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OIA-2025-5474

24th September 2025

[REDACTED]@nzme.co.nz

Dear [REDACTED]

I refer to your email of 16 July 2025 requesting, under the Official Information Act 1982 (OIA), the following information:

- A copy of the Court of Inquiry report listed as "bullying, harassment and welfare issues in a unit", as described in a recent OIA response to the NZ Herald, relating to an incident from 1/1/2020 to 1/7/2022, for which the Col report was signed on 21/7/23 and the Assembling Authority comments were made on 10/12/24;
- A copy of the comments of the Assembling Authority;
- A copy of any communication from NZDF to any of those subjected to bullying or harassment subsequent to the comments of the Assembling Authority;
- A summary update on progress achieved on recommendations from the Col.

A copy of the Court of Inquiry report and a copy of the Assembling Authority Comments are provided to you in accordance with section 200T of the Armed Forces Discipline Act 1971. Where indicated, information is withheld: to avoid prejudice to ongoing investigations in accordance with section 6(c) of the OIA; to protect privacy in accordance with section 9(2)(a) of the OIA; to protect information that is provided under an obligation of confidence in accordance with section 9(2)(ba)(i); and, to avoid the malicious or inappropriate use of staff information, such as phishing, scams or unsolicited advertising in accordance with section 9(2)(k) of the OIA.

As the Court of Inquiry found most of the cases of bullying, harassment, and alleged sexual violation/assault had been dealt with to the best of the ability of the unit, no communication with affected personnel subsequent to the comments of the Assembling Authority had taken place.

A summary of the status of the recommendations as at August 2025 is provided below:

133.a. Completed	133.b. Completed	133.c. Completed	133.d. Completed
134.a. Completed	134.b. Completed	134.c. Completed	134.d. Completed
134.e. Completed	134.f. In progress	134.g. In progress	134.h. Completed
134.i. In progress	134.j. In progress	134.k. Completed	134.l. Completed
135 In progress	136.a. Completed	136.b. Completed	137.a. Completed

You have the right, under section 28(3) of the OIA, to ask an Ombudsman to review this response to your request. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that responses to official information requests are proactively released where possible. This response to your request will be published shortly on the NZDF website, with your personal information removed.

Yours sincerely

GA Motley

Brigadier

Chief of Staff HQNZDF

Enclosure:

1. Court of Inquiry report and Assembling Authority Comments

REPORT OF THE COURT OF INQUIRY

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Terms and Definitions

The following terms and definitions are applicable to this court of inquiry:

1. **Hollowness:** The maintenance of organisations that are insufficiently resourced to be operationally useful.¹ This relates to the shortfall of suitably qualified and experienced personnel to meet the job description requirements of the role.
2. **Shallowness:** The lack of experienced personnel ready to be trained and promoted into roles when natural attrition or advancement occurs. Shallowness is an exacerbating factor to the effects of 'hollowness'.
3. **Junior Leaders:** Personnel from the rank of Lance Corporal to Sergeant and 2nd Lieutenant to Captain.
4. **The Rainbow Community:** Including, but not limited to, Lesbian, Gay, Bi-sexual, Queer, and Transgender (LGBTQ).
5. **Bullying:** Workplace bullying is unreasonable and/or repetitive behaviour directed towards an individual or group of people which creates a hostile environment or negative impact on them. This may include making them feel excluded, fearful or ashamed.²
6. **Harassment:** Harassment means being subjected to unacceptable and unwelcome behaviour that causes personal offence, humiliation or discomfort and fails to respect the rights of others. Harassment is behaviour that is demeaning to another person's status, leaving the person feeling humiliated, offended or intimidated. Harassment can be repetitive or a single incident of a significant nature. It is often power based, for example through rank or physical size and is detrimental to the individual. Harassment can be perpetrated by one person or a group of people.³
7. **Sexual Harassment:** Sexual harassment occurs when there is conduct of a sexual nature by a person or group of people toward another and the conduct might reasonably be perceived as unwelcome and offensive.⁴
8. **Racial Harassment:** Racial harassment is behaviour that humiliates, offends or intimidates someone because of their colour, race, ethnic or national origins.⁵
9. **Gender Harassment:** Gender harassment stereotypes a person according to their gender or sexual preference. It includes openly discussing views in which the other sex is portrayed as inferior or subordinate or using gender based or sexist, derogatory terms.⁶
10. **Indecent Assault:** An assault with a clear sexual overtone that consists of or is accompanied by an act of indecency or carried out in circumstances of indecency.⁷

¹ "Force Structure," accessed 06 March, *Australian Parliament House*, 2023, https://www.apf.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jfad/t/army/armych_6.pdf,

² Defence Force Order 3, Part 5, Chapter 3, Paragraph 13, Definitions

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ Ibid

11. **Sexual Violation:** An indecent assault becomes a sexual violation where there is sexual connection, or attempted sexual connection, without consent.⁸
12. **What is Not Harassment or Bullying:** Differences of opinion, conflicts and problems in working relationships are normal parts of working life and do not constitute discrimination, harassment or bullying. Professional and legitimate managerial actions such as workplace counselling and managing underperformance are likewise not discrimination, harassment or bullying.⁹
13. **Te Whare Tapa Whā.** The Māori health model relating to physical, mental, spiritual and whanau health, and is currently the holistic health model for the New Zealand Defence Force.
14. **Support Services.** This is a collective term relating to the services available to units to assist in the support of soldiers under the *Te Whare Tapa Whā* holistic health system. It is inclusive of:
 - a. Medical staff – inclusive of doctors, nurses and medics.
 - b. Chaplaincy.
 - c. Military Psychologists.
 - d. Sexual Assault Prevention and Response Advisor (SAPRA).
 - e. Social Workers.
 - f. Complex Case Coordinator.
15. **Multi-Disciplinary Team (MDT).** A combination of the support services coming together to discuss medical/welfare cases and the best way forward for each case.
16. **Whakawātea:** The freeing, purging, clearing, cleansing or purifying oneself spiritually.
17. **Whakanoa:** The process of removing a tapu. Usually involving kai or water and always involving kōrero.
15. **Culture:** The taken for granted values, underlying assumptions, expectations, collective memories, and definitions present in an organization. It is further defined as a social domain that emphasizes the practices, discourses, and material expressions, which over time, express the continuities and discontinuities of social meaning of a life held in common.
16. **Sub-culture:** The subdivision of a culture composed of a combination of factorable social situations such as rank, personal backgrounds, affiliations, forming a functioning unity which has an integrated impact on a participating individual. Sub-culture can be contrary and detrimental to the accepted/approved overarching organisational culture.

⁸ Ibid

⁹ Ibid

Court of Inquiry Report

The prevalence of bullying and harassment and welfare issues in 2nd/1st Battalion, Royal New Zealand Infantry Regiment (2/1RNZIR), between the period January 2020 and July 2022.

General

1. The court convened on 15 August 2022 and gathered evidence between 23 August 2022 and 10 February 2023. The court heard evidence from 67 witnesses and examined 87 exhibits.
2. One witness refused permission to use their interview as evidence; therefore, the court did not consider any of the evidence provided. No explanation was provided by the witness for this decision.
3. One witness, s. 9(2)(a) [REDACTED], released from the service post his interview and could not be contacted to review and sign his transcript. Numerous unsuccessful attempts to contact s. 9(2)(a) [REDACTED] occurred; therefore, after seeking legal advice, the court president determined the evidence admissible without the confirmation of his transcript.
4. The assembling authority identified the need to request acting Colonel rank for the court president given the possibility of having to investigate an individual of similar rank. As the court did not identify any breaches of conduct by individuals at the same rank as the court president, this acting rank was relinquished on 01 December 2022.
5. The court determined Witnesses 24, 34, 48 and 58 had their reputations brought into disrepute by other witnesses and therefore offered them the opportunity to exercise their Armed Forces Discipline Act section (AFDA s) 200N rights. No witnesses chose to exercise their AFDA s 200N rights.
6. The court provided interim updates to the following personnel:
 - a. Chief of Army, Major General John Boswell. Verbally on 01 November 2022;
 - b. Land Component Commander (assembling authority), Colonel Duncan Roy. Verbally on 01 November 2022 and by email on 02 December 2022; and
 - c. Land Component Commander, Brigadier Matthew Weston. Verbally on 23 February 2023.
7. The court acknowledges the considerably extended timeframe needed for this inquiry. The court found the nature of the questions and question technique required to gain information on sensitive topics greatly extended the timeframes for interviewing witnesses. The length of the subsequent interviews and the issues with transcribing such long interviews created significant delays beyond the projected timeframes. All court members were subsequently posted to new roles and undertook the inquiry whilst maintaining full time roles.

8. The court found reliving trauma with victims to be very difficult, highlighting the need to consider the number of interviews of a difficult nature conducted in a day and establishing coping mechanisms for the court members. The court found a maximum of two difficult interviews a day to be appropriate. The court found the maximum number of interviews possible in a day to enable good interview technique and subsequent review recall to be four interviews.

Circumstances of the Complaint

9. A former soldier and officer, s. 9(2)(a), who had served with 2/1RNZIR until mid-2022 contacted the Chief of Army, Major General John Boswell and Sergeant Major of the Army, Warrant Officer Class One Wiremu Moffitt, directly via email and expressed concerns over cultural and behavioural issues within 2/1RNZIR. A formal complaints process did not occur; however, the senior leadership determined the information received warranted further investigation. The nature of the complaint highlighted incidents and behaviours which risked the safety and wellbeing of NZ Army personnel and created a reputational risk to the NZ Defence Force (NZDF) in the public domain. The incidents, behaviours and shortfalls s. 9(2)(a) raised included bullying, harassment, sexual assault, welfare support shortfalls and overall poor culture within 2/1RNZIR.¹⁰ As a result, the Land Component Commander, Brigadier H. R. McAslan ordered the Court of Inquiry to be formed to investigate the matters raised.

Scope of the Inquiry

10. The court highlights the following significant incidents raised by the complainant:
- a. One alleged incident of rape of a current serving Senior Non-Commissioned Officer; however, the incident occurred approximately eight years prior to the time period stipulated by the terms of reference and did not involve 2/1RNZIR.¹¹ The court did not investigate this matter further as it lay outside the scope of the inquiry.
 - b. Four separate alleged sexual assaults of a current serving member of 2/1RNZIR which have not been reported to 2/1RNZIR.¹²
 - c. Alleged bullying and harassment of an openly gay soldier within 2/1RNZIR which commenced at The Army Depot and continued at 2/1RNZIR.¹³
 - d. One alleged assault involving two current serving 2/1RNZIR officers.¹⁴
 - e. One alleged assault involving two current serving Senior Non-Commissioned Officers which was reported and the subsequent actions deemed to be not in line with stated procedures.¹⁵
 - f. A prevalence of self-harm in Burnham Military Camp.¹⁶

¹⁰ Witness 1 (19 August 2022, p 6, 8, 9, 11 – 14, 16, 17, 20 – 22, 24, 26 – 31, 36 – 38, 56), (25 August 2022) Exhibits S and T

¹¹ Witness 1 (19 August 2022, p 8 – 10)

¹² Witness 1 (19 August 2022, p 8, 9, 14, 24, 36)

¹³ Witness 1 (19 August 2022, p 9, 37)

¹⁴ Witness 1 (19 August 2022, p 6)

¹⁵ Witness 1 (19 August 2022, p 22)

¹⁶ Witness 1 (19 August 2022, p 8, 16, 26 – 28, 37, 38), Exhibit S

- g. An alleged prevalence of racist and derogatory language from Junior Non-Commissioned Officers (JNCOs) to subordinates.¹⁷
- h. An alleged prevalence of homophobic language used within 2/1RNZIR.¹⁸
- i. An alleged prevalence of alcohol culture leading to violent behaviour within 2/1RNZIR.¹⁹
- j. An alleged prevalence of 2/1RNZIR not investigating significant incidents.²⁰

11. The Terms of Reference (TOR) focused the court on the areas of bullying, harassment, and welfare issues, to include determining whether organisational policies and procedures in relation to these issues were fit for purpose. The court broadened these topics to include the prevalence of sexually inappropriate behaviours, given they were nested within the complaint highlighted to the court.²¹ Additionally, the TOR highlighted the need to determine the prevalence of substance abuse within 2/1RNZIR.

12. The court deemed it necessary to determine where 2/1RNZIR displayed exemplar behaviours and approaches to identified issues in order to provide a balanced and realistic understanding of the situation in 2/1RNZIR over the period in question.

13. The court sought corroboration from other witnesses and confirmed each issue raised by s. 9(2)(a) contained factual elements. The court determined s. 9(2)(a) recollection of the incidents did not always represent all the facts involved.²²

14. The court subsequently identified the following serious incidents which fell within the timeframe of the inquiry and were similar to the themes raised s. 9(2)(a) :

- a. One incident of sexual assault involving a current serving soldier of 2/1RNZIR which resulted in the Court Martial of a 2/1RNZIR JNCO.²³
- b. s. 6(c)

²⁴

¹⁷ Witness 1 (19 August 2022, p 17, 20, 56,)

¹⁸ Witness 1 (19 August 2022, p 21, 22)

¹⁹ Witness 1 (19 August 2022, p 29, 30)

²⁰ Witness 1 (19 August 2022, p 31)

²¹ Witness 1 (19 August 2022)

²² Witnesses 6 (p 5, 12, 13), 7 (p 6, 8, 9, 11, 16, 21, 22), 8 (p 4, 5, 8, 15, 16, 22, 24,), 9 (p 3, 5, 6, 9, 14, 23, 26), 11 (p 2, 4, 5, 11, 15, 18), 15 (p 8 - 12), 12 (p 18, 19, 20, 22 - 25, 29, 33, 34, 39, 40), 13 (p 3 - 6, 13, 14, 26, 27), 15 (p 7 - 12, 14, 17, 22, 26), 16 (p 1 - 5, 7, 12 - 16, 18 - 20, 22, 26, 27, 40), 17 (p 4 - 6), 18 (p 3 - 5, 11, 20, 22, 25, 28), 19 (p 5, 7, 13, 17), 20 (01 September 2022, p 4, 9, 26, 28, 41 - 44, 47, 48, 50 - 53), 21 (p 5, 11, 20), 22 (p 2, 3), 23 (02 September 2022, p 5, 6, 22), 28 (p 11, 14), 29 (p 1, 3, 6, 7), 30 (p 2, 6, 9), 31 (p 21), 32 (p 2, 4, 5, 18 - 20), 39 (p 3, 16, 20), 41 (p 1, 13, 14, 17), 42 (p 2 - 5, 7), 43 (p 2, 5, 6, 9, 11, 15), 45 (p 1, 2, 6, 7, 12), 47 (p 1, 2, 6), 48 (p 10, 16 - 19, 23, 24), 50 (p 1, 2, 7, 13, 16, 18, 19), 51 (p 2, 4, 7, 9, 13, 14), 52 (p 1, 6 - 11, 16, 17, 22, 23, 26 - 29, 35, 36), 53 (p 2, 3, 5, 11, 12, 22), 54 (p 3), 56 (p 1 - 4), 59 (p 7, 9, 10), 64 (p 2, 7, 11, 25, 26) Exhibits A, Q, R, S, T, Y, AC AI, AP, AS, AY, BW

²³ Exhibit Y

²⁴ Exhibit Y

- c. One incident of alleged sexual assault by a 2/1RNZIR male soldier against a 2/1RNZIR female soldier which was unreported.²⁵ However, the court found no evidence to corroborate this claim.
 - d. Four separate incidents of alleged sexual assault by 2/1RNZIR male soldiers against a 2/1RNZIR female soldier which were unreported.²⁶
15. s. 9(2)(a) expressed a desire to see processes improved within 2/1RNZIR and the wider NZDF to create an acceptable working environment for all personnel.²⁷ s. 9(2)(a) did not seek any form of reparation, restorative justice or disciplinary action.

²⁵ Witness 18 (p 25)

²⁶ Witness 18 (p 25)

²⁷ Witness 1 (19 August 2022, p 23)

Summary of Findings

The court found the issues raised by the complainant to be based on facts. However, the court sought corroboration and context for each of the issues and found, in many instances, the complete picture was not known by the complainant.

The court found most of the cases of bullying, harassment, and alleged sexual violation/assault to have been dealt with to the best of the ability of the unit. The court found the current NZDF policies relating to bullying and harassment did not allow the unit to meet the expectations of some of the victims. The court found there was a lack of awareness around how bullying and harassment policies could support commanders in managing such situations. The court found the unit did not follow NZDF policy in relation to managing bullying and harassment complaints it was made aware of, but deemed this had no effect on the management of the cases. The court deemed these oversights to be based on lack of knowledge of the policies as opposed to deliberate disobedience.

The court found Operation PROTECT, the completion of operations in Iraq, low pay and high inflation created significant challenges to maintaining good culture in 2/1RNZIR. The resulting high attrition, leading to hollowness and shallowness at the junior leader level, made meeting these challenges more difficult.

The court determined hollowness to be a significant risk to NZDF personnel serving in affected units.

The court found the 2/1RNZIR command team of s. 9(2)(a) Lieutenant Colonel C. P. Neale and s. 9(2)(a) Warrant Officer Class One J. S. Cantwell worked from the beginning of their tenure to improve culture in 2/1RNZIR. The court determined their plans to be robust, but lacked a clear communications plan to enable understanding at the junior leader levels.

