

Preliminary Response Submission

Of

Victims Of Abuse

In The

Australian Defence Force Association Inc. A0059257W

To

The Productivity Commission Inquiry Into

Veteran's Compensation Draft Report

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Author

ABSTRACT

[The draft report has already caused great distress and concern to the Veteran Community through its flawed recommendations (Based upon anecdotal evidence)

Many of the recommendations in the draft report are flawed e.g. when it says the Department Of Veterans Affairs should do this and that when it really is an issue of Government and the Parliament modifying allocation of funds so that the Department Of Veterans Affairs can implement the recommendation.

The report ignores the appalling track record of Defence on Occupational Health And Safety.

It ignores the real issues.

Far from helping the Veterans it actually, with its ill considered recommendations, hurts them

The authors should apologise to the Veteran Community, the trees that have been producing oxygen for them and redo the report correctly!

Ver. 1.0 @ 17/10/2018

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1.0 Management Summary

1.1 Timing

1.1.1 Extremely Disturbing

The timing of the release of the Draft Report is extremely disturbing.

By releasing it at this time of the year, a time when people are winding up and going on holidays, it ensures that there will be minimal feedback on the report.

This allows the Productivity Commission to falsely claim that the Veteran Community is okay with the report's recommendations.

It should have been released in February to allow people to have sufficient time and opportunity to scrutinise the report and respond.

It is worth looking at what is done in Planning Permits in Victoria.

In Victoria, Local Government Councils recognise this fact so that period for public notice changes from 14 days to 28 days as of the 7th of December.

In the Telecommunications Industry there is a freeze on new connections that involve a technician going on site between 14th December 2018 to 7th January 2019.

1.1.3 The Veteran Community Must Be Allowed A Genuine Opportunity To Be Consulted

The best definition of genuine consultation is in CPSU v Vodafone Network Pty Ltd - PR911257 [2001] AIRC 1189 (14 November 2001).

At paragraph 25, Commissioner Smith said:-

“Consultation is not perfunctory advice on what is about to happen. This is common misconception. Consultation is providing the individual, or other relevant persons, with a bona fide opportunity to influence the decision maker.”

In order to provide a genuine opportunity, the closing date for response should be made the end of April 2019.

1.2 Overview – Grave Problems With Draft Report

1.2.1 This Submission Initial Response – There Will Be Follow Up Submissions

This report is an initial response and will be followed up with a more detailed additional submission over the January 2019 Period.

This report has already caused (at least anecdotally) great angst, worry and concern in the Veteran Community.

1.2.2 Key Issues

The key issues are:-

✂ **Ignores Lack Of Funding / Staff For DVA**

It ignores the fact that the reason why the Department Of Veterans Affairs is having such great difficulty in delivering services is because successive governments have starved the Department Of Veterans Affairs of the resources and staff they need to properly and correctly administer the relevant legislation in a timely and effective and correct manner.

✂ **Many Recommendations Ignore Fact That They Require Legislation / Funding**

Many of the recommendations ignore the fact that they will require legislation and votes of money from the Parliament.

Instead of recommending that the “*Government should pass legislative amendments and provide funds so that the Department Of Veterans Affairs can do this....*,” it recommends that “*the Department Of Veterans Affairs does this or that*” without the relevant legislation being amended or funding provided by the Parliament.

The Department Of Veterans Affairs can only act within the ambit of the relevant legislation being amended and the moneys provided by Parliament.

The Productivity Commission clearly is recommending the Department Of Veterans Affairs break the law.

✂ **PC Wants To Replace Independent Umpire With Biased Umpire**

The draft report ignores the fact that the Department Of Veterans Affairs is the independent umpire on injury related issues as is elsewhere in Australia.

We don't allow the employer to have the final say on injury claims. Yet that is what is recommending in rolling up the Department Of Veterans Affairs with Defence.

