

FOR PUBLIC RELEASE

**REPORT OF THE INDEPENDENT REVIEW ON THE HEALTH OF THE
REFORMED MILITARY JUSTICE SYSTEM**

The Honourable Sir Laurence Street, AC, KCMG, QC

And

Air Marshal Les Fisher, AO, FRAeS, MAP (Rtd)

23 January 2009



**MILITARY JUSTICE
SYSTEM REVIEW**

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MJSRT 2008/1042401/1

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MILITARY JUSTICE SYSTEM REVIEW

Dear Air Chief Marshal Houston, AC, AFC

In accordance with our Terms of Reference, we submit the final report into the reformed Military Justice System.

We would like to take this opportunity to thank you for making available Commander Rob Slaven RAN and Lieutenant Colonel George O'Kane to assist in the Review. Commander Slaven has recently come ashore from sea command and ably led the review team. Lieutenant Colonel O'Kane, the team legal officer, has recent operational experience in the Middle East. The extensive and diverse background of these two officers and their commitment to the Review task was of invaluable assistance to us.

Yours sincerely,

Sir Laurence Street,
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Chairman
Military Justice System Review Team

Air Marshal Les Fisher,
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LIST OF ACRONYMS

ABR:	Australian Book of Reference
ACAUST:	Air Commander Australia
ACPB:	Armidale Class Patrol Boat
ADC:	Australian Defence College
ADDP:	Australian Defence Doctrine Publication
ADFP:	Australian Defence Force Publication
ADF:	Australian Defence Force
ADFAITS:	Australian Defence Force Administrative Inquiry Tracking System
ADFARB:	Australian Defence Force Administrative Review Board
ADFC:	Australian Defence Force Cadets
ADFIS:	Australian Defence Force Investigative Service
ADFA:	Australian Defence Force Academy
ADO:	Australian Defence Organisation
ADR:	Alternative Dispute Resolution
AFP:	Australian Federal Police
AFOD:	Air Force Operations Directive
AFTG:	Air Force Training Group
AGIS:	Australian Government Investigation Service
AGS:	Australian Government Solicitor
AMC:	Australian Military Court
AMCR:	Australian Military Court Rules
ANAO:	Australian National Audit Office
AO:	Appointing Officer
AO:	Area of Operations
APS:	Australian Public Service
ARA:	Australian Regular Army
ARes:	Army Reserve
ARTC:	Army Recruit Training Centre
BOI:	Board of Inquiry
C2:	Command and Control
CA:	Chief of Army
CA:	Counsel Assisting
CAF:	Chief of Air Force
CDDA:	Compensation for Detriment caused by Defective Administration
CDF:	Chief of the Defence Force
CJA:	Chief Judge Advocate
CJOPS:	Commander Joint Operations
CLO:	Command Legal Officer
CMJ:	Chief Military Judge
CN:	Chief of Navy
CO:	Commanding Officer
COI:	Commission of Inquiry
COMAUSFLT:	Commander Australian Fleet
COMAUSNAVSYSCOM:	Commander Australian Naval Systems Command
ComTRACK:	Complaint Tracking
COS:	Chief of Staff
COSC:	Chiefs of Service Committee
CPDC:	Career and Professional Development Committee

CR:	Complaint Resolution
CIRTS:	Conduct and Investigation Report and Tracking System
CRA:	Complaints Resolution Agency
CRTS:	Conduct Reporting and Tracking System
COMDT:	Commandant
CRIMINT:	Criminal Intelligence
CWO:	Command Warrant Officer
DADRCM:	Directorate of Alternate Dispute Resolution and Conflict Management
DARE:	Directorate of Alternative Resolutions and Equity
DAS:	Defence Attitude Survey
DCA:	Deputy Chief of Army
DCAF:	Deputy Chief of Air Force
DCJOPS:	Deputy Chief of Joint Operations
DCO:	Defence Community Organisation
DCN:	Deputy Chief of Navy
DCS:	Defence Counsel Services
DDCS:	Director Defence Counsel Services
DE:	Defence Establishment
DEO:	Defence Equity Organisation
DETC:	Defence Education and Training Committee
DFC:	Deputy Fleet Commander
DFCE:	Defence Force Corrective Establishment
DFDA:	Defence Force Discipline Act
DFDAT:	Defence Force Discipline Appeal Tribunal
DFM:	Defence Force Magistrate
DFO:	Defence Force Ombudsman
DFR:	Defence Force Recruiting
DGC:	Defence General Counsel
DGADFLS:	Director General Australian Defence Force Legal Service
DGFR:	Director General Fairness and Resolution
DGSHPP:	Director General Strategic Health Policy and Plans
DGNPT:	Director General- Naval Personnel and Training
DGTDLS:	Director General The Defence Legal Service
DIPLO:	Discipline Officer
DIA:	Defence Investigative Agency
DI(A):	Defence Instruction (Army)
DI(AF):	Defence Instruction (Air Force)
DICA:	Defence Investigative Capability Audit
DI(G):	Defence Instruction (General)
DI(N):	Defence Instruction (Navy)
DJAG:	Deputy Judge Advocate General
DL:	Defence Legal
DLAA:	Defence Legislation Amendment Act
DLAB:	Defence Legislation Amendment Bill
DLIT:	Director Litigations
DLM:	Disciplinary Law Manual
DMAL:	Director Military Administrative Law
DMDL:	Director Military Discipline Law
DMP:	Director of Military Prosecutions
DPC:	Defence Purchasing Card

DPSMS:	Defence Policing and Security Management System
DPTC:	Defence Police Training Centre
DRMS:	Defence Records Management
DRN:	Defence Restricted Network
DSG:	Defence Support Group
DSOM:	Directorate of Senior Officer Management
DTC:	Defence Travel Card
DTCFMS:	Discipline Tracking and Case Flow Management System
DTM:	Defence Training Model
DWS:	Defence Whistleblower Scheme
E+D:	Equity and Diversity
EWO:	Executive Warrant Officer
FCAUST:	Fleet Commander Australia
FEG:	Force Element Group
GD:	General Duties (Military Police)
GE:	General Entry
GIR:	General Investigations and Review
GORPS:	Graded Other Ranks Pay Structure
HCP:	Head of Cadet Policy
HPC:	Head Personnel Capability
HPE:	Head Personnel Executive
HDLS:	Head Defence Legal Services
HMAS:	Her Majesty's Australian Ship
HREOC:	Human Rights and Equal Opportunities Commission
IG:	Inspector General
IGADF:	Inspector General Australian Defence Force
IGD:	Inspector General Division
IJM:	Investigation Jurisdiction Model
IO:	Inquiry Officer
IPP:	Information Privacy Principle
JA:	Judge Advocate
JADHE:	Justice and Discipline Health and Effectiveness
JAG:	Judge Advocate General
JIO:	Joint Investigation Office
JTF:	Joint Task Force
KPI:	Key Performance Indicator
LCAUST:	Land Commander Australia
LCI:	Learning Culture Inquiry
MAB:	Management Audits Branch
MCI:	Minor Criminal Investigation
MFU:	Major Fleet Unit
MIT:	Major Investigation Team
MJIT:	Military Justice Implementation Team
MJS:	Military Justice System
MJSRT:	Military Justice System Review Team
MLC:	Military Law Centre
MOU:	Memorandum Of Understanding
MRU:	Members Required in Uniform
MWV:	Minor War Vessel
NCO:	Non Commissioned Officer

ND:	Negligent Discharge (of a weapon)
NI:	Notifiable Incident
NIS:	Naval Investigative Service
NOK:	Next of Kin
NPC:	Naval Police Coxswain
NTSC:	Notice To Show Cause
OC:	Officer Commanding
ODMP:	Office of the Director of Military Prosecutions
OH+S:	Occupational Health and Safety
OPM ADF:	Office of the Provost Marshall ADF
OR:	Other Ranks
PA:	Public Affairs
PAP:	Potentially Affected Persons
PM-ADF:	Provost Marshall - Australian Defence Force
PM-A:	Provost Marshall – Army
PM-AF:	Provost Marshall – Air Force
PM-N:	Provost Marshall – Navy
PMKeyS:	Personnel Management Key Solutions
PSPG:	People Strategies and Policy Group
PTDH:	Pre Trial Directions Hearing
PTSP:	Prohibited Substances Testing Program
QA:	Quick Assessment
R2:	Recruitment and Retention
RA:	Rental Assistance
RAAF:	Royal Australian Air Force
RACMP:	Royal Australian Corps of Military Police
RAMC:	Registrar of the Australian Military Court
RAN:	Royal Australian Navy
RANR:	Royal Australian Navy Reserve
RFSU:	Regional Force Surveillance Unit
RFSL:	Regional Force Surveillance List
RIO:	Routine Inquiry Officer
RMC-A:	Royal Military College - Australia
RMC-D:	Royal Military College - Duntroon
ROG:	Redress of Grievance
ROSO:	Return of Service Obligation
RS:	Recruit School
RSM:	Regimental Sergeant Major
RSM-A:	Regimental Sergeant Major of the Army
RTA:	Returned to Australia
RTS:	Raise, Train, Sustain
RTU:	Recruit Training Unit
RTU:	Returned to Unit
RUP:	Random Urinalysis Program
SA:	Summary Authority
SAR:	Summary Authority Rules
SASR:	Special Air Service Regiment
SCMA:	Soldiers Career Management Agency
SECPOL:	Security Police (RAAF)
SFC:	Special Financial Claims

SIB:	Special Investigations Branch
SLG:	Senior Leadership Group
SME:	Subject Matter Expert
SOP:	Standard Operating Procedure
SOR:	Statement of Reasons
SP:	Service Police
SPCRO:	Service Police Central Records Office
SPI:	Service Police Investigation(s)
SPSA:	Superior Summary Authority
SQN:	Squadron
SUA:	Serviceman Under Arrest
SUBSA:	Subordinate Summary Authority
SUS:	Serviceman Under Sentence
SWO:	Ship's Warrant Officer
TC-A:	Training Command Army
TOR:	Terms of Reference
UD:	Unauthorised Discharge (of a weapon)
UER:	Unit Establishment Review
VCDF:	Vice Chief of the Defence Force
WO-AF:	Warrant Officer of the Air Force
WO-N:	Warrant Officer of the Navy

EXECUTIVE SUMMARY

1. On 14th April 2008, The Military Justice System Review Team (MJSRT) commenced the first of the independent reviews of the reformed Military Justice System (MJS). The task was to assess the effectiveness of the reformed MJS following the implementation of the then Government's response to the 2005 Senate Standing Committee on Foreign Affairs, Defence and Trade (FADT) Report, and nine previous and two more recent inquiries into the Military Justice System (MJS). The MJSRT conducted a total of 128 interviews with members and functional groupings from within Defence, along with 58 visits to Australian Defence Force (ADF) establishments, commands and units over a period of six months.
2. The final MJS 'structural' reform was completed on 20th September 2008 and as of December 2008, 93% of enquiry recommendations implemented (except the more recent 2006 Defence Investigative Capability Audit (DICA) Report and 2006 Learning Culture Inquiry (LCI) - see below). Notwithstanding the remaining recommendations to be progressed, the MJS is considered to be functionally complete and operating successfully. This undertaking represents an enormous amount of work across all areas of Defence.
3. The overall assessment is that: the MJS is delivering and should continue to deliver impartial, rigorous and fair outcomes; has greater transparency and enhanced oversight; is substantially more independent from the chain-of-command; and is effective in maintaining a high standard of discipline both domestically and in the operational theatre. Also, there is evidence that ADF training establishments have embraced the intent and spirit espoused within LCI. However, the overall impressions contained in this Report should be tempered by the knowledge that MJSRT observations are a relative 'snapshot' of MJS activities and significant portions of the MJS (in particular the summary hearing procedures) have been operating for just a few months. The findings and recommendations in particular, should be viewed as a complement to, or verification of, the regular in-depth monitoring and independent advice provided by ongoing Inspector General Australian Defence Force (IGADF) audit and oversight of the MJS.
4. The two main areas of concern with the MJS are that the reformed Defence Force Discipline Act (DFDA) investigations and Australian Military Court (AMC) hearings are incurring delays in delivery of discipline. To address these shortcomings, MJSRT recommends improvements to the investigative service and summary hearing procedures, a rebalancing of legal resources and practices, and establishing efficiency coordination arrangements and performance indicators across all MJS agencies. The Australian Defence Force Investigative Service (ADFIS) in particular requires early attention, with only 50% of the DICA recommendations completed. Importantly, the Chiefs of Service Committee (COSC) has already agreed and CDF directed the implementation of MJSRT Recommendations 1-3 in respect of ADFIS and to establish a Governance Board to provide high level oversight of ADFIS development. COSC has also agreed and CDF directed the implementation of MJSRT Recommendations 23 and 24 in respect of juries, and Defence Legal has agreed to pursue Recommendation 13, in respect of summary hearing procedures.

