Annex A to
Chapter 3.03

Special Operations Command: Leadership and Ethics Review

Professor David Whetham, King's College London, Assistant Inspector-General of the Australian Defence Force, July 2020

Executive Summary

This review into the leadership and ethics of Special Operations Command (SOCOMD) personnel during the period 2007 to 2014 draws a picture of a gradual erosion of standards over time resulting in a culture within which, ultimately, war crimes were tolerated. This was contributed to by: the character and tempo of the deployments (and redeployments); inadequate training and support; inappropriate metrics of success imposed from above warping behaviour within the Special Forces (SF) Task Group; a lack of clarity about purpose and gradual loss of confidence in both the mission and the higher chain of command; a fractured, compartmentalised and dysfunctional leadership, and; a general lack of effective oversight aided and abetted by the very people who should have been providing it. This combination of factors led to a normalisation over time of behaviours that should never have been considered normal and ultimately, the effective covering up of, or wilful blindness to, the perpetration of war crimes by some soldiers.

Purpose, Scope and Methodology

As directed by Major General (MAJGEN) the Honourable Justice Paul Brereton, this report is concerned solely with why, during the period 2007 to 2014, Australian military personnel:

- **knowingly committed clear and unambiguous acts of murder**
- **why these actions were apparently reported by no-one**
- **if senior commanders did not know about those incidents, could they, or should they have done?**

The purpose of this research paper is not to establish the evidential basis to support specific allegations of wrongdoing. While we will have to see how any criminal investigations turn out, the evidence already in the public domain,[1] along with the evidence gathered for the Inquiry that has been shared with me as part of creating this report strongly suggests that war crimes were committed, that we are not talking about just a tiny number of isolated incidents, and that their commission probably culminated in the period [redacted] 2012 to [redacted] 2013.

It is important to note at the start that an explanation is not the same as an excuse. For some of the reasoning below, it may appear as if this paper is attempting to justify or excuse the behaviour of certain SOCOMD personnel. This is not the case - if there is a desire to find out why things happened, and how to prevent them from happening again, it is necessary to examine causes. At best, some of the situational factors that are discussed amount to a degree of mitigation rather than a defence.

[1] [redacted]

However, it is important to note that the extensive interview transcripts consulted for this report were derived from a process in which the normal rules of evidence do not apply – for example, hearsay evidence was acceptable. This reflects an inquisitorial process, aimed at finding the truth rather than necessarily providing evidence to the standard required to secure a criminal conviction (ie, beyond reasonable doubt). Amongst other sources, I have also had access to the SOCOMD Culture Report informed by the extensive anonymised, candid, and lengthy conversations carried out by Dr Samantha Crompvoets across the wider Army and then specifically within the Special Forces community. Across the range of available sources, I am satisfied that they represent 'multiple authentication points', providing a sufficient evidential base to be able to draw some reliable conclusions within those caveats.[2] I have attempted to preserve the words of the interviewees where possible as I believe the language adds both richness and depth to the analysis and should help the reader get a better understanding of what happened. However, I am very aware that due to the focus of the review and the nature of the evidence consulted, the voice of both the victims and their families is entirely absent.

Due to this report being narrow in focus, it should be read alongside and understood within the context of the full Inquiry Report by MAJGEN Paul Brereton.

Author

The author of this research paper is Dr David Whetham, Professor of Ethics and the Military Profession at King's College London, and the Director of the King's Centre for Military Ethics, appointed as an Assistant Inspector-General of the Australian Defence Force (IGADF) for the purposes of completing this Report.[3] Since 2003 I have delivered or coordinated the military ethics component of courses for between two and three thousand British and international officers a year at the United Kingdom's (UK) Joint Services Command and Staff College, covering the full breadth of officer professional training and education post commissioning. I have held Visiting Fellowships at the Stockdale Center for Ethical Leadership, United States (US) Naval Academy Annapolis, the Centre for Defence Leadership and Ethics at the Australian Defence College in Canberra and I am currently a Visiting Professorial Fellow at the University of New South Wales.

I co-founded the European Chapter of the International Society for Military Ethics, and my wider defence engagement includes working regularly with the armed forces in Australia, Ireland, the US, Canada, Brunei, Estonia, and Romania, amongst others, and since 2012, I have been engaged with the Colombian Armed Forces introducing a full Military Ethics curriculum. From a Special Forces perspective, in the UK I was involved in the ethics review conducted by 22 Special Air Service which contributed to the new Regimental Handbook in 2018, and have supported ethical development with both the Royal Marines and Special Boat Service.

My teaching, extensive publications in the area of military ethics, understanding and approach have all been heavily influenced by the experience and feedback of the practitioners that I engage with on a daily basis during my professional career in this area.

[2] Reference 2 - [redacted]
[3] Reference 3 - https://kclpure.kcl.ac.uk/portal/en/persons/david-whetham(6a382e7f-1960-4031-93ef-227750f2fe34).html

During the period 2007-2014, why did Australian military personnel knowingly commit clear and unambiguous acts of murder?

1. Understanding what is in the mind of the soldiers is impossible. What is clear, however, is that Australian SOCOMD soldiers are not the only soldiers to have ever been guilty of aberrant and murderous conduct during war. [redacted] I have attempted to categorise the key factors into three broad areas: bad apples, training, and application of rules. While I describe these factors individually, it is the aggregation of all them together that created the cauldron of malfeasance within which the Australian SOCOMD soldiers operated.

Bad apples?

2. Applying Ockham's razor to the question, and seeking the least complicated answer, it is at least possible that all of the crimes were carried out by a tiny number of 'bad apples'. After all, this is a common theme from various military inquiries and creates the impression that once those individuals are dealt with, the military institution can return to business as usual.[4]

3. There is no doubting that some people are more likely to commit war crimes than others. There is a significant body of evidence that links traits associated with psychopathy, or antisocial tendencies, with unethical behaviours and the committing of atrocities.[5] In 2012, MacManus et al showed that UK military personnel who had demonstrated antisocial behaviour prior to enlistment were likely to continue on the same trajectory after they joined the military, with an increased risk of negative behaviour, including outbursts of anger and assault.[6] This, and other research, has led some to conclude that psychopathy may be the most important predictor of unethical military behaviour. In the future, it might be possible to predict, and therefore screen out and prevent, moral transgressions on operations based on the presence of malevolent individual difference factors, specifically: the 'Dark Triad' of Machiavellianism, narcissism and psychopathy; and socio-political attitudes relating to social-dominance orientation; and right-wing authoritarianism.[7] One US study suggests that members of the military are twice as likely as the general public to have some sort of Antisocial Personality Disorder, and there is no reason to think that this ratio would be exclusive to the US military.[8]

[4] Reference 4 - P Rowe, 'Military Misconduct during International Armed Operations: 'Bad Apples' or Systemic Failure?', *Journal of Conflict and Security Law,* 13.2 (2008): 165-189.
[5] Reference 5 - Darren W. Holowka et al, 'Associations among personality, combat exposure and wartime atrocities,' *Psychology of Violence* 2, no. 3 (2012): 260-272.
[6] Reference 6 - Deirdre MacManus et al, 'Impact of pre-enlistment antisocial behaviour on behavioural outcomes among UK military personnel,' *Social Psychiatry and Psychiatric Epidemiology,* 47 (2012): 1353-1358.
[7] Reference 7 - M Lind n, F Bjorklund, M Backstrom, D Messervey, D Whetham, 'A latent core of dark traits explains individual differences in peacekeepers' unethical attitudes and conduct,' *Military Psychology* 31, no. 6 (2019): 499-509. The US Mental Health Advisory Team IV (MHAT) survey for Operation Iraqi Freedom found that soldiers were twice as likely to mistreat non-combatants if they had high levels of anger or screened positive for 'mental health problems'. Office of the Surgeon General, 'Mental Health Advisory Team (MHAT) IV Operation Iraqi Freedom 05-07 Final Report,' United States Army Medical Command, 17 November 2006
[8] Reference 8 - American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th Edition (Arlington: American Psychiatric Association, 2013), 301.7; Stephen C. Messer et al, 'Projecting mental disorder

4. If there is a concentration of people predisposed to a particular type of behaviour in one place, it is seems obvious that there is a greater chance of seeing that behaviour. For this author, it is impossible to know if the Special Forces selection and training processes would have removed such people or condensed them. Likewise, it is impossible to know if screening would have helped prevent the behaviours that are the focus of this paper, but the evidence does not suggest that the behaviour of personnel in SOCOMD started out as bad in 2007. Specifically, given the evidence that has so far come to light, it would be impossible to support the claim that the deployment started with the murder of detainees. Therefore 'bad apples', while possibly a contributing factor, cannot be a full explanation, and there must have been other factors that need to be considered.