The court identified two times where the unit did not meet its own intent of transparency when managing incidents. However, the court found no evidence to suggest the management of these incidents breached the Armed Forces Discipline Act or current NZDF policy.

The court found the support services in Burnham Camp to be adequate and offered greater support to NZDF members than what is available in the civilian sector. The court found Defence Health processes were in a state of improvement, having identified many of the same issues as the court prior to the court sitting. The court found better education for command teams relating to medical gradings and support services is required to ensure the best utilisation of these services.

The court found 2/1RNZIR to be a desirable place for most individuals to work. The victims of alleged sexual violation the court spoke with all stated 2/1RNZIR was a good place to work. However, there still exists a 'boys club' approach to daily behaviours which in turn creates a requirement for individuals who do not fit the group norm to adjust to fit in. The court found the combination of unchecked negative behaviours, victims not coming forward, and abuse of alcohol were contributing factors to many of the negative behaviours and incidents raised by the complainant. The court was particularly concerned by the relation between alcohol and negative behaviour incidents. The court also noted this issue was broader than just 2/1RNZIR.

The court found the drawn out nature of investigations, and NZDF policy around privacy of those accused of a breach of the Armed Forces Discipline Act, created mistrust in the 2/1RNZIR leadership and worked against their policy of maintaining transparency.

The court found the external negative perceptions of 2/1RNZIR related to those individuals having experienced negative exposures to the unit, without exposure to the positive aspects of the unit.

The court found the overall culture within 2/1RNZIR to be professional and representative of what the NZDF expects of its units. However, sub-cultures, in many cases influenced by junior leaders, played a role in allowing unacceptable and dangerous behaviours to occur. The court found the 2/1RNZIR command teams were aware of these issues and were working towards aligning all personnel to the expected behaviours.

Bullying and Harassment

TOR 1: How many allegations or complaints of bullying and harassment were made by personnel posted to or supporting 2/1RNZIR to command during the specific period?

The court found serious incidents had been reported to the chain of command, and these included incidents of bullying and harassment; however, there is no evidence to suggest bullying and harassment was widespread within 2/1RNZIR.

16. The court found between January 2020 and July 2022, 2/1RNZIR recorded preliminary investigations into the following incidents relevant to the inquiry:

- a. Four incidents of alleged bullying and harassment,²⁸
- b. Four incidents of alleged sexual assault,²⁹
- c. 12 incidents of alleged assault,³⁰
- d. Nine incidents of alleged misuse of drugs,³¹ and
- e. Three other alcohol related incidents.³²

17. The court found between January 2020 and July 2022, Joint Military Police Unit (JMPU) South recorded investigations into the following relevant incidents within 2/1RNZIR:

- a. Two incidents of alleged sexual assault.³³
- b. Five alleged incidents of assault.³⁴
- c. Of note, the court found, despite 2/1RNZIR referring a bullying and harassment investigation to JMPU South for investigation, JMPU South did not record any incidents or allegations of bullying or harassment. 2/1RNZIR determined this was due to the complainant not wanting to progress the matter further.³⁵

18. SAPRA data could not be analysed further than total Army figures due to the nature of how it is recorded.³⁶

²⁸ Exhibit Y

²⁹ Exhibits A, Y and AY

³⁰ Witness 3 (26 August 2022, p 5), Exhibit Y

³¹ Exhibit Y

³² Exhibit Y

³³ Exhibit AY

³⁴ Exhibit AY

³⁵ Exhibits A, Y and AY

³⁶ Witness 21 (p 3, 4) and Exhibit AV

19. After interviewing a Defence Health medical expert, the court determined medical data available on the NZDF Health Profile system would provide inaccurate evidence due to issues with coding of cases; therefore, the court determined it to be of limited use. This issue is an identified area of improvement within NZDF Health.³⁷ The court did identify 40 reported cases of mental health related issues for 2/1RNZIR personnel, of which 25 were subsequently referred for external assistance.³⁸ However, as the data was subject to the same coding issues, the court could not determine if it reflected the true statistics.

³⁷ Witness 63 (p 18 – 19, 22)

³⁸ Exhibit S

TOR 2: In respect of any allegations of bullying and harassment:

TOR 2 (a): What actions or investigations were taken by command?

The court found 2/1RNZIR maintained a policy of investigating all complaints raised through the chain of command in order to maintain transparency. The court found no evidence to suggest this policy was not adhered to by the unit. The court found 2/1RNZIR generally took the correct actions when allegations were raised to the chain of command.

20. The court found when allegations of wrongdoing were brought to the attention of the 2/1RNZIR chain of command, commanders took immediate action to determine the nature of the allegations and whether they warranted subsequent investigation or whether it was appropriate to deal with it at the sub-unit level.³⁹ The court found 2/1RNZIR had clear policy relating to what warranted reporting higher which guided the selection of what proceeded to preliminary investigation.⁴⁰ The court found 2/1RNZIR maintained a policy of conducting preliminary investigations into well founded allegations in an effort to maintain transparency and accountability. The approach commenced under the previous Commanding Officer, s. 9(2)(a) Lieutenant Colonel M. A. van Welie and was reinforced by the Commanding Officer at the time of the inquiry commencing, Lieutenant Colonel Neale.⁴¹

21. The court found 2/1RNZIR conducted 64 preliminary investigations during the period in question.⁴²

22. The court found four investigations focused on alleged bullying and harassment:⁴³

- a. One incident where a Warrant Officer Class Two was investigated for ill treatment of subordinates. Two investigations were conducted, with the second being conducted to inform the new Commanding Officer of the situation. The individual involved faced a Commanding Officer's summary trial which resulted in a guilty finding and disciplinary action. The investigation occurred in the same month the incident was reported and was completed five months later.⁴⁴
- b. One incident relating to a 2/1RNZIR officer allegedly bullying another officer was dealt with informally as it did not meet the threshold for disciplinary action; however, a restorative justice process was completed. The investigation commenced two days after the incident was reported and completed a month later.⁴⁵
- c. One incident relating to the alleged bullying of an openly gay 2/1RNZIR soldier by fellow 2/1RNZIR soldiers at TAD and during Corps Training was passed to JMPU South for further investigation, but did not progress due to the alleged victim not wanting to lay a

³⁹ Witnesses 20 (01 September 2023, p 4 – 7), 22 (p 1, 2)

⁴⁰ Witness 67 (08 November 2022, p 1, 2) and Exhibits CH and CG

⁴¹ Witnesses 3 (26 August 2022, p 3 – 5), 20 (01 September 2022, p 28), 22 (p 14, 15), 32 (p 2), 50 (p 8, 12), 53 (p 2, 23), Exhibit Y

⁴² Exhibit Y

⁴³ Exhibit Y

⁴⁴ Exhibit AI

⁴⁵ Exhibit AS

complaint. The investigation commenced the same month the incident was reported and was completed after approximately two months. Of note, the soldier involved made the complaint through the OVERWATCH avenue, as opposed to using the unit chain of command.⁴⁶

- d. One incident of the alleged bullying of an openly gay soldier (the same soldier as referred to in paragraph 22 c.) by fellow 2/1RNZIR soldiers did not result in disciplinary proceedings due to insufficient and conflicting evidence; however, a restorative justice process was completed. The investigation commenced the day after the incident was reported and was completed in twenty days.

23. The court found four investigations focused on alleged sexual assault:

- a. A Private soldier was sexually assaulted by a Junior Non-Commissioned Officer (JNCO) during Combat Corps Training. The complaint laid by the soldier to JMPU South resulted in a Court Martial and the JNCO being discharged from the military. Alcohol was a factor in the sexual assault. The incident was reported to 2/1RNZIR a month after the initial complaint to JMPU South and the investigation took a year and one month to complete.⁴⁷
- b. An officer was accused of sexual assault stemming from an incident in 2017 whilst under training in Australia. The incident was initially reported through TRADOC before 2/1RNZIR was informed of a Military Police investigation. The investigation resulted in the Commanding Officer remanding the incident for Court Martial in September 2023.⁴⁸ The investigation had already commenced when 2/1RNZIR were informed. The investigation was completed after nine months.⁴⁹

- c. s. 6(c)



- d. A Senior Non-Commissioned Officer (SNCO) allegedly indecently assaulted and physically assaulted a civilian female in Christchurch. JMPU South received the complaint and investigated the incident. The Commanding Officer remanded the incident to Court Martial.⁵¹ Alcohol was a factor in the alleged sexual assault. The investigation took less than a month from the time the complaint was received.⁵²

⁴⁶ Witnesses 16 (p 2)

⁴⁷ Exhibit Y

⁴⁸ Court Comment: This court martial ended up taking place in February 2023. No finding was reached in respect of sexual violation and DMP decided there will not be a re-trial and ordered an indefinite stay of proceedings.

⁴⁹ Exhibits A and Y

⁵⁰ Witnesses 9 (p 3), 10 (p 7, 8), 20 (01 September 2022, p 50, 51), 22 (p 17 – 19), 30 (p 2, 6, 9), 45 (p 12, 13), 52 (p 1, 6 – 11), Exhibit Y

⁵¹ Court comment: The individual was subsequently found not guilty on both charges faced.

⁵² Exhibits Y and AY

- e. The court also found one incident outside the timeframe of the court of inquiry, where a Private soldier was allegedly sexually assaulted by a Section Commander. Alcohol was a factor in the incident. When interviewed by the court, the Private soldier highlighted three subsequent alleged sexual assaults she had been the victim of, which did fall under the timeframe of the court of inquiry. The court deemed the incident relevant to the inquiry based on the subsequent alleged offences.⁵³

24. The court found one reported incident where an individual felt bullied and informed the Commanding Officer and no further action was taken. The court found the behaviour to be an isolated incident which, although inappropriate, did not meet the New Zealand Defence Force (NZDF) definition of bullying. The court found the perception of the officer being bullied was the Commanding Officer (Lieutenant Colonel Neale) did not do enough to deal with the incident.⁵⁴ The court disagreed with this observation as the individual was not privy to subsequent conversations held by the Commanding Officer.

TOR 2 (b): In respect of any allegations of bullying and harassment, to what extent were they reported through the higher chain of command?

The court found the general themes relating to negative behaviours and cultures in 2/1RNZIR were well reported to higher chains of command. The court found 2/1RNZIR adhered to the requirement to report serious incidents and investigations resulting in Commanding Officer's summary trials to Headquarters 1st (New Zealand) Brigade.

25. The court found Lieutenant Colonel Neale informed the Chief of Army, Major General Boswell, of concerns around culture in 2/1RNZIR in November 2020 during a command visit. Lieutenant Colonel Neale also briefed the same issues around culture in 2/1RNZIR to the then Deputy Chief of Army, Brigadier Matthew Weston, in February 2021. Lieutenant Colonel Neale subsequently briefed the Chief of Army again in June 2021 on how 2/1RNZIR would approach their culture and behavioural challenges.⁵⁵

26. The court found 2/1RNZIR command informed 1st (New Zealand) Brigade Headquarters of all incidents which warranted summary trial or which risked bringing the service into disrepute.⁵⁶

27. The court found 2/1RNZIR directly involved the 1st (New Zealand) Brigade Command Sergeant Major, s. 9(2)(a) Warrant Officer Class One L. V. Mooney, in relation to the incidents relating to the bullying and harassment of an openly gay soldier. This soldier is the complainant in two of the four bullying and harassment preliminary investigations conducted by 2/1RNZIR.⁵⁷

⁵³ Witness 15 (p 9 – 11)

⁵⁴ Witness 53 (p 11 – 13)

⁵⁵ Exhibits A and CF

⁵⁶ Witness 20 (02 November 2022, p 1 - 3) and Exhibits A, Y and CF

⁵⁷ Witness 16 (p 9, 22, 29), 20 (01 September 2022, p 26), Exhibits A and AP

28. The court found one occasion where 2/1RNZIR formally briefed Commander 1st (New Zealand) Brigade on the challenges it faced, including incidents of sexual assault and bullying. Specifics were not included in the formal brief provided to the court.⁵⁸

29. The court found 2/1RNZIR command, upon learning of this court of inquiry, produced a dot point brief to 1st (New Zealand) Brigade Headquarters detailing the challenges the 2/1RNZIR command team had faced since the beginning of their tenure in October 2020.⁵⁹ The court found this dot point brief covered most of the major events identified by the complainant, in particular the incidents of sexual assault, bullying and harassment.

30. The court found Lieutenant Colonel Neale informally briefed the 1st (New Zealand) Brigade Commander on multiple occasions in relation to incidents and culture issues as part of regular command interactions.⁶⁰

TOR 2 (c): In respect of any allegations of bullying and harassment, were any notifications timely, sufficient, and in accordance with applicable orders, instructions, policies and/or best practice?

The court found 2/1RNZIR adhered to stipulated timelines for reporting and met the requirements of applicable policies. However, the court found the delays between notifications, investigation and subsequent disciplinary processes to be lengthy, creating perceptions of inaction. The court found 2/1RNZIR did not adhere to all orders and policies relating to bullying and harassment; however, this had minimal impact on outcomes and process.

31. The court found no evidence to suggest any delays in initiating preliminary investigations or reporting relevant incidents to the higher chain of command. However, the court did identify issues around the length of time investigations took and the level of training afforded to individuals conducting the investigations.⁶¹

32. The court found 2/1RNZIR did not adhere to the Defence Force Order 3, Part 5, Chapter 3 in that it did not raise a MD1037 when instances of bullying and harassment were identified.⁶² The court found evidence to suggest commanders at all levels did not know about the reference.⁶³

33. The court found 2/1RNZIR had a reporting timeframes policy relating to Command Critical Information Requirements (CCIRs) which generally encompassed the offences raised by the complainant.⁶⁴ The court found this was enabled through a CCIR email which immediately informed essential leaders and support personnel of an incident.⁶⁵ The court found no evidence to suggest this

⁵⁸ Exhibit AT

⁵⁹ Witness 3 (23 August 2022, p 1), Exhibit A

⁶⁰ Witness 20 (02 November 2022, p 1 – 3)

⁶¹ Witnesses 15 (p 8, 10), 18 (p 20), 43 (p 5, 6),

⁶² Witness 67 (10 February 2023, p 1, 2), Exhibit CI

⁶³ Witnesses 20 (01 September 2022, p 27), 67 (10 February 2023, p 1, 2)

⁶⁴ Witnesses 20 (01 September 2022, p 28), 67 (08 November 2022, p2), Exhibits CG and CH

⁶⁵ Witness 32 (p 7)

policy was not adhered to by command teams within the unit. The court found reporting to higher command, whether to the Battalion Headquarters or the Brigade Headquarters, to be mostly timely and conducted without unnecessary delays. Where delays did occur, it was due to process not being adhered to. Once identified, the Battalion Headquarters would remedy any issues in reporting.⁶⁶

34. The court found investigations generally met the timeframes stipulated by command; however, delays between the time of the incident and any formal disciplinary process created a perception of lack of action.⁶⁷ The court found some evidence to suggest COVID-19 may have exacerbated delays in one case.⁶⁸ Complex cases, such as the case at paragraph 22 c. encompassed a long period of alleged offending across The Army Depot and 2/1RNZIR. The timeframe from complaint to investigation completion was approximately two months and the referral to JMPU South led to further delays and resulted in no action due to the individual not wanting to take the matter further.⁶⁹ This is compared to the incident at paragraph 22 d. involving the same soldier, but with less complexity, so only took three weeks for findings to be made and recommendations implemented.⁷⁰

⁶⁶ Witness 67 (08 November 2022, p 2, 3), Exhibit Y

⁶⁷ Witnesses 16 (p 32, 33, 38), 20 (01 September 2022, p), Exhibit Y

⁶⁸ Witness 16 (p 33)

⁶⁹ Exhibit Y

⁷⁰ Exhibit Y

TOR 3: Were the actions and reporting appropriate? If not, comment on why the actions and reporting may not have been appropriate.

The court found the actions taken by 2/1RNZIR to be in line with Defence Force Order 3, Part 5, Chapter 3; however, the court identified bullying and harassment to be difficult to deal with using the military justice system. The court found the NZDF policies around release of findings and a duty to support all parties involved created poor perceptions of the processes leading to mistrust in the system.