5. The ongoing development issues raised in this report and those action items still outstanding from the DICA and LCI reports will require about three years to complete. As such, a further review in three years would seem appropriate. The 2005 FADT Report and the nine previous reports should now be placed aside.

6. The Findings and associated recommendations of the Review are as follows:

Finding: A dedicated effort to improve career opportunities and the professional recognition of, and remuneration for, the 'specific capability enablers' (investigative skills) provided by SP/ADFIS, is required to support investigator retention and recruiting. Management issues regarding the development of a tri-service culture within ADFIS remain and effort is required to establish a mature joint organisation. Advice to units is needed when a DIA investigation is to occur and, within seven days, as to whether (or not) an investigation is to proceed. A temporary senior officer placement would be appropriate to ensure that the Government's agreed 'remediation' timeline is achieved. A clarification of the responsibility and purpose of NI, and rebalancing of investigative authority at unit-level would be appropriate.

Recommendation 1: Raise a specific pay case recognising the Fundamental Input to Capability (FIC) ADF Investigators deliver across the ADF, and the unique and demanding skill sets required of service investigators to meet legal and civil expectations.

Recommendation 2: Raise a second dedicated and significant pay initiative, across tri-Service lines, to encourage SP recruitment and retention; this initiative needs to be sufficient to allow the SP agencies to compete from within the ADF workforce and attract lateral transfer recruitment from civil policing agencies.

Recommendation 3: Encourage greater efforts from within all areas of the ADO to ensure a joint culture is established and maintained within ADFIS.

Recommendation 4: Establish a temporary 'O7' position as an adjunct to the Provost Marshall-Australian Defence Force (PM-ADF), to assist with ongoing project implementation.

Recommendation 5: Establish a SP career model that allows personnel to rotate in and out of ADFIS.

Recommendation 6: Amend DI(G) ADMIN 45-2 - *Reporting and Investigation of Alleged Offences within the Australian Defence Organisation*, to reflect a mandatory requirement on all Defence Investigation Agencies to report back to unit Commanding Officers within seven days of receipt of a Notifiable Incident, as to whether (or not) they intend to assist/proceed with an investigation. In the absence of response within seven days the matter is deemed to be declined by the Defence Investigative Agency and returned to the Unit for action.

Recommendation 7: Amend DI(G) ADMIN 45-2 *Reporting and Investigation of Alleged Offences within the Australian Defence Organisation* to clarify the description and purpose of notifiable incidents and to rebalance investigative authority between units and DIA.

Finding: The Discipline Officer Scheme has been welcomed by all users; however, minor structural and regulatory changes are appropriate to facilitate flexibility and efficiency of operation.

Recommendation 8: Amend the Discipline Officer scheme to allow personnel down to the rank of WO2(E) to be appointed as DIPLOs.

Recommendation 9: Amend jurisdiction of appointed DIPLOs to discipline personnel 'two or more ranks down'.

Recommendation 10: Amend the DFDA to apply a single scale of punishments applicable across all ranks, including 'Extra Duties'.

Recommendation 11: Extend DIPLO jurisdiction to encompass visiting, transient and attached personnel.

Recommendation 12: Revise DIPLO reporting arrangements to allow for a single collated DIPLO punishments return within individual units.

Finding: The new processes for summary hearings do not include checklists or flowcharts and the 'language' to be put to the accused is confusing. Recent changes to the review of Summary Level DFDA hearings have introduced mechanisms that are unwieldy in operation, and can cause further delays to the fair and timely administration of discipline.

Recommendation 13: Introduce into DLM Vol 3 a simplified checklist/flow chart and simplify the language for election and appeal.

Recommendation 14: Introduce an improved 'higher command review' mechanism with authority to take remedial action (to replace the recently adopted 'technical' review of summary level DFDA hearings).

Finding: AMC efficiencies can be achieved by allowing Summary Authorities to hear minor DTC charges. The risk of DTC misuse calls for a review of DTC administration.

Recommendation 15: Create a specific offence in the DFDA for misuse of a Defence Credit Card without authority, which may be tried summarily. This offence should also be a DFDA Class 3 offence for the purposes of AMC trial.

Recommendation 16: Review DTC administrative arrangements with a view to reducing the risk of DTC misuse.

Finding: The current three Classes of DFDA offence do not deliver expedient or appropriate levels of justice, given the bulk of cases going before the AMC and relative weight of punishments.

Recommendation 17: Review the classification of all DFDA offences and classes to achieve greater efficiencies.

Finding: There needs to be improved independence for the DDCS; and a rebalancing of permanent and reserve legal officers between DDCS and ODMP, which would increase the efficiency and effectiveness of the trial process.

Recommendation 18: Increase the organisational independence of DDCS.

Recommendation 19: Rebalance permanent and reserve legal officer staffing and facilitate exchange between DDCS and ODMP to achieve efficiencies and broaden experience in case disposal before the AMC.

Finding: There is a perceived tension between roles where the ODMP takes the decision to prosecute and thereafter the DMP conducts the prosecution.

Recommendation 20: DMP discontinue the practice of appearing in the conduct of prosecutions; a permanent or reserve officer should be briefed on each occasion to appear for the prosecution.

Finding: There are efficiencies to be achieved by maximizing hearings at the new Canberra court facility and conducting regular regional sittings in convenient and appropriate premises employing Reserve Judges. The Registrar of the AMC requires dedicated court officers to staff the AMC to reduce the burden on units in supporting AMC hearings.

Recommendation 21: Establish the new AMC facility in Canberra as the principal location for hearings, with the capacity to travel as the exigencies of service may dictate, and uniformed Court staff (possibly Reserves) be identified to support the AMC in Canberra and the regions.

Recommendation 22: Develop a plan where AMC circuit hearings make use of the recently selected Reserve Judges, sitting where appropriate at regional locations and on a fixed calendar basis.

Finding: There are significant efficiencies to be achieved by expanding the pool of jurors and selecting them on a regional basis.

Recommendation 23: Expand the available pool of potential ADF Jurors by lowering the minimum rank for Panel members to CPL(E), (whilst retaining the provision that no Jury member is to be of subordinate rank to the accused) and removing the mandatory requirement for at least one member of the Jury to be of LTCOL(E) rank.

Recommendation 24: Provision be made for the Registrar of the AMC to identify and select potential Jurors on a 'regional basis' in preference to the current nation-wide pool.

Finding: The disciplinary system would benefit from a provision that allows the AMC to order a convicted member into custody before sentencing where appropriate.

Recommendation 25: Amend the DFDA to include the power for a military judge to order a convicted member into custody following conviction but before

sentence, together with the authority to order conditional release where appropriate.

Finding: The unintended consequence of the revised summary level review procedure is allowing some offenders to avoid intended punishments.

Recommendation 26: Amend the DFDA so that a stay of execution against a punishment imposed by the Summary Authority is by AMC leave or direction, and is not automatic upon appeal notification.

Finding: Efficiency in AMC hearings and procedures could be achieved by simplifying the applicable evidence regime.

Recommendation 27: In proceedings in the AMC the rules of evidence to be applied should be the rules applicable in the Federal Court.

Finding: The ongoing DFDA reform process and associated workload warrant a centralised coordination and efficiency body.

Recommendation 28: Establish a non executive 'Discipline Coordination and Efficiency Committee' (DCEC), chaired by a senior 'line officer' to oversee and coordinate DFDA action items and facilitate future efficiencies across the principal responsible DFDA agencies.¹

Finding: The ongoing law reform process, including MJS policy, should be managed by a single entity.

Recommendation 29: Defence Legal should be the functional agency for developing and implementing ongoing law reform within Defence.

Finding: Improvements could be made to the technical control and professional oversight of ADF legal officers.

Recommendation 30: Professional Rules for ADF legal officers be introduced with technical control and professional administrative oversight by DGADFLS on advice from Head of Corps/Category and in consultation with HDL.

Finding: The role of the JAG has been overtaken by the reformed MJS appeals and review process and the legacy DFDA charges are expected to be completed by December 2009. The requirement for an independent report to Parliament previously provided by the JAG, could be provided by IGADF.

Recommendation 31: Disestablish the JAG and DJAG positions once all legacy DFDA appeals have been finalised and have IGADF report annually on the MJS to the Minister for presentation to Parliament.

¹ AMC, ODMP, DDCS, RAMC, ADFIS and DL, with IGADF as a permanent observer.

Finding: The DFDAT is constrained by having to sit as a panel. Greater efficiency can be attained by allowing a single Tribunal member to hear and determine a sentencing appeal, or refer it to the full tribunal. Additionally, the MJSRT notes that the DFDAT panel would benefit from additional membership.

Recommendation 32: Expand the DFDAT to six members and allow a single member to hear and determine sentencing appeals for Class 2 and 3 offences or to refer an appeal to the full tribunal for determination.

Finding: While some work is being done to establish suitable Key Performance Indicators (KPIs) and benchmarks amongst the principal MJS agencies², this approach is not yet universally accepted or followed. All available performance and other appropriate data need to be transferred on a regular basis to IGADF, to allow that office to meet its reporting requirements.

Recommendation 33: Establish and promulgate Key Performance Indicators (KPIs)/benchmarks against which all principal MJS agencies' performance can be assessed.

Recommendation 34: Arrangements be established between the principal MJS agencies and IGADF to facilitate the transfer of performance data to IGADF.

Finding: Discipline case data should be entered into CRTS by the unit/agency that has responsibility for the case at a particular time.

Recommendation 35: Repromulgate DI(G) ADMIN 10-8 Conduct Reporting and Tracking System, to require DFDA case data to be entered by the agency that has carriage of the case at the time, reducing unit administrative burden after the fact.