Was the training received adequate - perhaps they didn't realise that it was murder?

5. The quality and type of training given to Australian SOCOMD personnel both before, and during, their deployments is a vital consideration. There is evidence that soldiers who receive effective ethics education and training are less likely to commits acts of atrocity.[9] Therefore, the time spent on training soldiers to deal with the challenges they are likely to face in a Counter Insurgency (COIN) environment is an essential part of any examination into the possible causes of aberrant behaviour.

6. There is a difference in the balance between training and education provided for enlisted personnel and officers. While there are common elements, especially in pre-deployment, due to the way people come into Special Forces from their parent units, this is replicated here as well. While the two terms are often used interchangeably, training and education are both vital and represent different processes which are aimed at creating different outcomes. Training equips one to deal with the specifics; education that leads to reflective, deliberative thinking is required to allow the flexibility to adapt to the uncertainties of the real world. This is particularly evident in COIN – what the US Marines have traditionally referred to as 'Small Wars'.

> Small Wars demand the highest type of leadership directed by intelligence, resourcefulness, and ingenuity. Small wars are conceived in uncertainty, are conducted often with precarious responsibility and doubtful authority, under indeterminate orders lacking specific instructions.[10]

7. While this characterisation may be extreme, the description of elements of the contemporary operating environment will be familiar to many, and even more so for special operations in this COIN environment. And yet, despite the fact that Special Forces units operate with a very flat structure, with life and death decisions in extreme and ambiguous situations pushed right down to the lowest tactical levels, ethics education aimed at dealing with complexity and ambiguity, as opposed to values and standards training and/or Law of Armed Conflict briefs of the kind mentioned above (focusing upon right and wrong answers in specific black and white situations), tends to be focused almost exclusively upon officers. They are supposed to be the ones in command and control, and therefore traditionally it has made sense to concentrate resources and time on developing their

prevalence from national surveys to populations-of-interest: An illustration using ECA data and the U.S. Army,' *Social Psychiatry and Psychiatric Epidemiology* 39, issue 6 (June 2004): 419.

[9] Reference 9 - For example, Warner, Appenzeller, Mobbs, Parker, Warner, Grieger & Hoge 'Effectiveness of battlefield-ethics training during combat deployment: a programme assessment', *Lancet* 378 (2010): 915-24.

[10] Reference 10 - *US Marine Small Wars Manual* 2004.

effective ethical analytical and decision-making skills. [11] Ambiguity surrounding orders or expectations is a major cause of ethical failure if and when people without clear direction attempt to 'fill in the gaps' themselves.[12] The manifestation of such a tradition is, at least in part, clear to see, by people feeling they lack the necessary tools to navigate and resolve those ambiguities. One of the peculiar challenges of this situation is that officers, with their greater degree of education in ethics and decision-making, were removed, both in a physical sense and in cultural relevance, from situations where they would be able to exercise influence (see below).

8. That is not to say that officers were necessarily particularly well equipped either, despite their additional education. The lack of support for junior officers is mentioned in several transcripts. [redacted]. While one may expect a tough environment for leaders in such a demanding unit, [redacted] [13]

9. Military ethics should be considered as a core competency that needs to be updated and refreshed if it is to be maintained. For example, research in the British Army demonstrates that while officers were generally well aligned with the army's stated values, this was most prominent for cadets, declined for lieutenants and captains and only partially recovered as majors, suggesting that whatever ethics training British junior army officers received, it was insufficient to counter their lived experience when it came to maintaining army values.[14] It would be very surprising if these findings were unique to the British Army, given the similar institutions and cultures with the ADF and it would be surprising if this finding was also not replicated across enlisted personnel.

10. There is no doubt that the Rules of Engagement (ROE) briefs 'back here in country' were hated by some soldiers due to their confusing nature, apparently sometimes leaving soldiers in doubt about what they were permitted to do 'and that was soldiers who had already been there'.[15] It could well be that this tension between what was supposed to happen and the experience of those who had already been in theatre reflects the gradual divergence of theory and practice that will be discussed in more detail below, but it also reflects the issue that being told 'a whole lot of lawyer speak without the practicalities' created a difference between the black and white legal position that was presented, and the experience of those who felt that out in the field, 'there are so many grey areas'.[16] These grey areas may have created some ambiguity for some people about what was

[11] Reference 11 - David Whetham, 'Challenges to the Professional Military Ethics Education Landscape' in Carrick, Connelly & Whetham, *Making the Military Moral* (Routledge 2018), 148. Therrien and Messervey demonstrated that ethical attitudes do vary between officer and enlisted personnel, to which differences in training and education will have contributed. M Therrien & D Messervey, Ethical Attitudes and Intentions on the Battlefield: empirical evidence from the Human Dimensions of Operations Survey. Defence Research and Development, Canada. DRDC-RDDC-2019-R185 (Nov 2019).

[12] Reference 12 - For example, Kelman & Hamilton assert that ambiguous orders contributed to My Lai. HC Kelman, & VL Hamilton. Crimes of obedience: *Toward a social psychology of authority and responsibility*. Yale University Press, 1989.

[13] Reference 13 - [redacted] TROI of [redacted]

[14] James Arthur, David Ian Walker and Steve Thoma, 'Soldiers of Character: Research Report'. University of Birmingham, The Jubilee Centre for Character and Virtues, https://www.jubileecentre.ac.uk/userfiles/jubileecentre/pdf/Research%20Reports/Soldiers_of_Character.pdf

[15] Reference 14 - SAS Forum, 16 Sep 19. 28/134 [redacted]

[16] [redacted]

permitted and what was not. This explanation has some intuitive appeal until one realises the nature of some of the allegations. There is a huge and important difference between pulling a trigger and getting it wrong in the heat of the moment despite trying to do the right thing, and taking a handcuffed prisoner and executing them in cold blood.[17]

11. There is no suggestion anywhere in the extant accounts that anyone, including the perpetrators, claimed that what they were doing was not clearly and unambiguously illegal. Therefore, while there are clear lessons that need to be learned for the training and education environment, changes here, even if combined with improved screening for 'bad apples', cannot be a complete answer to the first question.

The 'wrong' rules, peer (and wider) approval and lack of consequences

12. Grasmick and Green suggest that three independent variables – moral commitment, threat of social disapproval and the perceived threat of legal punishment – represent a key set of factors which inhibit illegal behaviour.[18] To explain each one: if a rule is not considered justified in a particular situation, it can come to have low moral commitment. For example, why obey a 'reduce speed now' sign when it is obvious that the traffic queue has dispersed? While it might have done once, the rule doesn't make sense anymore so it seems justified to now ignore it. Alternatively (and sometimes in tandem), if a rule is frequently being broken by people around you, it creates an impression that the rule-breaking behaviour is either not actually viewed seriously by other people, or is even condoned by those that are aware of it – if everyone breaks the rule, why bother to adhere to it? Finally, if people believe that any negative consequences in terms of punishment for their actions are either unlikely, so far in the future as to be irrelevant, or they do not believe that the action would be considered 'bad' at all (perhaps even regarding perpetrators as heroes rather than villains), the rules become far easier to ignore.[19] Each of these three factors will be examined below to show how individually, or in some cases cumulatively, they join with the bad apples and education/training deficiencies to explain the answer to our first question – why did people knowingly commit acts of murder?

