

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

SUBMISSION COVER SHEET

Inquiry Title: Effectiveness of Australia's Military Justice System

Submission No: P30

Date Received: 16.02.04

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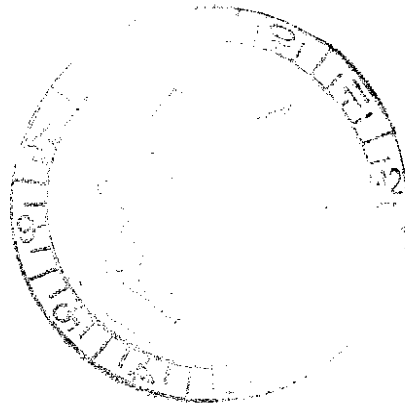
Email:

Name/Contact: Mr Lyndon Pelly

Date Authorised:

14th February 2004

The Secretary,
Mr Brenton Holmes
Senate Foreign Affairs, Defence and Trade Committee
Suite S1.57
Parliament House
Canberra ACT 2600
Australia



From
Mr Lyndon Pelly

RE: Inquiry into effectiveness of Australia's military justice system

Dear Secretary,

Please find attached, my submission to the Senate Inquiry into the effectiveness of Australia's military justice system.

I wish to appear before the committee and give oral evidence

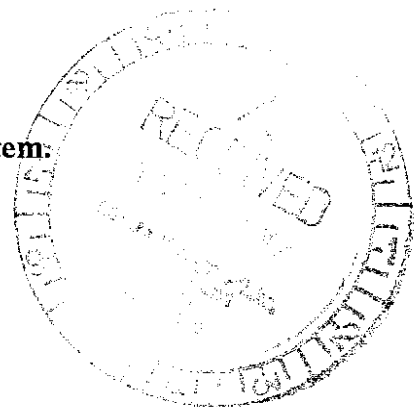
I am the father of the late MIDN Megan Pelly RAN.
Tragically killed during a fire aboard HMAS WESTRALIA on 5th May 1998.

My submission concerns my families struggle to get to the truth about our daughters death,
and the events leading to it.

Submission to,

Senate Inquiry into effectiveness of Australia's Military Justice System:

Lyndon Ross Pelly



15th February 2004

Dear Senate Committee,

In December 1998 I spoke with the Minister for Veteran Affairs, Mr Bruce Scott in Canberra requesting the release of the BOI findings to the families, and other related matters. The BOI Report into the fire was released on 17th December 1998, some family members of the four deceased sailors became aware of certain oversights and anomalies in the published/publicly released BOI report.

By January 1999, I rang or wrote to both the Minister and/or the navy and requested the full 16-volume report. To this day, I still have not got the full report, only an edited version of it. On 19th February 1999 I wrote to the WA coroner requesting a coronial inquest into my daughters death.

Main Points of Concern

1/ BOI REPORT.

- (a) Deceased Personal were not Represented at BOI.
- (b) BOI Recommendations
- (c) Honours and awards
- (d) Treatment of PO Francis Testimony
- (e) Conclusions Toward Dead Sailors

2/ ASSISTANCE TO FAMILIES OF DECEASED.

- (a) HMAS Westralia
- (b) Australian Defence Forces (Navy)
- (c) Comsuper
- (d) Australian Government
 - (1). Request for assistance
 - (11). Delays in payments to Families Legal Council
 - (111). AGS Attitude toward Families and their Legal Council
 - (1V). Family members being excluded from Equipment Testing or Inspections.
- (e) Families of tragedies in ADF believe the BOI Investigations were flawed.

1/ BOI REPORT

(a) Deceased Personal were not Represented at BOI.

The four deceased personal were never represented at the BOI. The Board members and council assisting the board were accountable directly to the navy, and that is the way they appear to have run the BOI.

MIDN Megan Pelly, POMT Shaun Smith, LSMT Bradley Meek and ABMT Phillip Carroll had nobody to investigate their unobserved actions, none of the Board Members or Council Assisting the BOI took any steps to get character analysis or probable action assessments done.