Finding: Software applications have received universal criticism as to portability, functionality and user support from unit administrative staff. The CRTS disciplinary reporting and tracking system specifically suffers from the lack of a user friendly interface and adequate connectivity for geographically remote units.

Recommendation 36: Simplify MJS data collection systems (CRTS in particular), with the aim of improving the user interface, connectivity, and minimising the growing number of reporting systems and occasions for reporting.

Finding: Concern is held for the balance between the requirement for the retention of data and individual privacy relating to investigations that are 'not proceeded'.

Recommendation 37: Review the policy relating to the retention and access of disciplinary investigations and records that do not result in a prosecution, and hearings that result in an acquittal, quashing or direction 'not to proceed with'.

Finding: There have been representations regarding the suitability of the current functional location of FR within People Strategies and Policy Group (PSPG).

² FR, AMC, RAMC, ODMP, ADFIS, DDCS and DL.

Recommendation 38: MJSRT supports the current collocation of the policy and resolution delivery functions of FR within PSPG.

Finding: Units, DFO and FADT recommend that a specific benchmark of 90 days be imposed on referrals of ROGs to CDF/Service Chiefs.

Recommendation 39: Adopt and promulgate a 90 day benchmark for the referral of ROGs to CDF/Service Chiefs.

Finding: That PSTP has not kept pace with modern drug detection technology.

Recommendation 40: Review modern illegal drug detection techniques with a view to introduction as appropriate.

Finding: The current termination review and complaint process is being exploited to extend service in some circumstances and needs review.

Recommendation 41: Review the current Service termination process to reduce delays and the exploitation of the ROG system by disaffected personnel.

Finding: Inquiry Officers appointed under the DIRs, including IGADF, lack the ability to compel the participation of Reserve personnel and ADO civilian staff in the inquiry.

Recommendation 42. Pursue amendments to the Defence (Inquiry) Regulations and Defence Act to provide Inquiry Officers the requisite powers and protections to compel ADF Reserve personnel and Defence APS staff to participate in inquiries.

Finding: The administrative support of CDF COIs would improve if provided by the office of IGADF.

Recommendation 43: Provide administrative support to CDF COIs from the Office of IGADF.

Finding: The CDF COI process could be conducted more efficiently and effectively by appointing COI Assistants, who have similar powers and protections to those granted to Inquiry Assistants under Part 6 of the Defence (Inquiry) Regulations. Witnesses who provide evidence to COI Assistants should be entitled to the same protections as would apply for evidence they might give during COI hearings.

Recommendation 44: Pursue legislative amendments to allow for the appointment of COI Assistants with similar powers and protections as those currently granted to Inquiry Assistants under part 6 of the Defence (Inquiry) Regulations. Witness protections currently provided for evidence given before a COI should be extended to evidence provided to a COI Assistant and evidence otherwise provided to a COI outside of formal hearings.

Finding: *Significant progress has been achieved in Defence's response to the LCI and, in all establishments visited, appropriate attitudes and processes were in place or are being put in place. On recruitment, members and their families or Next of Kin would be assisted by an understanding of the concept and application of the MJS.*

Recommendation 45: Provide on recruitment into the ADF, a pamphlet highlighting the application of the DFDA and Performance Appraisal System in a disciplined military force, and emphasising the rights and responsibilities of individuals.

Finding: *There is a widespread desire from commands and units for a formalised training continuum linked to career development courses, to better prepare personnel for the roles and responsibilities of the disciplinary process, and to generally improve the preparation and quality of unit inquiries.*

Recommendation 46: Introduce a training continuum for NCOs and junior officers, to better prepare personnel to perform the duties of summary level prosecutor and defending officer, and to participate in the conduct of administrative sanctions and routine inquiries.

Finding: *Considering the work already underway from the DICA and LCI inquiries and that proposed in this review, the next similar MJS review should be in three years.*

Recommendation 47: Conduct the next Military Justice System review in three years.

Finding: *The current CDDA administrative scheme is not well suited to correct wrongs associated with ADF service. A new discretionary compensatory delegation, controlled by the CDF, needs to be developed to meet the expectations and unique service considerations of the uniformed workforce.*

Recommendation 48: Establish a discretionary delegation for CDF to compensate administrative/management/financial errors in addition to the current CDDA format.

Finding: *DI(G) PERS 37-1- Appraisal and Development Reporting of Executive and Senior Executive Officers in the Australian Defence Force, requires that performance reports be raised by ADO supervisors for personnel in the O6-O8 rank bracket concerning their performance, developmental needs and potential. Indications are this requirement is not being universally complied with, with potential for dissatisfaction.*

Recommendation 49: Reemphasise the requirement for all senior reporting officers (both APS and military) to adhere to the requirements of DI(G) 37-1 Appraisal and Development Reporting of Executive and Senior Executive Officers in the Australian Defence Force.

PART ONE - INTRODUCTION

1. In October 2003, the Senate referred the matter of the effectiveness of Australia's Military Justice System (MJS) to the Senate Standing Committee on Foreign Affairs, Defence and Trade (FADT) for inquiry and report. The inquiry was the latest in a series of inquiries into military justice spanning a decade. The FADT tabled its report, *The effectiveness of Australia's military justice system*, on 16 June 2005 and made 40 recommendations.

2. The then Government response to the FADT Report, tabled on 5th October 2005, accepted in whole, in part or in principle 30 of the 40 recommendations. Alternative solutions were adopted to the Report's recommendations on referral of offences to civil authorities, legislative basis of a permanent military court and establishment of an Australian Defence Force Administrative Review Board (ADFARB).

3. The then Government response outlined significant reforms to the MJS, which were intended to balance the maintenance of effective discipline with the protection of individuals and their rights. Key features included:

- a joint Australian Defence Force (ADF) investigation unit,
- simplified summary hearing procedures,
- an Australian Military Court (AMC) (independent of ADF chain-of-command that replaces previous Courts Martial and Defence Force Magistrates),
- a revised complaints processing system, and
- a new system of Chief of Defence Force (CDF) Commissions of Inquiry (COI) for service deaths and suspected suicide - each with an independent civilian president.

The then Government required Defence to implement these reforms within two years, with completion targeted for the end of 2007. Progress was reported to the FADT biannually throughout the two year period.

4. The then Government response to the FADT, specifically recommendation 35, agreed to commission regular independent reviews of the health of the MJS, with the first timed to assess the effectiveness of the reformed MJS at the conclusion of the two year implementation period. Such reviews were to be headed by a qualified eminent Australian.

5. On 14th April 2008, Sir Laurence Street, AC, KCMG, QC and Air Marshal Les Fisher, AO, FRAeS, MAP (Ret'd) commenced the first of these independent reviews of the reformed MJS in accordance with the Terms of Reference (TOR) at Annex A.

Purpose of the Review

6. The purpose of the Review is to assess the effectiveness of the reformed MJS following the implementation of the then Government's response to the FADT Report, as well as the implementation status of the Government's/ADF responses to the nine previous inquiries into the MJS [as listed in the CDF/Sec Joint Directive 18/2005, of 7th October 2005 (Enclosure 1 to TOR)]. The Review is to also assess whether the implementation of the Defence responses to the 2006 *Report of an Audit of the ADF Investigative Capability* (DICA) and the 2006 *Report of the Inquiry into the Learning Culture in ADF Schools and Training Establishments* (LCI), are on track. The Review is to take into account that the MJS is critical to the operational effectiveness of the ADF, but that it must be tempered with a concern for individuals and their rights.

Scope of the Military Justice System

7. For the purposes of the Review, the MJS encompasses both the Discipline System and the Administrative System. The Discipline System includes the Discipline Officer (DIPLO) Scheme, investigation of offences, summary hearings and the AMC, and the associated review and appeal processes. The Administrative System consists of 'administrative sanctions' (previously known as 'adverse administrative actions'), the right of redress and complaint and administrative inquiries. To differentiate these two complementary control structures, the Disciplinary System reflects those aspects that are considered to be *disciplinary* in nature [actions that affect the maintenance and ability to enforce service discipline as laid out in the Defence Force Discipline Act (DFDA)], while the Administrative System reflects those organisational controls that are *performance* related. Combined, the two systems enable the ADF to maintain a correct balance between the requirement to maintain a high standard of discipline, and the need to ensure members are treated fairly and with respect.

Methodology

8. The MJS Review Team (MJSRT) used various methods in seeking submissions and interviews including:

- formal letters and minutes to internal Defence military justice administrative, training and peripheral organisations;
- web page links via the Defence Restricted Network (DRN);
- professional military journals, articles and advertisements within Service Newspapers;
- ministerial media releases (covered by commercial media outlets and the internet); and
- DEFGRAM promulgation.

The closing date for formal written submissions was 1st September 2008.

9. Specific mention was made in all media releases that 'individual case specific' reviews would not be undertaken, to allow Team efforts to concentrate on wider systemic issues in accordance with the TOR. As such, 'case specific' submissions were assessed for systemic issues alone.

10. In the course of the enquiry the MJSRT received a number of submissions raising matters of varying importance. The view was taken that the MJSRT should resist the invitations to micromanage, and confine discussion and recommendation to the more important aspects raised in the enquiry.

Consultations

11. The MJSRT conducted a total of 128 interviews or consultations with members and organisational groupings from within Defence, along with 58 visits to ADF establishments, commands and units. Emphasis was given to interviews with ADF units recently returned from operational deployments. This was to ensure that the prime intent of the MJS was assessed against its ability to deliver quality results on operations, and to contrast the efficiency and applicability of the MJS at home and abroad. A list of the consultations conducted and units visited is at Annex B and C respectively.

12. MJSRT took the opportunity to attend the 25th Anniversary Seminar of the Defence Force Ombudsman (DFO). This allowed the Team to hear formal presentations reflecting differing aspects of the MJS and comments from a diverse audience of interested parties on a wide range of MJS issues.

Submissions

13. In total, the MJSRT received only six formal submissions. Four submissions are attached to the Report at Annexes P-S (two further submissions were withheld from publication at member's request). The systemic issues identified and general comments on the submissions are in Part Five of this Report.

Reporting

14. The TOR at paragraphs 12-13 requires a progress report by 14th November 2008 and a final report by 10th February 2009. The progress report was delivered to CDF on 31st October 2008.

Structure of the Final Report.

15. This report has been divided into the following parts:

- Part One summarises the Review's background, scope and methodology, and MJSRT activities over the preceding seven months.
- Part Two assesses the progress of all agreed reforms implemented by Defence in addressing the then Government's response to the 2005 FADT Report, the nine previous MJS related Reviews and Reports, and the two more recent enquiries.
- Part Three concentrates in detail upon the MJSRT findings on the Discipline System.
- Part Four addresses the Administrative System.
- Part Five covers general issues and systemic concerns, found within the submissions made to the MJSRT, and observations and assessments on the ADF's Learning Culture.

- Part Six addresses the 'matters' raised in the FADT MJS *Fourth Progress Report of 24th September 2008*, to be reviewed by MJSRT.
- Part Seven contains the MJSRT conclusions.

Recommendations, where appropriate, have been included throughout the report and are also appended separately with the conclusions.