35. The court found the following in relation to the reported instances of bullying and harassment:

- a. In relation to all incidents:
 - (1) The court found the process followed by 2/1RNZIR generally reflected the orders provided in Defence Force Order 3, Part 5, Chapter 3, paragraph 5.3.21 and, where matters raised indicated alleged offending, the Defence Manual 69 (Second Edition) Volume 1, Chapter 3 relating to preliminary investigations.⁷¹ The court found this was more due to diligence by commanders as opposed to knowledge of the system.⁷²
 - (2) The court found that although the incidents were reported through the chain of command, the required MD1307s were not submitted in line with direction at Defence Force Order 3, Part 5, Chapter 3, paragraph 5.3.21, sub-paragraph (13).⁷³
- b. In relation to the ill treatment of a subordinate by a Warrant Officer Class Two:
 - (1) The court identified a lack of communications plan post the verdict from the summary trial led to members of the unit and wider Burnham Camp believing the individual either did not receive a punishment, or did not receive an appropriate punishment. The court found the lack of communications plan reflected the need to provide a duty of care to not only the victim, but also the offender.⁷⁴
 - (2) The court identified offences and findings of summary trials are now required to be published in routine orders, in accordance with Defence Manual 69 (2nd edition) Vol 1, Chapter 7, Section 8A; however, the court identified the need for a more appropriate approach for communicating the results of summary trials of personnel.⁷⁵
- c. In relation to the incident where a 2/1RNZIR officer allegedly bullied another officer:

⁷¹ Exhibit Y and Exhibit CI

⁷² Witnesses 20 (01 September 2022, p 28 – 30), 67 (10 February 2023, p 1)

⁷³ Witness 67 (10 February 2023, p 1) and Exhibits Y and CI

⁷⁴ Witnesses 8 (p 24, 25), 17 (p 3, 4), 20 (01 September 2023, p 7, 8, 46 – 48), 22 (p1, 16, 17), 39 (p 2, 3), 64 (2, 3) and Exhibits A, Y, and AI

⁷⁵ Witnesses 22 (p 6), 48 (p 13, 14), 58 (p 19)

- (1) The court found the incident was investigated appropriately. The investigation commenced two days after the incident was reported and completed a month later.
 - (2) The court found the incident was subsequently dealt with informally as it did not meet the threshold for disciplinary action; however, a restorative justice process was completed. The court found this to be a suitable outcome.⁷⁶
- d. In relation to the alleged bullying and harassment of an openly gay soldier which occurred at The Army Depot and continued into Combat Corps Training:
- (1) The court found this incident led to a considerable amount of reporting and investigation.⁷⁷
 - (2) The investigation commenced the same month the incident was reported and was completed after approximately two months. Of note, the soldier involved made the complaint through the OVERWATCH organisation, as opposed to using the unit chain of command.⁷⁸
 - (3) The Brigade Headquarters were informed immediately (once the unit were informed) via the Brigade Commander's Update Brief and this was followed by an email from Lieutenant Colonel Neale.⁷⁹
 - (4) The court found the subsequent investigations to be thorough and the court found the soldier to be well supported throughout; however, the court identified the soldier had expressed disappointment the complaint had not gone anywhere.⁸⁰
 - (5) The court found the soldier had in fact expressed a desire to have no involved individuals be disciplined, and JMPU South ceased investigating when the soldier informed the investigators they did not wish to lay a complaint.⁸¹
 - (6) The court found 2/1RNZIR followed the investigation process and provided appropriate and ongoing support to the soldier; however, the perception from the soldier involved is that the process did not meet their expectations.⁸² The court identified personnel inside and outside of 2/1RNZIR which corroborated the court's finding that the support provided was appropriate.⁸³
 - (7) The court found the unit experienced difficulty identifying breaches of the Armed Forces Discipline Act in relation to this matter, leading to a perceived lack of action by the unit.⁸⁴

⁷⁶ Exhibit Y

⁷⁷ Exhibits Y and AP

⁷⁸ Witnesses 16 (p 2)

⁷⁹ Exhibits Y and AP

⁸⁰ Witness 16 (p 9 – 10)

⁸¹ Exhibits Y and AY

⁸² Witness 16 (p 9 – 10)

⁸³ Witnesses 6 (p 6), 20 (01 September 2022, p 28, 29), 42 (p 3, 4, 11, 12), 53 (p 2) and Exhibit AP

⁸⁴ Witness 20 (01 September 2022, p 26)

- (8) The court found the situation to be very complex and beyond the capacity of the unit to manage appropriately. The court determined the decision to bring in Brigade Headquarters to assist in managing the situation to be the correct decision.
- e. In relation to an incident of the alleged bullying of an openly gay soldier (the same soldier as referred to in paragraph 35d.) by fellow 2/1RNZIR soldiers:
- (1) The court found the investigation commenced the day after the incident was reported and was completed in twenty days.⁸⁵
 - (2) The court found the investigation resulted in no disciplinary proceedings due to insufficient and conflicting evidence; however, a restorative justice process was completed.⁸⁶ The court noted the witness expressed confusion at this process being used given it usually occurs after a guilty plea in disciplinary proceedings.⁸⁷
 - (3) The court found the unit acted appropriately to support the soldiers in question. In this case, the court found the process to be an appropriate response to the matter; however, the court found there needed to be additional guidance around where the threshold was in regards to using this restorative justice approach as part of the military justice system. The court did note the soldier involved had been involved in other incidents, suggesting a possible theme of bullying and harassment towards this individual. The court could not identify any corroborating evidence to suggest this soldier was the target of bullying and harassment based on their status as a member of the Rainbow Community.
36. The court found the following in relation to unreported instances of bullying and harassment:
- a. One instance where two soldiers alleged a JNCO had bullied them resulted in an internal sub-unit investigation to determine what had happened. Based on interactions with both involved parties, the Officer Commanding determined it did not meet the threshold for disciplinary action. Instead a restorative justice process occurred resulting in a satisfactory outcome for all parties.⁸⁸ The court deemed this process to be an appropriate approach which allowed all parties to air their grievances and for the JNCO to be developed without resorting to the disciplinary process for what was a minor issue.
 - b. One instance where an individual (the same soldier referred to in paragraphs 35 d. and e.) allegedly received a single text message from an unknown number urging the soldier to kill themselves. The soldier in question reported the instance to a single SNCO who recommended the soldier inform the Military Police. The soldier did not approach the Military Police and did not take the matter further.⁸⁹ The court determined the matter to be serious, but could not be associated with 2/1RNZIR based on the lack of evidence available and lack of formal investigation. The court determined this matter could have been progressed further by the unit had the SNCO in question raised the matter up the

⁸⁵ Exhibit Y

⁸⁶ Exhibits Y and AP

⁸⁷ Witness 16 (p 24)

⁸⁸ Witness 50 (p 1, 2)

⁸⁹ Witness 16 (p 26)

chain of command. The court noted the soldier in question remained well supported during all associated incidents.

37. The court found the following in relation to the reported instances of sexual assault:

- a. In relation to the Private soldier who was sexually assaulted by a Junior Non-Commissioned Officer (JNCO) during Combat Corps Training:
 - (1) The court found the significant length of time between the alleged offence and the investigation completion and subsequent court martial increased the risk of welfare issues to the individuals involved.⁹⁰
 - (2) The court found no evidence to suggest the soldiers in question were not well supported; however, the court did note the soldier who was the victim continues to have ongoing welfare and behavioural issues which were existent prior to the incident occurring.⁹¹
- b. In relation to the officer accused of sexual assault stemming from an incident in 2017 whilst under training in Australia.
 - (1) Of note, the incident was initially reported through TRADOC before 2/1RNZIR was informed of a Military Police investigation. The court found the investigation was completed after nine months. Given the international complexities of the investigation requirement, the court deemed this length of time to be acceptable.⁹²
 - (2) The court found that the incident was dealt with appropriately by the Commanding Officer in that it was remanded to Court Martial.⁹³
- c. s. 6(c)



⁹⁰ Exhibit Y

⁹¹ Witnesses 9 (p 6, 7), 32 (p 6, 7), 56 (p 1, 2)

⁹² Exhibits A and Y

⁹³ Exhibit Y

⁹⁴ Witnesses 9 (p 3, 4, 23 – 26), 20 (01 September 2022, p 51), 29 (p 3 – 6), 30 (p 2, 3), 52 (p 2, 3, 5, 8, 10 – 12), 64 (p 14) and Exhibit Y

⁹⁵ Witnesses 20 (01 September 2022, p 41, 42, 51), 29 (p 5), 30 (p 4), 52 (p 8, 10, 11)

- d. In relation to a Senior Non-Commissioned Officer (SNCO) who allegedly indecently assaulted and physically assaulted a civilian female in Christchurch:
 - (1) The court determined 2/1RNZIR handled the disciplinary process appropriately.⁹⁶
 - (2) The court determined there was a perceived lack of communications between the SNCO and his command chain on the matter. The perceived delays from the SNCO relating to the convening of the court martial for the alleged offence exacerbated the issue.⁹⁷ The court determined these perceived delays were not significant and the matter was dealt with in a timely manner.
- e. In relation to the Private soldier who was allegedly sexually assaulted by her Section Commander after a Combat Corps Training function:
 - (1) The court could not establish clear evidence relating to the investigation; however, it established there was no evidence to proceed with a complaint, other than the statement of the alleged victim.⁹⁸
 - (2) The court found the lack of result, and the subsequent departure of the alleged offender from the service to have caused the Private soldier to have distrust in the discipline and complaints system. The court noted the support services were engaged to provide support to the Private soldier in question.⁹⁹
 - (3) The court deemed the unit could have supported the Private soldier better post this incident.

38. The court found the following in relation to two reported instances of assaults which were deemed relevant to the court as they were raised by the initial complainant (see paragraphs 10 d. and e.):

- a. In relation to the alleged assault by a 2/1RNZIR officer on another 2/1RNZIR officer in the unit during a mess function, the court found the Commanding Officer, Lieutenant Colonel Neale, did not apply the unit policy of maintaining transparency through formally investigating all alleged incidents. The court found the Commanding Officer should have investigated the incident further as the incident represented behaviours not in line with the NZDF ethos and values.¹⁰⁰ The court found Lieutenant Colonel Neale accepted he should have looked into the incident further.¹⁰¹ The court determined the matter to be very low level and dealt with in a mature manner by those individuals involved. The court determined the perception of inaction and lack of transparency did contribute to the complainant's view of the 2/1RNZIR command.
- b. In relation to the alleged assault between two SNCOs during the Battalion Birthday celebrations, the court found Warrant Officer Class One Cantwell did not apply the unit policy of maintaining transparency through formally investigating all alleged incidents.

⁹⁶ Exhibit Y

⁹⁷ Witness 43 (p 5 – 7)

⁹⁸ Witness 15 (p 9 – 12)

⁹⁹ Witness 15 (p 9 – 11)

¹⁰⁰ Witnesses 1 (19 August 2022, p 4), 20 (01 September 2022, p 50), 29 (p 6, 7), 48 (p 16, 17)

¹⁰¹ Witness 20 (01 September 2022, p 50)

Instead, an informal investigation occurred and the individuals received informal punishments from Warrant Officer Class One Cantwell. The court deemed the incident warranted formal disciplinary action, and by taking this approach, the lack of transparency contributed to distrust in the 2/1RNZIR disciplinary system.¹⁰²

TOR 4: What organic resources were available within 2/1 Bn (including Anti-Harassment Advisors)?

The court found that other than the command chain, 2/1RNZIR did not have sufficient organic resources available to support individuals with welfare issues. The court found the command chain supported its personnel to the best of their ability given the restrictions of their work tempo and requirements. The court found the Anti-Harassment Advisors in the unit to be underutilised and not fit for purpose.

TOR 4 (a): Comment on whether the organic resources were sufficient, and

TOR 4 (b): Comment on whether the organic resources were appropriately utilised.

39. The court found most individuals facing harassment at work would first use the chain of command as an accepted general practice. The court found this created some conflicts of interest and may have created a reluctance on behalf of some soldiers to come forward when their issues were related to their chain of command.¹⁰³

40. The court found 2/1RNZIR commanders were stretched due to administrative requirements on top of their training and command duties. The court determined this lack of available time created a welfare risk for individuals who came forward with bullying and harassment claims.¹⁰⁴

41. The court found 2/1RNZIR had eight Anti-Harassment Advisors (AHA) consisting of the following ranks:¹⁰⁵

- a. 3 x Private soldiers.
- b. 2 x Junior Non-Commissioned Officers.
- c. 2 x Lieutenants, and
- d. 1 x Civilian.

42. The court found the number of AHAs to be irrelevant from a sufficiency perspective as they were underutilised within 2/1RNZIR. The court found this was due to the lack of understanding of what an AHA was and the stigmas attached to the AHA role and course. The court found the role of

¹⁰² Witnesses 1 (19 August 2022, p 22), 22 (p 5, 6), 56 (p 2, 3)

¹⁰³ Witnesses 9 (p 16), 10 (p 8), 13 (p 22, 23), 18 (p 31, 32), 20 (01 September 2022, p 29), 22 (p 8),

¹⁰⁴ Witnesses 3 (23 August 2022, p 21), 11 (p 2), 20 (01 September 2022, p 33 – 35, 19 October 2022, p 4, 7, 10), 41 (p 17 – 19), 50 (p 6, 20), 51 (p 9, 10)

¹⁰⁵ Exhibit I

AHA had been undermined through the use of the course as a punishment/developmental tool for underperforming individuals displaying inappropriate behaviours. As such, degradation of trust in the AHA role occurred leading to the role being no longer fit for purpose.¹⁰⁶

43. The court found Delta Company, 2/1RNZIR s. 9(2)(a) [REDACTED], did use the AHA course in an appropriate manner, which was available through request by units. The court noted the sub-unit did this to better prepare its leaders to meet the broad demands of their roles, as opposed to qualifying personnel to assist others in how to deal with alleged harassment. Members of the unit who undertook the training for the purpose of professional development, viewed the course and its content positively. The court deemed this approach to be beneficial to maintaining a strong positive sub-culture within the sub-unit.¹⁰⁷

44. The court found that the commanders who received complaints or issues had not received significant formal training to be able to deal with such issues. The court found professional military judgement, based on experience, to be the foundation for how commanders approached issues.¹⁰⁸ The court found greater preparation of commanders would have been beneficial to reducing the risk of exacerbating issues relating to the alleged victims and reducing the risk to the commanders themselves as they dealt with complex issues.

45. The court found the employment of a full-time S1 within the unit to be beneficial to providing advice and guidance to the command chain, effectively reducing the risk to commanders when dealing with issues such as harassment, bullying and assaults.¹⁰⁹

¹⁰⁶ Witnesses 7 (p 22), 8 (p 8), 10 (p 8), 18 (p 31, 32), 20 (01 September 2022, p 29), 25 (p 20 - 22), 50 (p 31, 32), 53 (p 23 - 25), 59 (p 21 - 23), 62 (p 17, 18), 67 (10 February 2023, p 2, 3)

¹⁰⁷ Witnesses 12 (p 55 - 57), 25 (p 20 - 22)

¹⁰⁸ Witnesses 19 (p 12, 13), 20 (01 September 2022, p 29, 37), 29 (p 2 - 4), 37 (p 38), 39 (p 6, 7), 48 (p 10, 11)

¹⁰⁹ Witnesses 20 (08 November 2022, p 1 - 3), 67 (10 February 2023, p 2 - 5)

TOR 5: Did the unit seek or gain assistance from resources outside the chain of command to support the process following receipt of complaints?

and,

TOR 6: What external assistance was available to the unit? Comment on whether the support available was sufficient.

The court found that external services were readily available and able to support the unit. The court found the unit generally used these services well; however, a lack of understanding of what services to use was a common theme.

46. The court identified the following resources outside of the chain of command which were available to support the range of complaints received:

- a. NZDF Military Police.
- b. Defence Legal Services.
- c. OVER WATCH.

47. The court found the unit was supported by the Burnham based lawyer for legal advice on complaints or allegations which then often progressed through to the application of the military discipline process.¹¹⁰

48. The court found 2/1RNZIR sought support from JMPU South in instances where the investigation was beyond the capability or responsibility of the unit. On these occasions, the matters in hand related to significant offences or ones that were required to be referred to JMPU.¹¹¹ The court found no evidence to suggest this process was not adequate; however, previous findings around the negative effects of lengthy investigation timeframes remain extant.¹¹² The court determined low staffing levels to be the main cause for the lengthy delays in Military Police investigations.¹¹³

49. The court found Warrant Officer Class One Cantwell approached OVERWATCH and sought advice on how to deal with a gay soldier who had made allegations of bullying and harassment. The court found this was linked to the fact the soldier had had laid a complaint through OVERWATCH rather than using the chain of command.¹¹⁴ This led to the involvement of Ms Nina Russell, Director Diversity and Inclusion. The court found this involvement to be appropriate; however, communications could have been enhanced by queries to the unit to determine what work had already occurred to date.¹¹⁵ The court found the Commanding Officer had already advised the

¹¹⁰ Exhibit Y

¹¹¹ Exhibits A, Y and AY

¹¹² See TOR 2 (C) paragraph 29 and TOR 3 paragraphs 33 a. and 33 b.

¹¹³ Witness 23 (02 September 2022, p 12)

¹¹⁴ Witness 42 (p 11)

¹¹⁵ Exhibit AP

soldier to lay a formal complaint, but he chose to use OVERWATCH to submit a written report on the incidents which had affected him.¹¹⁶ The court found the reaction from higher headquarters created unneeded pressure on the unit who had clearly briefed the process through to higher command.¹¹⁷ The court determined this would have been avoided if a formal complaint process had been followed right from the start. The court determined the soldier in question did not have the knowledge to follow the formal complaint process and instead relied on laying complaints through external support providers and then directly through the chain of command.¹¹⁸

¹¹⁶ Exhibit AP

¹¹⁷ Witness 20 (01 September 2022, p 28), Exhibits Y and AP

¹¹⁸ Witness 16 (p 29) and Exhibit AP

TOR 7: Did the complaints or allegations disclose any common themes or trends in terms of allegations made?

The court found the instances of bullying and harassment to be too few to establish themes. The incidents applicable to the bullying of a gay soldier, although not in keeping with the ethos and values expected of NZ Army personnel, were isolated and involved greater complexity than simple anti-Rainbow Community behaviours from 2/1RNZIR personnel. However, alcohol use, stress and inappropriate language were determined to be relevant themes in the unit.