Had anyone been interested in finding out what these brave young sailors may have been doing during the fire, the Board may have come to a different conclusion for their actions as the WA Coroner did (See Coroners Report, pages 24-25).

Had the Navy or the BOI panel provided representation for the deceased sailors, it may have avoided a long, emotionally draining and costly Coroners Inquest, not to mention the public embarrassment associated with a lengthy drawn out Inquiry.

(b) BOI Recommendations

The BOI report suppressed all information about any recognition of personal from the tragedy.

During my discussions with Capt. Peter Callaghan on 9th July 1999 at HMAS Cresswell, Capt Callaghan indicated that he would attempt to get this information for me.

He later sent a letter indicating that the recommendations had been handed over to the Honours and awards committee and were no longer available.

These recommendations are still under a cloak of secrecy, therefore there appears to be no accountability for the accuracy or justification of the recommendations.

(c) Honours and awards

On 13th October 1999, the two highest awards were awarded to;

CMDR Johnson. A shore based officer who did not set foot on HMAS Westralia during the crisis.

WO Bottomley. Found by both the BOI and the WA Coroner of being party to the illegal fitting of the flexible fuel hoses to the engines. These hoses were found to be the primary cause of the fire in the MMS and responsible for the deaths of four of his shipmates.

LSMT Bradley Meek, received a Bravery Citation and Navy Conspicuous Conduct Award. Remarkably, this sailor, with evidence in the BOI of his outstanding bravery (See BOI Vol 1, page 91, 5.37) was overlooked for an individual Bravery Award.

I have no complaint toward any other awards received on 13th October 1999, as they were truly deserved. Indeed some brave sailors should have received higher awards.

(d) Treatment of PO Francis Testimony

PO Francis gave evidence to the BOI of the fire fighting efforts of personal still trapped in the MMS after he had evacuated the area.

Including a list of these personal he wrote in his notebook and handed to LCMD Jones for HQ1 information (BOI pages 1461-1463). Most of his evidence had been substantiated from testimony of crewmembers and other factual evidence.

Yet Capt Callaghan, in his closing address attacked the credibility of PO Francis evidence to the BOI. To the extent that Capt. Callaghan lied to the board about the availability of PO Francis notebook to verify his evidence (BOI page 4266).

This attack on PO Francis character could have been the reason he did not receive a bravery award. As his documented actions suggest.

(e) Conclusions Toward Dead Sailors

The BOI made no attempt to thoroughly investigate the actions of the deceased sailors. Nor did they attempt to get any sort of character analysis of the deceased to help them evaluate any likely actions of the deceased.

In my opinion, the boards' conclusions regarding the possible actions of three of the four deceased sailors were founded on ignorance and a willingness to protect the navy's position.

Had the board been interested in the truth, it would have found that the EOOW PO Herridge had ordered my daughter into the engine room. To assist laying out the fire hoses. Part of those duties required her to act as hose century when the fire started.

She did not deliberately disobey an order to remain in the Machinery Control Room in an emergency.

The WA coroner (Mr Hope) found this information five years after the navy's BOI, and came to a different conclusion to that of the BOI. A more plausible one (See Coroners Report page 23).

2/ ASSISTANCE TO FAMILIES OF DECEASED.

(a) HMAS Westralia.

Let me say from the start, since the fire that killed those four brave young sailors aboard HMAS Westralia. The conduct of Officers and crew of the HMAS Westralia toward their families has been exemplary, with one exception.

Family members of the deceased were refused entry into the MMS three days after the fire that took the lives of their loved ones, on the excuse of toxic fumes being present in the MMS. Yet the day before this, the media and leading politicians were escorted around this same area.

I could not say the same for Canberra based ADF, Comsuper or the Australian Government Solicitors Office.

(b) Australian Defence Forces (Navy).

During the past five years, the Dept. of Navy has continually tried to evade, slow down or ignore any requests by the families or the legal representatives for as long as they could.

Some serving members were given instruction (ordered) not to talk with any of the families from the Westralia fire.

(c) Comsuper.

Had it not been for the intervention of the Minister for Veteran Affairs in January 1999, I may still be fighting Comsuper for my daughters' superannuation pay out.

(d) Australian Government.