PART TWO - PROGRESS OF REFORMS

General

16. The past decade has seen 12 separate reviews and reports covering different aspects of the MJS. An enormous amount of work by Defence has gone into restructuring and improving the system over the past three years to meet the Government's timeline resulting from the 2005 FADT Report. This period has seen the creation of the Australian Defence Force Investigative Service (ADFIS), the independent AMC and Registrar, the Office of the Director of Military Prosecutions (ODMP) and the Director of Defence Counsel Services (DDCS), all of which commenced operation in 2007.

17. The final 'plank' was laid in the new MJS structure on 20th September 2008, with the introduction of the simplified procedures for summary hearings. This was combined with ADF-wide training in these procedures and the re-issue of the Discipline Law Manual, which provides the policy framework underpinning the new summary procedures.

18. A review of the completion status of the 2005 FADT Report, and the nine previous and two more recent inquiries is below.

The 2005 Senate Foreign Affairs, Defence and Trade References Committee Report on *The Effectiveness of Australia's Military Justice System*

19. In October 2003, the Senate referred the matter of the effectiveness of the ADF's military justice structure to the FADT for inquiry and report. This inquiry was the most recent Senate review in a series of inquiries into the ADF's military justice arrangements. The then Government accepted 30 of the Senate Committee's 40 recommendations in part or in whole, with alternative measures adopted to achieve the intent of the Report's recommendations. The changes accepted by Government were intended to balance the maintenance of effective discipline with the protection of an individual's rights, both to the individual and the chain-of-command.

20. There has been a significant amount of work and resources devoted by Defence in implementing the recommendations in the two year timeframe set by Government. A progress report addressing the recommendations of the FADT is at Annex M. Of the 30 accepted recommendations, only six remain. They are:

FADT Recommendation 4 – where the civilian police do not pursue a matter, current arrangements for referral back to the service police (SP) should be retained. The SP should only pursue a matter where proceedings under the DFDA can reasonably be regarded as substantially serving the purpose of maintaining or enforcing service discipline. MJSRT comment: this recommendation is awaiting finalisation of DI(G) PERS 45-1 *Jurisdiction under the Defence Force Discipline Act – A Guide for Military Commanders*, before closure.

FADT Recommendation 5 – the ADF increase the capacity of the SP to perform their investigative function by implementing the 2004 Ernst & Young Report, encouraging secondments, recruit civilian police into the Reserve, participate in civilian investigative training courses, and design clearer career paths and goals for military police personnel. MJSRT comment: this is addressed in DICA

FADT Recommendation 6 – the ADF conduct a tri-service audit of current SP staffing, equipment, training and resources to determine the current capacity of the criminal investigations services. This should be done in conjunction with a scoping exercise to examine the benefit of creating a tri-service criminal investigation unit. MJSRT comment: this is addressed in DICA

FADT Recommendation 29 - the Government establish an ADFARB. MJSRT comment: this was not agreed by the then Government but improvements to the administrative system are being progressed. Currently this recommendation is awaiting finalisation of the revised DI(G) PERS 34-1 *Redress of Grievance – Tri Service Procedures*, before closure.

FADT Recommendation 34 - That all notifiable incidents including suicide, accidental death or serious injury be referred to the ADFARB for investigation/inquiry and other ADFRB related matters. MJSRT comment: this recommendation was also not agreed by the then Government, though CDF COIs have been established and efforts are continuing to establish Memorandums of Understanding with each State and Territory Coroner.

FADT Recommendation 35 - Building on the report by the Australian Law Reform Commission, *Principled Regulation: Federal Civil and Administrative Penalties in Federal Jurisdiction*, the ADF commission a similar review of its disciplinary and administrative systems. MJSRT comment: this recommendation was agreed by Government in principle. This review addresses the recommendation.

The Nine Previous Military Justice Reviews

21. **1997 Abadee Review** - Changes to the UK and Canadian disciplinary system in the mid 1990s resulted in a study into the ADF judicial system under the DFDA by a Deputy Judge Advocate General, Brigadier The Honourable A.R. Abadee, RFD. Brigadier Abadee made 48 recommendations as a result of his review. All recommendations have been completed or have since been superseded. A progress report is at Annex E.

22. **1998 DFO Own Motion Inquiry – Responses to Allegations of serious Incidents and Offences** - In 1995, the then CDF requested that the Defence Force Ombudsman (DFO) conduct an 'own motion' investigation into allegations regarding a sexual assault at a Defence base. The DFO concentrated on systemic issues arising from investigations into serious incidents and offences with an emphasis on sexual offences. Of the 14 recommendations made by the DFO, 13 are complete and one remains partially complete. A progress report is at Annex F.

23. **1999 Senate Inquiry into Military Justice Procedures** - The contemporary MJS first came under examination by the Senate in 1999 by the Joint Standing Committee on Foreign Affairs, Defence and Trade. This was as a result of a number of recent military inquiries that attracted public interest and media comment, predominantly involving the death of an ADF member. The Committee sought to evaluate the effectiveness of the MJS while acknowledging the system must function across the whole spectrum of conflict in which the ADF can be expected to operate. Of the 59 recommendations, 58 were agreed in full or in part and 57 have been implemented within the intent of the recommendations. A progress report is at Annex G.
24. **2001 Senate Inquiry into Rough Justice** - This Joint Standing Committee Inquiry resulted from allegations arising from an Army unit during the period 1996-1999, following media exposure of complaints by ex-soldiers and their families. All eight recommendations, have been completed. A progress report is at Annex H.
25. **2001 Burchett Inquiry** - Mr Burchett QC was appointed to inquire into the application and functioning of law in the military. The inquiry was initiated as a result of events in a specific military unit between 1997 and 1998. Of the 55 recommendations made by Burchett, 15 remain outstanding. A progress report is at Annex I.
26. **2003 Acumen Alliance Review of Board of Inquiry Processes and Procedures** - Boards of Inquiry (BOI) were reviewed by the 1999 Joint Standing Committee report into 'Military Justice Procedures in the Australian Defence Force'. A number of recommendations were implemented to improve Board performance. While the performance of most BOI since then is well regarded, concerns over the efficiency of two other recent BOI at the time resulted in The Defence Legal Service (TDLS) commissioning a management audit by Acumen Alliance to identify 'best practise'. Twenty-five of the 26 recommendations were accepted and all have since been implemented. A progress report is at Annex J.
27. **2004 Ernst & Young Review of the Military Police Battalion Investigation Capability** - Defence commissioned Ernst & Young to review the Army military police investigation capability and to design a 'robust, flexible and responsive' organisation comparable with 'best practise'. This review produced 54 recommendations, which have been substantially implemented or superseded by DICA (see para 30).
28. **2004 Joint Report by the Department of Defence and the Commonwealth Ombudsman - Review of the ADF Redress of Grievance System** - This 2004 joint review of the ADF complaint handling system sought to improve internal processes and refine the relationships that Defence has with external complaint handling agencies. Three of the seven recommendations have been completed with the remaining recommendations to be addressed with the re-issue of DI(G) 34-1 *Redress of Grievance- Tri Service Procedures*, which is in the final stages of clearance. A progress report is at Annex K.

29. **2005 Defence Force Ombudsman Own Motion Review on the ADF Management of Service Personnel under 18 years** - As a result of several complaints made to the DFO on the adequacy of ADF administration of minors, the DFO undertook an own review of the adequacy of ADF arrangements in 2005. The DFO made 11 recommendations of which four are still being progressed. A progress report is at Annex L.

The Two More Recent Inquiries

30. **2006 Defence Investigative Capability Audit Report** - The DICA Report was as a result of a 2005 FADT Report recommendation (Recommendation 6) on SP investigations and its implementation is ongoing. The Audit Report found that the ADF's investigative capability was in decline with remediation likely to take five years. The Report made 99 recommendations to transform service investigations into an independent, impartial standard that equals Australian civilian police 'best practice'. Fifty-one recommendations have been completed, with the remainder the subject of an increased focus of attention and resources to meet the remediation deadline of April 2012 (five years from the creation of ADFIS). A progress report is at Annex N.

31. **2006 Learning Culture Inquiry** - The LCI was established in 2005 by CDF to inquire into the culture of ADF Schools and Training Establishments to determine whether a culture of harassment or bullying exists, and irregularities against established policies and processes of administration occur. The Inquiry was completed in 2006 and is addressed in detail in Part 5 of this report (also see Annex O).

Conclusion

32. The majority (93%) of the military justice reforms resulting from the 2005 FADT Report and the nine previous inquiries are now complete. Of the 382 recommendations, only 28 remain to be addressed. None of these is of a structural nature or has major policy implications. The overlapping nature of these past reviews has been distracting and destabilising and it is timely to 'pull together all the strings', and report on the MJS as it presently exists. This report is directed at covering the field, noting that there are two current and relevant reforms still ongoing - DICA and LCI.

PART THREE – THE DISCIPLINE SYSTEM

General

33. The structural reforms to the MJS were completed on the 20th September 2008 when Defence Legislation Amendment Act 2008 (DLAA 08) came into effect. All other structural changes to the Disciplinary System post FADT 2005 were already established, with a total of 97 AMC hearings completed from 27th November 2007 to 11th December 2008. As such, the MJSRT considers that the Disciplinary System is now functionally complete.

Timeliness

34. A consistent theme, raised with the MJSRT by all units and formations, was the perception that DFDA investigations and AMC hearings were incurring delays in the delivery of discipline. While the reformed DFDA processes are still bedding down, timeliness needs to be improved to ensure the DFDA operates in the most efficient and effective manner.

35. To address this shortcoming, the MJSRT will recommend improvements to the investigative service, summary hearing processes, a rebalancing of legal resources, some changes in tribunal practice (including legal representation), and establishing efficiency coordination arrangements and performance indicators across all DFDA support agencies¹. With greater access by the Inspector General ADF (IGADF) to the full range of performance data, a wider independent assessment of the application of the DFDA will be available and, where necessary, early corrective action taken.

The Australian Defence Force Investigative Service

*The role of the ADFIS is to assist the CDF and the Service Chiefs to maintain discipline in the ADF through the lawful, ethical and effective investigation of matters involving persons subject to DFDA jurisdiction*²

36. The successful establishment of the ADFIS from single-Service policing agencies in April 2007 was a key feature of the MJS reform process. Without qualification, all headquarters interviewed were keen for ADFIS to succeed and are supportive of its growth as a functional component of the MJS. However, there have been delays experienced by ADF units in engaging ADFIS investigative support, and in receiving progress reports and feedback from ADFIS staff.

37. **Delays** - The area requiring improvement is the time taken for unit staff to receive an acknowledgement accepting or rejecting investigative responsibility from ADFIS, or where appropriate, a completed Brief of Evidence (BOE). The average time taken for ADFIS to complete an investigation is between 34 days³ and 152 days⁴.

¹ AMC, ODMP, DDCS, RAMC and ADFIS.

² CDF Directive 7/2007.

³ Information supplied by ADFIS on 27 Oct 08.

⁴ Information supplied by ODMP on 21 Nov 08.

These varying degrees of responsiveness are reflected in interviews with unit and headquarters staff. They also disclose disparity in the statistical data provided by DFDA agencies. For ADFIS to develop as a professionally respected agency, the timeliness of feedback/delivery of BOE to unit commanders and the ODMP must be improved.

38. BOE delays result from both workforce and workload issues. The first involves difficulties in competitively recruiting and retaining proficient military investigators from within the ADF workforce⁵, while the second is linked to a heavy case load resulting from a number of factors.