50. The court found no evidence to suggest themes of anti-Rainbow Community behaviour. The court found some evidence to suggest there was a theme of language which was not in line with Operation PROTECT being used at the Private soldier and Junior Non-Commissioned Officer levels.¹¹⁹ The court heard evidence to suggest some of the older generation of soldiers in the unit did still, at times, use inappropriate language relating to the Rainbow Community.¹²⁰ The court determined the unit hierarchy took all practicable steps to eliminate such behaviours from the unit and there was a perception this was improving.¹²¹

51. The court found evidence suggesting the alleged bullying and harassment of the openly gay soldier described at paragraphs 35 d. and 35 e. was not based entirely on his sexuality, with his competence as a soldier being an influencing factor.¹²² Furthermore, the court found there were instances where, although there was a perception of bullying and harassment, the soldiers involved believed it to be interactions between comrades.¹²³

52. The court found alcohol to be a common theme in the negative behaviours reported within the unit. The court found of the 12 investigations focused on alleged common assault, seven incidents involved excess alcohol consumption and in the instances of alleged sexual assault, three of the four incidents involved excessive alcohol consumption.¹²⁴ In relation to the unreported alleged sexual assault of a 2/1RNZIR soldier, the court found alcohol to be a factor.¹²⁵

53. The court found there was a common theme relating to stress which could have increased the likelihood of negative behaviours leading to complaints, particularly when combined with alcohol. The court found this stress was linked to numerous factors, including:

a. Operation PROTECT.¹²⁶

¹¹⁹ Witnesses 1 (19 August 2022, p 5, 21, 56), 9 (p 10), 52 (p 28, 29), 58 (p 15), 59 (p 16, 17), 62 (p 4, 13)

¹²⁰ Witness 6 (p 7, 11)

¹²¹ Witnesses 12 (p 19, 20), 51 (p 13, 14) and Exhibit H

¹²² Witness 16 (p 3, 4, 12, 14, 15, 21), 42 (p 3, 4, 11, 12) and Exhibits Y and AP

¹²³ Exhibits Y and AP

¹²⁴ Exhibits Y and AY

¹²⁵ Witness 15 (p 9, 10)

¹²⁶ Witnesses 3 (23 August 2022, p 3, 4, 12. 26 August 2022, p 7, 8, 9), 4 (p 8), 5 (p 5, 6, 7, 8), 7 (p 11), 8 (p 9, 10, 18), 10 (p 2), 11 (p 18), 14 (p 8, 9), 15 (p 4, 5), 16 (p 1, 2), 20 (01 September 2022, p 15, 25, 31, 33, 36), 22

- b. Operation MANAWA.¹²⁷
- c. Financial security.¹²⁸
- d. Unit hollowness.¹²⁹
- e. Unit tempo.¹³⁰

(p 8, 9, 24, 25), 23 (02 September 2022, p 3), 25 (p 6), 39 (p 14), 43 (p 8), 50 (p 6, 17, 27, 28), 58 (p 12), 60 (p 15), 64 (p 32)

¹²⁷ Witnesses 3 (26 August 2022, p 7), 5 (p 6, 16), 12 (p 20), 39 (p 15), 62 (p 10)

¹²⁸ Witnesses 4 (p 8), 5 (p 6), 8 (p 11, 13, 14), 13 (p 11), 20 (01 September 2022, p 33, 19 October 2022, p 2), 22 (p 9), 43 (p 3, 4), 63 (p 15)

¹²⁹ Witnesses 14 (p 11), 18 (p 9, 10), 20 (19 October 2022, p 1 – 17), 41 (p 3, 4, 6, 7) and Exhibits BU and BV

¹³⁰ Witnesses 18 (p 9, 10), 20 (01 September 2022, p 31, 19 October 2022, p 7), 30 (p 15), 34 (p 4, 10, 11), 37 (p 6, 8), 38 (p 5, 6), 41 (10 – 12), 50 (p 6, 7)

TOR 8: If investigations found any forms of bullying or harassment:

TOR 8 (a) & (b): What actions were taken by the unit to address those findings and were they appropriate?

The court found this TOR to be covered by the information provided at TOR 3.

TOR 9: What support was provided to any members of the unit who raised complaints or allegations of bullying and harassment?

The court found this TOR to be covered by the information provided at TOR 3.

TOR 10: To what extent have instances of bullying or harassment gone unreported?

The court found historical examples of delays in the discipline system had created a stigma of mistrust around reporting unacceptable behaviour. Additionally, the court found some junior ranks had a lack of trust in, and knowledge of, the chain of command and how it works, creating an aversion to coming forward with complaints. The court found very few individuals knew the process of how to lay a formal complaint.

54. The court received evidence highlighting the following unreported incidents:

- a. An unreported alleged incident of bullying and harassment where the individual reported the alleged offences to a Private soldier qualified as an Anti-Harassment Advisor. The incident did not progress to the chain of command. s. 9(2)(ba)(i)
[REDACTED]¹³¹
- b. An unreported alleged incident of bullying and harassment of the openly gay soldier mentioned in TOR 2. The court found no other corroborating evidence. The court noted the soldier had laid complaints in all other instances and in this matter, the alleged perpetrator was not named.¹³²
- c. An alleged incident of sexual assault. The allegation was hearsay and the court found no corroborating evidence to substantiate this claim.¹³³
- d. Three separate instances of alleged sexual assault against a 2/1RNZIR soldier, by 2/1RNZIR soldiers, which had been reported through the SAPRA. The court received evidence from the victim of four separate alleged sexual assault incidents. This individual did not wish to complain as the individuals had departed the service s. 9(2)(ba)(i)
[REDACTED]¹³⁴ The court found this lack of trust in the system stemmed from this soldier's first complaint not leading to a result, and the alleged offender departing the service, as well as observations of other complaint delays.¹³⁵ The court noted the first complaint laid by the individual was outside the designated time window of the court of inquiry, but deemed the incident relevant to the inquiry.

55. The court found no evidence of formal complaints made under s 49 of the Defence Act 1990 being laid over the period in question; however the unit conducted 64 preliminary investigations.¹³⁶ The court found that the knowledge of formal complaints procedures varied depending on the rank and experience of witnesses; however, the court determined the lack of knowledge did not prevent

¹³¹ Witness 59 (p 21, 22) and Exhibit AY

¹³² Witnesses 52 (p 30, 31), 53 (p 9), 58 (p 9 – 11)

¹³³ Witnesses 18 (p 25)

¹³⁴ Witness 15 (p 10)

¹³⁵ Witness 15 (p 9 – 11, 24, 25)

¹³⁶ Exhibit Y

soldiers from coming forward with issues to either command, or support services. The court determined this may have been a factor in some individuals not reporting incidents; however, it could not confirm it as a cause.¹³⁷

56. The court noted there were incidents reported through support services, but could not be discussed or identified due to being restricted disclosure cases. The court also noted the information could not be narrowed down by location due to the limitations of the SAPRA information management system.¹³⁸

57. The court found evidence of complaints relating to bullying and harassment being received by sub-unit commanders but not progressing to a formal unit preliminary investigation.¹³⁹ Based on the evidence provided, the court determined these investigations were conducted in an appropriate manner and at the lowest level of command appropriate in the circumstances.

¹³⁷ Witnesses 13 (p 2), 19 (p 11, 12), 29 (p 8, 9), 50 (p 26, 27), 52 (p 7, 8), 53 (p 15, 16)

¹³⁸ Witness 21 (p 3, 4) and Exhibit AV

¹³⁹ Witnesses 50 (p 1, 2, 5, 6)

TOR 11: In respect of support services available to personnel:

The court found 2/1RNZIR personnel were aware of the support services available to them; however, not all were aware of the specific services they provided. The court found the 2/1RNZIR Chaplain to be an essential support mechanism for the unit. The court found compliance training to not be fit for purpose to enable retention of essential support information. The court found the support services to be adequately staffed, but were under pressure.

TOR 11 (a) & (b): Are they widely used by personnel? If not, why not?

58. The court determined this TOR encompassed Welfare and Wellbeing TORs; therefore, the TOR has been answered to reflect the total support services available to Burnham based personnel.

59. The court spoke with all support service providers in Burnham Camp in the course of its investigation.¹⁴⁰

60. The court found the Burnham support services to be well utilised by the unit; however, there was a lack of formal training across all rank levels in how to use them, and most personnel relied upon on the job training to become proficient with using such services.¹⁴¹

61. The court identified some junior members of 2/1RNZIR did not have a working knowledge of what support services were available, despite these being covered annually during compliance training. The court identified the method of delivery for compliance training to not be fit for purpose for soldiers to retain the required information.¹⁴²

62. The court identified evidence to suggest some support services had difficulties engaging with 2/1RNZIR. The court identified aspects of 2/1RNZIR culture which suggested new support services personnel felt the need prove themselves before trust in an individual was granted. The court found this created a negative perception of the unit from those support service personnel who experienced this approach.¹⁴³

63. The court identified the main point of contact for welfare issues was s. 9(2)(a) [REDACTED] Chaplain s. 9(2)(a) [REDACTED]. The court identified a heavy reliance on Chaplain s. 9(2)(a) [REDACTED] to advise and assist 2/1RNZIR in relation to welfare issues and deal with many issues presented to the various levels of command. The court found Chaplain s. 9(2)(a) [REDACTED] to be a well trusted and respected individual. The court found Chaplain s. 9(2)(a) [REDACTED] provided what is in essence a triage approach to welfare matters. The court determined this approach highlighted a risk of a single point of failure

¹⁴⁰ See Terms and Definitions for list of support agencies.

¹⁴¹ Witnesses 3 (23 August 2022, p 20, 21), 5 (p 2 – 24), 6 (p 5), 8 (p 1 – 5), 10 (p 7, 8, 10), 12 (p 27, 28, 53 – 55), 17 (p 1, 2), 18 (p 18, 19), 19 (p 12), 24 (p 11, 12), 29 (p 9, 10), 37 (p 15), 39 (p 6, 7), 48 (p 10, 11), 51 (p 2, 3), 60 (p 3) and Exhibits J, AB and BO

¹⁴² Witnesses 15 (p 6), 19 (p 10, 11), 24 (p 12, 13), 29 (p 3, 8, 9), 39 (p 16, 17), 45 (p 15, 16), 48 (p 10), 52 (p 27, 28)

¹⁴³ Witnesses 7 (p 5, 6, 8, 9), 8 (p 15, 16)

for members of the unit not educated in the services provided by other elements in Burnham camp.¹⁴⁴

64. The court found no evidence to corroborate the insinuation by one witness that Chaplains were not supportive of the Rainbow Community.¹⁴⁵

65. The court found evidence to suggest most support services were under varying degrees of high workload pressure, but not to a critical level.¹⁴⁶ The court found the Burnham medical services to be adequately staffed and noted the intent to employ permanent doctors to reduce the risk associated with locum doctors who did not know the military system. The court noted the locum doctors currently in use did have a good working knowledge of the military system, due to the induction programme conducted and long term employment with the military, effectively reducing this risk.¹⁴⁷

66. The court noted the staffing pressures on the medical centre in Burnham had previously been significant.¹⁴⁸ The court determined this could have affected access to medical support for personnel seeking mental health assistance.

67. The court found military psychologists to be stretched with the broad range of tasks required of them.¹⁴⁹ The court found access to clinical psychologists outside of NZDF to be difficult to access due to availability. The court also determined this access for members of the armed forces to be better than what was available to civilians.¹⁵⁰

68. The court found the Complex Care Coordinator to be an essential element of the Multi-Disciplinary Team (MDT) and used by 2/1RNZIR hierarchy as part of this process; however, they were not enabled by NZDF Rehabilitation policies.¹⁵¹ This affected the standard of advice and guidance they could provide as part of the MDT process.¹⁵² The court found the Complex Care Coordinator had worked with 2/1RNZIR to create a unit specific rehabilitation policy which enhanced how personnel were brought back to operational readiness; however, further work was needed to make this fit for purpose.¹⁵³

¹⁴⁴ Witnesses 3 (23 August 2022, p 10, 21, 22), 20 (01 September 2022, p 30), 22 (p 6, 8), 25 (p 7), 39 (p 6), 43 (p 7), 50 (p 2, 13), 54 (p 10), 62 (p 7), 65 (p 12) and Exhibit Y

¹⁴⁵ Witness 16 (p 21)

¹⁴⁶ Witnesses 3 (23 August 2022, p 21), 5 (p 13), 7 (p 11), 11 (p 13, 14), 20 (01 September 2022, p 30), 63 (p 16), 66 (p 2)

¹⁴⁷ Witnesses 11 (p 11), 63 (p 5), 66 (p 3, 4)

¹⁴⁸ Witness 66 (p 3) and Exhibit CA

¹⁴⁹ Witness 57 (p 7)

¹⁵⁰ Witnesses 14 (p 13), 26 (p 2)

¹⁵¹ Court Comment: The NZDF Rehabilitation Policy is currently in draft and yet to be issued.

¹⁵² Witnesses 60 (p 1 – 3), 61 (p) and Exhibits BQ and BT

¹⁵³ Witness 60 (p 4 – 7) and Exhibit BO

TOR 12: Were any complaints or allegations of bullying and harassment made to NZDF support services external to the unit? If so, was this information appropriately shared with 2/1 Bn RNZIR command?

The court found the support services system in Burnham to be functional and enabled personnel to come forward with issues, outside of the chain of command. The court found the support services adhered to their policy of disclosure, where the individual must give permission for their case to be shared with command.

69. The court found support services did receive complaints outside of the chain of command; however, the court determined this met the intent of these services offering another line of support to our people in order to encourage personnel to come forward for help without fear.¹⁵⁴

70. The court found no evidence to suggest the support services did not disclose relevant information to the Battalion command in an appropriate manner and in line with their disclosure guidelines. The court found the process of obtaining permission before disclosing information to be adhered to by support services; however, the court determined there was a possibility this could create issues with providing clear advice and information to unit command.¹⁵⁵

¹⁵⁴ Witnesses 6 (p 1, 2), 7 (p 1, 2), 8 (p 1, 2), 11 (p 3, 4), 22 (p 8)

¹⁵⁵ Witnesses 6 (p 1, 2), 7 (p 1, 2), 8 (p 2), 59 (p 12, 13)

Welfare and Wellbeing

TOR 13: How many personnel posted to or supporting 2/1 Bn RNZIR sought welfare support from within the unit command structure? Comment on the nature of support sought.

and

TOR 14: What actions were taken by the unit in response? Comment on whether these actions were appropriate.

The court found no evidence to suggest personnel were denied access to welfare support if they came forward. The court found 2/1RNZIR provided appropriate support in all the significant incidents raised in TOR 1. The court found some individuals had grievances with the level of support they received. The court found the approach taken by the unit to be appropriate when dealing with welfare cases. The court determined the amount of administration required of commanders created a risk in being able to effectively deal with welfare incidents, and added to the stress of commanders

71. The court could not obtain complete evidence of the number of personnel who sought assistance due to the nature of how the medical coding system functions across the support services and minor level instances not being recorded.¹⁵⁶

72. The court found individuals who were involved in the incidents listed at TOR 1 received the appropriate support as per the findings at TOR 2.

73. The court found the approach taken by company command teams and platoon command teams to be appropriate when approached with welfare cases. The court found individuals would approach leadership with issues ranging from serious complaints through to minor welfare issues. The court found the leaders would escalate the matters if not able to be managed at their level, which included contacting support services. The court found multiple examples of individuals being enabled with support external to the unit by the chain of command as a result of coming forward with an issue.¹⁵⁷ The court found no evidence to suggest any personnel were denied access to support networks.

74. The court found Operation PROTECT reduced the ability for soldiers to come forward and receive help with issues due to the demands on leaders and the command chain being thinly

¹⁵⁶ Witnesses 11 (p 19), 21 (p 4), 63 (p 21), Exhibits AV and BY

¹⁵⁷ Witnesses 9 (p 4, 5, 13), 15 (p 3), 16 (p 2), 17 (p 2, 3), 44 (p 7, 8), 51 (p 2 - 5), 52 (p 10), 59 (p 4 – 6) and Exhibit AP

spread.¹⁵⁸ The court found Operation TIEKE created a similar challenge by exacerbating hollowness, putting greater pressure on those leaders left behind.¹⁵⁹

75. The court found some individuals had welfare related grievances; however, the court determined these to be the exception to the majority. The court found a lack of clear communication around expectations and reasons for actions led to some of these issues.¹⁶⁰

76. The court identified commanders conducted significant amounts of administration in support of troops and current Army reporting systems, taking away from their time commanding and interacting with troops. This led to long working hours which exacerbated stress levels.¹⁶¹

77. The court observed the behaviours of numerous leaders during the course of the interviews, and identified several who were displaying obvious signs of stress and fatigue due to overwork. The court notes this was not identifiable in the dialogue recorded. The court reached out to the chain of command to guide the unit in providing support, which subsequently occurred.