✧ **Ignore OHS Real Issues**

In its recommendation that Defence does not require more rigorous Occupational Health And Safety, the Productivity Commission is clearly ignoring case law and recent coronial inquiries into deaths in Defence.

✧ **Appalling Track Record Of Defence In Dealing With Injuries**

In recommending that the Department Of Veterans Affairs be merged with Defence, it ignores the appalling track record of Joint Health Medical Command On Dealing With Injuries.

By merging Department Of Veterans Affairs with Defence, it ignores the attitude of Joint Health Medical Command on dealing with injuries.

It also ignores the proven case law on Defence's attitude to injuries.

This would adversely affect veterans claims.

✧ **Ignores Facts Of Different Standards Between Military Superannuation And DVA**

The recommendation that there be one portal between Military Superannuation and Department Of Veterans Affairs.

The draft report ignores the fact of different legislation and standards and case law.

By creating the single portal you would reduce and adversely affect veterans access to compensation and treatment.

1.3 Contempt Of The Victims Of Abuse In The ADF And Unauthorised Access Of A Computer System

In addition, there are the issues of the Productivity Commission of:-

✧ Showing absolute contempt to our Association and

✧ Attempting unauthorised use of our Computer Systems.

1.4 The Authors Must Apologise To Veterans, The DVA And Trees

The authors of this **lack lustre, fast-food, slick-ass, Persian Bazaar manner** report need to apologise to:-

- ✓ The Veteran Community
- ✓ The Department Of Veterans Affairs
- ✓ The staff of the Department Of Veterans Affairs
- ✓ The Government
- ✓ Trees – there are trees working very hard to produce oxygen for them. They should find those trees and apologise to them!

2.0 Ignores Lack Of Funding / Staff For DVA

This was included in our submission.

The issue of the \$300 Million came direct from Secretary Lewis, the staffing problem from Staff.

It was very easy to confirm but the Commission could not be bothered raising a finger to confirm these two facts.

Without the funding and staffing, no matter what it wants the Department Of Veterans Affairs to do, it can't.

The need to properly fund and staff the Department Of Veterans Affairs should have been the first recommendation.

It was, irresponsibly, not!

3.0 Many Recommendations Ignore Fact That They Require Legislation / Funding

Many of the recommendations ignore the fact that they will require legislation and votes of money from the Parliament.

They should be of the form:-

“Government should pass legislation amendments and provide funds so that the Department Of Veterans Affairs can do this....,”

Not

“the Department Of Veterans Affairs does this or that.

Such poorly conceived and written up “recommendations cast into doubt the whole credibility of the report and the Authors.

Have they no idea of the rules and limitations that Departments operate under?

If they don’t they shouldn’t be writing reports such as this.

If they do, why didn’t they write the recommendations correctly in the first place?

The Department Of Veterans Affairs can only act within the ambit of the relevant legislation being amended and the moneys provided by Parliament.

The Productivity Commission clear is recommending the Department Of Veterans Affairs break the law.

4.0 Productivity Commission Wants To Replace Independent Umpire With Biased Umpire

As a matter of good Public Policy, every where else at the Federal and State Level, as a Society, we have decided that we want independent umpires for the assessment of injuries for their treatment and payment of compensation.

This is exactly what the Department Of Veterans Affairs is.

That is because they employer has a vested interest in rejecting claims.

We don't allow the employer to have the final say on injury claims.

Whilst members of the Australian Defence Force are not employees but Servants of the Crown, the same logic applies.

Yet that is what is recommending in rolling up the Department Of Veterans Affairs with Defence.

What bizarre madness is this?

Far from improving veteran access to benefits it will obviously reduce them!

5.0 Ignore Real OHS Issues

One of the recommendations is that the Australian Defence Force does not need more rigorous Occupational Health Inspection and supervision.

The draft report ignores:-

✂ **Comcare v Commonwealth of Australia [2012] FCA 1419 (13 December 2012)**

✂ Death of Private Challis.