(i). Request for Assistance

I first approached Mr. Bruce Scott, Minister of Veteran Affairs in December 1998 asking for financial assistance for the families to be represented at any future coroners inquest.

Some months later, The Minister for Veteran Affairs Mr Scott advised me that there was no precedent for the government to help the families in this way, and that he would refer the matter to the Attorney Generals Department for exceptional circumstances funding.

The Attorney Generals Department refused our request.

After many letters/e-mails were sent to senators and members of the House of Representatives, we were finally granted this assistance on 12 November 2002.

Five months after the inquiry started on 4 June 2002.

(ii). Delays in Payment to Families Legal Council.

Although the coroners inquiries concluded on 27th June 2003. To my disbelief, the Government Solicitors Office is still quibbling over payment to our solicitor, Mr Collaery.

One must ask the question, is this appropriate, or is this another government tactic to dissuade legal firms from taking on clients like us.

(iii). AGS Attitude toward Victims Families and their Legal Council.

The families have had reason to complain to the Minister for Veteran Affairs, regarding the conduct of the AGS toward them.

On one occasion a family member was given unwelcome advice not to attend a coroners session.

Another occasion was when the families were informed their travel entitlements were not to be honoured as requested. This was not in the spirit of the Ministers Address to Parliament.

This officer is representing the AGS in negotiations with Mr Collaerys law firm regarding their remuneration from the government for representing us at the coronial hearings.

(iv). Family members being excluded from Equipment Testing or Inspections.

Post BOI and during the coroners inquest, new evidence was revealed and inspections and testing of this evidence was carried out.

One such piece of evidence was a high pressure fuel line with a hole in it, found to be loose and removed from the engine after the BOI, then kept hidden in a cabin on the ship.

From there, this possibly important piece of evidence was handed over to a contractor (ADI) and kept under lock and key for four years. Numerous attempts were made by the families legal representatives to locate this piece of evidence through the navy without success.

This evidence was finally given up only after the holder (ADI) was challenged by Mr Collaery during the coroners inquiry to produce it.

It is ironic that the Navy, in the process of litigation against ADI for the fire aboard HMAS Westralia. Would hand over such an important piece of evidence without first testing it, to the very people they claim caused the fire.

This piece of evidence may well have proved their claim, or may it have quashed it?

(e) Families of tragedies in ADF still believe the BOI Investigations were flawed.

Over the last five years I have spoken to other families in similar circumstances to our own.

On one occasion four families were attending a dedication service for a memorial in Canberra.

Only one of these families were satisfied with their sons inquest, An officer serving in Kuwait, and investigated by a US military inquiry.

The three other families, two RAAF and ourselves Navy, were convinced that the truth was not a priority while investigating our children's deaths.

It is clear by the list of ADF investigations to be reviewed in section 2 of the Terms of Reference of this Senate Committee, other families of deceased members have similar views.

I have no doubt that the Westralia BOI was nothing more than a navy public relations exercise. Had the Minister for Defence, Navy, board members or council assisting the BOI truly endeavoured to get the real reason behind the fire aboard HMAS Westralia, it could have done so.

Instead there was a Board of Inquiry rushed into action, before the four deceased sailors were buried. No time or consideration for the families of those deceased, and little information of the inquest was given to the families, other than media articles.

Given that it was an open and public inquest, there seems no logical reason the families could not have been kept up to date with transcripts of the daily proceedings. This would have allowed any family members with a query to contact the BOI and express it.

Instead we had to wait for the report to be made public, then take our concerns to the navy. Only to be told it was too late to do anything about it. So you have to go to a coroner and ask them to investigate your concerns.

Have the Navy and the Minister for Defence read the Coroners Report? If so, are they going to correct their oversight and recommend bravery awards for LSMT Bradley Meek, MIDN Megan Pelly and PO Ray Francis.

There is only one way deceased and injured personnel and their families are going to get open and accurate accident investigation. The government taking away the ability of the ADF to judge itself can only achieve this.

Only then will ADF personnel and grieving families have any confidence that justice can, or will be done.

Yours sincerely,

Lyndon Ross Pelly