¹⁵⁸ Witnesses 3 (23 August 2022, p 3, 4, 10 – 12, 26 August 2022, p 7, 8, 9), 4 (p 8), 5 (p 5, 6, 7, 8), 7 (p 11), 8 (p 9, 10, 18), 10 (p 2), 11 (p 18), 14 (p 8, 9), 15 (p 4, 5), 16 (p 1, 2), 20 (01 September 2022, p 15, 25, 31, 33, 36), 22 (p 8, 9, 24, 25), 23 (02 September 2022, p 3), 25 (p 6), 39 (p 14), 43 (p 8), 50 (p 6, 17, 27, 28), 58 (p 12), 60 (p 15), 64 (p 32)

¹⁵⁹ Witnesses 14 (p 11), 18 (p 9, 10), 20 (19 October 2022, p 1 – 17), 41 (p 3, 4, 6, 7) and Exhibits BU and BV

¹⁶⁰ Witnesses 52 (p 9, 10), 17 (p 2 – 4), 65 (p 1, 2)

¹⁶¹ Witnesses 9 (p 14), 19 (p 12, 13), 51 (p 9, 10), 62 (p 21)

TOR 15: How many personnel posted to or supporting 2/1 Bn RNZIR sought welfare support from NZDF support elements, such as Medical Officers, chaplains, base psychologists and social workers? Comment on the nature of support sought.

and

TOR 16: Was information about welfare concerns of unit members appropriately passed between camp support elements and command?

The court could not identify exact numbers due to differences in medical coding approaches. The court identified the processes relating to the Multi-Disciplinary Team and the Integrated Wellness Meetings to be of great value to safeguarding personnel. The court found the frequency of the Integrated Wellness Meetings to not be sufficient. The court found no significant issues with sharing information with the unit when correct procedures were applied.

78. The court found a total of 40 2/1RNZIR personnel sought assistance for mental health and wellbeing issues. Of these, 25 personnel were referred to external services. 34 personnel were seen by medical doctors, 19 cases by social workers and 17 by external psychologists.¹⁶² However, due to the nature of how each of the supporting agencies codes their findings, the court determined this data to be incomplete and it is likely the figure was higher.¹⁶³ The court found some individuals approached support services for issues where they perceived approaching their chain of command would have a negative effect on their career or their daily life.¹⁶⁴ The court found these instances to be the exception rather than the norm.

79. The court found the stigma and lack of education relating to medical downgrades to be an obstacle for personnel wanting to come forward to support services.¹⁶⁵

80. The court identified the Chaplain to be the main point of contact for the unit in dealing with welfare cases. The court found the vast majority of individuals had significant trust in Chaplain s. 9(2)(a) and so were most likely to approach him first for any matters. The court found the Chaplain to be the greatest source of advice and guidance for welfare matters for the command chain.¹⁶⁶

81. The court determined the Burnham based Multi-Disciplinary team (MDT) process and approach to be very valuable in ensuring the best care was provided to personnel.¹⁶⁷ The court found the unit saw the benefit in the MDT approach which delivered the Integrated Wellness Meetings at the unit level and was working to refine it to gain greater efficiency and benefit for its people. The court found the current process of conducting Integrated Wellness meetings at sub-unit and unit level to be appropriate. These wellness meetings consisted of all appropriate support

¹⁶² Exhibit S

¹⁶³ Witnesses 11 (p 19), 21 (p 4), 63 (p 21) and Exhibits AV and BY

¹⁶⁴ Witnesses 9 (p 13, 14), 15 (p 9 – 12)

¹⁶⁵ Witnesses 8 (p 7), 11 (p 3, 4), 20 (01 September 2022, p 45), 63 (p 1, 2) and Exhibit BX

¹⁶⁶ Witnesses 3 (23 August 2022, p 10, 21, 22), 20 (01 September 2022, p 30), 22 (p 6, 8), 25 (p 7), 39 (p 6), 43 (p 7), 50 (p 2, 13), 54 (p 10), 62 (p 7), 65 (p 12) and Exhibit Y

¹⁶⁷ Witnesses 5 (p 12), 7 (p 2, 3, 4), 8 (p 1), 60 (p 5, 6), 63 (p 11)

personnel applicable to a case.¹⁶⁸ The court found the Integrated Wellness Meetings to be the primary method to formally share information between support providers and the units. Of note, although the court found there had been significant gaps between meetings due to Operation PROTECT, it had not prevented support from being provided to personnel who asked for it. The court found the lack of meetings created greater difficulty in gaining oversight of the full range of issues faced by members of the Battalion.

82. The court found 2/1RNZIR had not run the intended quarterly Integrated Wellness Meetings due to the pressures of Operation Protect and Operation TIEKE.¹⁶⁹ The court found that COVID-19 and the high tempo post Operation PROTECT disrupted 2/1RNZIR engaging with the MDT and the conduct of the Integrated Wellness Meetings.

83. The court determined a review by 2/1RNZIR to be necessary to establish the optimum number of Integrated Wellness Meetings needed annually. The court also determined a clear formalised system of communicating risk relating to personnel involved in the MDT process would be beneficial to mitigate perceived privacy breach risks with the disclosure process.

¹⁶⁸ Witnesses 3 (23 August 2022, p 3, 4, 20), 8 (p 1 – 5), 20 (01 September 2022, p 11, 12), 37 (p 26), 48 (p 11), 50 (p 13, 14)

¹⁶⁹ As per findings at TOR 13 and TOR 14

TOR 17: Were higher command kept appropriately informed of welfare issues within 2/1 Bn RNZIR? If not, comment on why not.

The court found higher command was informed of complex welfare issues which met the threshold for reporting requirements. The court found no evidence to suggest reporting processes were not followed.

84. The court found the incidents highlighted at TOR 2 (b) also required welfare support, and as such, were reported higher up the chain of command. The incident relating to the bullying of an openly gay soldier at 2/1RNZIR saw direct support provided by the Brigade Headquarters.

85. The court found that when welfare cases moved to the Battalion Headquarters level, the cases were generally very complex and presented risk to the individual and the unit. As such, when an issue reached Battalion Headquarters it was briefed to Brigade Headquarters in line with Brigade direction. The court found no evidence to suggest 2/1RNZIR did not abide by the 1st (New Zealand) Brigade direction on reporting Command Critical Information Requirements (CCIRs).¹⁷⁰

86. As a result of the court of inquiry being raised, the Commanding Officer of 2/1RNZIR provided a thorough breakdown of all incidents and complaints to the Brigade Headquarters in an effort to maintain transparency.¹⁷¹

¹⁷⁰ Exhibit CG

¹⁷¹ Exhibit A

TOR 18: Was the support provided to the unit by the above elements at Burnham Military Camp fit for purpose? If not, comment on why not.

The court found the Brigade Headquarters provided the required support to the unit.

87. The court deemed the support provided by the Brigade Headquarters in regards to the gay soldier allegedly bullied whilst serving in 2/1RNZIR to be appropriate. The court noted the complexity of the issue was beyond the expertise of command at all levels and required heavy input from support services to support command.¹⁷²

88. The court found that the unit made a significant effort to improve its culture and behaviours, including policy and guidance targeted at identified culture issues.¹⁷³ The court found the unit bore the brunt of the responsibility to pursue its culture issues, and found no evidence where the Brigade Headquarters opposed the approach of the unit. The court found this approach to be appropriate, as the culture of the unit is the responsibility of the unit command team.

¹⁷² Exhibits A and AP

¹⁷³ Exhibits A, E, F, G, H, K, M, AB, AK, AL, AM, AQ, AW, BA and CF

TOR 19: Was the command of 2/1 Bn RNZIR appropriately trained and resourced to enable them to respond to welfare issues?

The court found the external resources available to 2/1RNZIR to be adequate, and represented greater support than what individuals would receive outside the NZDF. The court found the command teams of 2/1RNZIR relied upon professional military judgement based on their respective experiences to deal with welfare issues. No targeted military training occurred to prepare individuals for significant welfare cases. The court found compliance training did not prepare most individuals to properly understand welfare support processes.

89. The court found that although the command acted mainly in line with direction provided in policy, it was not aware of all policies.¹⁷⁴ The court found evidence at all levels of command to suggest there was a lack of awareness and training as to how to approach many of the welfare and disciplinary issues it faced. The court found individuals used professional military judgement when they were comfortable, and sought advice when they felt an issue was beyond their knowledge and expertise; however, there was a lack of awareness of how to utilise the support services to best support personnel.¹⁷⁵

90. The court determined the support services in Burnham mitigated a lot of the associated risk. The court found commanders were more likely to use support services if they had been exposed to them either personally, or through association with an event which required intervention from support services.¹⁷⁶

91. The court found 2/1RNZIR suffered from hollowness over the period in question, which placed an expectation on commanders to deal with a wide range of requirements. The court found the pressures on commanders led to a significant amount of stress which the court deemed to be detrimental to the successful achievement of all tasks required of commanders. The court determined commanders remained focused on welfare and did so at the risk of their own health as they worked significant hours to meet all command requirements.¹⁷⁷

92. The court identified some junior members of 2/1RNZIR did not have a working knowledge of what support services were available, despite these being covered annually during compliance training. The court identified the method of delivery for compliance training to not be fit for purpose for junior commanders to retain the required information.¹⁷⁸

¹⁷⁴ Witnesses 20 (01 September 2022, p 27, 28), 67 (10 February 2023, p 1, 2)

¹⁷⁵ Witnesses 3 (23 August 2022, p 20, 21), 5 (p 2 – 24), 6 (p 5), 8 (p 1 – 5), 10 (p 7, 8, 10), 12 (p 27, 28, 53 – 55), 17 (p 1, 2), 18 (p 18, 19), 19 (p 12), 24 (p 11, 12), 29 (p 9, 10), 37 (p 15), 39 (p 6, 7), 48 (p 10, 11), 51 (p 2, 3), 60 (p 3)

¹⁷⁶ Witnesses 9 (p 27), 17 (p 2)

¹⁷⁷ Witnesses 14 (p 11), 18 (p 9, 10), 20 (19 October 2022, p 1 – 17), 41 (p 3, 4, 6, 7) and Exhibits BU and BV

¹⁷⁸ Witnesses 15 (p 6), 19 (p 10, 11), 24 (p 12, 13), 29 (p 3, 8, 9), 39 (p 16, 17), 45 (p 15, 16), 48 (p 10), 52 (p 27, 28)

TOR 20: What were accepted behaviours and practice around substance misuse?

The court found no evidence to suggest drug use was a systemic problem in 2/1RNZIR. The court found alcohol to be a significant contributing factor in many disciplinary cases. The court found 2/1RNZIR identified these issues and worked towards improving alcohol culture.

93. The court found no evidence to suggest 2/1RNZIR did not abide by policies and procedures relating to the misuse of drugs and alcohol. The court noted alcohol remained a common factor in many disciplinary issues. The court found of the 12 investigations focused on alleged common assault, seven incidents involved excess alcohol consumption.¹⁷⁹ The court found alcohol did not play a factor in the majority of cases referred to JMPU South for investigation.¹⁸⁰

94. The court found one instance where the 2/1RNZIR hierarchy did not conduct a thorough appreciation of their approach to alcohol consumption resulting in several disciplinary incidents during the Battalion Birthday celebrations.¹⁸¹ The court determined the 2/1RNZIR hierarchy understood this oversight and the incoming Regimental Sergeant Major also highlighted it was a mistake the unit would not repeat.¹⁸² The court deemed this oversight by the hierarchy to be a one off and not reflective of their intended 2/1RNZIR culture approach.¹⁸³

95. The court determined the sub-cultures surrounding the use of alcohol, although not solely a 2/1RNZIR issue, was not conducive to maintaining good discipline. The court found that although the 2/1RNZIR hierarchy worked to influence an improved alcohol use culture, the pressures placed on 2/1RNZIR personnel by Operation PROTECT, remuneration shortfalls, hollowness and a lack of engaged training worked against these efforts.¹⁸⁴ The court determined the poor culture surrounding the use of alcohol to be an Army wide factor, not confined solely to 2/1RNZIR.

96. The court found no evidence to suggest drug use was a systematic issue in 2/1RNZIR.

97. The court identified one witness who stated the use of methylenedioxymethamphetamine (MDMA) was common.¹⁸⁵ The court found no further evidence to prove further MDMA use.

98. The court found one witness who identified a significant issue relating to marijuana which was dealt with by the unit and reflected in their disciplinary actions relating to drug offences.¹⁸⁶ The court found ten incidents of marijuana use by 2/1RNZIR personnel over the period in question.

¹⁷⁹ Exhibits Y and AY

¹⁸⁰ Exhibit AY

¹⁸¹ Witnesses

¹⁸² Witness 32 (p 18 – 20)

¹⁸³ Exhibit H

¹⁸⁴ Witnesses 3 (23 August 2022, p 3, 4, 12. 26 August 2022, p 7, 8, 9), 4 (p 8), 5 (p 5, 6, 7, 8, 16), 8 (p 9, 10, 11, 13, 14, 18), 10 (p 2), 11 (p 18), 12 (p 20), 13 (p 11), 14 (p 8, 9), 15 (p 4, 5), 16 (p 1, 2), 18 (p 9, 10), 20 (01 September 2022, p 15, 25, 31, 33, 36. 19 October 2022, p 1 – 17), 22 (p 8, 9, 24, 25), 23 (02 September 2022, p 3), 25 (p 6), 30 (p 15), 34 (p 4, 10, 11), 37 (p 6, 8), 38 (p 5, 6), 39 (p 14, 15), 41 (p 10 – 12), 43 (p 3, 4, 8), 50 (p 6, 7, 17, 27, 28), 58 (p 12), 60 (p 15), 62 (p 10), 63 (p 15), 64 (p 32) and Exhibits BU and BV

¹⁸⁵ Witness 8 (p 6)

¹⁸⁶ Witness 10 (p 2) and Exhibits Y and AY

Where applicable these were referred to JMPU South for investigation.¹⁸⁷ The court found four individuals from 2/1RNZIR who were investigated by JMPU and charged with cannabis related offences over the period in question. The court noted 2/1RNZIR made up the majority of drug related offences recorded by JMPU South over the period in question.¹⁸⁸

99. The court determined the infrequency of current drug testing provided greater opportunity for drug users to avoid detection.¹⁸⁹

¹⁸⁷ Exhibit Y

¹⁸⁸ Exhibit AY

¹⁸⁹ Witness 50 (p 18)

Policies - Bullying and Harassment:

TOR 21: Which orders, instructions, policies and procedures applied to responding to bullying and harassment allegations?

The court found 2/1RNZIR generally complied with relevant orders, instructions, policies and procedures; however, there were minor exceptions when this did not occur. Application and sufficiency of said orders, instructions, policies and procedures was dependant on the level of command within 2/1 RNZIR, and the individual's trained state of knowledge of policies and procedures.

100. The court found the below orders, instructions, policies and procedures relate to harassment and bullying:¹⁹⁰

- a. List of Anti-Harassment Advisors (AHAs) in 2/1 RNZIR.¹⁹¹
- b. DFO3, Part 5 - Understanding The New Zealand Defence Force Workplace Environment.¹⁹²

101. The court found the Commanding Officer, Lieutenant Colonel Neale (who took over the unit in August 2020) and his Regimental Sergeant Major, Warrant Officer Class 1 Cantwell (already in the role under the previous Commanding Officer) identified several issues surrounding the culture in the unit post the Commanding Officer handover and introductory period.¹⁹³

102. The court found Lieutenant Colonel Neale worked to address concerns around culture, which included preventing bullying and harassing behaviour, using the following means:

- a. 04 November 2020. Warning Order for the Commanding Officer's Command Directive. The court found Lieutenant Colonel Neale produced this document based on his assessment of where the unit's trained state and culture was at post his handover. The document focused on providing immediate direction and included minor direction on unit culture expectations.¹⁹⁴
- b. Culture Campaign. The focus on improving culture led to a stream of work to ensure a positive and inclusive unit culture. This work commenced in 2021 and included a range of planning sessions and concluded with a formal directive, the 2/1RNZIR Culture Campaign Plan, released on 09 February 2022.¹⁹⁵
- c. Lieutenant Colonel Neale speeches to the Unit and Army events on 10 March 2022, 01 July 2022 and 30 July 2022. Amongst the topics covered were achieving unit resilience,

¹⁹⁰ Findings for this TOR are also covered in TORs 2, 3, 12 and 23.

¹⁹¹ Exhibit I

¹⁹² Exhibit CI

¹⁹³ Witnesses 20 (01 September 2023, p 4 – 7), 22 (p 1, 2), 32 (p 2)

¹⁹⁴ Exhibit B

¹⁹⁵ Exhibits C, E, F, H, AK, AL

improving behavioural standards, inclusiveness, avoiding bias, mental health and wellbeing.¹⁹⁶

- d. Multiple presentations on OP RESPECT, Culture and Resilience.¹⁹⁷

TOR 21 (a): To what extent were the applicable orders, instructions, policies and procedures complied with?

and

TOR 21 (b): Were these references sufficient in the specified context?