39 **Workforce** – A major difficulty in attracting and retaining service investigators is the lack of competitive remuneration for SP (ADFIS in particular) and how SP are professionally recognised. An example of pay disparity is the comparison of Army investigators relative Pay Grade (PG) ranking to other members of the Royal Australian Corps of Military Police (RACMP). Under the recently passed Graded Other Ranks Pay Structure (GORPS) pay scheme⁶, Army Investigators will now receive PG 4 at best, while Army Dog Handlers and Close Personal Protection Operators within the RACMP, can receive up to PG 6 (an approximate \$6000 differential). Similar examples can be found within the Navy and Air Force regarding SP pay grades. The remuneration imbalance becomes more pronounced when SP investigators are compared with their Inspector General Division (IGD)/Defence Security Agency (DSA) investigator counterparts. Nominally, a military investigator at SGT(E) rank could be investigating a service related offence of equal complexity to that as an APS investigator at EL1 rank (an approximate \$27 000 differential⁷). Both by qualification possess a 'Certificate in Investigations'⁸ as Defence Investigation Authority (DIA) investigators.

40. It has been reported to the MJSRT that when the ADFIS workforce was established, the larger numbers of Army investigators resulted in an 'Army Special Investigations Branch' (SIB) culture, at the expense of Navy and Air Force integration. While this is understandable, this trend needs to be adjusted and a 'joint' culture established if adequate numbers of Navy and Air Force SPs are to be attracted to and recruited into ADFIS.

41. Another relevant element is the limited career opportunities for ADFIS personnel. This can be addressed by rotating ADFIS members back to parent units where there are greater career prospects. In other words, the ADF needs to provide career opportunities for 'life after ADFIS'.

42. **Workload** - The second contributing factor to investigative delay is the increase in investigative workload undertaken by ADFIS. When ADFIS was established in April 2007, most single-Service investigative personnel/capabilities were transferred into the new organisation.⁹ Interim arrangements saw ADFIS

⁵ Based on data supplied by ADFIS, currently manning is approximately 80% established strength, with the available workforce expected to drop to 68% early in 2009.

⁶ Announced in CDF AUSTRALIA WAC 170207Z NOV 08.

⁷ SGT(E) PG 4 - \$55 434.00 versus EL 1 Base of \$82 890.00

⁸ DI(G) ADMIN 45-2, pp4.

⁹ CDF Directive 07/2007.

accepting responsibility for 'minor criminal offences in those ADF locations where single-Service Minor Criminal Investigation (MCI) qualified personnel were not available'¹⁰. In addition to the ADFIS 'Complex and Major Investigations'¹¹ responsibility this MCI workload is not what ADFIS was structured and established to deal with.

43. In CDF Directive 07/2007, the ADF recognised this transfer of MCI responsibilities was an interim measure only and a reinvigoration of single-Service policing capabilities¹² would be necessary. Since that Directive, the Services have worked within personnel constraints toward rebuilding their Garrison Policing/MCI capabilities, although each currently remains unable to meet most of the demands of unit disciplinary activities. The efforts by the Services to regenerate these Garrison Policing capabilities is encouraged; it will not only serve to reduce the overall ADFIS workload, but will also enable a career path for SP personnel leading into (and out of) ADFIS.

44. The current ADFIS/DIA investigation workload is determined by the definition of 'Notifiable Incidents' (NI) in Defence Instruction (General) Administration DI(G) ADMIN 45-2 – *Reporting and Investigation of Alleged Offences within the Australian Defence Organisation*. Within this instruction, the definition of what constitutes an NI spans most possible ADF incidents, and is seen as distracting ADFIS from concentrating on serious and complex investigations.

45. The draft revision of DI(G) ADMIN 45-2 has been in development for 18 months. The revised DI(G), needs to make a clear division between what is essentially required for event/incident visibility to higher authorities (i.e. what are actually 'Notifiable Incidents'), and what are the types of disciplinary incident that must have DIA/ODMP assistance to investigate and prosecute¹³. When this delineation is agreed, there would be value in revisiting the responsibility and accountability for those NIs which are below the 'DIA/ODMP' threshold - while retaining the notification responsibility. Investigation of these lesser NIs should then be a decision resting with unit commanders – with visibility by the relevant DIA. In doing so, the ADF would reinforce the principle of 'Military Command' and elevate the roles and profile of Garrison Policing at a unit level. Minor disciplinary incidents should be able to be finalised in a more timely manner.

46. **Unit Liaison** – Improvements are needed in unit/ADFIS cooperation. Units perceive ADFIS as insensitive to unit accountabilities and responsibilities for personnel management. There is no question that ADFIS investigations must be conducted free from command interference. However safety, security and operational issues dictate that the Commanding Officer (CO) be made aware of when an investigation is to be initiated into a unit member (unless the CO is compromised). Equally, COs need to know early whether a unit originated NI is to be investigated by ADFIS or will be for the unit to address. There was advice from units indicating some

¹⁰ *ibid.*

¹¹ SI(ADFIS) 03-1, Enclosure 1.

¹² DPSN BAB/W4P/WAB 170105Z OCT 08 – Service Police Investigator capability; CA Directive 33/08 – Establishment of the Military Police Domestic Policing Unit; and DCAF Minute 2008/1032525/1(12) – Commencement of partial Minor Investigation Capability within Air Force.;

¹³ See the ADFIS Investigative Jurisdiction Model contained in SI(ADFIS) OPS 03-1.

cases had been handed back by ADFIS after six months or more, with no action taken. As a first step in improving relationships and transparency, all DIA need to advise units within seven days from notification, whether or not they will accept or reject responsibility for investigating unit-initiated NI. Failure to respond within seven days should be deemed to be a rejection, thus placing responsibility back with the unit. Also, DIAs need to advise unit COs when DIA originated investigations are to commence.

47. The complexity and extensive nature of the remedial actions being proposed, and the completion of the DICA recommendations, warrants the temporary assignment of a senior project officer to ensure the Government's agreed 'remediation' timeline is achieved.

Finding: A dedicated effort to improve career opportunities and the professional recognition of, and remuneration for, the 'specific capability enablers' (investigative skills) provided by SP/ADFIS, is required to support investigator retention and recruiting. Management issues regarding the development of a tri-service culture within ADFIS remain and effort is required to establish a mature joint organisation. Advice to units is needed when a DIA investigation is to occur and, within seven days, as to whether (or not) an investigation is to proceed. A temporary senior officer placement would be appropriate to ensure that the Government's agreed 'remediation' timeline is achieved. A clarification of the responsibility and purpose of NI, and rebalancing of investigative authority at unit-level would be appropriate.

Recommendation 1: Raise a specific pay case recognising the Fundamental Input to Capability (FIC) ADF Investigators deliver across the ADF, and the unique and demanding skill sets required of service investigators to meet legal and civil expectations.

Recommendation 2: Raise a second dedicated and significant pay initiative, across tri-Service lines, to encourage SP recruitment and retention; this initiative needs to be sufficient to allow the SP agencies to compete from within the ADF workforce and attract lateral transfer recruitment from civil policing agencies.

Recommendation 3: Encourage greater efforts from within all areas of the ADO to ensure a joint culture is established and maintained within ADFIS.

Recommendation 4: Establish a temporary 'O7' position as an adjunct to the Provost Marshall-Australian Defence Force (PM-ADF), to assist with ongoing project implementation.

Recommendation 5: Establish a SP career model that allows personnel to rotate in and out of ADFIS.

Recommendation 6: Amend DI(G) ADMIN 45-2 - *Reporting and Investigation of Alleged Offences within the Australian Defence Organisation*, to reflect a mandatory requirement on all Defence Investigation Agencies to report back to unit Commanding Officers within seven days of receipt of a Notifiable Incident, as to whether (or not) they intend to assist/proceed with an investigation. In the

absence of response within seven days the matter is deemed to be declined by the Defence Investigative Agency and returned to the Unit for action.

Recommendation 7: Amend DI(G) ADMIN 45-2 *Reporting and Investigation of Alleged Offences within the Australian Defence Organisation* to clarify the description and purpose of notifiable incidents and to rebalance investigative authority between units and DIA.

The Chief of Service Committee (COSC) agreed and CDF directed the implementation of Recommendations 1 - 3 on 25 Nov 2008

CDF has established the ADFIS Governance Board to provide high level oversight of the development of the ADFIS investigative capability and activity. The MJSRT supports this initiative.

Discipline Officer (DIPLO) Scheme

48. The ADF's major MJS success story is the widespread employment and popular support for the DIPLO Scheme. The DIPLO scheme allows unit staff to enforce discipline for minor workplace infractions in a scaled manner, without having to resort to the higher punishments under Summary Authorities. The DIPLO scheme serves as a quick and effective method by which junior personnel (who admit culpability by a plea of guilty) are afforded the chance to learn from minor disciplinary indiscretions. Every unit and command visited throughout the course of the Review spoke positively as to the DIPLO's utility and its acceptance by uniformed personnel. The DIPLO scheme would now benefit from minor refinements.

49. **Rank Structure Applicability** - Under current legislation, the DIPLO rank structure limits the ability of small units (for example RAN Patrol Boats and NORFORCE) to effectively utilise the DIPLO regime without referring matters to higher headquarters or other larger units, simply due to rank/personnel limitations. The MJSRT proposes that the minimum rank for DIPLOs be reduced to that of WO2(E), and that DIPLOs be authorised to discipline all personnel 'two ranks down'. A specific exception to this regulatory change would need to be made for Midshipmen and Officer Cadets (officers under training) which, for training purposes, should remain liable to those DIPLOs (both non commissioned officer and officer), specifically responsible for their training.

50. **Punishments** - A criticism of the DIPLO scheme is the unequal punishments imposed across differing ranks, with the consensus being that the available punishments should apply across all ranks (officers and other ranks). The MJSRT also supports the common request that 'extra duties'¹⁴ be included as a DIPLO punishment.

51. **Powers of Punishment** - A deficiency, is the inability of DIPLOs within one unit, from disciplining visiting, transient, or attached personnel from another unit.

¹⁴ DLM Vol 1, Part V, Rule 8, pp6.

This denies the ability to discipline personnel without recourse to summary level hearings, and is considered an unintentional limitation given the differing posting/attachment/movement methods employed by the Services. A legislative amendment is required to allow DIPLO jurisdiction over all visiting, transient or attached personnel within a unit.

52. **Monthly Reports** – The DIPLO reporting regime creates inefficiencies through the mandatory raising of monthly infringement returns by every DIPLO in the command. This multiple reporting within any single unit is not efficient, and with slight modification to the current reporting format, it should be possible for multiple DIPLOs to pass a single monthly report to their commander. As envisaged, this revised reporting/recording arrangement could be maintained by a designated unit coordinator, and then passed to the command for monthly review as is current practice. This change would reduce disciplinary administration burdens within units, while still retaining the important command oversight function.

Finding: The Discipline Officer Scheme has been welcomed by all users; however, minor structural and regulatory changes are appropriate to facilitate flexibility and efficiency of operation.

Recommendation 8: Amend the Discipline Officer scheme to allow personnel down to the rank of WO2(E) to be appointed as DIPLOs.

Recommendation 9: Amend jurisdiction of appointed DIPLOs to discipline personnel 'two or more ranks down'.