(1) The 'wrong' rules and cultural responses to them

13. There were a series of rules applied to SOCOMD personnel who, in their view, made their missions more challenging and put their personal and collective safety at risk. Rules of engagement and rules regarding detainee handling and processing are both frequently mentioned as being either wrong in design, or wrong in application. The cultural responses to such 'wrong rules' was to find ways to subvert and break them.

14. There are many references to a feeling from personnel that were routinely 'outside of the wire', that the ROE were sometimes inappropriate for the tasks that were required. An example of this is in the case of the prohibition on firing warning shots, even where it was believed that this

[17] Reference 15 - [redacted].
[18] Reference 16 - H.G. Grasmick, and D.E. Green, 'Legal Punishment, Social Disapproval and Internalization as Inhibitors of Illegal Behavior', *Journal of Criminal Law and Criminology,* 71 (1980): 4.
[19] Reference 17 - D Whetham, 'Drones to Protect', International Journal of Human Rights, 19 iss. 2 (2015): 22; Reference 18 - M. Verkuyten, Why Do People Follow (Formal) Rules? (Rotterdam: Erasmus University, 1992).

could be used to save lives – '*So, we either shoot to kill, or we do nothing*'.[20] An example was given where a young child was moving towards a discarded rocket-propelled grenade. In this case there are some accounts of warning shots being fired despite the ROE in order to avoid using lethal force when it was legally permitted but considered ethically unjustified.[21] There were cases where it was necessary to subvert the rules (in this case, aiming to miss deliberately), in order to do the right thing, because for the people applying the rules, those rules did not make sense. Simply relaxing the rules is clearly not the right response to such concerns, however. For example, other cases demonstrate that the ROE in general was actually very permissive in many situations, [redacted] This particular incident was entirely within the Law of Armed Conflict and extant ROE, but in this case, when the Coalition Forces returned to that area, the action had motivated the local population to the extent that it was the whole population rather than just the Taliban that were now hostile to the International Security Assistance Force (ISAF).[22]

15. There was some admiration for US practice, especially when it came to maintaining the 'shock of capture' on detainees where their disorientation contributes to them sharing time-sensitive and useful information. The maintenance of this pressure was deemed essential for the successful extraction of actionable intelligence within the narrow window of opportunity following the apprehension of a target. The desire to maintain that pressure, unsurprisingly, led to some tension. An understandable (and laudable) desire to ensure that detainees were not abused led to the first question being asked of any detainee brought in for questioning being '*have you been mistreated?'.*[23] [redacted] [24] Even legitimate injuries caused in the apprehension of suspects became the cause of investigations. The hassle and frustration this generated meant that it became preferable in many instances to hand them straight over to Afghan forces as at least it was considered that they would be held on to for six months.

16. Other policies were perceived as far more problematic than this and, due to the perception of being ill-thought through, or even counterproductive. These appear to have had a corrosive effect on behaviour. First among these was the policy of 'catch and release' as it is repeatedly referred to, which came to signify an out of touch chain of command, helping to create a 'them and us' situation between them and higher command. This involved releasing detainees if there was no clear evidence of serious criminal misconduct or if they were not considered to be important enough in terms of leadership. From a policy position, one can see the logic. Unlawful or unfair detention leads to ill feeling that ultimately can fuel an insurgency, but the rapid release of 'known' insurgents was possibly 'the single most important factor in the population's lack of confidence in the government in Uruzgan Province'.[25] The effect on the people who were supposed to be doing the catching was just as profound: [redacted]

[20] [redacted]. I note that this prohibition is not unique to the ADF.
[21] [redacted]
[22] [redacted].
[23] [redacted].
[24] Reference 20 – [redacted] TROI of [redacted].
[25] Reference 21 - [redacted]

– it's counterintuitive. It's like, why are we doing this?'[26]; and, '*If you haven't got enough to keep them, don't send us out there to risk our lives'*.[27]

17. It was suggested that the use of throwdowns – the planting of contraband weapons or military equipment that could be linked to hostile intent such as a grenade, radio or rifle – was a response to this 'catch and release' policy, by ensuring that people could be held for longer without automatically being released straight back into the field. The interviews taken over a number of years build up a picture of their use gradually becoming an acceptable practice to solve this real problem on the ground. While they may not have been spoken of openly, the practice was widespread and '[redacted]', [redacted].[28] [redacted].[29] [redacted].[30] [redacted].[31] An officer noted that [redacted].[32] Any organisation's ethical culture is degraded when even good people feel they need to systematically falsify, fudge, and exaggerate in order to make the system work properly.[33]

18. It appears that this practise gradually morphed into a new, more insidious activity as time went on. The perversity of the rules were recognised by the local Afghan forces that the Australian forces were working alongside, with accounts of 'bad guys' being executed because they believed that the restrictive Coalition rules on detention would result in a release after three to five days. [redacted].[34] But there was also some sympathy for ensuring that there was the 'right' outcome:

> …when you realise your detainees are getting released and they're going to go and, as we found, kill people again. So sometimes understanding how that process works and inherently these are evil people, then they don't come off alive.[35]

19. One can see a mindset that emerged - these are practical people being presented with what became seen as a practical rather than ethical or legal problem - denied the 'sensible' solution that should have supported them. A mindset emerged where SOCOMD soldiers found practical ways of

[26] [redacted].
[27] [redacted].
[28] Reference 22 – [redacted] TROI of [redacted]; [redacted] TROI of [redacted].
[29] [redacted] TROI of [redacted].
[30] [redacted] TROI of [redacted].
[31] [redacted] TROI of [redacted].
[32] [redacted] TROI of [redacted].
[33] Reference 23 - Michael Skerker, 'Honesty', in Skerker, Whetham & Carrick, *Military Virtues*.
[34] [redacted].
[35] [redacted].

subverting and breaking the rules with which they did not agree. A parallel reality was created to cope with the resulting gap: to any reader of reports it would be clear the rules were being followed; to any direct observer on the ground it would have been evident that entirely different processes were being applied.

20. This is not limited to a SOCOMD chain-of-command issue, of course, but reflects a wider failure of policy to provide appropriate guidance to those on the ground.[36] This led to an attitude where it was preferred if the target that was supposed to be apprehended fired shots, as it justified a lethal response and removed the known problem of the person being briefly interrogated and possibly released straight back into the field:

> The intransigence of government to agree an appropriate detention strategy for a substantial period of the war in Afghanistan could have, and potentially did, lead to circumstances where the lawful prosecution of operations through the applications of lethal force was preferred to detention'.[37]

21. With it already an established habit as a response to perverse policies, it can be imagined how engagements resulting in lethal casualties were subsequently justified by placing a throwdown on or near the body.

(2) Peer approval, organisational culture and gradual decline in standards over time

22. A sense of exceptionalism is very evident from the accounts. SOCOMD as a collective were treated differently to other members of the military, and they knew it:

> 'To that end, some soldiers believed quite passionately that an Australian soldier is expected to 'muck up' on operations. It seemed as though many soldiers felt that they were almost obliged to live up to a rogue, irreverent and scruffy stereotype (a distorted view of the larrikin) and that their leaders ought to tolerate such things'.[38] They were, after all, the 'Force of Choice' of the Australian government for a number of years. 'The hyperbole surrounding the contribution of Australian soldiers in Afghanistan makes the soldiers feel entitled to be treated almost as Roman gladiators'.[39] Unsurprisingly, this may have led to a feeling of 'exceptionalism' and even a sense of entitlement.[40]

23. When members were challenged on the declining standards in the unit, there was a feeling that in some areas, the unit had higher standards than the rest of the Army, but there was also an acknowledgement that they were 'more relaxed' about other rules which were considered to be just 'minor infringements'.[41] For example, there was supposed to be no alcohol, but there was a pub

[36] Reference 24 - This failure was evident in other areas as well, for example, failing to provide help or guidance to ADF personnel faced with the Thursday night rapes being committed by some partner forces on prepubescent boys up to and including 2009. See D Whetham, 'Coalition Operations in Afghanistan, Iraq and Beyond: Two Decades of Military Ethics Challenges and Leadership Responses', in Olsthoorn, P. (ed.), Military Ethics and Leadership (Brill Nijhoff, International Studies in Military Ethics; vol. 3, 2017).