At the current inquest, the coroner observed:-

"shambolic" wasn't the only word that could be used to describe Exercise Tigers Run.

*He referred to a scene in the movie Heartbreak Ridge, where Clint Eastwood's character is asked to describe a marine operation: "It's a clusterf***," he said. Counsel assisting the Coroner observed"*

Counsel Assisting the Coroner about the death of Private Challis observed:-

"it wasn't the lack of appropriate doctrine that was the issue, it was the failure to follow the doctrine."

Counsel for the Parents also observed:-

"I can't say it's not going to happen again, because it's happened on a number of occasions prior to this," Mr Brandich said. "And Army keep saying 'yep it won't happen again' and somehow, it seems to keep happening."

See Annexure A and B.

✂ **The Way Army Treats Medical Certificates**

Unlike the other services, if the medical personnel give you a medical certificate such as turned in or go to hospital it doesn't actually work until your Commanding Officer signs off on it.

They have not been signing off in order to maintain unit availability.

This is clearly contrary to good occupational health and safety!

How could any one in their right frame of mind say that the current Occupational Health and Safety Standards are good enough in the Australian Defence Force?

6.0 Appalling Track Record Of Defence In Dealing With Injuries

In Recommending that the Department Of Veterans Affairs be merged with Defence, it ignores the appalling track record of Joint Health Medical Command On Dealing With Injuries.

For example look at the case of an attempt to convert to Medical Discharge by Mr Stack.

Mr Stack was injured by an explosion of a Mortar Simulator.

He spent 20 days in Hospital and then was dismissed by the Army as being unfit to serve.

In the case of Stack v Chief of Army [2016] FCCA 1809 (15 July 2016), it emerged that the Australian Defence Force would not do that conversion because:-

“In the request, Col. Wells explained:

- *We have traditionally not supported claims where ex-members are clearly now diagnosed and have some accepted origins in Defence service but have no recorded disability at discharge, even where a Consultant Psychiatrist (such as [omitted by Freedom of Information]) opines that they actually did suffer identifiable symptoms at the time of service and assumes a level of not contemporaneously identified disability.”*
- *We have traditionally not supported claims where ex-members are clearly now diagnosed and have some accepted origins in Defence service but have no recorded disability at discharge, even where a Consultant Psychiatrist (such as [omitted by Freedom of Information]) opines that they actually did suffer identifiable symptoms at the time of service and assumes a level of not contemporaneously identified disability.*
- **13. There are significant financial implications and potential political sensitivities associated with this issue. The cost to the Government for backdated pensions can be quite large. The veteran claims of poor treatment (both during and after service) and publicity, including direct approaches to the media and the Minister can cause ‘difficulties’ for JHC.**
- *14. Acceptance of a medical status (and hence that a past member was medically unfit at the time of discharge) based on assumptions has significant ramification. The same argument applied by at least some of the enclosed case [words deleted by*

Freedom of Information] can be applied to all Veterans who now suffer from significant PTSD (a large portion of Vietnam veterans). The rationale can also be applied to other (including non-mental health) conditions. Hence the acceptance of these claims based on assumptions must be carefully thought through and should be a clear conscious decision of 'Defence'.

From the conduct of Colonel Wells it is quite clear that more claims would be rejected, not because they were invalid but because he enters into excess of jurisdiction.

Another reason Col Wells has advanced for rejecting claims is embarrassment to Joint Health Medical Command.

By merging Department Of Veterans Affairs with Defence, it ignores the attitude of Joint Health Medical Command on dealing with injuries.

This would adversely affect veterans claims.

7.0 Ignores Facts Of Different Standards Between Military Superannuation And DVA

The recommendation that there be one portal between Military Superannuation and Department Of Veterans Affairs.

It ignores the fact of different legislation and standards and case law.

It has ignored the case quoted in our submission that because of the different standards and legislation, the assessment of the incapacity of the member was minimal by Military Superannuation and no pension was payable.