Recommendation 10: Amend the DFDA to apply a single scale of punishments applicable across all ranks, including 'Extra Duties'.

Recommendation 11: Extend DIPLO jurisdiction to encompass visiting, transient and attached personnel.

Recommendation 12: Revise DIPLO reporting arrangements to allow for a single collated DIPLO punishments return within individual units.

Summary Hearings

53 **Summary Hearing Procedures** - On the 20th September 2008, the final 'plank' of the reformed DFDA was laid. The focus of this last round of reforms was the unit-level administration and management of the discipline system. The intention was to simplify the discipline system for the benefit of commanders and members, and expand the rights of the accused. The new arrangements were promulgated in ADF Publication 06.1.1- *Discipline Law Manual (DLM) Volume 3* effective 20th September 2008; with an extensive training package delivered across the ADF before that date. Central to the new system was the new procedure for the conduct of summary authority proceedings. While experience with the new procedure is limited, a number of units have raised two concerns. First, no simplified checklist/flowchart sheet was included in the relevant DLM and, secondly, the language used, on 'election' and 'appeals' could be confusing.

54. **Review Processes** - A universal concern raised by ADF commanders has been the removal of the automatic review of summary level hearings by superior authorities. Under DLAA 08, the mechanisms by which Superior Authorities (SUPSA), Subordinate Authorities (SUBSA) and CO judicial decisions are reviewed and 'corrected' (if found excessive or incorrect in law), were modified and replaced by a less exhaustive 'technical review' of proceedings. This technical review has not met user expectations.

55. Previously, the automatic review (by a more senior and experienced commander and legal staff), afforded a level of procedural and legal protection for both the accused and Summary Authority. The review authority identified errors of law or punishment, and was empowered to correct decisions or order re-trials, as appropriate. Under DLAA 08, this automatic review process was replaced with a process where the reviewing authority may now write to the accused recommending an appeal to the AMC. This revised process has removed the ability of the reviewing authority from simply correcting the error and informing those concerned, and introduces the possible complicating factor of an appeal to the AMC - with the risk of having the conviction confirmed by the AMC, with resulting criminal record.

56. **Operational Experience** - Interviews with Command and legal officers recently returned from Iraq, Afghanistan, East Timor and Solomon Islands, indicate that the DFDA is operating satisfactorily (albeit pre 20th September 2008) in those operational theatres. This is reinforced in the submission at Annex P.

Finding: The new processes for summary hearings do not include checklists or flowcharts and the 'language' to be put to the accused is confusing. Recent changes to the review of Summary Level DFDA hearings have introduced mechanisms that are unwieldy in operation, and can cause further delays to the fair and timely administration of discipline.

Recommendation 13: Introduce into DLM Vol 3 a simplified checklist/flow chart and simplify the language for election and appeal.

Defence Legal has agreed to pursue this outcome in advance of this Report
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Recommendation 14: Introduce an improved 'higher command review' mechanism with authority to take remedial action (to replace the recently adopted 'technical' review of summary level DFDA hearings).

Australian Military Court

57. The AMC commenced hearings on 1st October 2007, replacing the previous regime of Courts Martial and Defence Force Magistrates, and satisfies the FADT's desire for a separation and independence from the chain-of-command. This military tribunal has the jurisdiction to try service offences including matters resulting from appeals and elections. To meet the requirements of transparency, the AMC maintains a record of its proceedings on the DRN website.

58. An area of concern has been the rate of DFDA case disposal through the

AMC. Delays associated with AMC hearings, are impacting the ability of Commanders and unit administrative staff to manage their personnel. Operational commitments and posting turbulence often means that those personnel associated with a DFDA offence, seldom see the outcome of a delayed AMC hearing. This lack of timely justice can frustrate the deterrent intent and impact of the DFDA. The following paragraphs illustrate where efficiencies can be pursued and improvements made in the timeliness of court processes.

59. **Defence Travel Card (DTC)** - Currently 36% of all AMC hearings (78% of convictions) represent DTC 'misuse', which equates to some \$120,000 of unapproved transactions over the period 27th November 2007 to 3rd December 2008.¹⁵ Under existing legislation, DTC charges must be heard by the AMC. This represents a significant case load, along with attendant travel and administrative costs, for hearings that in the majority have resulted in 'Guilty' pleas by the accused (29 cases out of 32 DTC related cases)¹⁶. Efficiencies can be achieved by redefining DTC misuse as a Class 3 offence. This would allow Summary Authorities to hear DTC offences as appropriate, or refer the case to the AMC for a 'Judge Alone' (JA) hearing. Also the demonstrated risk that has arisen with respect to the use of the DTC, calls for an early review of the administrative arrangements for its use. The MJSRT notes there maybe some concerns for the perceived disparity between ADF personnel and APS staff in handling DTC misuse; however, as the DFDA is a military disciplinary tool, it is considered that this issue is not within the scope of this review.

Finding: AMC efficiencies can be achieved by allowing Summary Authorities to hear minor DTC charges. The risk of DTC misuse calls for a review of DTC administration.

Recommendation 15: Create a specific offence in the DFDA for misuse of a Defence Credit Card without authority, which may be tried summarily. This offence should also be a DFDA Class 3 offence for the purposes of AMC trial.

Recommendation 16: Review DTC administrative arrangements with a view to reducing the risk of DTC misuse.

60. **Classes of DFDA Offence** – The 'Class' division of DFDA offences could be improved. Presently the division of offences precludes a Summary Authority or JA from hearing DTC cases; instead a mandatory 6, or possibly 12 person jury (on election) is stipulated for these 'Class 2' offences. Class 1 offences should be limited to those justifying a 12 person military jury (i.e. very serious offences – murder etc), with Class 2 representing those of a lesser criminal or disciplinary nature that would justify a six person jury, while Class 3 offences would reflect those that require Summary Authority or JA hearings. This redefinition across all three classes would facilitate better AMC planning and create efficiencies across the full spectrum of DFDA offences.

61 In addition, there are certain 'prohibited drug' offences in Class 2 which would be better placed in Class 3 and the omission of subsection 60(1) and 60(1A)

¹⁵ Data supplied by IGADF.

¹⁶ Based on data available from AMC website.

from Schedule 7 of the DFDA.

Finding: The current three Classes of DFDA offence do not deliver expedient or appropriate levels of justice, given the bulk of cases going before the AMC and relative weight of punishments.

Recommendation 17: Review the classification of all DFDA offences and classes to achieve greater efficiencies.

62 **Common DDCS/ODMP Issues** – There is a disparity between ODMP and DDCS resourcing, staffing and responsibilities, yet each represents one of the two adversarial aspects of the DFDA tribunal process. As reflected in the 2005 FADT Report, the ODMP must have the capacity to effectively direct the prosecution of DFDA offences without influence from the chain-of-command; yet similar independence does not exist for its counterpart, the DDCS. Considering the wide-ranging remit and roles of DDCS, it is not considered appropriate to appoint DDCS as a statutory authority; however, an administrative change to separate DDCS from its parent organisation (Defence Legal) would achieve many of the ODMP operating parameters.

63. Equally, a common staffing structure, reflecting a workforce of representatives (Regular and Reserve legal officers) for both directorates, has much to offer the professional development of advocacy capability and hence the quality of AMC procedures and hearings. For example, the availability of the ‘pool’ of Reserve personnel to service the trial requirements of DDCS and ODMP would allow for junior ADF legal officers to benefit from the extensive civil prosecution and defence experience available within the Reserve panels. The exchange of Regular legal officers between ODMP into DDCS defence counsel positions would improve scheduling of AMC hearings and allow a similar mentoring of regular staff in AMC advocacy. Such an arrangement would reflect the adoption of a collegiate ‘one ship’ approach to DFDA issues within the military legal community, allowing for a balanced experience base to both DDCS and ODMP.

Finding: There needs to be improved independence for the DDCS; and a rebalancing of permanent and reserve legal officers between DDCS and ODMP, which would increase the efficiency and effectiveness of the trial process.

Recommendation 18: Increase the organisational independence of DDCS.

Recommendation 19: Rebalance permanent and reserve legal officer staffing and facilitate exchange between DDCS and ODMP to achieve efficiencies and broaden experience in case disposal before the AMC.

64. **Conduct of Prosecutions** - There is a very real tension between on the one hand the duties of the director of a prosecution, who inevitably has a professional/personal involvement in the decision to prosecute, and on the other hand the conduct of the prosecution in the hands of an independent trial counsel. The relevance of this observation is that the limitation in the establishment of personnel within the ODMP has lead to the DMP herself shouldering the burden of appearing before the AMC to conduct prosecutions that have been directed by her office. The

readiness to accept this burden is to the credit of the DMP, but it is inimical to the fact and the appearance of impartial discharge of the different duties of directing and conducting prosecutions. The distinction is recognized and observed in the non-military criminal jurisdictions; the Commonwealth DPP does not appear in Commonwealth prosecutions and the NSW DPP does not appear in Criminal Prosecutions. The distinction should be recognized and observed in prosecutions in the AMC.

65. A further factor underlying the need for the ODMF, who holds the rank of Brigadier, to be detached from the conduct of prosecutions and in lieu to have access to permanent and reserve legal officers to conduct prosecutions, lies in the disquiet that attaches to the rank structure of the AMC. The CMJ is a Brigadier; the other two military judges are a Colonel and a Lieutenant Colonel; defence representatives are unlikely to hold a rank of or even near to Brigadier (E) and the same can be said of the members of the jury. Introducing into a trial before the AMC a prosecution officer with the rank of Brigadier hardly represents the appearance, let alone the fact, of an ADF member being prosecuted in the AMC on a level playing field. Not only is this unacceptable in principle but it has the potential to undermine confidence in the AMC.

Finding: There is a perceived tension between roles where the ODMF takes the decision to prosecute and thereafter the DMP conducts the prosecution.

Recommendation 20: DMP discontinue the practice of appearing in the conduct of prosecutions; a permanent or reserve officer should be briefed on each occasion to appear for the prosecution.

66. **AMC Operating Locations** - Numerous units have questioned the need for the AMC to hear charges at the accused's base location. The ongoing net effect of ADF operational commitments, court process delays and workforce mobility collectively challenge the perception that the AMC achieves consistent levels of deterrent value by working on this basis. The operating costs and the imposition of hosting AMC hearings has on unit staff is considerable, with few observable positive outcomes to justify the expense and administrative overheads. Any loss of notional deterrent value from reducing the number of unit hearings would be offset by the publishing of AMC outcomes in service newspapers. Also, the additional lack of suitable AMC facilities at most base locations introduces the risk of mistrials. There is a need for a revised methodology for how and when the AMC sits regionally.

67. As the AMC has now completed one full year of operations, a list of base sites that provide an acceptable level of AMC facilities should offer a foundation upon which to develop a revised regional sitting structure. Also, the imminent announcement of a number of Reserve AMC Judges for the AMC, would allow for those Judges to hear regional cases. A combination of selected regional facilities, proximate Reserve AMC Judge availability, and the identification of readily available and experienced regional staff (possibly reserves) to support 'scheduled' AMC hearings, would produce a preferable system to current arrangements. This model would enable those AMC cases that require dedicated facilities, or those that are complex, to be heard by three AMC Judges sitting within the purpose developed facility in Canberra.