[37] [redacted].

[38] [redacted].

[39] [redacted].

[40] [redacted].

[41] [redacted].

in the base – the Fat Lady's Arms – '*somewhere there where we can do certain stuff but we're not going to get caught and it's not going to be regarded as misconduct because that's who we are and that's what we do*'.[42] Although unauthorised, the pub managed to get resupplied through the system. A Sergeant with 10 operational tours said, *'I have seen alcohol consumed on every operation since 1999 by every rank on every operation since 1999, by every rank and including JTF and unit commanders*'.[43] While alcohol on deployments was linked to 'risky or unacceptable behaviours', it is 'difficult to conclude that almost everyone in the SOCOMD chain of command was not aware of this'.[44] Alcohol was widely justified as a coping mechanism for stress, grief and high tempo operations and the unit was basically given a pass because it was 'special', reinforcing a perception of entitlement, with the 'logic of exceptionalism warranting the application of different rules and behaviours to those that applied to other ADF members'.

24. While it is easy to get used to some rules not being applied, and justifying such exceptions as warranted by the extraordinary situation, when seen in the broader context of the decline in standards in the field, it is hard not to see a correlation between this and attitudes towards 'protective clothing, fieldcraft and equipment checks', amongst other things.[45] Even if alcohol consumption or relaxed personal hygiene was regarded as a symptom rather than a cause of other behaviours, it was also a symptom of how this was a unit that did things differently. If someone was punished for such infringements, perceived as minor or trivial issues, it came to be seen as double standards. Creating the routine assumption that some rules are optional is bound to undermine the way other problems and situations are viewed.[46] If a group has normalised a behaviour that was previously regarded as against the rules, then members are more likely to acquiesce to more significant acts in the future.[47]

25. The atmosphere combined to challenge the consistency of the chain of command and may have contributed to what MAJGEN Sengelman referred to as 'degree of learned helplessness' in the face of certain activities that may not have been just limited to the breaking of rules against drinking on operations.[48] For example, there are accounts that 'drugs were rampant', 'buying, selling, everything'.[49] This sense of exceptionalism clearly started to seep into other areas as well though, and many accounts refer to a gradual decline in standards over time. [redacted],[50] [redacted]. In the case of throwdowns, although they were being used in 2008, this was at a much smaller and more discrete level. [redacted].[51]

[42] [redacted].
[43] Reference 25 - Sengelman, Commanding in Adversity. [redacted]
[44] Sengelman, Commanding in Adversity.
[45] [redacted].
[46] Michael Skerker, 'Honesty', in Skerker, Whetham & Carrick, *Military Virtues*.
[47] Reference 26 - Cialdini, Robert B., and Noah J. Goldstein. 'Social Influence: Compliance and Conformity'. *Annual Review of Psychology,* 55 (2004): 591-621.
[48] Sengelman, Commanding in Adversity. [redacted]
[49] Reference 27 - [redacted].
[50] [redacted] TROI of [redacted].
[51] [redacted] TROI of [redacted].

26. Contributing to this gradual decline in standards was fatigue and a general sense of loss of purpose. Fatigue is an issue that is going to be a factor on any deployment and was mentioned by multiple interviewees.[52] It is also recognised as a major ethical risk factor in its own right.[53] Insufficient sleep and fatigue leads to poor judgment, lack of self-control, and impaired creativity as well as increasing the likelihood that people will engage in unethical behaviour.[54] A factor that must have increased the challenge of getting any psychological rest was the lack of safe space, even in Camp Russell, [redacted][55]

> Past that four-month mark in a rotation, and you can physically see guys sort of slowly degrading as far as, you know, just alertness and things like that.[56]

27. There was a perception among some that despite the extra resources at their disposal such as helicopters, protected mobility vehicles, drones (and so on) compared to actors in other areas of the battlespace, the shift to day operations instead of night in response to pressure from the Afghan government added to the risks for SOCOMD personnel and [redacted].[57] [redacted].[58] [redacted].[59]

> We were out there fighting on a daily basis. If we didn't go out that day, I'd just about guarantee it wouldn't make a pinch of shit of difference…we were playing with people's lives, both ours and theirs.[60]

28. The disenchantment caused by 'catch and release' also added to that sense of fatigue, and due to the small size of SOCOMD, multiple rotations of the same personnel returning to the deployed Task Group would also have ensured that bad habits became reinforced and perpetuated over time. The behavioural economist Dan Ariely notes that the meaningfulness of one's work has a large part to play in how well we do it. While it may seem counterfactual, rule-breaking behaviour actually goes down when the stakes are higher. If one's work is valued or recognised to be important, it will generally be done to a higher standard than work that is not.[61] One could conclude from this that it is not surprising that a decline in standards of behaviour coincided with the loss of a sense of purpose for some in SOCOMD.

[52] [redacted].

[53] Reference 28 - OK Olsen, S Pallesen, J Eid. The Impact of Partial Sleep Deprivation on Moral Reasoning in Military Officers, *Sleep,* 33, no. 8 (2010): 1086-90

[54] Reference 29 - C Barnes, J Schaubroeck, M Huth, S Ghumman. Lack of Sleep and Unethical Conduct. *Organizational Behavior and Human Decision Processes,* 115, no. 2 (2011): 169-180.

[55] [redacted].

[56] [redacted].

[57] Reference 30 – [redacted] TROI of [redacted]

[58] [redacted] TROI of [redacted].

[59] [redacted] TROI of [redacted]

[60] [redacted]

[61] Reference 31 - Dan Ariely (2012). *What Makes Us Feel Good About Our Work?* https://www.ted.com/talks/dan_ariely_what_makes_us_feel_good_about_our_work

29. This coincided with [redacted].[62] [redacted].[63] As the mission profile changed, and the type of activity became less 'special' and more routine, while still maintaining a high tempo, there was sense that they were trying to create activity to justify their presence in the scale that they were deployed as Special Operations unit.[64] [redacted].[65] [redacted].[66] This coincided with the way the Australian force began to align themselves [redacted] towards a 'Warrior mentality' culturally at odds with the mission that was still supposed to be based on a 'hearts and minds' approach, and with the ADF as a whole.[67]

30. Rewarding the behaviour you want to see is as, if not even more, important than applying discipline to prevent the behaviour you want to eliminate, and will ultimately promote the behaviour you are seeking. These issues are just as true at the systemic level as they are at the individual one. [redacted].[8] If the system is looking for and expecting enemy killed in action, it would be naïve not to expect that this is what people are going to try and achieve, by whatever means were available. The narrative that emerges is not one of a limited number of exceptional events, but rather, widespread and systematic behaviours:[69] *'I think there was that thirst to get out there and chase. You know, chase, chase, chase. Keep going, sometimes beyond reason'*.[70]

31. The military institutional way of rewarding the behaviour it wishes to see at the individual level is through the use of citation and awards. While many of the awards and citations made over this period were no doubt well-deserved and represented the best traditions of the ADF, there may also have been a number of awards handed out with far less scrutiny than should have been the case, and even less merit. In one case, for example*, 'the only thing they got right in that citation was the person's name*'.[71] It adds to the impression of entitlement, where it was X's turn to receive a

62 [redacted] TROI of [redacted].
63 [redacted] TROI of [redacted].
64 [redacted].
65 [redacted] TROI of [redacted].
66 [redacted] TROI of [redacted].
67 [redacted] See also Reference 32 - Wavell Room May 5, 2020. https://wavellroom.com/2020/05/05/the-warrior-culture-is-more-than-a-badge/ accessed July 10, 2020.
68 [redacted] TROI of [redacted].
69 [redacted]
70 [redacted]
71 [redacted]

medal this time. However, by rewarding (some) people who were objectively demonstrating the wrong kinds of behaviour, this further contributed to the poisoning of the organisational culture and was referred to by several people who were distressed by the signals that the organisation was sending to its people.