However, taking the same incapacity to the Department Of Veterans Affairs resulted in the payment of an Incapacity Payment.

The single portal would result in the same lower standard and more veterans missing out.

It also failed to address the incorrect manner that Military Superannuation used to calculate your back pay component resulting in the veteran receiving less than they are entitled to.

By creating the single portal you would reduce and adversely affect veterans access to compensation and treatment.

8.0 Showing Absolute Contempt To Our Association

8.1 Pretending That The Association Submission Was A Private Submission

From the beginning the Productivity Commission has shown utter contempt for our members and the Association.

When our submission first went up they listed it as not coming from our Association (as was clearly marked) but put it up as an individual submission from myself.

We then provided an additional submission on Servants of the Crown, which had amendments at their request.

8.2 Blatant Plagiarism

It is quite clear that it was the basis for pages 81 and 82 of the draft report.

Instead of giving us due credit, they instead gave to the Defence Welfare Association.

It is quite clear that the Productivity Commission is pro abuse and anti Victims of abuse in the Australian Defence Force!

This is clearly inappropriate and vile behaviour of the Commission.

9. Attempting Unauthorised Use Of Our Computer Systems.

The Commission also blatantly broke the law by trying to access our mailing system in order to disseminate their material on the Draft Report.

This is clearly a criminal act under the Crimes Act and begs the question why the Productivity Commission is determined to engage in criminal behaviour

10.0 Final Observations

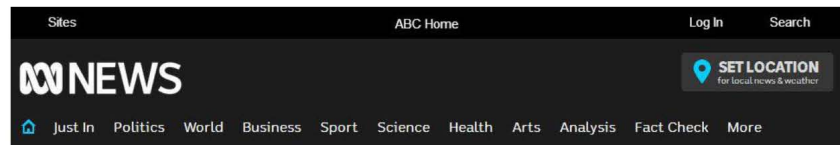
This draft report has been released in a manner designed to prevent genuine consultation with the Veteran Community and key Stake Holders.

The authors of this **lack lustre, fast-food, slick-ass, Persian Bazaar manner** report need to apologise to:-

- ✓ The Veteran Community
- ✓ The Department Of Veterans Affairs
- ✓ The staff of the Department Of Veterans Affairs
- ✓ The Government
- ✓ Trees – there are trees working very hard to produce oxygen for them. They should find those trees and apologise to them!

It needs to be redone and then released for genuine consultation.

Annexure A – Death Of Private Challis – Article By Felicity James



Army didn't follow safety rules in 'shambolic' deadly exercise, inquest hears

By [Felicity James](#)

Updated yesterday at 10:06pm

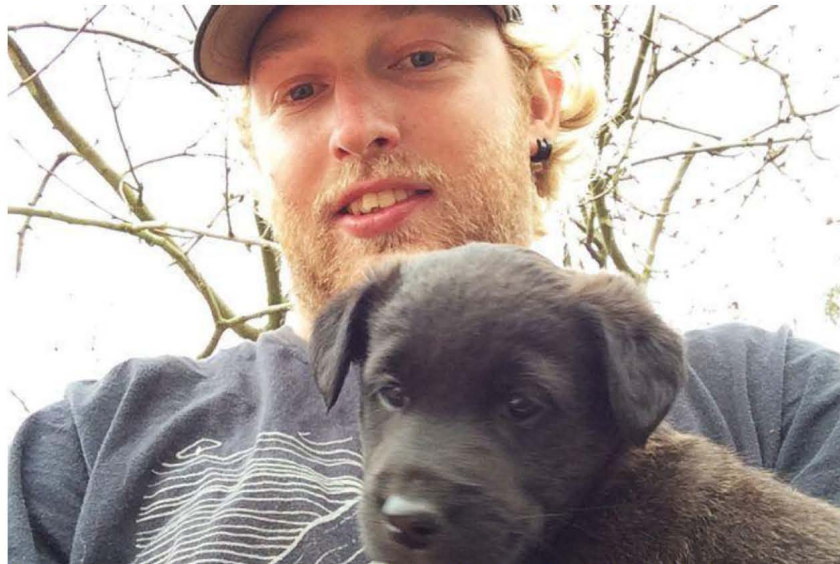


Photo: [Jason Challis from Victoria was killed at Mount Bundery in the NT during an Army live-firing exercise. \(Supplied: Australian Defence Force\)](#)