68. The central use of the Canberra facility whenever possible – and especially for complex Jury trials – would provide immediate efficiencies for the ADF. Also the provision of dedicated Court staff for the Registry (possibly Reserve personnel drawn from the local Canberra region), would allow a substantial number of cases from within the NSW/ACT/VIC region to be heard with minimal disruption to units.

Finding: There are efficiencies to be achieved by maximizing hearings at the new Canberra court facility and conducting regular regional sittings in convenient and appropriate premises employing Reserve Judges. The Registrar of the AMC requires dedicated court officers to staff the AMC to reduce the burden on units in supporting AMC hearings.

Recommendation 21: Establish the new AMC facility in Canberra as the principal location for hearings, with the capacity to travel as the exigencies of service may dictate, and uniformed Court staff (possibly Reserves) be identified to support the AMC in Canberra and the regions.

Recommendation 22: Develop a plan where AMC circuit hearings make use of the recently selected Reserve Judges, sitting where appropriate at regional locations and on a fixed calendar basis.

69 **Jury Selection**– The selection of military jurors at random from across the geographic spread of ADF units, while soundly intended, is inefficient in practice. Currently, some 12,000 serving personnel meet eligibility requirements (based on rank of Warrant Officer and above, with the provision of at least a single LTCOL(E) serving on the panel). However, in practice far fewer personnel are available at any one time through a combination of operational, training, leave and other administrative restraints. As such, Registrar of the AMC (RAMC) staff expends considerable effort in identifying a panel of suitable jurors, arranging complex travel, accommodation and administrative details, only then to find that the accused has decided to plead guilty before the trial.¹⁷ Such an arrangement is considered untenable when minor amendments to jury selection procedures (such as selecting possible jurors from a 'regional pool' rather than nationwide, and opening the range of personnel able to serve in juries on a rank basis) could achieve major efficiencies and offer improved performance.

70. The minimum rank of WO1(E) is seen by all interviewed parties as not reflecting either the organisational makeup of the ADF workforce (mostly young, junior personnel), or the intent of trial by peers. A modification of current jury selection criteria to lower the minimum rank composition has received wide support from ADF personnel of all ranks and duties, with most considering that a jury panel consisting of CPL(E) and above – with the proviso that no accused would ever face a jury including a subordinate – would reflect both the intent and age/rank breakdown of the ADF workforce. Removing the requirement to have a LTCOL(E) serving on the jury would also be appropriate, as personnel having gained at least CPL(E) have

¹⁷ Currently RAMC staff spends some 13.6 hours organising 'Judge Alone' trials, with this case specific effort increasing to 77.9 hours for 'Judge and Jury' trials. On average, 78 ADF personnel are screened for each jury trial, however, due to varying operational/staff commitments this generic number rises into the hundreds - up to 420 personnel in one instance. (Data supplied by RAMC)

sufficient service experience to understand the requirements of service life.

Finding: There are significant efficiencies to be achieved by expanding the pool of jurors and selecting them on a regional basis.

Recommendation 23: Expand the available pool of potential ADF Jurors by lowering the minimum rank for Panel members to CPL(E), (whilst retaining the provision that no Jury member is to be of subordinate rank to the accused) and removing the mandatory requirement for at least one member of the Jury to be of LTCOL(E) rank.

Recommendation 24: Provision be made for the Registrar of the AMC to identify and select potential Jurors on a 'regional basis' in preference to the current nation-wide pool.

COSC agreed and CDF directed the implementation of Recommendations 23 and 24 on 25th November 2008.

71 Custody Following Conviction – There is an apparent 'loophole' in the DFDA which allows a member convicted of an offence by the AMC to remain at liberty until sentencing. While this is not an issue for most DFDA offences, it can become an issue in the case of conviction for a serious offence when a custodial sentence is likely or certain. While the DFDA does not contain a bail framework similar to the civil courts, the DFDA does have provision for a Military Judge to grant a stay against punishment when an appeal against conviction or punishment is lodged. To complement this, an express provision is required to order a convicted member into custody pending sentence by the AMC.

Finding: The disciplinary system would benefit from a provision that allows the AMC to order a convicted member into custody before sentencing where appropriate.

Recommendation 25: Amend the DFDA to include the power for a military judge to order a convicted member into custody following conviction but before sentence, together with the authority to order conditional release where appropriate.

72 Stay of Execution Appeals – DLAA 08 introduced to the MJS the ability for convicted personnel to 'stay execution of sentence' for DFDA offences on appeal to the AMC/DFDAT. This ability is considered to be an unwarranted imposition on the military discipline system. Given the limited range of punishments generally imposed for disciplinary offences at the summary level, an automatic 'stay of execution' undermines commanders attempting to reinforce disciplinary lessons under what are normally constrained operating environments. An example is where a Summary Authority aboard a warship imposes an offender 'Restriction of Privileges' covering a weekend shore leave, yet on announcing an intention to appeal, the offender enjoys the weekend ashore negating the net intent of what the authority had been trying to achieve. Such an option is not seen as serving the maintenance of good discipline, and needs to be reviewed.

Finding: *The unintended consequence of the revised summary level review procedure is allowing some offenders to avoid intended punishments.*

Recommendation 26: Amend the DFDA so that a stay of execution against a punishment imposed by the Summary Authority is by AMC leave or direction, and is not automatic upon appeal notification.

73. **Rules of Evidence** – The rules of evidence applicable to the AMC are inherited from the introduction of the DFDA in 1985 and are unnecessarily complex; being a combination of Territory, ACT, Commonwealth and Defence specific legislation and regulations.

Finding: *Efficiency in AMC hearings and procedures could be achieved by simplifying the applicable evidence regime.*

Recommendation 27: In proceedings in the AMC the rules of evidence to be applied should be the rules applicable in the Federal Court.

Cooperation and Efficiency

74. A feature that characterises much of the reformed MJS is the independent 'stovepipe' nature of the new DFDA agencies¹⁸. Some perceptions regarding 'statutory independence' by individual agencies are inhibiting the effective coordination and efficiency of DFDA procedures, and the generation of improvements. In some instances, independence is misconceived as involving freedom from need to operate as an integer in the MJS and conforming with the requirements for serving that system. The independence is to insulate the office holder from interference in the discharge of the duties of the relevant office; it does not import freedom from accountability that inevitably accompanies all holders of high office, both within and outside the ADF. To address this issue, a single high level coordination and efficiency committee needs to be established across the major DFDA agencies.¹⁹ This non-executive committee should be chaired by a senior 'Line Officer' to ensure that DFDA agencies remain clearly focussed upon the efficient delivery of their DFDA responsibilities to the ADF.

Finding: *The ongoing DFDA reform process and associated workload warrant a centralised coordination and efficiency body.*

Recommendation 28: Establish a non executive 'Discipline Coordination and Efficiency Committee' (DCEC), chaired by a senior 'line officer' to oversee and coordinate DFDA action items and facilitate future efficiencies across the principal responsible DFDA agencies.²⁰

75. **Defence Law Reform** - Defence Legal is the principal legal advisor to the Defence Minister, CDF, Secretary and Defence generally. To improve the development and implementation of law reform within the Department and the ADF, Defence Legal should be the functional agency in this ongoing process.

¹⁸ AMC, ODMP, DDCS, RAMC and ADFIS.

¹⁹ AMC, ODMP, DDCS, RAMC, ADFIS and DL, with IGADF as a permanent observer.

²⁰ *ibid.*

Finding: The ongoing law reform process, including MJS policy, should be managed by a single entity.

Recommendation 29: Defence Legal should be the functional agency for developing and implementing ongoing law reform within Defence.

76. **Legal Officer Governance** – The independence, technical supervision and professional governance of ADF legal officers was raised. The independence of legal officers was enhanced by the introduction of Section 1222B of the Defence Act this year. As the majority of legal officers are within their respective chain-of-command, there is a requirement for technical control and professional oversight in support of Command. This could be addressed by the promulgation of Professional Rules with policy developed reinforcing technical control by senior Defence legal officers. Professional and administrative oversight across the Services, including enforcement and, if necessary, sanction should be by Director General ADF Legal Services (DGADFLS), on advice from Head of Corps/Category and in consultation with Head Defence legal (HDL).

Finding: Improvements could be made to the technical control and professional oversight of ADF legal officers.

Recommendation 30: Professional Rules for ADF legal officers be introduced with technical control and professional administrative oversight by DGADFLS on advice from Head of Corps/Category and in consultation with HDL.

The Judge Advocate General (JAG)

77. The role of the JAG has been superseded by the MJS reforms with the exception of the annual report to Parliament. The MJSRT considers that an equivalent report by the IGADF would adequately meet this responsibility.

Finding: The role of the JAG has been overtaken by the reformed MJS appeals and review process and the legacy DFDA charges are expected to be completed by December 2009. The requirement for an independent report to Parliament previously provided by the JAG, could be provided by IGADF.

Recommendation 31: Disestablish the JAG and DJAG positions once all legacy DFDA appeals have been finalised and have IGADF report annually on the MJS to the Minister for presentation to Parliament.

The Defence Force Disciplinary Trials Tribunal (DFDAT)

78. The DFDAT was established under the Defence Force Discipline Appeals Act of 1955, and hears and determines appeals from the AMC, in respect to service offences by ADF personnel.

79. Under current arrangements, the full DFDAT must sit to hear interlocutory matters and appeals. Whilst the necessity for retention of the full tribunal sitting in determination of a conviction is supported, a single tribunal member should determine

challenges to punishments. This will allow the tribunal to more efficiently manage cases and avoid unnecessary delays. To improve regional availability, the Tribunal membership should be expanded to six members.

Finding: The DFDAT is constrained by having to sit as a panel. Greater efficiency can be attained by allowing a single Tribunal member to hear and determine a sentencing appeal, or refer it to the full tribunal. Additionally, the MJSRT notes that the DFDAT panel would benefit from additional membership.

Recommendation 32: Expand the DFDAT to six members and allow a single member to hear and determine sentencing appeals for Class 2 and 3 offences or to refer an appeal to the full tribunal for determination.

Performance Measurement and Reporting

80. ADFIS investigations can take in the vicinity of 34-152 calendar days to complete²¹, whilst preparatory work within ODMP and DDCS averages four to six months²² in a case being referred to the RAMC. Once with the RAMC, an additional four to six month delay can be expected in scheduling a hearing due to, inter alia, the difficulties of identifying suitable premises and jurors (if required)²³. Clearly, this average 12+ month delay in determining, what are mainly minor disciplinary cases, is excessive. Neither are such timings considered a suitable performance measure with which to justify the associated costs.

81. Given the definitive performance measures levied upon unit staff to action disciplinary issues, and taking into account the reasonable expectations of the unit members, the following performance benchmarks are proposed for consideration of the various DFDA support agencies (timings are based upon previous military justice timelines²⁴, and take into account the formalised structures and dedicated staffing now available to the agencies):

- 28 days from notification of incident for unit/DIA investigation,
- 70 days for ODMP case assessment and preparation,
- 14 days for RAMC/ AMC case allocation, and
- 70 days for hearing to commence (inclusive of DDCS preparation).

Total – 6.5 months from incident notification.

82. Considering the MJS ‘oversight’ responsibilities of IGADF, arrangements for the transfer of performance data to that agency need to be agreed and promulgated.