103. The court found the following in regards to orders, instructions, policies and procedures:

- a. Defence Force Orders, Part 5, outlines the process for managing bullying and harassment complaints, which includes completion of an MD1037. The court found the unit did not complete these forms in the process of conducting investigations or managing complaints.¹⁹⁸ The court found AHA's had received training on using the MD1037; however, as AHA's were seldom used by personnel in 2/1RNZIR (see TOR 4 findings) the complaints were generally managed by command. The court found the unit command was not aware of the MD1037 requirement.¹⁹⁹
- b. In line with findings at TOR 4, AHAs were available throughout 2/1RNZIR and Burnham Camp. The court found some AHA trained personnel were not suitable for the role and some personnel were directed to attend AHA training to moderate and amend their own behaviours related to bullying and harassment.²⁰⁰ The court found as a result, AHAs were not always trusted by those needing to make a harassment or bullying complaint. As such, individuals seeking assistance were more likely to seek support from their chain of command or an external support services provider.²⁰¹

104. The court found no evidence to suggest members of 2/1RNZIR command were not compliant with the culture direction from the Battalion Headquarters. The court found the approach taken by Lieutenant Colonel Neale to involve all sub-units in the development of the plan to be conducive to buy in from the sub-units.²⁰² The court did find the documents to be complex and less accessible beyond the sub-unit headquarters level and an improved communications plan was required to gain better awareness across the unit.²⁰³

¹⁹⁶ Exhibits AF, AG, AH

¹⁹⁷ Exhibits AM, AO, AQ

¹⁹⁸ Witness 67 (10 February 2023, p 1)

¹⁹⁹ Witness 67 (10 February 2023, p 3 – 4)

²⁰⁰ Witness 67 (10 February 2023, p 3)

²⁰¹ Witnesses 67 (10 February 2023, p 3), 3 (23 August 2022, p 21), 6 (p 2), 7 (p 20), 8 (p 8), 10 (p 8), 39 (p 18), 59 (p 21), 62 (p 17 – 18).

²⁰² Witnesses 10 (p 3, 4), 20 (01 September 2022, p 17 – 21),

²⁰³ Witness 10 (p 3 – 5), 37 (p 12, 13), 50 (p 9 – 13), 53 (p 9, 10)

TOR 22: Welfare and wellbeing issues:

The court identified a range of orders, instructions, policies and procedures, all of which were complied with to varying levels. At times policy documents were contradictory or inconsistent with each other, or policies, orders or procedures were out-dated or were insufficient in meeting wellbeing and welfare needs of service personnel. This often limited the ability for appropriate application of NZDF policies at unit level, resulting in a more localised approach to providing wellbeing solutions. In addition command and support services were stretched for resources to respond, this was exacerbated by operational tempo, support to OP PROTECT and multiple COVID-19 lock downs.

TOR 22 (a): Which orders, instructions, policies and procedures applied to responding to welfare and wellbeing issues?

105. The court found evidence of a range of NZDF, NZ Army, 1st (NZ) Brigade and 2/1 RNZIR instructions, policies and procedures relating to issues associated with welfare and wellbeing.

106. Documentation relating to NZDF Medical support included:

- a. Defence Health Medical Standards.²⁰⁴
- b. NZDF Health Policy: Sharing Health Information.²⁰⁵
- c. NZDF Mental Health Care Pathways – QRG.²⁰⁶
- d. FRAGO 002 to JSG Command Directive 01/22 dated 16 September 2022.²⁰⁷

107. Documentation relating to psychological support included:

- a. Psychological Support to Operations Guidance²⁰⁸
- b. Higher Psychological Support to Operations Guidance.²⁰⁹
- c. Operation PROTECT Psychological Support Standard Operating Procedures.²¹⁰
- d. Operation PROTECT Follow Up Guidance.²¹¹

²⁰⁴ Exhibit BX

²⁰⁵ Exhibit BY

²⁰⁶ Exhibit BZ

²⁰⁷ Exhibit CE

²⁰⁸ Exhibit BL

²⁰⁹ Exhibit BL

²¹⁰ Exhibit BI

²¹¹ Exhibit BJ

- e. Burnham Military Camp Psychological Guidance on Change at the Unit Level²¹²

108. Documentation associated with COVID-19 / Operation PROTECT related wellbeing and welfare issues included:

- a. Operation PROTECT Psychological Support Standard Operating Procedures.²¹³
- b. Operation PROTECT Follow Up Guidance.²¹⁴
- c. Operation PROTECT After Action Review – Lieutenant Commander Matt Harrison (noting this document is not policy; however, provides commentary on policy and procedures).²¹⁵
- d. Critical Incident Response Guidance Operation PROTECT.²¹⁶
- e. OPORD 039/21 – Support to Operation PROTECT and Unit Reduced Activity Plan.²¹⁷

109. Documentation associated with rehabilitation of personal included:

- a. NZDF Rehabilitation Policies.²¹⁸
- b. 2/1 Wellbeing Workplan Proposal.²¹⁹
- c. 2/1 RNZIR Individual Goals and Return to Work Plan.²²⁰
- d. Burnham Military Camp Rehabilitation Guide.²²¹
- e. 3 Combat Service Support Battalion (3CSSB) Initial Injury, Individual Goals and Return to Deployability Plan.²²²
- f. 2/1 RNZIR Rehabilitation Management Changes.²²³

110. Documentation associated with Mental Health included:

- a. NZDF Mental Health Care Pathways – QRG.²²⁴
- b. WNGO 046/22 – 2/1RNZIR Mental Health Awareness Training.²²⁵

²¹² Exhibit AX

²¹³ Exhibit BI

²¹⁴ Exhibit BJ

²¹⁵ Exhibit BM

²¹⁶ Exhibit BN

²¹⁷ Exhibit J

²¹⁸ Exhibit BQ

²¹⁹ Exhibit AW

²²⁰ Exhibit BO

²²¹ Exhibit BT

²²² Exhibit BP

²²³ Exhibit AR

²²⁴ Exhibit BZ

²²⁵ Exhibit Z

111. Documentation associated with 2/1 RNZIR internal wellbeing and welfare initiatives included:

- a. WNGO 046/22 – 2/1RNZIR Mental Health Awareness Training.²²⁶
- b. Depot Company Training Documents.²²⁷
- c. Outline of Pakari Programme.²²⁸
- d. 2/1 RNZIR Campaign Plan – Compliance Training February 2022.²²⁹
- e. 2/1 RNZIR Rehabilitation Management changes.²³⁰
- f. 2/1 Wellbeing Workplan Proposal.²³¹

112. The court was also presented with the following documents to represent comparisons on where the NZDF Rehabilitation policy is at with regards to its ally and a key partner:

- a. Australian Defence Force Rehabilitation Program Procedures Manual.²³²
- b. Canadian Armed Forces – The Guide.²³³

TOR 22 (b): To what extent were the applicable orders, instructions, policies and procedures complied with?

and

TOR 22 (c): Were these references sufficient in the specified context?

113. The court found that orders, instructions, policies and procedures were complied with to varying degrees.²³⁴ Application and sufficiency of said orders, instructions, policies and procedures was dependant on the level of command within 2/1 RNZIR, individuals trained state of knowledge of policies and procedures, capacity of staff to address welfare concerns, willingness of individuals to seek wellbeing support and capacity of support services to provide care and solutions.

114. Application of NZDF Medical orders, instructions, policies and procedures:

- a. The court found tension existing for service-personnel around seeking appropriate medical support, in part because the NZDF is both their medical provider and their employer.²³⁵ The court found commanders²³⁶ lacked an understanding as to the

²²⁶ Exhibit Z

²²⁷ Exhibit AB

²²⁸ Exhibit AJ

²²⁹ Exhibit AQ

²³⁰ Exhibit AR

²³¹ Exhibit AW

²³² Exhibit BR

²³³ Exhibit BS

²³⁴ The court findings at TORs 11 and 16 also apply to this TOR.

²³⁵ Witness 26 (07 September 2022, p 2)

²³⁶ Commanders in this instance are not solely limited to 2/1 RNZIR. Health related witnesses referred to command across the organisation.

purpose or intent of the NZDF Medical Employment Standards found within Exhibit BX.²³⁷ The court found the following in relation to these standards:

- (1) A medical employment standard informs the employer (command) of any occupational restrictions and how a service-person can be employed.²³⁸ The court found this to be incorrectly referred to by non-medical personnel as a medical grading, and associated this as a service-person being medically downgraded and non-deployable.²³⁹
 - (2) Consequently the medical employment standard is often utilised incorrectly in relation to service-personnel's day to day employment and career progression associated with daily outputs, coursing and promotion.²⁴⁰
 - (3) The court found the shortfalls in understanding the application of this medical standard led to some service-personnel not seeking appropriate medical support through fear of it limiting career progression, or the stigma associated with being downgraded or needing support in relation to mental health conditions.²⁴¹ The court found where medical assistance was sought, it was often delayed to the point of extreme need, resulting in greater medical support needed and a longer recovery period.²⁴² Additionally, the court found some service-personnel chose to seek medical support outside of the NZDF system.²⁴³
- b. Exhibit CE outlined the JSG prioritisation of medical support. This FRAGO directed clinical priorities to focus on immediate care, including mental health, with a de-prioritisation of non-urgent medical support like routine medical boards.²⁴⁴
- (1) This prioritisation was well understood and applied by personnel within the NZDF health and medical system. However, Defence Health saw individuals pressured to be deployable, driving soldiers to demand medical boards to ensure they had a medical grading that enabled them to have a cleared deployability status.²⁴⁵
 - (2) The court found that to meet the medical outputs, the staff establishment level of the Burnham Force Health was almost complete, with 11 out of 13 clinical roles filled and all roles likely to be filled by the end of 2022.²⁴⁶ The court did note three of the GPs are considered locums / contractors, rather than permanent staff, and are consequently not NZDF employees with the associated benefits.²⁴⁷ The court noted that these clinicians were not able to work during Covid-19 lockdowns as they were contractors.²⁴⁸

²³⁷ Witness 26 (07 September 2022, p 14)

²³⁸ Witnesses 27 (p 14 – 15), 63 (20 October 2022, p 1-2) and Exhibit BX.

²³⁹ Witness 63 (20 October 2022, p 1 – 2, 7 – 9)

²⁴⁰ Witnesses 63 (20 October 2022, p 7 – 9) Witness 26 (07 September 2022, p 3, 14 – 15), Witness 27 (p 14 – 16)

²⁴¹ Witnesses 11 (24 August 2022, p2 – 4), 66 (26 October 2022, p 7 – 8), 26 (07 September 2022, p 2 – 3)

²⁴² Witness 66 (26 October 2022, p 8)

²⁴³ Witness 26 (07 September 2022, p 13)

²⁴⁴ Witness 66 (26 October 2022, p 2, 8 – 9) and Exhibit CE

²⁴⁵ Witness 66 (26 October 2022, p 18)

²⁴⁶ Witness 66 (26 October 2022, p 3) and Exhibit CA

²⁴⁷ Witness 66 (26 October 2022, p 16)

²⁴⁸ Witness 66 (26 October 2022, p 16)

- (1) The court identified that there may be potential NZDF employment law compliance issues around the long-term employment of locums.²⁴⁹

115. Application of psychological support orders, instructions, policies and procedures.

- a. Exhibit BK is the Psychological support to Operations SOP. This is supported by Exhibit BL which is the Psychological support to High Psychological Threat Missions SOP. These SOPs outline the administrative and functional aspects to conduct psychological support to operations with key outcomes being to²⁵⁰:
 - (1) Psychologically prepare service personnel to undertake military operations.
 - (2) Provide support to critical incidents that may occur during operations.
 - (3) Provide guidance and support to command for resilience and performance of personnel on operations.
 - (4) Support personnel transitioning back to garrison following military operations.
- b. The court found evidence individuals who deployed on MANAWA 10 had some ongoing welfare and wellbeing concerns that were potentially linked to operational incidents.²⁵¹ Refer to TOR 24 as a contributing factor.

116. Application of Covid-19 / OP PROTECT related wellbeing and welfare orders, instructions, policies and procedures.

- a. Exhibit BI outlined the Psychological Support to MIQF as an SOP. This provided a framework for psychologist support OP PROTECT tasks, including key deliverables and psyche support required for both individuals and groups. Further it outlines Pre-Deployment Training (PDT), psychological screening and reporting, and key guidance on Managing Stress and Fatigue, mental health first aid and dealing with critical incidents.²⁵² The court found psychologists briefed contingents as part of the PDT.²⁵³
- b. Exhibit BJ, is a flowchart that outlines the OP PROTECT follow-up guidelines for all psychological screening.²⁵⁴
- c. A range of individuals felt that the psychological, mental health and wellbeing support was either inadequate or did not occur IAW OP PROTECT psychological screening SOPs.²⁵⁵ The court found evidence that 2/1 RNZIR leaders felt better supported from an overall welfare and wellbeing perspective when they deployed their Padre to the Auckland Security Group (ASG).²⁵⁶

²⁴⁹ Witness 66 (26 October 2022, p 17)

²⁵⁰ Witness 57 (p 1 – 2), Exhibits BK and BL

²⁵¹ Witnesses 3 (26 August p 7), 5 (p 4 – 5), 12 (p 20 – 21), 39 (p 16), 43 (p 3), 48 (p 12), 62 (p 10)

²⁵² Witness 57 (p 1) and Exhibit BI

²⁵³ Witness 57 (p 3 – 4)

²⁵⁴ Witness 57 (p 1) and Exhibit BJ

²⁵⁵ Witnesses 57 (p 1 – 2), 3 (26 August p 10 and 23 August p 9 – 10), 5 (p 16)

²⁵⁶ Witness 3 (23 August p 9 – 10)

117. Application of rehabilitation orders, instructions, policies and procedures.

- a. The court found evidence of limited centralised or overarching NZDF policy on rehabilitation. The court acknowledged a rehabilitation policy is in draft within Defence Health but has yet to be implemented. The court determined the lack of a policy during the period in question created additional welfare risk to 2/1RNZIR personnel, their command and 2/1RNZIR overall readiness.²⁵⁷
- b. The current medical policies and instructions focused predominantly on musculoskeletal based injuries. This was considered the most cohesive rehabilitation policy element in the NZDF.²⁵⁸
- c. Localised rehabilitation procedures and processes were developed in Burnham to support Burnham based units, including 2/1 RNZIR.²⁵⁹
 - (1) Burnham was piloting a rehabilitation process to support wider development of a NZDF rehabilitation plan.²⁶⁰
 - (2) In addition 2/1 RNZIR developed their own SOP to support rehabilitation of their personnel. This included return to work plans.²⁶¹
- d. In 2022 Defence Health directed a greater focus on executing the MDT policy. The court determined this approach will deliver an improved rehabilitation and return to work plan for patients.²⁶²
- e. Evidence indicated that there is stigma within 2/1 RNZIR and the wider Army, associated with rehab, and the process for recovery.²⁶³ This is at times limiting people's ability to complete rehab properly as individuals are concerned about the judgement associated with their rehab plan.²⁶⁴
- f. In addition evidence indicated that rehabilitation associated appointments were not always attended, with army camps being the worst from non-attendance or the cancellation of medical appointments.²⁶⁵ As an example, September 2022 NZDF Health data indicate that within Burnham 7% of physiotherapy appointments made were not attended by the patient.²⁶⁶

118. Application of Mental Health orders, instructions, policies and procedures.

- a. The court found evidence that directives or practice guidance documents that touch on mental health or mental health conditions are inconsistent with each other, creating inconsistent application within the NZDF health system.

²⁵⁷ Witnesses 39 (p 9 – 10), 60 (p 1 – 2), 61 (p 2)

²⁵⁸ Witness 61 (p 2) and Exhibit BQ

²⁵⁹ Witness 60 (p 2 – 3), 61 (p 5 – 7) and Exhibits BO and BP

²⁶⁰ Witness 66 (p 14)

²⁶¹ Witness 39 (p 9 – 10) and Exhibits AR and BO

²⁶² Witnesses 63 (p 10 – 13), 66 (p 14)

²⁶³ Witness 60 (p 13 – 14)

²⁶⁴ Witnesses 60 (p 14), 17 (p 2 – 3)

²⁶⁵ Witness 66 (26 October 2022, p 13)

²⁶⁶ Exhibit CD (p 12)

- (1) This included either conservative management of effective disorders (mood, anxiety being the most common in NZDF) or a more judgement based approach. Various management approaches have previously resulted in inconsistent management strategies for patients presenting with mental health conditions.²⁶⁷
 - (2) The NZDF Mental Health Care Pathways Quick Reference Guide indicates that a patient can be referred for a number of external clinical appointments in support of mental health related care. This number is dependant on the mental health severity and can range from 6-18 sessions. A medical officer (MO) is authorised to refer up to 12 session, with a clinical update provided back to them every six sessions.²⁶⁸
 - (a) At the time of the court the pathways plan had not been fully implemented.²⁶⁹ Consequently, the court found that referrals to clinical support were inconsistently applied.²⁷⁰
 - (b) NZDF mental health pathway enables medical staff and psychology services to service and assess risk in the same way.²⁷¹
 - (3) The use of rehab as a way to manage mental health, and support mental health responses, is not being done particularly well.²⁷²
- b. The court found that ongoing stigma associated with mental health was also limiting individuals accessing metal health resources or support, this included speaking with NZDF psychologists.²⁷³

TOR 23: External support services involvement with command:

TOR 23 (a): In respect of NZDF support services external to the unit, which NZDF orders, instructions, policies and procedures exist to ensure that command are informed of, and updated on, issues of bullying and harassment, and welfare and wellbeing within their unit?

and

TOR 23 (b): Are those orders, instructions, policies and procedures sufficient to keep command appropriately informed of, and updated on, issues of bullying and harassment, and welfare and wellbeing within their unit?