Related Story: [Army admits death of soldier during live-fire exercise was preventable](#)

Related Story: [Soldier who died in NT training accident remembered as 'life of the party'](#)

Related Story: [Soldier killed in live-fire exercise remembered as 'happiest person on Earth'](#)

A failure to follow Army safety requirements, as well as time pressures and inexperience, all contributed to a "shambolic" live-fire exercise that killed a soldier, an inquest has heard.

Key points:

- Exercise Tigers Run did not follow Army safety doctrine, inquest hears

- Officer in charge of exercise was junior and faced time pressures
- Army blames commander's assessment of staff competency for failures

The inquest has been examining the fatal shooting of Geelong man Jason Challis, 25, during an urban live-fire exercise known as Exercise Tigers Run at Mount Bundey Station about 130 kilometres south-east of Darwin on 10 May, 2017.

Private Challis was behind a plywood building directly in line with a "dummy" target on the other side of the wall when he was shot in the head and leg.

Lieutenant Steven Cross was the officer in charge of designing and supervising the exercise, and gave evidence on Wednesday that he was a "junior lieutenant" with little supervision at the time.

"I do feel like there wasn't any influence or assistance, I guess, from anyone above me," he said.

Lieutenant Cross said his commanding officer Lieutenant Colonel Paul Shields made it clear that blank ammunition would not be available for a required blank run-through.

"The [commanding officer] was sick and tired of hearing people say they can't do anything," he said.

"I did everything in my power... but I was directed by my chain of command that it wasn't going to occur."



[Photo: The family of Private Jason Challis arrive at court in Darwin for the inquest into his death. \(ABC News: Jason Matthews\)](#)

Range preparation time halved

At the time of the incident it was mandatory to conduct "dry-run" rehearsals and a run-through with blank ammunition before an urban live-fire exercise, said counsel assisting the coroner Kelvin Currie in closing submissions.

There was no blank ammunition available for the exercise, and the section Private Challis was in did not have a dry rehearsal, the inquest heard.

"If even a dry rehearsal had been conducted, it is almost inconceivable that Private Challis would have been in the danger zone behind a target," Mr Currie said.

"What is clear is that it was not a lack of appropriate doctrine that was the issue. It was a failure to follow the doctrine."

Mr Currie told the inquest it had been "a shambolic start" to the exercise, after an initial pause in the training because of safety concerns and soldiers missing their target.

Lieutenant Cross also gave evidence about time pressures on the exercise, which preceded Exercise Southern Jackaroo with US and Japanese forces.

"I was initially given two days to conduct the range, and the morning of I was told I had one," he said.

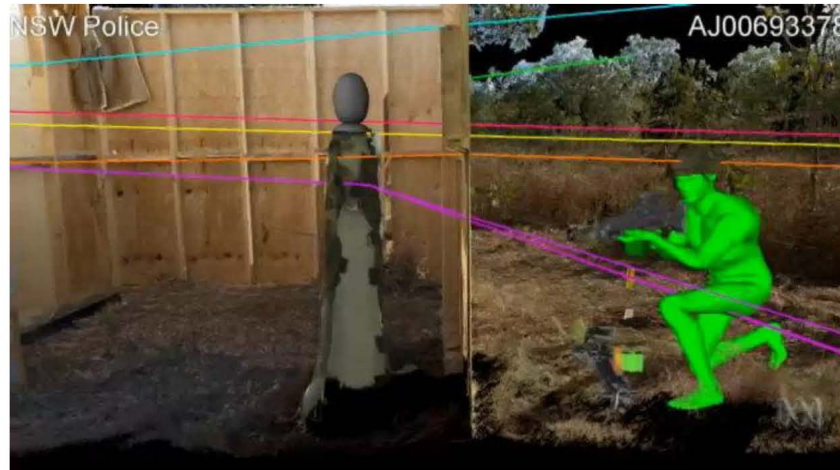
"I don't know why I was cut down by one day, but I was annoyed about it."

