Australia's Military Justice System: The Explosive Truth Behind Power, Secrecy, and Broken Fairness

Opinion Piece: Dr Kay Danes, OAM

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Australian TV personality Karl Stefanovic recently posed a question to viewers of his Facebook group, *The Karl Stefanovic Show*: *"Do you think Ben Roberts-Smith VC MG, or any other soldier, should have been charged under the civilian system or the military?"*

It is a question that cuts straight to the heart of a far larger one: *when does a justice system stop serving justice and start serving power?*

When Process Is Not Justice

Inside Australia's military justice system, the existence of process does not guarantee fairness. A system can speak the language of discipline, duty, and accountability while still delivering outcomes that are profoundly unjust. That is not a theoretical warning.

On 16 August 2024, the Inspector-General of the Australian Defence Force opened an independent inquiry into allegations and perceptions that the military justice system had been, or could be, weaponised and abused in ways that cause real harm.

After three decades inside and around this system, I have seen enough to know the concern is real. Again and again, the same patterns emerge: biased fact-finding, selective briefings,

evidential cherry-picking, excluded testimony, conflicts of interest, breaches of statutory duty, and failures to disclose those conflicts. These are not minor procedural flaws. They are the machinery of injustice. They distort outcomes, silence truth, and corrode confidence from the inside out. The Royal Commission into Defence and Veteran Suicide reflected the same reality, with more than 6,000 submissions documenting widespread physical and sexual violence and the depth of institutional harm.

So, the question is no longer whether the military justice system can deliver justice in theory. It is whether it can be trusted to deliver it in practice. When complainant and witness testimony is sidelined while potentially prejudiced third-party accounts are elevated, the result is not balance. It is distortion. And once a process is distorted, justice becomes theatre: a performance of fairness with the substance stripped away.

For that reason, any military justice process involving Ben Roberts-Smith VC MG would, in my view, face an almost impossible burden. It would not merely risk falling short; it would risk becoming a mechanism that hardens a predetermined outcome while preserving the appearance of due process. That is not justice.

In December 2016, a former Australian Army Officer and the Inspector-General of the Australian Defence Force (IGADF), Mr James M Gaynor, CSC appointed a serving ADF reserve Major-General, Paul Le Gay Brereton AM RFD, to investigate rumours and allegations relating to possible breaches of the Law of Armed Conflict by members of the Special Operations Task Group in Afghanistan, over the period 2005 to 2016. He remained in service well after he presented his report.

The report that emerged from that investigation, infamously referred to as "The Brereton Report" remains the clearest example of Australian military justice failure: grave allegations, a torrent of commentary too often rooted in hearsay, and senior leadership largely shielded from meaningful scrutiny. It created the appearance of legitimate inquiry while protecting the institution. In truth, it advanced command protectionism over truth and was prepared to sacrifice junior ranks to preserve reputation.

A Case Study In Institutional Failure

This is not a theoretical concern; it is a lived reality that thousands of soldiers have experienced, and continue to experience.

In my submission on 19 June 2025, to the Inspector-General of the Australian Defence Force (IGADF) Own-Initiative Inquiry 1/24, *"Weaponisation" of the Military Justice System*, I presented a detailed case study that should have forced serious scrutiny and meaningful reform. Instead, it was met with inaction, despite the fact that many of my suggestions for reform were woven into the Final Report released by the Royal Commission into Defence and Veteran Suicide. Mine was not an isolated voice on military justice reform: other prominent scholars, legal professionals, veterans' groups, and advocates also made submissions, all pointing to the same unmistakable truth, the need for reform was urgent, undeniable, and long overdue.

A case study I presented involved a highly decorated former SASR veteran who served for 40+ years with an exemplary record. In the later part of his service, a career-ending campaign was set in motion by false allegations and deliberate sabotage by a peer who, at

the time, held a senior position in Career Management — Army. The allegations were not about war crimes, but about something equally explosive: that the SASR member had misappropriated $7–10 million dollars from the SAS Resources Trust, implying the theft of money from a fund set up for the families of SASR soldiers killed in service (RE: the Blackhawk Accident of 12 June 1996).

The accuser escalated the allegation, claiming the SASR member had been driven out of the Regiment as punishment for a crime that never happened, all supposedly buried to shield the reputation of the SASR. Even more shocking, the career panel swallowed the story whole. No one paused to check the basic timeline. No one noticed the fatal flaw: the SAS Resources Trust did not even exist at the time. The Blackhawk accident had not happened either. The real record was starkly different.

After promotion, the SASR member was posted east to support a unit, as was common then, and there earned a Land Commander's Commendation for training and mentoring soldiers. The member later returned to SASR and was appointed by the Commanding Officer as Squadron Sergeant Major. He went on to serve on overseas military and diplomatic deployments, earning medals that spoke to exceptional professionalism, distinction, and impact.