32. 'That one's compass may adjust within the norms of a combat zone is perhaps not a remarkable occurrence':[72] What is clear is that people became very 'business-orientated', perhaps at the expense of being 'humanity-orientated' with regards to the people who were being directly affected.[73] One example where ROE and interpretations changed over time was the attitude towards 'squirters'. This was the term given to people who would run away as a helicopter landed in a particular area. Clearly, an unarmed non-combatant should not be engaged. But, if it was deemed they were moving towards a prepared fire position or could be trying to access a weapons cache, then it became accepted that it was appropriate to engage them with lethal force.

33. While this interpretation may have been a pragmatic and necessary permission to exercise lethal force when it was deemed necessary, even if the person was not seen to be armed at that specific time, [redacted] [74] Running became a death sentence, even for women and children, with the dead person's actions being recorded as 'tactically manoeuvring' to a firing position or suspected weapons cache in the subsequent report once it had been 'legally massaged':[75] 'It got to the point where the end justified the means'.[76]

34. The transcripts and accounts chart a gradual move from a justified confidence in the abilities of the unit, into arrogance and even a feeling of being 'untouchable'.[77] Soldiers became more and more confident overtime, 'a law unto themselves',[78] and these 'behaviours became permissible and equated with being a good and effective soldier'.[79] For some rotations, a new team member fresh into theatre who hadn't yet shot someone would be required to shoot a prisoner, 'to pop his cherry…to prove that he was up to it'.[80] That appeared to be the price of entry into the in group. While healthy competition is obviously a good thing, when competition is measured by bad or inappropriate metrics internally as well as externally, it can become highly corrosive. For example, adopting a body count metric, formally or informally, is likely to skew the way operations are conceived and executed.[81] There is clear evidence that some elements did keep score of the number of kills. While not in itself a breach of the Law of Armed Conflict, 'in terms of establishing an ethical framework for your troops as a Patrol Commander, it's a clear fail'.[82] A tally board total, and a desire

72 [redacted]
73 [redacted].
74 [redacted] TROI of [redacted].
75 [redacted]
76 [redacted]
77 [redacted].
78 [redacted].
79 [redacted].
80 [redacted].
81 [redacted].
82 [redacted].

to take it from 18 to 20 appears linked to the deaths of two prisoners who were shot following an explosive entry into a compound that didn't result in the expected outcome. [redacted].[83]

35. [redacted] [84] Other accounts of similar events refer to 'Guys just had this blood lust. Psychos. Absolute Psychos. And we bred them'.[85]

36. The last of Grasmick and Green's three factors – chance of being caught and lack of consequences – is also closely linked to the second question asked by MAJGEN Brereton.

During the period 2007 to 2014, why were serious criminal actions apparently reported by no-one?

37. There is a necessary secrecy attached to Special Forces. However, due to the enduring, 'persistent', long-term nature of the mission, many of the tasks that the SF Task Group ended up being involved with could be considered routine military activity rather than 'special operations'. As the character of the mission changed, the continued secrecy that would normally be appropriate just hampered accountability and oversight when this particular military tool was employed in a sustained fashion.[86]

(3) Lack of consequences for rule-breaking

38. There is a significant body of research demonstrating that group identity can have a profound impact on behaviour, both good and bad. Group conformity, even in a benign environment, is an incredibly powerful social force. Solomon Asch demonstrated as far back as the 1950s that when a group was asked to make simple judgments, most individuals would conform to group consensus, at least some of the time, even when they knew it to be wrong.[87] Just as the role of the leader at every level is vitally important in shaping the ethical climate of the group,[88] the group itself is also a significant actor in its own right, and peer-to-peer influence is likely to be a powerful factor in any organisation, but I would argue even more so in the tightly knit special operations world.[89] The support (or rejection) of ethical norms by immediate peers and direct leaders is even more influential than that of senior military officers.[90] If the group has a strong *positive* identity, that is

[83] [redacted] TROI of [redacted].
[84] [redacted]
[85] [redacted]
[86] [redacted].
[87] Reference 33 - Solomon E. Asch, 'Opinions and Social Pressure,' *Scientific American* (November 1955): 31-35.
[88] Reference 34 - Schminke, M., Ambrose, M. L., & Neubaum, D. O. The effect of leader moral development on ethical climate and employee attitudes. *Organizational Behavior and Human Decision Processes*, 97, no. 2 (2005): 135–151.
[89] Reference 35 - O'Keefe *et al*, suggest that understanding the relationship between these two groups is important. O'Keefe, D., Messervey, D., & Squires, E. Promoting Ethical and Prosocial Behavior: The Combined Effect of Ethical Leadership and Coworker Ethicality. *Ethics and Behavior*, 28, no. 3, (2018).
[90] Reference 36 - M Murdoch, JB Pryor, MA Polusny, GD Gackstetter & D Cowper Ripley. Local Social Norms and Military Sexual Stressors: Do Senior Officers' Norms Matter? *Military Medicine,* 174, no. 10, (2009): 1100-4; see also

itself an excellent defence against ethical drift away from appropriate conduct, whilst if you see other members of the group breaking rules or cheating, it spreads further very fast.[91] Group identity prompts people to ask 'what do *we* do in this situation?' If you see fellow group members breaking the rules or cheating, then the chances are you will too, whereas seeing other people passing up 'opportunities' or doing the right thing, that too will tend to get mirrored.[92] This demonstrates how behaviour becomes embedded at the level of organisational culture, which then determines what is considered 'normal'. Fighting against that is extremely challenging.

39. One officer [redacted].[93]

[redacted][94]

[redacted].[95]

40. Some will have concluded that the best they could do was try and make the most of a bad situation. [redacted]:

[redacted][96]

41. This suggests that [redacted]

42. There is some evidence that there was a deliberate effort made to conceal some behaviours and goings on from the junior officers (there is also the suggestion that they became cut out of the loop in some regards between the troopers, the NCOs, and those who helped compile the reports). [redacted].[97] If this compartmentalisation of information and knowledge is true, it came about thanks to a fractured unit command culture that had direct implications for both oversight and transparency and therefore consequences for actions.

GR Weaver, LK Treviño, & B Agle. 'Somebody I Look Up To:' Ethical Role Models in Organizations. *Organizational Dynamics*, 34, no.4, (2005): 313-330.

[91] Reference 37 - Unethical behaviour by peers is often judged less harshly than those outside of the group. F Gino & AD Galinsky. Vicarious Dishonesty: When Psychological Closeness Creates Distance from One's Moral Compass. *Organizational Behavior and Human Decision Processes*, 119, (2012): 15-26.

[92] Reference 38 - Dan Ariely (2013). *The Honest Truth About Dishonesty: How We Lie to Everyone - Especially Ourselves* (New York), 197-207.

[93] [redacted] TROI of [redacted].

[94] [redacted] ROC of [redacted].

[95] [redacted] ROC of [redacted].

[96] Reference 39 - [redacted] TROI of [redacted]

[97] [redacted]

43. While officers were not so sure to confirm this, this [redacted], suggests that, to at least some extent, there was an attempt to keep junior officers out of the loop by soldiers and NCOs:[98] [redacted].[99] For example, while the practice appears to have been widespread, there was an attempt not to draw attention to the use of throwdowns. [redacted].[100] However, the questions weren't asked, partly because [redacted][101]

44. [redacted], [redacted].[102] This had the effect of empowering the NCOs, with Patrol Commanders basically doing the Troop Commander's job. For example, in a compound clearance operation, the *modus operandi* would be for the Troop Commander to be in an overwatch position until the area was secured. [redacted],[103] but it also had the effect of removing officers from effective control in many situations, and as such, afforded an opportunity for Patrol Commanders and soldiers to act without oversight.