119. The court found that Burnham health entities and interaction with command varied and was often personality driven, based on leadership position and knowledge of commanders. The court

²⁶⁷ Witness 26 (07 September 2022, p 1)

²⁶⁸ Witness 26 (07 September 2022, p 17) and Exhibit BZ

²⁶⁹ Witness 66 (26 October 2022, p 7)

²⁷⁰ Witness 66 (26 October 2022, p 7)

²⁷¹ Witness 26 (07 September 2022, p 5)

²⁷² Witness 26 (07 September 2022, p 4)

²⁷³ Witnesses 26 (07 September 2022, p 12), 5 (p 17 – 18), 26 (07 September 2022, p 12 – 13), 66 (p 8)

identified that more successful outcomes for personnel occurred when command saw the health team or provider as part of the solution; rather than waiting until there was a problem and then is too late to harder to solve.²⁷⁴ There was evidence within 2/1 RNZIR that this command issue stemmed at the lower sub-unit level rather than those that are engaged at unit level and higher.²⁷⁵

- a. The court found that understanding what support or services external support agencies provide varies due to level of command, individual experiences and the rank of the individual.²⁷⁶ As an example military psychologists are often seen as having a clinical component, which is not accurate.²⁷⁷

120. The court found that in relation to keeping command informed or updated on, issues of bullying and harassment, and welfare and wellbeing within their unit, there is a critical requirement to gain consent from individual involved.²⁷⁸

- a. NZDF policy on consent varies between medical services and other non-medical support services. Generally, command can be informed of any element of a service-person's bullying and harassment, and welfare and wellbeing issues, as long as they give consent to do so.²⁷⁹
- b. At times command may not be fully aware of a situation due to this consent limitation, linked to privacy and Health codes of practice.²⁸⁰

121. The court found that in relation to mental health, command is an integral part of mental health and wellness response.²⁸¹ It is a shared responsibility between support agencies and command elements.²⁸² To support this integration, wellness meetings were held for units within Burnham Camp, however these meetings are conducted slightly differently between units. A wellness meeting is a way for health professionals, support services and command to discuss service-personal and appropriate support plans required to meet individuals' needs.²⁸³

- a. The Court found evidence that medical staff had observed an increase in mental health incidents over last 2 years²⁸⁴, and that the CO of 2/1 RNZIR was warned about patients' concerns due to mental well-being.²⁸⁵
- b. The Court found evidence that the relationship between command and medical providers has changed since the removal of Regimental Aid Posts (RAPs); this includes

²⁷⁴ Witness 66 (26 October 2022, p 12)

²⁷⁵ Witness 66 (26 October 2022, p 12 – 13)

²⁷⁶ Witness 57 (p 6)

²⁷⁷ Witness 57 (p 6)

²⁷⁸ Witness 7 (p 1, 3), Witness 8 (p 2-3), Witness 11 (p 10), Witness 14 (p 15), Witness 26 (p 7), Witness 28 (p 7), Witness 60 (p 3), Witness 63 (p 3-4)

²⁷⁹ Witness 4 (p 3), Witness 5 (p 11), Witness 7 (p 1, 3), Witness 8 (p 2-3), Witness 11 (p 10,16-17), Witness 14 (p 4, 6, 15), Witness 26 (p 7, 24), Witness 27 (p 13), Witness 60 (p 3), Witness 63 (p 3-4)

²⁸⁰ Witness 63 (p 15)

²⁸¹ Witness 26 (07 September 2022, p 4)

²⁸² Witness 66 (26 October 2022, p 8)

²⁸³ Witness 7 (p 1, 3) Witness 8 (p 2), Witness 11 (p 9), Witness 20 (1 September 22, p 11),

²⁸⁴ Witness 11 (p 10)

²⁸⁵ Witness 11 (p 2)

provision of advice to HQ staff. RAPs enabled the building of trust and focusing on how medical entities (in particular Medical Officers) could specifically help individual units. The court found evidence that this risked degrading medical responses for personnel.²⁸⁶

- c. The court found evidence that in relation to command, agency to the patient is important to ensure they are an active participant in treatment plan, which is then supported to share relevant requirements with command.²⁸⁷
- d. The court found evidence that 2/1 RNZIR held wellness meetings during 2021-22, but these were done so inconsistently.²⁸⁸

122. Separate to unit integrated wellness meetings, the court found evidence that Multi-Disciplinary Teams (MDT) meetings were being held. This is a meeting that supports collaborative teams of medical professionals to use a process for getting patients back to deployability levels.²⁸⁹

- a. Evidence indicated that MDTs are an important part of a mental health response, and other complex cases, and enables other perspectives to support and develop treatment plans for individuals.²⁹⁰ Further, the court found that a coherent integrated treatment plan developed by an MDT is generally best for mental health treatment.²⁹¹
- b. The court found evidence that the MDT approach is still in the process of being embedded as a consistent NZDF Health policy. Observation amongst health professionals is that the MDT directive/policy is inconsistently applied and varied implementation between camps and bases.²⁹²
- c. The court found evidence that in Burnham, MDTs are held once a month.²⁹³

123. The court found evidence that the medical system is under strain with staff levels at approximately 70%.²⁹⁴ Resourcing gaps in Burnham were identified with active solutions being worked towards to close these gaps.²⁹⁵

124. In addition to resourcing gaps, the court found additional evidence indicating some health professionals were not able to apply their full scope of practice due to NZDF policies putting greater reliance and responsibility on doctors. Based on NZDF medical policy, nursing scope is much narrower than external health providers. Advanced nursing practices can help mitigate the reliance on doctors and can supplement Medical Officers' (MOs) outputs. This can provide greater workforce flexibility, especially as MOs are hard to secure and expensive.²⁹⁶ As an example, for women's

²⁸⁶ Witness 11 (p 8)

²⁸⁷ Witness 26 (07 September 2022, p 7)

²⁸⁸ Witness 7 (p 3), Witness 8 (p 2-3), Witness 20 (1 September 22, p 11)

²⁸⁹ Witness 11 (p 9)

²⁹⁰ Witness 26 (07 September 2022, p 5)

²⁹¹ Witness 26 (07 September 2022, p 6)

²⁹² Witnesses 63 (p 15), 26 (p 5 – 6)

²⁹³ Witness 60 (p 5)

²⁹⁴ Witnesses 26 (p 9), 63 (p 15)

²⁹⁵ Witness 66 (26 October 2022, p 15, 16) and Exhibits CA and CD

²⁹⁶ Witness 66 (26 October 2022, p 10)

health, the administration of some contraceptive devices can be administered by external nurses, however they aren't enabled to do this within NZDF policy settings.²⁹⁷

Additional Matters Considered

TOR 24: Comment on any other matters the Court considers relevant to the purpose of the inquiry.

Contributing Factors

The court found several factors outside of the control of 2/1RNZIR which placed pressure on personnel, leading to increased individual and organisational stress.

These included 2/1RNZIR's involvement in Operation PROTECT, significant remuneration shortfalls and a lack of operational opportunities leading to high attrition, unit hollowness, and the subsequent pressures to regenerate the unit with less personnel.

125. **Operation PROTECT Duties.** The court found the following in relation to 2/1RNZIR's involvement with Operation PROTECT:

- a. The court found 2/1RNZIR to be significantly impacted by Operation PROTECT duties during the period of focus for the inquiry. The associated isolation and lack of consistent chains of command normally present in the unit exacerbated existing issues for some soldiers and made oversight of these issues difficult to achieve for commanders. The lack of military training due to the focus on Operation PROTECT also created issues leading to people departing the service or becoming frustrated with the service.²⁹⁸
- b. The court found the Pre-Deployment Training (PDT) for Operation PROTECT to be lacking at times from a welfare perspective in that it did not provide clear direction for how to seek support. This increased the risk to NZDF personnel deploying to conduct hotel security work. The court found that although there was good planning and direction in place from NZDF psychologists, evidence suggests it did not always occur as planned.²⁹⁹
- c. The court found evidence to suggest a lack of sleep (quality and quantity) was a factor in exacerbating stress during Operation PROTECT. The court found some soldiers relied upon pharmaceutical remedies to achieve sleep during shift work or high periods of stress.³⁰⁰
- d. The court found the psychological debriefs which occurred post the Operation PROTECT deployments were perceived as insufficient by junior members of contingents. The

²⁹⁷ Witness 66 (26 October 2022, p 11)

²⁹⁸ Witnesses 3 (23 August 2022, p 3, 4, 12, 26 August 2022, p 7, 8, 9), 4 (p 8), 5 (p 5, 6, 7, 8), 7 (p 11), 8 (p 9, 10, 18), 10 (p 2), 11 (p 18), 14 (p 8, 9), 15 (p 4, 5), 16 (p 1, 2), 20 (01 September 2022, p 15, 25, 31, 33, 36), 22 (p 8, 9, 24, 25), 23 (02 September 2022, p 3), 25 (p 6), 39 (p 14), 43 (p 8), 50 (p 6, 17, 27, 28), 58 (p 12), 60 (p 15), 64 (p 32)

²⁹⁹ Witnesses 5 (p 16), 16 (p 33), 29 (p 8, 9) and Exhibit BI, BJ, BM

³⁰⁰ Witnesses 5 (p 7, 8), 14 (p 8, 9)

court found this could have contributed to exacerbating stress in individuals who did not feel they were being supported.³⁰¹

- e. The court found the level of pastoral care available to 2/1RNZIR rotations to Auckland based locations to be insufficient in the initial stages of Operation PROTECT and created significant risk for personnel. The court found the unit Chaplain and the unit command had to step in to ensure the right level of pastoral care was in place for their people.³⁰²
- f. The court found the lack of decompression, or whakanoa and whakawātea approaches, risked creating future issues for those who developed issues during their Operation PROTECT duties.³⁰³

126. **Hollowness.** The court found 2/1RNZIR to be under significant pressure to maintain high standards of training whilst balancing the requirements of organisational hollowness. The court found 2/1RNZIR had to accept risk in posting individuals to meet training and operational requirements due to a shortfall in available personnel. The court determined significant risk also existed in relation to shallowness, where the unit did not have sufficiently qualified personnel to cover gaps left by individuals departing the service or meeting service obligations elsewhere.³⁰⁴ The court found Operation TIEKE exacerbated the risks posed by hollowness and shallowness.³⁰⁵ The court found the number of disciplinary incidents at Combat Corps Training reflected the risks associated with hollowness and meeting the instructor requirements to conduct Combat Corps Training whilst balancing operational and training requirements.³⁰⁶

127. **Personal Financial Pressure.** The court found the following financial pressures exacerbated stress in 2/1RNZIR:

- a. The court found evidence that the lack of appropriate remuneration for members of 2/1RNZIR created additional stress on individuals which became a contributing factor to reducing unit cohesiveness.³⁰⁷
- b. The court found the decision to reduce service housing to six years created stress amongst members of the unit, exacerbating already significant financial stress for some.³⁰⁸

Transition from Basic Training to Combat Corps Training. The court found evidence that the current approach to Ab Initio Training did not adequately prepare combat soldiers for Combat Corps Training.³⁰⁹ The high attrition rates experienced during Combat Corps Training suggested to the court that a different approach is required to transition soldiers from Basic Training, through Combat Corps Training and into the unit.

³⁰¹ Witnesses 15 (p 5), 25 (p 11), 59 (p 10, 11)

³⁰² Witnesses 5 (p 6, 7), 16 (p 31)

³⁰³ Witness 8 (p 18)

³⁰⁴ Witnesses 11 (p 2), 18 (p 7, 8), 20 (19 October 2022, p), 41 (p 17 – 19)

³⁰⁵ Witnesses 18 (p 7, 8, 10), 20 (01 September 2022, p 31)

³⁰⁶ Witnesses 18 (p 7, 8), 20 (01 September 2023, p 9, 19 October 2022, p 4 – 7), Exhibit Y

³⁰⁷ Witnesses 4 (p 8), 5 (p 6), 8 (p 11, 13, 14), 13 (p 11), 20 (01 September 2022, p 33, 19 October 2022, p 2), 22 (p 9), 43 (p 3, 4), 63 (p 15)

³⁰⁸ Witness 41 (p 9)

³⁰⁹ Witnesses 17 (p 14, 15), 18 (p 1, 2)

Exemplar Behaviours and Policies

The court found the current command team focused on improving culture from the start of their tenure, building on the efforts of the previous command team, and sub-unit examples of cultural excellence. The court found the unit put a great deal of effort into confronting negative culture and behaviours.

128. The court found the unit had commenced working on improving areas of concern prior to the period in question.³¹⁰ The court found that Lieutenant Colonel Neale and Warrant Officer Class One Cantwell identified cultural issues within the unit upon arrival in 2020 and implemented a Campaign Plan focusing on cultural improvements, based on NZDF guidance stemming from Operation RESPECT.³¹¹ The court found that although the Campaign Plan was communicated to many within the unit, there remained a lack of understanding which suggested the communication approach needed refining to ensure the messaging was appropriate at the right levels.³¹² s. 9(2)(a)

129. The court found the leadership approach of s. 9(2)(a) and s. 9(2)(a) in 2020 to be exemplary. The court found the majority of junior ranks saw the approach as revolutionary and maintained higher morale during the COVID-19 pandemic than other companies.³¹⁴ The court found issues arose when the Battalion and other Rifle Companies were divergent in their cultural approaches, creating divides within the Battalion. The court found the command team of Lieutenant Colonel Neale and Warrant Officer Class One Cantwell identified this issue and worked to remedy 2/1RNZIR's overall culture within their culture campaign. plan.³¹⁵

130. The court found the command teams of Combat Corps Training had worked hard to introduce a solid base for good culture within the Combat Corps. The court found the approach to be good and well documented. The court also found this to be an area of continuous improvement for the command teams in Depot Company sub-unit headquarters. The court found the incidents relating to negative behaviours on Corps Training went against the command initiated training and guidance and intended culture.³¹⁶

131. The court found the establishment of the Junior Development Council in 2/1RNZIR to be an exemplary action by the unit. s. 9(2)(a) the Council offered an opportunity to enhance culture and inform command.³¹⁷ The court found initial buy-in to the concept was good; however, the effects of Operation PROTECT, hollowness and tempo saw it fail to gain the required

³¹⁰ Exhibit AU

³¹¹ Witness 20 (p 6 – 8, 20, 29, 38), Exhibits F, G, H, AK, AL, AM, AN, AQ, AT,

³¹² Witness 10 (p 3 – 5), 20 (01 September 2022, p 17 – 21), 25 (p 19), 37 (p 12, 13), 50 (p 9 – 13), 53 (p 9, 10)

³¹³ Witness 20 (01 September 2022, p 33, 34)

³¹⁴ Witnesses 12 (p 1 – 21, 31 – 34, 37 – 40, 53, 54), 20 (01 September 2022 p 2, 10), 21 (p 2), 24 (p 3 – 6), 25 (p 6, 10, 13, 14, 15, 17, 18,), 27 (p 6, 7,) and Exhibits K, L, M and AW

³¹⁵ Witness 20 (01 September 2022, p 2, 10), 25 (p 20)

³¹⁶ Witnesses 17 (p 4, 5, 9, 10), 18 (p 2, 16 – 19), 53 (p 3 – 6) and Exhibits AB, BE, BF, BG, BH

³¹⁷ Witnesses 3 (23 August 2022, p 5), 12 (p 13, 14), 20 (01 September 2022, p 5, 8), 22 (p 4, 5), 31 (p 2 – 7), 45 (p 10, 11) and Exhibits A and B

gain traction.³¹⁸ The court deemed the concept to be salvageable, and something which could be replicated across the NZDF to achieve positive outcomes.

132. The court found the unit's approach to expanding development opportunities available to junior members of the unit to be an exemplary approach. The court found the Pakari Programme provided an excellent development opportunity for junior members of the unit. The court noted it was similar to the Institute for Leader Development experiential leadership development activity approach. The court noted Army leadership has viewed this programme to determine suitability for expansion across the Army.³¹⁹ The court also noted the Pakari Programme offered a product similar to what was offered by the NZDF Experiential Leadership Development Activities (ELDA), but focused at a junior soldier/leader level.

³¹⁸ Witnesses 33 (p 4, 5), 45 (p 11)

³¹⁹ Witnesses 3 (23 August 2022, p 3), 5 (p 3, 10), 16 (p 6), 17 (p 18, 19), 20 (01 September 2022, p 15, 16), 30 (p 10, 11) 32 (p 10, 11), 41 (p 19, 20), and Exhibits A and AJ

Recommendations

2/1RNZIR Recommendations:

133. The court makes the following recommendations in relation to 2/1RNZIR:

- a. Formalise in unit policies the code of conduct for training and acknowledgement by staff on Combat Corps Training. NB. This must apply to Combat Corps Trainings run by both infantry battalions and be benchmarked against The Army Depot approach.
- b. Formalise the current unit policy associated with investigating and appropriately documenting all reported incidents to ensure transparency within the unit command directive.
- c. Review the frequency of Integrated Wellness Meetings and the structure of the meetings and make recommendations through the chain of command on an approach which is fit for purpose and reduces risk to personnel.
- d. Identify to Defence Health when Chaplain pastoral support is overwhelmed to enable additional support to be initiated.