The inquest heard it was Lieutenant Cross's first time designing and supervising a so-called Category C urban live-fire range, but he believed it was a "great opportunity".

Consistent with evidence from other witnesses during the inquest, Lieutenant Cross said a live-fire range training course he attended did not focus on urban live-fire safety procedures contained in Army doctrine, known as "Annex K".

"Annex K isn't really stressed on the course," he said.





[Video: A reconstruction of the shooting incident during Exercise Tigers Run \(ABC News\)](#)

Commander's ability to assess staff 'deficient'

According to a statement from Lieutenant Colonel Paul Shields which was read aloud during the inquest, a "default mindset" existed within the Army not to disclose the tactical setting of live-fire practices to participants.

"It is common practice to predominantly seek to exercise our commanders and soldiers in a dynamic setting — having teams conduct activities on the objective live without having seen or rehearsed their actions on the actual range," he said.

"This default mindset runs counter to the risk mitigation measures outlined in Annex K, which require dry walk-throughs followed by blank rehearsals on the buildings utilised for the practice."

Lieutenant Colonel Shields also said Mount Bunday was not accessible for "reconnaissance activities and detailed planning" prior to Exercise Tigers Run because of "heavy wet season environmental impacts".

The inquest heard Lieutenant Colonel Shields was no longer with the Army.

'It's a clusterf*'**

Defence Force counsel Fiona McLeod SC told the inquest the Army accepted Private Challis's section did not complete either a dry-run or a blank rehearsal, as required.

"The live question is whether the members in the activity were competent and qualified," she said.

Ms McLeod said the "accepted failures" reflected deficiencies in the commander's ability to assess the competency of staff, including the officer in charge.

"The Army does not accept the characterisation that this exercise was shambolic or that there was chaos on the ground," she said.

She said Army had put in place a new range safety team and an annual qualification requirement to demonstrate understanding of Army doctrine.

Counsel assisting the coroner recommended "proper dissemination and training" related to all Army safety documentation.

Coroner Greg Cavanagh said "shambolic" wasn't the only word that could be used to describe Exercise Tigers Run.

He referred to a scene in the movie Heartbreak Ridge, where Clint Eastwood's character is asked to describe a marine operation: "It's a clusterf***," he said.

The coroner expressed his sympathy to Private Challis's family.

"I'm glad it's not my son," he said.

Topics: [defence-forces](#), [defence-industry](#), [law-crime-and-justice](#), [darwin-0800](#), [nt](#)