45. In some cases, as their role became in many ways superfluous, the traditional relationship between junior officers and NCOs changed as well:

> It may be the case that the guidance and nurturing normally provided by NCOs to their junior officers was replaced by a more domineering or controlling approach.[104]

46. That this is perhaps an understatement is supported by multiple accounts, [redacted].[105] The Troop Commanders effectively became figureheads – [redacted].[106] It is hardly surprising that one Troop Commander described it [redacted].[107] [redacted].[108] [redacted].[109] One anonymous solder explained:

> Patrol Commander level is the worst. They were responsible for the worst of it. Core group of people who wield so much influence that officers find it very difficult to manage, especially if

[98] [redacted] TROI of [redacted].
[99] [redacted] ROI [redacted].
[100] [redacted] ROI [redacted].
[101] [redacted] TROI of [redacted].
[102] [redacted] TROI of [redacted].
[103] Reference 40 - [redacted] TROI of [redacted]
[104] [redacted].
[105] [redacted] TROI of [redacted].
[106] [redacted] TROI of [redacted].
[107] [redacted] TROI of [redacted].
[108] [redacted] TROI of [redacted].
[109] [redacted] TROI of [redacted].

the Patrol Commander [redacted]. They are hero worshipped and unstoppable.[110]

47. Another person noted that they were '*treated like God by young guys and it all just repeats again and again*'.[111] There was an 'operator mafia' at play and 'I think we as a command element failed'. [redacted].[112]

48. For those who retained enough awareness to see that the situation was dangerously wrong, it was clear that doing anything about it was not going to be easy and there were potentially serious repercussions for those who had the temerity to speak up. While it was acknowledged that the SOCOMD organisational culture has now changed for the better, [redacted].[113] If you broke that rule, then it was widely understood that there would be repercussions. Dr Crompvoets recorded that it was explicitly said to her that 'being a lone whistle blower in the SF world on these atrocities would be met with intense resistance; shaming, ostracising, scapegoating, hostility and vindictiveness'. Some people clearly were fearful, for their own safety, their family's safety and for their career.[114]

49. It is obviously hard to challenge an organisational culture or to speak out when you are trying to fit in. It was acknowledged as far back as 2012 that there an issue with a wider force culture of 'overfamiliarity' and desire for 'peer validation' from junior leaders.[115] However, it must also be recognised that in this environment especially, the cost of not fitting in was high. For example, for a junior officer, not being accepted by their soldiers could mean the end of your Special Forces career - [redacted].[116] [redacted][117] There is a sense that people had to pick their fights.

50. [redacted].[118] For example, when a Troop Commander wouldn't let the troopers engage spotters, he was apparently branded '[redacted]' and unworkable.[119] There was a perception that this Troop Commander received no support from above, [redacted]'.[120] There were, then, many good reasons why people may have chosen not to speak out. Cultures of silence thrive when people are victimised for

[110] [redacted]
[111] [redacted]
[112] [redacted] TROI of [redacted].
[113] [redacted] TROI of [redacted].
[114] [redacted].
[115] [redacted].
[116] [redacted] TROI of [redacted].
[117] [redacted] TROI of [redacted].
[118] [redacted] TROI of [redacted].
[119] Incidentally, there were no reported incidents from that deployment. [redacted] TROI of [redacted].
[120] [redacted] TROI of [redacted].

challenging the status quo or speaking out. People who felt they had no effective way of speaking up without making their own situation precarious at best may well have decided that discretion was the better part of valour in this situation: 'There is a culture of silence and I do think people get ostracised who potentially speak out against it. There's also the people who stay silent and they tend to continue on. But that's maybe the party line'.[121] Others, including lawyers, who couldn't reconcile what they saw with what they thought should have happened just left the organisation.[122]

51. This environment meant that those with the specific responsibility to sustain the integrity of the chain of command, the link between operations on the ground and the operational and strategic ambition, were unable to perform this task due to physical and cultural separation from operations on the ground. That is not to say that Troop Commanders must be in direct command of all aspects of those operations. The unique nature of SOCOMD tasks combined with the knowledge, skills, and experience of SOCOMD non-commissioned leaders, make the flat structure of SF operations not only desirable but necessary. Within this context, however, it is a clear sign of failure where junior officers are not able to exercise any form of leadership over the teams they serve.

How much was known by the chain of command (above Troop Commander)?

52. It was recognised before the Inquiry was started, there was an issue with leadership accepting practises that should not have been permitted. For example, drinking on operations was 'tacitly endorsed', and such things had, over the years:

> resulted in an inherited culture that was endemic across deployed SOCOMD forces and had become normalised…the extended period over which this applied, translated into generational behaviours which involved all ranks.[123]

53. The result was a kind of organisational blindness, where the collective sacrifice on operations justified certain excesses. The organisation became voluntarily 'collectively blind' to what was going on.[124]

54. The way that the system responded to things if and when they went wrong is also telling and seems in part to be connected with this inexplicable disinterest mentioned above. While there are some positive observations about the tactical training in the reinforcement cycle, and even some of the psychological preparation that was put in place,[125] there was also a perception that the Army wasn't actually interested in learning lessons – 'there was no learning mechanism in place'.[126] Inquiries were felt to be about arse-covering rather than being interested in making sure that it wasn't repeated. For example, if there was an injury in the field, the questions all focused on availability of kit and medical provision but didn't ask about tactics, techniques and procedures, and what people *should have known*.

[121] [redacted].
[122] [redacted].
[123] Sengelman, Commanding in Adversity.
[124] Sengelman, Commanding in Adversity.
[125] [redacted].
[126] [redacted].

55. Was it simply a case of too much trust at the time? From some transcripts, there is an almost sense of bewilderment from staff officers when presented with the evidence of what was happening on 'their watch' – [redacted].[127] As seen above, there is no doubt that people can very quickly become acclimatised to a new normal. Some people may have seen something that was wrong, but saw it as an isolated incident, perhaps easier to dismiss and move on, rather than as a pattern of behaviour.[128] The dangers of drawing a line in the sand are well articulated by Robillard, once a US Ranger, now an academic, when he points out that the problem with people thinking they will take action if this line is ever crossed, is that they therefore allow many things to pass that don't quite reach or cross that line. By having a point at which you will absolutely take a stand, it often means that one never acts at all: 'I remained complicit and silent… because I was waiting for a moment of unquestionable, discernible immorality to clearly manifest itself before taking decisive action'.[129] It would appear that such a position may have been common. One anonymous interview stated:

> If they didn't do it, they saw it. If they didn't see it, they knew about it. If they knew about it, they probably were involved in covering it up and not letting it get back to Canberra. And to make it even harder, if they didn't know about it, the question will be: why didn't you, because you should have.[130]

56. The widespread nature and normalisation of the use of throwdowns [redacted][31]

57. While there is a clear feeling in the accounts from the SF Staff Officers that the vast majority of reported killings were seen as justified by the 'fog of war' and nature of disruption operations, there is also a sense that much of the supposed oversight and control from above was 'characterised by an abandoned curiosity to explore these matters further', even when the reports should have demanded it.[132] For example, when asked about the high death count caused by some patrols, despite them 'not being engaged in a two-sided contest', one officer replied, '[redacted]'.[133] [redacted].[134] Some believed that the knowledge of what was going on was at every level of the SOTG, and beyond. For example, [redacted].[135]

[127] [redacted] TROI of [redacted].
[128] [redacted].
[129] Reference 41 - M Robillard, 'Integrity, Institutions, and the Banality of Complicity' in M Skerker, D Whetham, & D Carrick, *Military Virtues* (Howgate 2019), p182.
[130] [redacted].
[131] [redacted] TROI of [redacted]. .
[132] [redacted].
[133] [redacted] TROI of [redacted].
[134] [redacted] TROI of [redacted].
[135] [redacted] TROI of [redacted].

