  - e. The overall progress and outcomes of the implementation process, alerting the Minister for Defence to any challenges and difficulties which may be identified.

f. Whether any advice can be drawn from the conduct of the Inquiry and the subsequent Defence response in relation to how matters of similar gravity might appropriately be dealt with by Defence, should the need arise, in the future. This includes consideration and review of the role of Command element, oversight of and accountability for deployed forces, and related policies associated with deployment of both regular and special forces.

g. Whether Defence is adequately positioned, resourced and empowered to appropriately support the response to the Inquiry by other Australian Government entities; including but not necessarily limited to; the Australian Federal Police, the Department of Home Affairs, the Commonwealth Director of Public Prosecutions and the Attorney-General's Department.

16. The Panel may establish and conduct activities to validate the efficacy of Implementation Plan actions and to assess any cultural issues across the ADF and broader Defence, through surveys and other engagement as the Panel deems necessary.

17. It is anticipated that the Panel will engage directly with the Inspector-General of the Australian Defence Force. The Panel may engage directly with any Service or Group within the Department of Defence as considered necessary in the course of their role. This engagement may, at the discretion of the Panel, be undertaken confidentially with current or previous members of any rank or level of the ADF or APS in the Department of Defence. This engagement may occur in a manner that is independent of the member's supervisory chain.

18. While the role of the Panel is to oversee the response of the Department of Defence, appropriate input should be sought from other areas of Government in order to assess the Defence response to the Inquiry. Such advice should include how the Defence response supports and interacts with the related roles and responsibilities of other Departments and Agencies. In this regard, the Panel is expected to engage with other Departments and Agencies, including but not limited to:

- the Attorney-General's Department;
- the Department of Home Affairs, including the Office of the Special Investigator;
- the Australian Federal Police; and the
- the Department of Veterans' Affairs.

19. The Panel may, at its discretion, elect to engage with other individuals or agencies not included in previous descriptions to the extent to which such engagement would assist in undertaking its oversight role.

20. The Panel should examine the manner in which the above matters are being addressed and make resulting reports and recommendations to the Minister for Defence; having regard to the responsibilities of the Minister and the Government, including identification of any actions for the Minister and/or the Government.

### **Reporting**

21. The Panel will provide Progress Reports to the Minister for Defence on a quarterly basis.

22. The Panel will provide a Final Report at a time directed by the Minister for Defence. The Final Report may be tabled in Parliament at the discretion of the Minister for Defence.

### **Values**

23. The Panel's recommendations, are to reflect Defence's organisational values and Defence's commitment to ensure that these values are at the foundation of Defence's actions and behaviours. In this context, the Panel will consider the Defence values of:

- Service
- Courage
- Respect
- Integrity
- Excellence

### **Working methods**

24. The Panel will be provided with access to relevant reports and information, access Defence establishments, ADF and APS personnel and Defence information and communications technology as required for their work.

25. The Panel will be supported by a Secretariat in the conduct of its work.

26. The work of the Panel may include undertaking visits for the purposes of oversight and assurance, with those visits anticipated to include, but not be limited to:

- progress meetings with the Secretary of Defence and Chief of the Defence Force;

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- inspection of records of actions taken by the Department in response to the Chief of the Defence Force Implementation Plan;
- review of the internal Department implementation monitoring processes;
- interviews with key stakeholders;
- site visits as appropriate;
- inspection of documentation; and
- engagement of external stakeholders, such as other Government departments and agencies

27. It is anticipated that the Panel would engage, as necessary, with the following stakeholders, internal and external to the Department of Defence:

- the Secretary of Defence
- the Chief of the Defence Force
- the Chief of Army
- the Special Advisor – Special Forces
- the Special Operations Commander – Australia
- the Commissioner of the Australian Federal Police
- the Inspector-General of the Australian Defence Force.

28. Collective and individual visits will be facilitated by the Secretariat, as is required to support the Panel in responding to these Terms of Reference.

29. The Panel will have an active, dynamic and visit-based (subject to any COVID-19 restrictions that may be in place from time-to-time) approach by:

- a. providing iterative feedback; both through quarterly reporting to the Minister for Defence and by direct engagement of the Secretary of Defence and the Chief of Defence Force, as appropriate; to enable timely response to their observations and recommendations.
- b. making assessments and recommendations which result as necessary in prompt reorientation or renewed approach in Defence's response and/or adjustment of the Implementation plan.

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30. The Panel will consider factors beyond the immediate scope of the Inquiry report's findings and recommendations and recommend to the Minister for Defence, the Secretary of Defence and the Chief of the Defence Force any additional actions that should be considered.

### **Secretariat**

31. The Secretariat will be provided by the Department of Defence within the Defence Headquarters, segregated from functions subject to oversight.

32. The Secretariat responsibilities include:

- arranging visits by the Panel
- arranging stakeholder meetings as required by the Panel
- arranging travel and accommodation requirements of the panel
- arranging circulation of papers as required by the Panel
- supporting drafting of reports to the Minister of Defence

### **Conflict of Interest**

33. Prior to appointment to the Panel, or to the engagement of an expert consultant, a declaration of any real or apparent conflict of interest in relation to the scope of work to be completed is to be made in writing. Conflict of interest declarations will be considered by the Minister of Defence when making appointments to the Panel or approving the engagement of an expert consultation. Consideration of conflict of interest declarations may be delegated to the Secretary of Defence.

34. Members of the Panel and expert consultants have an ongoing obligation to update their conflict of interest declaration if any real or apparent conflict of interest arises in the course of their work.

### **Security**

35. Members of the Panel and expert consultants will hold, and maintain, an appropriate security clearance for the work that they are engaged to complete.

36. The work of the Panel, and any expert consultant engaged to assist the Panel, will be conducted in accordance with Defence Security Principles Framework.

**Confidentiality**

37. The role of the Panel is to provide advice to the Minister for Defence. The work of the Panel including but not limited to working papers, notes or minutes from meetings, briefing documents and reports are to be treated as confidential and may not be publicly released without the approval of the Minister for Defence.

38. Members of the Panel, or any expert consultant engaged to assist the Panel, will consult with the Minister for Defence before making public comment regarding the Inquiry, the Defence response to the Inquiry report, the Implementation Plan, or the work of the Panel.

39. It is noted that any public comment, or release of information, may affect potential investigations, prosecutions or legal proceedings arising from the Inquiry.

**Amendment of Terms of Reference**

40. Any amendment of this Terms of Reference is to be authorised by the Minister of Defence. Amendments will be advised in writing to:

Oversight Panel Members

Secretary of Defence

Chief of the Defence Force

Secretariat for the Afghanistan Inquiry Implementation Oversight Panel

**Authorisation**

41. This Terms of Reference for the Afghanistan Inquiry Implementation Oversight Panel was authorised by the Minister for Defence, Senator, the Honourable Linda Reynolds CSC, on 12 November 2020.