NZ Army Recommendations:

134. The court makes the following recommendations in relation to the NZ Army:

- a. LCC aligns applicable corps trainings with the codes of conduct code of conduct for training and acknowledgement by staff on Combat Corps Training. NB. This must apply to Combat Corps Trainings run by both infantry battalions and be benchmarked against The Army Depot approach.
- b. LCC review the concept of the Junior Development Council for feasibility of implementation within NZ Army units.
- c. LCC review the feasibility of re-implementing a formalised mentoring approach for junior leaders.
- d. LCC review where unit consolidation is appropriate to reduce the risks of hollowness created by current attrition rates and operational requirements. Ensure a clear conditions based return to normal transition plan is included in any associated communications plan.
- e. LCC to enhance junior leader development training courses by identifying the relevant skill sets required to deal with welfare issues and including them into applicable areas of the courses.
- f. Army GS G7 provides direction to NZ Army units to report risks associated with hollowness using the Safety Event Management Tool when the health and safety of personnel is clearly at risk.

- g. Army GS explore a system of tools to alleviate the administrative/bureaucratic burden on junior leaders. Consideration is to be given to:
 - (1) Technology solutions as an enabler to leadership:
 - (a) Identifying complimentary planning, execution and lessons capture tools/systems which create time allocation efficiencies.
 - (b) Automatic input of personal information and execution of associated administrative requirements e.g. Australia's PMKeyS model of swiping in and out of an exercise.
 - (2) Enabling a review of sub-unit level processes (e.g. Lean Sigma Six) to ensure best practice is adhered to.
- h. Army GS provide training to unit command teams during Army Pre-Command Courses focusing on:
 - (1) Managing bullying, harassment, welfare and culture issues and the associated online tools and policy guidance.
 - (2) Provision of training around the publication of summary trial findings in the interests of service discipline.
- i. Army GS review how NZ Army delivers compliance training to achieve greater buy in and understanding across all ranks. Consideration must be given to the following:
 - (1) Interactive discussions for appropriate topics, including smaller groups to ensure open discussion.
 - (2) Modernised learning approaches.
 - (3) Continuous access to resources associated with the training.
 - (4) Capturing attendance by attendees.
 - (5) Provision of instruction on how to lay formal complaints and how to report incidents through the chain of command when someone in the chain of command is involved.
- j. Army GS formalise a process of how we whakanoa/whakāwatea our people after significant activities/events in order to help them transition between environments, regain their balance and be less likely to rely on alcohol/illegal substances to deal with issues arising from what they have been exposed to in service of their nation.
- k. Army GS, in line with Operation STAND and Operation RESPECT direction, identify initiatives for implementation in camps to improve opportunities for alcohol free social interactions.

- I. Army GS, in conjunction with Defence Health, is requested to develop an approach to optimise the contribution of Army GS Liaison Officer Injured, Wounded, Ill within the health service system.

NZDF Recommendations:

135. CPO is requested to progress the current work focusing on discrimination, harassment and bullying, to enable subsequent work streams focused on improved policy, training and front line support.

Defence Health Recommendations:

136. The court makes the following recommendations in regards to Defence Health policy:

- a. Defence Health is requested to reinforce the importance of the consistency of health care services across camps and bases in accordance with extant health policy.
- b. Defence Health, in conjunction with Army GS, is requested to develop an approach to optimise the contribution of Army GS Liaison Officer Injured, Wounded, Ill within the health service system.

Legal Recommendations:

137. The court makes the following recommendations in regards to legal related training and policy:

- a. Defence Legal is requested to investigate the production of guidance for the conduct of unit level disciplinary investigations.

Dated at Defence House, Wellington on 21 July 2023

s. 9(2)(k)

President

.....COL A. P. SHATTOCK, ACA (T) – G7

s. 9(2)(k)

Member

.....LTCOL K. A. HOCKINGS-MACKIE, CO 1CSR

Headquarters Joint Forces New Zealand

Land Component Commander **MINUTE**

10 Dec 24

See Distribution

ASSEMBLING AUTHORITY COMMENTS: THE PREVALENCE OF BULLYING, HARRASSMENT, AND WELFARE ISSUES IN 2/1 RNZIR BETWEEN JANUARY 2020 AND JULY 2022

References:

- A. Order for the Assembly of a Court of Inquiry for COI 0047 (4/2022/A), dated 22 Aug 22
- B. Record of Proceedings for COI 0047 (4/2022/A), dated 21 Jul 23

Purpose

- 1. As initiated by Ref A, Ref B is a Court of Inquiry (COI) into the prevalence of bullying, harassment and welfare issues in 2/1 RNZIR between Jan 20 and Jul 22. My comments will provide a summary of the COI's findings and recommendations before recording my opinion relating to them.

Summary of the COI findings

- 2. The COI found the issues raised by the complainant to be based on facts. However, the court found that, in many instances, the complete picture was not known by the complainant.
- 3. The COI found most of the cases of bullying, harassment, and alleged sexual violation/assault to have been dealt with to the best of the ability of the unit, but that:
 - a. current and relevant NZDF policies did not allow the unit to meet the expectations of some of the victims;
 - b. there was a lack of awareness around how bullying and harassment policies could support commanders in managing such situations;
 - c. the unit did not follow NZDF policy in relation to managing bullying and harassment complaints it was made aware of, but deemed this had no effect on the management of the cases; and
 - d. oversights were based on lack of knowledge of the policies as opposed to deliberate disobedience.
- 4. The COI found that, while the Unit Command Team worked to improve the culture of 2/1 RNZIR, there was a lack of clear communication of these to junior leaders and that, in two instances, they did not meet their own intent of transparency when managing incidents.
- 5. The COI found that support services in Burnham Camp exceeded what is available in the civilian sector but that, while Defence Health is working to improve these services, command teams require educating on how to best utilise these services.

6. The COI found 2/1 RNZIR to be a “desirable place for most individuals to work,” including for victims of alleged sexual violation. However, it also determined that there still exists a “boys club” mentality within the unit which contributed to negative behaviours, victims of alleged offending not coming forward, and that alcohol was an exacerbating factor.
7. The court found the overall culture within 2/1RNZIR to be professional and aligned to broader organisational expectations. However, sub-cultures, in many cases influenced by junior leaders, played a role in allowing unacceptable and dangerous behaviours to occur. The court found the 2/1RNZIR command teams were aware of these issues and were working towards aligning all personnel to the expected behaviours.

Summary of COI recommendations

8. The COI made the following recommendations in relation to 2/1 RNZIR in that the unit:
 - a. **Formalises** in-unit policies, the code of conduct for training, and acknowledgement by staff on Combat Corps Training. This must apply to Combat Corps Trainings run by both infantry battalions and be benchmarked against The Army Depot approach.
 - b. **Formalises** the current unit policy associated with investigating and appropriately documents all reported incidents to ensure transparency within the unit command directive.
 - c. **Reviews** the frequency of Integrated Wellness Meetings and the structure of the meetings and makes recommendations through the chain of command on an approach which is fit for purpose and reduces risk to personnel.
 - d. **Identifies** to Defence Health when Chaplain pastoral support is overwhelmed to enable additional support to be initiated.
9. The COI made the following recommendations in relation to the wider NZ Army:
 - a. **LCC** aligns applicable corps trainings with the codes of conduct for training and acknowledgement by staff on Combat Corps Training. This must apply to Combat Corps Trainings run by both infantry battalions and be benchmarked against The Army Depot approach.
 - b. **LCC** reviews the concept of the Junior Development Council for feasibility of implementation within NZ Army units.
 - c. **LCC** reviews the feasibility of re-implementing a formalised mentoring approach for junior leaders.
 - d. **LCC** reviews where unit consolidation is appropriate to reduce the risks of hollowness created by current attrition rates and operational requirements. Ensures a clear conditions-based return to normal transition plan is included in any associated communications plan.
 - e. **LCC** to enhance junior leader development training courses by identifying the relevant skill sets required to deal with welfare issues and integrates them into applicable areas of the courses.

- f. **Army GS G7** provides direction to NZ Army units to report risks associated with hollowness using the Safety Event Management Tool when the health and safety of personnel is clearly at risk.
- g. **Army GS** explores a system of tools to alleviate the administrative/bureaucratic burden on junior leaders. Consideration is to be given to:
 - (1) Technology solutions as an enabler to leadership:
 - (a) Identifying complimentary planning, execution and lessons capture tools/systems which create time allocation efficiencies.
 - (b) Automatic input of personal information and execution of associated administrative requirements e.g. Australia's PMKeyS model of swiping in and out of an exercise.
 - (2) Enabling a review of sub-unit level processes (e.g. Lean Sigma Six) to ensure best practice is adhered to.
- h. **Army GS** provides training to unit command teams during Army Pre-Command Courses focusing on:
 - (1) Managing bullying, harassment, welfare and culture issues and the associated online tools and policy guidance.
 - (2) Provision of training around the publication of summary trial findings in the interests of service discipline.
- i. **Army GS** reviews how NZ Army delivers compliance training to achieve greater buy in and understanding across all ranks. Consideration must be given to the following:
 - (3) Interactive discussions for appropriate topics, including smaller groups to ensure open discussion.
 - (4) Modernised learning approaches.
 - (5) Continuous access to resources associated with the training.
 - (6) Capturing attendance by attendees.
 - (7) Provision of instruction on how to lay formal complaints and how to report incidents through the chain of command when someone in the chain of command is involved.
- j. **Army GS** formalises a process of how we whakanoa/whakāwatea (spiritually cleanse) our people after significant activities/events in order to help them transition between environments, regain their balance and be less likely to rely on alcohol/illegal substances to deal with issues arising from what they have been exposed to in service of their nation.
- k. **Army GS**, in line with Operation STAND and Operation RESPECT direction, identifies initiatives for implementation in camps to improve opportunities for alcohol free social interactions.

- I. **Army GS**, in conjunction with Defence Health, is requested to develop an approach to optimise the contribution of Army GS Liaison Officer Injured, Wounded, Ill within the health service system.
10. The COI made the following recommendations in relation to the wider NZDF:
- a. That **CPO**:
 - (1) progresses the current work focusing on discrimination, harassment and bullying, to enable subsequent work streams focused on improved policy, training and front line support;
 - (2) reinforces the importance of the consistency of health care services across camps and bases in accordance with extant health policy; and
 - (3) in conjunction with Army GS, develops an approach to optimise the contribution of Army GS Liaison Officer Injured, Wounded, Ill within the health service system.
 - b. That **Defence Legal Services** investigates the production of guidance for the conduct of unit level disciplinary investigations.

My opinion as the Assembling Authority

11. I accept the recommendations of the COI. However, some COI findings contain aspects that require clarification. Given the nature of these aspects and noting the additional delay that would result from re-opening the COI, I am of the opinion that these are best addressed through my comments as the Assembling Authority.

Alleged sexual offending against Witness 15.

12. Witness 15 stated that she suffered four to five sexual assaults by unidentified individuals during her time in service. The witness reported the first incident to command, which was investigated and resulted in administrative action being taken against the individual. The witness felt let down by this result as not being sufficiently severe.¹ The remaining assaults have only been reported to the COI.²
13. The COI commented, regarding the investigated allegation, that this assault was committed by the section commander of the witness.³ My review of the evidence makes it clear that the alleged assault was committed by a different individual on combat corps training, and it was her section commander that supported her through the investigation.⁴ It appears the COI has mistakenly conflated the witness' account of one of the unreported incidents occurring after combat corps training that involved a different section commander.
14. Further, regarding the investigated allegation, the COI stated that they "*...established there was no evidence to proceed with a complaint, other than the statement of the*

¹ Ref B, Witness 15, pp 7-8.

² Ref B, Report, para 23.e.

³ Ref B, Report, para 37.e.

⁴ Ref B, Witness 15, pp 7-9.

alleged victim.”⁵ While it is not the role of a COI to make assessments relating to the military justice system, this is not a proper characterisation of a charging decision under section 102 of the AFDA. To ensure clarity on this point I note that a statement of offending by a complainant can be considered sufficient evidence to bring a charge under the AFDA.

15. The COI President has confirmed that the witness did not want this allegation, or any of her other allegations, investigated further at this stage. I understand the COI President also made it clear that the witness could change her mind at any time. Accordingly, I will not direct any disciplinary action to occur at this stage. While the COI indicates that all the alleged perpetrators have left the military,⁶ should the witness wish to come forward with her complaints, the NZDF can facilitate her reporting to the civil police or the military police (should any individuals remain serving).

Witness 16 bullying/harassment investigations.

16. The instances of alleged bullying and harassment of Witness 16 resulted in two different investigations at the time. The first related to recruits and NCOs at TAD and the second related to soldiers in Depot Company.
17. The COI states that they found the investigations to be thorough and that they could not identify any evidence to suggest that Witness 16 was the target of bullying and harassment based on their status as a member of the Rainbow Community.⁷
18. While the COI was underway, the NZDF conducted a more focused review of Witness 16’s concerns as part of a different process. This focused review demonstrated that there *were* aspects of the first investigation that should have been done better and had they been investigated thoroughly, the salience of Witness 16’s sexuality as a factor in his bullying and harassment may have become apparent.
19. I acknowledge the COI was charged with conducting a systemic review of multiple allegations and cultural concerns over a period of time and was not required to do a targeted review of any specific allegation. I also note that the COI was not informed of this separate review. As such, I understand how, and do not critique, that the COI came to a different conclusion.
20. As a consequence of the above, I:
 - a. **Note and accept** that the COI came to a different conclusion to the focused review as to the adequacy of investigations into the bullying and harassment of Witness 16 and the significance of his sexuality in these instances;
 - b. **Consider** it not necessary or appropriate to direct the COI be reopened to consider this separate review and instead;
 - c. **Find** in favour of the conclusions made by the separate review; and

⁵ Ref B, Report, para 37.e.

⁶ Ref B, Report, para 54.d.

⁷ Ref B, Report, para 35.e(3).

- d. **Consider** that recommendations, additional to those already made by the COI, are not necessary to address this finding.

Allegations of common assault.

21. The COI identifies two instances of common assault that were dealt with without formal disciplinary action. The COI found that the first instance was low level and dealt with in “a mature manner”, and the second instance involved an informal investigation and informal punishments.
22. It is regrettable that informal means were used in relation to investigating and prosecuting known instances of offending. However, owing to the nature of the offending, the length of time elapsed since the offending occurred and the informal actions taken in each of these cases, I assess that re-examining the offending through formal investigations would be inappropriate.
23. Therefore, I **note and accept** that the above matters were settled via informal means.

Employment Law Compliance

24. The COI identified that there may be potential NZDF employment law compliance issues around the long-term employment of locums within FHO.
25. It is unclear based on the evidence of the COI alone whether NZDF is out of step with its obligations. While independent contractors can be used for long periods of time without issue, if they are permanently filling a civil staff position, or the degree of control, integration and management intention is such that they are legally entitled to the status of an employee then this should be addressed.
26. Consequently, I **direct** that **Commander JSG** review how FHO is managing locums.

Adherence to NZDF policy in the management of incidents by 2/1 RNZIR.

27. The COI concluded, in relation to the management of incidents by 2/1 RNZIR, that there was no evidence of NZDF policy breaches but also notes that there were instances where NZDF policy was not followed.⁸ The way this is expressed appears incongruent. A review of the record of proceedings demonstrates that the COI found that while there may not have been strict adherence to policy at all times, any divergence has been minor and not in bad faith.
28. Based on this review, I accept the COI's finding as clarified above. I also note the COI has recommended 2/1 RNZIR formalise relevant unit policies to enhance policy adherence and I consider the recommendation adequately addresses this clarified finding.

Inclusion of events identified by Witness 1 in Exhibit A

29. The COI found that most of the major events identified by Witness 1 were covered in a dot point brief (Exhibit A) produced by 2/1 RNZIR.⁹ While the dot point brief did correspond to several of the events raised, I consider that the terminology used by the

⁸ Ref B, Report, p 11, paras 2 and 6.

⁹ Ref B, Report, para 29.

COI could provide a false sense of the extent of 2/1 RNZIR's awareness of the specific events raised by the witness.

30. As such I accept the finding of the COI as qualified that the dot point brief covered several of the major events identified by Witness 1. As these events have now been thoroughly considered by the COI, I consider that no further investigation or corrective action is needed.

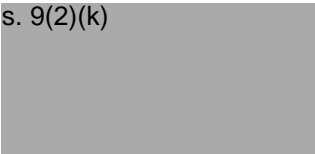
Dissemination of Report

31. Owing to the subject matter of this COI, I **direct** that a copy of the COI report be forwarded to the Op RESPECT Project Team and the Diversity and Inclusion Team for their awareness.

Concluding Comments

32. This has been a highly complex COI that necessitated obtaining and considering a significant number of witness statements and other relevant exhibits as the Court worked to satisfy the requirements of each TOR. This has taken a considerable amount of time as the Court endeavoured to satisfy the requirements of each TOR while also remaining mindful that it was asking the victims of bullying, harassment, and sexual misconduct to relive past trauma. Consequently, I pass on my sincere thanks to the Court for their efforts in concluding this COI, and to those witnesses who willingly gave statements and answered questions, despite the hurt that revisiting past events may have caused.
33. Despite Court's best efforts, I am mindful that there are findings that I have not accepted in full. However, given their nature and the further delay that reopening the COI would cause, I have elected to address these in my Assembling Authority comments. This should not be seen as undermining the considerable efforts of the Court, particularly noting that I have accepted all of their recommendations, but instead be viewed as a pragmatic means of properly concluding this COI and enabling both the recommendations and my subsequent direction to be implemented.

s. 9(2)(k)



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