Many people spoke of how widespread the knowledge of wrongdoing was, making it very difficult to believe that the lack of oversight can be put down to simple disinterest:

> What was really concerning was everyone knew which SF units, Squadrons and patrols, and under which commanders, most of the killings were perpetrated. The same names would pop up with remarkable frequency. A reasonable person would think, now that's odd, that name has popped up at a few incidents, the circumstances and witness accounts are very similar, hmm there is a pattern here. That didn't happen, [redacted] [36]

58. Beyond the excessive willingness of so many people to take things at face value when told from those outside of the wire of what had happened, there were also others who played a more active role. Many things were simply not reported upwards or were intentionally hidden by those who were in a position to look after their personnel and possibly believed that shielding subordinates was part of their job requirement. It is clear from multiple sources that investigations could be seen as a manifestation of the Headquarters versus Camp Russell mentality – manifesting in the persecution of those who were just trying to get on with their job. There developed a culture of 'protecting' the people on the ground from what may have been perceived as unnecessary scrutiny. These negative interactions with 'ADF legal officers assigned to SOCOMD and with various levels of command within SOCOMD' were noted by the Provost Martial ADF (PMADF) as indicative of a 'systemic culture of command interference, obstruction and the apparent concealment and/or fabrication of evidence'.[137] Recurring themes involved a reluctance to assist, obstruction and interference, and the active concealment of evidence culminating in an 'adversarial resistance to any form of scrutiny'.[138] From the other side, officers refer to [redacted].[139] There was an appreciation within SOCOMD that while trying to a difficult job, sometimes, people in the unit would get things wrong or make mistakes, and this [redacted].[140]

59. Some of the issues that were being investigated may have appeared to be of very low importance, or even vexatious, to those who were risking their lives. For example, the obvious fabrication of damage to vehicles despite CCTV footage that contradicted the account. From the PMADF's point of view, there seemed no concern from SOTG chain of command that one of his members had staged an accident, and the attitude was one of trying to ensure the matter went away rather than being dealt with.[141] From the side of the soldiers, there was some frustration that investigative officers were seeking to gather evidence from areas that were not considered safe, or trying to employ air assets that were required for 'real' operations. Nevertheless, push back, sometimes to the point of making investigators fear for their own safety, was not limited to investigations into lesser issues.[142] It is not clear, at least to this author, if the interference and

[136] [redacted].
[137] Reference 42 – [redacted] Submission to IGADF of [redacted].
[138] [redacted].
[139] [redacted] TROI of [redacted].
[140] [redacted] TROI of [redacted].
[141] This particular issue resulted in administrative action rather than prosecution.
[142] [redacted].

obstruction remained constant, but it would fit the pattern of the general decline in standards of behaviour if it escalated over time as it became normalised. The results of this interference or obstruction were that as well as pushing away issues that were regarded as trivial (rightly or wrongly) by those involved, it ensured that it was also simply impossible for more serious allegations to be followed up and examined. For example, the investigation into a fatal shooting of a detainee took 12 months to complete after [redacted] made it clear that they didn't want 'another ADFIS Inquisition'.[143] In another similar case involving a very serious allegation, 'we were unable to visit the scene, we were unable to access Afghan interpreters, Afghan military and Afghan detainees, who would all more than likely have been in a position to offer valuable evidence'.[144] Given that no one was held accountable for these and other incidents, and these are just the ones that we actually know about, it is difficult not to conclude that some people were literally getting away with murder.

60. Some Joint Operations Command lawyers above the SF Task Group started to try and assert some control over what they increasingly believed were 'sanctioned massacres'. The ROE were tightened up, but there was scepticism about whether this had any actual effect as 'SF just got more creative in how they wrote up incidents'.[145] As the lawyers started to become more 'troublesome', the SF unit started to rely more on their own lawyers, 'with the promise of being inside their 'elite tent', doing cool stuff in return for legally polishing their version of events and the truth in a way that created enough doubt as to exonerate them…' [146] The support of the legal officers was appreciated by many of the unit personnel as a barrier to some of the 'phenomenal' pressure that was felt to be coming from Headquarters Joint Task Force 633.[147] For example, ensuring a 24-hour gap between returning from an operation and the debrief. The inevitable fact-finding process that followed any detainee's allegation was seen as particularly draining. There was also general uncertainty about what would actually trigger an investigation from higher up, and a desire within the unit to insulate people from this as much as possible. There was a perception that there was a 'distinct lack of understanding of someone coming in to do a job which was investigation-focused compared to the realities of what was actually going on in the battlespace at the time'.[148] There was also, ironically, a general frustration from some in the Task Group that ADF Staff Officers at Headquarters were implying they were hiding things. And yet, the Task Group was hiding things. It was considered normal practice to change the Intelligence Summary that was supposed to drive activity to accord with what actually happened on the ground, [redacted].[149] After Action Report writing was assisted by the legal officer and the CO who would then defend SOCOMD personnel from higher level scrutiny. That can be understood as prudent in many ways, but there is evidence

143 [redacted].
144 [redacted]
145 [redacted]
146 [redacted]
147 [redacted].
148 [redacted].
149 [redacted] TROI of [redacted].
150 [redacted] TROI of [redacted].

that [redacted].[151] [redacted][152] Ultimately, the After Action Reports, rather than being part of the oversight and institutional understanding process, in some cases became a way of removing scrutiny for wrongdoing. This would have added to the insidious corrosive effect of some people believing that they were untouchable thanks to the legal whitewashing of their activities.

61. Other actors were trying their best, unsuccessfully, to raise awareness of what was happening. Complaints made by or through the International Committee of the Red Cross, the Afghan Independent Human Rights Commission, or local elders – a number of which can now be seen to have substance – were routinely passed off as Taliban propaganda or motivated by a desire for compensation.[153] It is clear that there were warning signs out there, but nothing happened.

62. One can perhaps be sympathetic to a desire to push away vexatious investigations, or protect one's people from the scrutiny of those who just 'wouldn't get it'. Perhaps there was [redacted].[154] But this demonstrates a dangerous gap between what the force had become acclimatised to and what was actually acceptable. However well-intentioned some of these efforts to block or push away investigations may have been, it seems clear that this feeling of protection that such actions generated would have contributed to an attitude of untouchability for some people. This may have facilitated the escalation into the most serious of the crimes that are alleged to have taken place. Ironically, if the Headquarters motivation was to protect their people, they were letting down some of the very people they were supposedly looking out for:

[redacted].[155]

63. Many sources refer to the moral injury that will have been compounded by the betrayal of those who were put in an impossible position.

64. There is also the observation that appropriate scrutiny from higher up may have been avoided in part, due to the SF officers who have proliferated throughout the ADF.[156] This may have contributed to a lack of institutional appetite to look into things earlier, either because it sounded like the continuation of behaviours that were 'ok in my day' and perceived troublemakers making a mountain out of a molehill. On the other hand, it is notable that the present Inquiry was instigated by and continued under two Chiefs of Army, both with SF backgrounds.

[151] [redacted] TROI of [redacted].
[152] [redacted] TROI of [redacted].
[redacted].
[154] [redacted] TROI of [redacted].
[155] [redacted] TROI of [redacted].
[156] [redacted]

Conclusion and Recommendations

65. The accounts consistently paint a picture of a gradual erosion of standards, contributed to by the character and tempo of the deployments (and redeployments), inappropriate metrics of success imposed from above and warping behaviour within the SF Task Group, a lack of clarity about purpose and gradual loss of confidence in both the mission and the higher chain of command, a fractured, compartmentalised and dysfunctional leadership, and a general lack of effective oversight aided and abetted by the very people who should have been providing it. This combination of factors led to a normalisation over time of behaviours that should never have been considered normal and ultimately, the effective covering up of, or wilful blindness to, the perpetration of war crimes.

66. While the nature of successive rotations saw a deterioration of moral standards, there was also [redacted].

[redacted].[157]

67. Many if not all of the ethical risk factors that lead to the failures in this report are understood and can be both taken into account at the institution, training and leadership levels. In their book *War Crimes: Causes, excuses and blame*, Talbert and Wolfendale make three recommendations for preventing war crimes, and each is pertinent to the findings above. The recommendations are around education, narrative of truth, and accountability.