The facts were indisputable. The evidence was overwhelming. Yet the truth was still ignored. The false accusations stood. The consequences were catastrophic. The SASR member was notified of his pending removal from the ADF entirely!

In the Australian military justice system, disproving a false accusation by a senior rank is nigh on impossible for insubordinates. As in so many cases like this, the matter was pursued through the chain of command and then through multiple external review bodies [in accordance with military justice policy], but each step closed the door more firmly. At the heart of it all was the most basic entitlement in any fair system: to be heard, to know the case to answer, to respond openly, and to be treated with fairness rather than suspicion.

That never happened.

The inquiry was handled in secrecy, as military justice so often is. The opportunity to defend oneself was tightly constrained, while the SASR member faced the full force of a well-resourced Defence legal apparatus determined to keep the matter from scrutiny.

It was David against Goliath.

For someone who had spent decades serving their country, the experience was devastating, not only because of the allegation itself, but because of the silence, the uncertainty, and the slow, brutal realisation that the system they had trusted had allowed others to speak blatant lies in ways that were both cruel and calculating. Learning the extent of those lies later through Freedom of Information was another blow.

The SASR member escalated the complaint to the highest levels of the Australian Government. An inquiry of sorts followed, but it fell far short of the criminal investigation that was warranted, to expose those who had corrupted the military justice system. Instead, the matter was absorbed into the familiar machinery of secrecy, looking less like democratic accountability and more like institutional self-protection at the expense of the individual.

The official responses were chilling in their neatness.

> The Chief of Army concluded that the inquiry was "conducted in an appropriate and transparent manner" and that there was "sufficient evidence to support the findings" — in other words, nothing to see here.
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> The Chief of Defence Force reached a similar conclusion.
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> The IGADF said they were "satisfied the inquiry was comprehensive and legally reviewed and validated."
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> The Attorney-General replied that the matters "did not fall within [their] portfolio responsibility" and referred them to the Commonwealth Ombudsman.
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> Despite the allegations clearly implying criminal conduct, the Commonwealth Ombudsman concluded, even before the complaint was presented, that no investigation was warranted and suggested a claim through the Scheme for Compensation for Detriment caused by Defective Administration.
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> The Australian Defence Force Minister consulted with the Defence Chief and concluded that the allegations relating to the alleged theft and fraud "were not addressed in the Terms of Reference." That was because the SASR member had never even been informed of those allegations, which in itself was a denial of procedural fairness.

The damage was done. Defeat was inevitable. The SASR member was broken by the system and left mentally distraught.

In what became a long-running dispute with command, natural justice was denied, accountability stripped away, and Army regulations were misused against the SASR member. False statements were left standing on his personnel file. Misinformation was never corrected. And the consequences followed everywhere. Any aspiration of concluding a career with honour was reduced to a training position outside the Special Forces unit served for most of that career. It was political execution.

Unable to pursue legal action because of mental state and financial constraints, the SASR member could not sustain the prolonged battle that would have been required against the ADF's unlimited resources. The documented losses amounted to hundreds of thousands of dollars in future earnings and pension benefits.

How on earth could such madness ensue?

Quite simply, rank and status lent the accusers' false narratives unwarranted credibility, making the truth harder to see and even harder to defend. What should have been clarified by fact was instead buried in bureaucracy. By then, the harm was no longer abstract. It was personal, measurable, and life-altering. A decorated SASR member was left carrying the weight of unanswered allegations, denied the dignity of a fair hearing, and forced to fight a system that seemed determined to keep the truth out of view.

Why Australian Military Justice Reform Cannot Wait

This case is not an isolated failure; the Royal Commission made that unmistakably clear. The hardest truth is this: justice does not automatically right itself, not even under the weight of a Royal Commission. When attention shifts to lived experience while the machinery of maladministration goes unexamined, the real causes of harm remain untouched.

Justice is meant to protect dignity, truth, and public confidence. Many ADF members have lived with grave injustices like this. Many have been damaged by a military justice system that rewards silence, punishes complainants, and teaches people to turn the machinery against one another. That is why reform is urgent. Not incremental adjustment. Not another internal review designed to protect the institution first. Real reform, so fewer ADF members are harmed, so fairness is not exceptional, and so the system can never again be used as a weapon against the people it is meant to serve.

In the end, that is the answer to the opening question. The issue is not whether a soldier should be charged in the civilian system or the military system alone; it is whether any system, civilian or military, can be trusted to deliver truth, fairness, and accountability without fear or favour. When a process is distorted by rank, secrecy, or institutional self-protection, the forum matters less than the integrity of the people and rules inside it. Until Australian military justice is reformed so that evidence is tested openly, complainants are heard, conflicts are disclosed, and power cannot override procedure, the public will keep asking the wrong question. The real question is not where a case should be heard, but whether justice can still be done at all.

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About the author

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