First posted yesterday at 8:09pm

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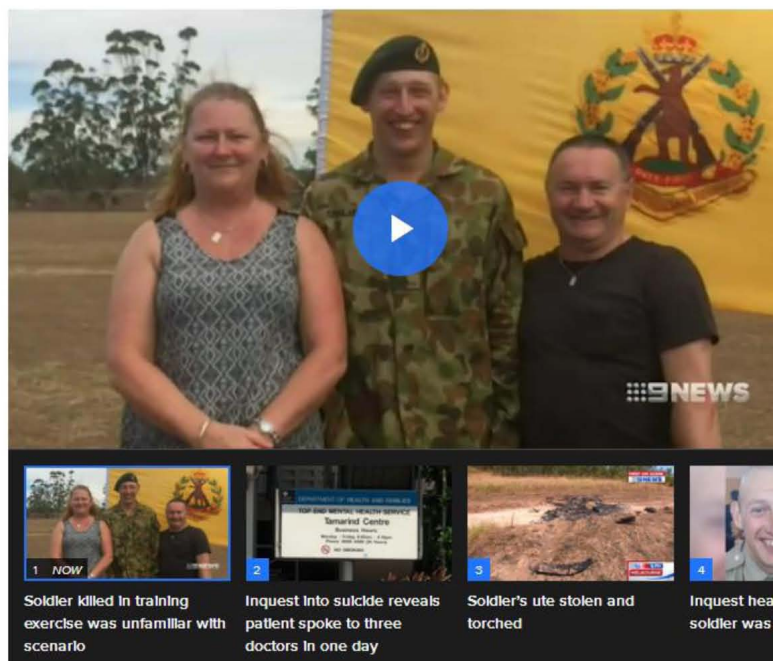
<https://www.abc.net.au/news/2018-11-21/army-shambolic-exercise-killed-soldier-safety-procedures/10520294?fbclid=IwAR1KnIh69Ny-mJK2WpSXy7AGC936I0bHyac1d0wSbPF1uhzxiObbu9nYyb4>

Annexure B – Death Of Private Challis – Article By Melissa Mackay



Jason Challis inquest: Parents of soldier killed in training don't want him blamed for his death

[By Melissa Mackay • Journalist](#)
10:10pm Nov 21, 2018



The parents of a soldier killed in training in the Northern Territory last year say they are "now waiting to see what will happen" to those involved, as an inquest into their son's death wraps up.

Helen and Mirko Brandich spoke exclusively with 9News, remembering their son, Private Jason Challis, as a "cheeky" young man.

"He was a fun-loving partying kid and his life was cut too short," Private Challis' mother Mrs Brandich said.

"He didn't get to finish having fun."

"It should never have happened to Jason," his stepfather Mirko said.

"It should never happen to anybody."



The soldier's family want him absolved of blame for his death. (Supplied)

Sitting down with 9News after the court proceedings, Mr and Mrs Brandich described the 18 months since Private Challis' death as "too long" to wait for answers.

They wanted the inquest to show it wasn't their son's fault he was in the wrong position at the time he was shot in the head.

"The way the defence barrister (for Army) summed up her case, that's the way it sounded to me," Mr Brandich told 9News.

"She was blaming him for not being trained. And that's not the case at all."



Jason Challis' parents say his "life was cut too short". (Supplied)

The inquest heard today Private Challis' group didn't have a mandatory "blank" run of the exercise, before live firing began.

The group was limited on time and not given the blank ammunition needed for a practice run, despite this being part of the training safety guidelines.

Harrowing bodycam vision played to the court showed the young soldier and his team moved into the wrong positions during live fire.

They were quickly called back.

But Private Challis wasn't accounted for, before the group were told to "carry on."

"It's their job to train him, he'd only been out of initial training for 10 months. They should have been watching his back and making sure he was where he should have been," Mrs Brandich said.

"And they had procedures in place and they should have followed them," Mr Brandich added.

"But they didn't follow them."



Private

Challis was killed in a training exercise. (AAP)

The family said they just hoped in the future no one takes any "shortcuts" and training is done by the book.

Following the death of Mason Edwards in South Australia in 2009, a number of changes were made to the safety guidelines for urban exercises.

But Counsel Assisting the Coroner, Kelvin Currie told the court today "it wasn't the lack of appropriate doctrine that was the issue, it was the failure to follow the doctrine."

"I can't say it's not going to happen again, because it's happened on a number of occasions prior to this," Mr Brandich said.

"And Army keep saying 'yep it won't happen again' and somehow, it seems to keep happening."

"Four things they should have done, but they didn't and it's now wrecked about 20 people's lives," Mrs Brandich said.

Coroner Greg Cavanah is expected to hand down his findings in the new year.

"I do not expect to be making specific criticisms of particular individuals," he told the court today.

"That may be something for the Army after this process and consequences may follow."

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