Recommendation 1: Deliver education to all SOCOMD personnel on the causes of war crimes.

68. Educating military personnel about the causes of war crimes so that they understand how such crimes can come to be seen as almost required and therefore justified, is vital. Making sure that such deviation from the expected values and standards of the ADF cannot happen again is important, but such 'armouring against atrocity' is not necessarily easy. Talbert and Woldendale argue that rather than focusing on writings committed by others, military ethics training should employ case studies drawn from military personnel 'from the same services and country as themselves' so that they understand that they too could become torturers or murderers – that the 'good guys' can also do bad things.[158] [redacted] the Australian Defence College at Weston Creek historically has utilised officers to talk candidly about being on the wrong end of a (justified) court martial.[159] The pedagogical value of this was clear at the time and it was reviewed by the student body to be an exceptionally worthwhile and humbling session, in particular for demonstrating that nobody was immune from making a really bad decision.

[157] [redacted] TROI of [redacted].
[158] Reference 43 - M Talbert & J Wolfendale, *War Crimes: Causes, excuses, and Blame* (Oxford University Press, 2019), 152.
[159] Reference 44 - Advanced Command and Staff Course, 2009. Australian Defence College, Weston Creek.

The pedagogical value of learning directly from the experience of ADF personnel, both bad and good, is already firmly embedded.

a. Every member of SOCOMD should receive education on the causes of war crimes. This education to be delivered by SOCOMD soldiers themselves and reviewed by appropriate external (ie, non-SOCOMD) reviewers who can act as critical friends.[160]

b. Members of the SOCMD community should be recorded talking candidly, and on the record, about the ethical drift that took place over a period of time, how hard to was to resist the prevailing organisational culture and the missed opportunities that could and should have been taken to address the failures that so many people appeared to recognise at the time but felt powerless to change.

Recommendation 2: The normalisation of the *right kinds* of routine ethical discussion.

69. The second recommendation is to encourage alternative and dissenting narratives, encouraging military personnel to be able to construe alternative ways of understanding events and situations. This can help prevent a 'monolithic and flawed articulation of morality within military forces',[161] expressed above by the change in perception about what a 'good soldier' was supposed to do.[162] They cite the stoic and virtue ethics traditions as being potential tools to help do this. Clearly there are a number of different approaches, but looking to the very values that the ADF already state in a more robust way may be a good place to start. The values-based foundation for the ADF represents a broader Western virtue ethics approach to training and education in the military. Just like many professional militaries, the ADF invests a huge amount of effort in ensuring that those they promote into positions of authority have the character to be able rise to the challenge of their new position. The virtue ethics approach concentrates on the importance of character and how we can nurture the right types of behaviour. The ADF have identified specific values (professionalism, loyalty, integrity, courage, innovation and teamwork) that underpin this virtue ethics approach, and these represent the institutional articulation of expected behaviour. The idea is that they are internalised through conscious training and unconscious institutional diffusion: 'This is what we should do'. The more we do the right thing, the more it becomes habit and therefore part of the stable disposition that informs one's character. The hope is that, by 'fostering such behaviours, and promoting those who consistently demonstrate them, people will be able to do the right thing when the situation demands it'.[163]

70. The desire to realign Australian SF back to Army standards was expressed in 2015 and hopefully is already well underway.[164] It must be remembered that the power of the situation to undermine even the strongest of characters is now well documented.[165] Therefore, preparing

[160] It is vital that such an external view is present, but also that the role is able to provide constructive feedback as an accepted and trusted friend rather than as an ombudsman, permitting two-way candour without compromising the necessary objectivity of the role.

[161] M Talbert & J Wolfendale, War Crimes: Causes, excuses, and Blame (Oxford University Press, 2019), 153.

[162] [redacted]

[163] Reference 45 - David Whetham, *What senior leaders in defence should know about ethics and the role that they play in creating the right command climate*. Defence Academy of the UK, 2020.

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people for the environmental effects on their ethical perception and likely behaviour is vital. Therefore, in addition to Recommendation 1, this should include routine critical reflections on the values and standards of the ADF and how these can and should be interpreted in different situations. Whilst the values and standards can and should be understood as universal within the ADF, the way that individual values will need to be interpreted will be different due to the context. For example, 'courage' is a value (or virtue) that is supposedly easy to understand, but what courage looks like on a patrol in Helmand or Uruzgan Province may be very different to the courage required by an administrator who wants to question the receipts submitted by a CO, or the Chief of the Defence Force when faced with a questionable direction from the Prime Minister. Military ethics must be considered as a core competency that needs to be updated and refreshed as part of professional development and specific training if it is to be maintained – it cannot just be assumed that once a base level of understanding has been achieved it can just be left alone [166] Exploring how one demonstrates courage in different circumstances is not something that should just happen in institutions during phase one training, but should be part of a normalised process of healthy ethics discussions taking place at all ranks and at all stages of military careers – it should just be a routine part of everyday activity. Even mentioning ethics changes peoples' awareness and behaviour.[167] Therefore, the normalisation of the *right kinds* of routine ethical discussion is important.

Recommendation 3: Accountability for actions

71. Finally, Talbert and Wolfendale argue that any other activity, no matter how well intentioned or delivered, will come to nothing without genuine accountability for wrongdoing. As I noted at the start of this research paper, it is easy to muddle up seeking to understand why war crimes are committed with an attempt to excuse them. This must not happen, for a lack of accountability 'does much to undermine our faith in the commitment of governments and military forces worldwide to the prevention of war crimes'.[168] While legal accountability for wrong-doing is likely to be focused on a tiny minority of personnel, there is no doubt that this goes beyond the law. Responsibility and accountability beyond purely legal matters is something that is recognised in the ADF. In 2015 MAJGEN Sengelman quite rightly stated his intent to ensure that people should not only 'own their mistakes' but that any blame and punishment should be fairly apportioned, including acting upon any 'clear breaches of integrity or significant character flaws'. It is clear that a wider organisational accountability for creating a system that made those failures possible is also required.

72. The last quote of this report should go to Dr Crompvoets:

> **Amongst the sources and transcripts consulted, it must be mentioned the countless references to exceptional soldiers and officers, who upheld Army values and whose character was unquestionably of high standing**.[169]

[166] Reference 47 - M Therrien & D Messervey, Ethical Attitudes and Intentions on the Battlefield: empirical evidence from the Human Dimensions of Operations Survey. Defence Research and Development, Canada. DRDC-RDDC-2019-R185 (Nov 2019), 17.

[167] For example, Ariely found that even reminding people of non-existent rules is enough to make them behave better. Reference 48 - N Mazar, O Amir, D Ariely. The Dishonesty of Honest People: A Theory of Self-Concept Maintenance. *Journal of Marketing Research,* Vol. XLV, (2008): 633-644.

[168] M Talbert & J Wolfendale, *War Crimes: Causes, excuses, and Blame* (Oxford University Press, 2019), 153.

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73. Ultimately, there is an important difference between pulling a trigger and getting it wrong, and taking a prisoner and executing them in cold blood.[170] Anyone who does not recognise this distinction, or is prepared to ignore it, does not deserve to belong in any professional military, let alone the ADF.

Postscript

From the start of being asked to write this report, I have been given full access to anything that I requested and candid responses to any questions I have had. Because of that access, I have been privy to some of the institutional responses that were generated by the SOCOMD Culture Review and extensive interviews that were required for this to be produced. I have also been given access to the significant number of interview transcripts that have since been generated as part of this Inquiry. I have seen the internal institutional conversations and clear concern to get to the bottom of the allegations. While reputation was a factor that was considered, it was not, according to what I have seen, a primary motivating factor and the actions that were taken were very clearly not those of an organisation that wished to 'brush anything under the carpet'. Instead, the Inquiry led by MAJGEN Justice Brereton, the breadth and scope afforded to its investigative team, the ongoing attempts to reform and reorganise the way that the SF community is managed and operated, and the legal actions that will no doubt proceed, demonstrate an organisation that recognises that something has gone very badly wrong and is determined to put it right.[171]

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