²¹ Based on data supplied by ADFIS/ODMP.

²² Based on data supplied by ODMP/DDCS to date 01 Dec 08. Of note, a major cause of these delays is the availability of ADF Reserve Defence Counsel by DDCS.

²³ Dependent upon Jury participation/size.

²⁴ DI(G) ADMIN 10-8, dated 27 Nov 2002.

Finding: While some work is being done to establish suitable Key Performance Indicators (KPIs) and benchmarks amongst the principal MJS agencies²⁵, this approach is not yet universally accepted or followed. All available performance and other appropriate data need to be transferred on a regular basis to IGADF, to allow that office to meet its reporting requirements.

Recommendation 33: Establish and promulgate Key Performance Indicators (KPIs)/benchmarks against which all principal MJS agencies' performance can be assessed.

Recommendation 34: Arrangements be established between the principal MJS agencies and IGADF to facilitate the transfer of performance data to IGADF.

Data Collection

83. DFDA Data Entry - All aspects of data entry for the Conduct Reporting and Tracking System (CRTS) have been determined to be a unit responsibility. What had once been an equitable division of data-entry responsibilities under the previous DFM/Courts Martial regime between unit, investigation and court staff, has now been determined to be the sole responsibility of unit personnel. There is a concern that 'backward reporting' of CRTS data into units introduces an administrative time lag into the tracking system, as the reliance upon 'hard-copy' DFDA reports being returned to units is arguably tenuous and inefficient. Enforcing supporting DFDA agencies to complete CRTS data entry when they are responsible for case management, will improve the overall reliability of disciplinary tracking systems and lessen the burden on unit staff.

Finding: Discipline case data should be entered into CRTS by the unit/agency that has responsibility for the case at a particular time.

Recommendation 35: Repromulgate DI(G) ADMIN 10-8 Conduct Reporting and Tracking System, to require DFDA case data to be entered by the agency that has carriage of the case at the time, reducing unit administrative burden after the fact.

84. Data Integrity/Connectivity - Information Technology (IT) connectivity and software application suitability were consistent critiques from operational units, with simple internet access for IT reliant MJS software applications dropping markedly for units in Western Australia, Northern Territory and ships at sea. This connectivity issue is the source of frustration for unit disciplinary and administration staff, as it serves to exacerbate many of the frustrations voiced on the lack of user friendliness in the interface system, such as CRTS.

Finding: Software applications have received universal criticism as to portability, functionality and user support from unit administrative staff. The CRTS disciplinary reporting and tracking system specifically suffers from the lack of a user friendly interface and adequate connectivity for geographically remote units.

²⁵ FR, AMC, RAMC, ODMP, ADFIS, DDCS and DL.

Recommendation 36: Simplify MJS data collection systems (CRTS in particular), with the aim of improving the user interface, connectivity, and minimising the growing number of reporting systems and occasions for reporting.

85. Data Retention – The CRTS system allows for data to be retained that can be used to identify individuals not convicted of a disciplinary offence. Unauthorised access to information that can identify personnel who may have previously been accused of an offence, but whom have had the investigation stopped, or a prosecution not proceeded, or subsequently been found not guilty, is of concern. Currently the only safeguard to prevent access to or the improper use of identification data from within CRTS is the confidentiality/privacy agreement a CRTS user must sign on application to access CRTS. This single protection is insufficient to safeguard personnel from unauthorised access to unproven accusations.

Finding: Concern is held for the balance between the requirement for the retention of data and individual privacy relating to investigations that are 'not proceeded with'.

Recommendation 37: Review the policy relating to the retention and access of disciplinary investigations and records that do not result in a prosecution, and hearings that result in an acquittal, quashing or direction 'not to proceed'.

PART 4 – THE ADMINISTRATIVE SYSTEM

General

86. The Administrative System comprises administrative sanctions and administrative inquiries, which reflect the collective non-disciplinary means by which the ADF moderates personnel performance, processes and behaviour. It exists to support commanders in achieving distinct military outcomes, and allows internal inquiry and examination of internal processes and incidents. The Redress of Grievance (ROG) structure is also included in this component as the means by which members may formally seek to have a complaint addressed.

87. Apart from a specific concern raised by the Royal Australian Navy (RAN) concerning ROG procedures (see para 94), the MJSRT believes that Defence members are satisfied with the administrative protections in the Administrative System. The MJSRT has identified no grounds for concerns, post the 2005 FADT Report, of maladministration or procedural bias. Indeed, the effectiveness of Defence's responses to the FADT Report is evident by the reducing number of complaints registered with the DFO²⁶, and the growing acceptance of alternate dispute resolution methods by Defence.

Fairness and Resolution (FR)

88. The MJSRT examined the functionality and structural disposition of the various Directorates that comprise FR. A proposal has previously been raised within the ADO to split FR into distinct policy and service delivery functions, keeping the former within the People Strategies and Policy Group (PSPG), whilst splitting and moving the latter into IGD's General Investigations and Review Branch (GIR) as a complimentary investigative arm of that organisation. The MJSRT cannot identify any efficiency to be gained by such restructure, noting FR derives synergies by having its resolution/service delivery directorates close to and linked with policy development staff.

Finding: There have been representations regarding the suitability of the current functional location of FR within People Strategies and Policy Group (PSPG).

Recommendation 38: MJSRT supports the current collocation of the policy and resolution delivery functions of FR within PSPG.

Alternate Dispute Resolution (ADR)

89. FR's Directorate of Alternate Resolution and Equity assists ADO personnel to seek alternate methods of conflict resolution within the Defence workplace through mediation, conflict coaching and workplace conferences. Since 2006, there has been a consistent increase in the number workplace disputes requesting ADR intervention,

²⁶ DFO interview 25 July 2008.

indicating that there is an increasing acceptance of the services by ADO personnel²⁷ and an effort to resolve disputes at the lowest practicable level.

Redress of Grievance (ROG)

90. A formal complaint resolution system is available to all ADF members through DI(G) PERS 34-1, *Redress of Grievance – Tri-Service Procedures*. Statistical data indicates that since 2005, Defence has a relatively stable ROG workload. The DFO considers this regular case load to be a hallmark of a healthy personnel environment and demonstrates that ADF personnel feel confident with the systemic protections offered by the redress and other administrative processes.²⁸ Also, DFO staff now regularly use the ADF ROG/Administrative system as an example of how to implement complaint management structures and sustainable complaint resolution methodologies in a non-adversarial environment, to other organisations (both Government and commercial).

91. The ROG process allows members an effective and efficient method by which to express complaints and concerns. However, the MJSRT received criticism of the ROG process in two areas, the first reflecting the desire for a common benchmark for case resolution and, secondly, a perception ROG procedures may offer individual protections that prevent efficient termination administration, and jeopardise discipline and morale.

92. **ROG Benchmarks** - There is wide spread desire from units for the introduction of a performance benchmark to be set for the resolution of ROGs raised to CDF/Service Chiefs. This benchmark would complement that already stipulated for unit level ROGs and allow unit staff to manage the expectations of their personnel. This requirement has also been raised by both the DFO and FADT. As envisaged, a 90 day benchmark would provide a measure of predictable closure for claimants, and demonstrate a systemic determination by Defence to finalise personnel complaints in a timely manner.

Finding: Units, DFO and FADT recommend that a specific benchmark of 90 days be imposed on referrals of ROGs to CDF/Service Chiefs.

Recommendation 39: Adopt and promulgate a 90 day benchmark for the referral of ROGs to CDF/Service Chiefs.

93. **Prohibited Substance Testing Program (PSTP)** – Several units and commands commented on the time taken and effectiveness of PSTP terminations. While the PSTP was welcomed as a positive recent initiative, the associated urinalysis program has not kept pace with the availability of recreational drugs. Whilst the current urinalysis program was effective at the time of its introduction, modern technological advances (for example hair or saliva testing), may provide a more efficient and robust method of detecting illegal substance use.

Finding: That PSTP has not kept pace with modern drug detection technology.

²⁷ Representative cases loads: 2006-85 cases, 2007 – 157 cases, 2008 – 183(+) cases; data provided by DARE effective Nov 08.

²⁸ DFO interview, 25 July 2008.

Recommendation 40: Review modern illegal drug detection techniques with a view to introduction as appropriate.

94. **Termination Decision Review** - The RAN has expressed concern that the current system of review of complaints in respect of terminations is cumbersome and time consuming. It is said that the process can be exploited by a member without merit, to have service extended beyond 12 months. This in turn leads to a significant degree of uncertainty for the member concerned, the member's command and the morale of the other members of the unit. A number of options have been proposed by Navy, but there are numerous complications which warrant a separate review.

Finding: The current termination review and complaint process is being exploited to extend service in some circumstances and needs review.

Recommendation 41: Review the current Service termination process to reduce delays and the exploitation of the ROG system by disaffected personnel.

Administrative Inquiries

95. The purpose of an administrative inquiry is to determine the facts and circumstances surrounding an adverse incident or situation to avoid recurrence. This capability is vital to the safety of military personnel, and is not conducted with the intention of meeting the requirements of any organisation other than Defence. To achieve this purpose, the ADF has varying inquiry models that can be applied to individual scenarios, promoting sound decision making from unit-level to CDF. Defence Inquiry Regulations (DIRs) are appropriately scaled and flexible for use by military personnel, though anomalies are apparent in the integrated ADO environment, which require attention.

96. Currently Inquiry Officers and IGADF staff lack the ability to order ADF Reserve personnel not on duty and APS staff, to participate as witnesses in the inquiry process²⁹. This restriction limits the ability of Inquiry Officers to ascertain all facts surrounding an incident and introduces the possibility of flawed decision making. The MJSRT considers that this weakness in the integrated environment prevents the identification of all facts and is in need of legislative amendment.

Finding: Inquiry Officers appointed under the DIRs, including IGADF, lack the ability to compel the participation of Reserve personnel and ADO civilian staff in the inquiry.

Recommendation 42. Pursue amendments to the Defence (Inquiry) Regulations and Defence Act to provide Inquiry Officers the requisite powers and protections to compel ADF Reserve personnel and Defence APS staff to participate in inquiries.

²⁹ ADFP 06.1.4, 'Administrative Inquiries Manual', pp 6-14.

CDF Commissions of Inquiry

97. The legal framework for CDF COIs was established on 21st June 2007, with COIs having superseded Boards of Inquiry (BOI) as the primary process for inquiring into the deaths of service personnel. The COIs are currently administered by the CDF/Secretary Group. There would be efficiencies and perceptions of a greater degree of independence, if COI administration was provided by IGADF.

Finding: The administrative support of CDF COIs would improve if provided by the office of IGADF.

Recommendation 43: Provide administrative support to CDF COIs from the Office of IGADF.

Inquiry Assistants

98. The CDF COI process was substantially based on previous BOI processes established in 2007. Some improvements could be made to the efficiency of the process and protections for those involved in the preparation stages of the COI. This could be achieved by appointing COI Assistants to support COI Presidents and Counsel Assisting, in gathering evidence for the COI before formal hearings. COI Assistants and witnesses should have protections extended to them in the preparation for the COI as well as during COI hearings.

Finding: The CDF COI process could be conducted more efficiently and effectively by appointing COI Assistants, who have similar powers and protections to those granted to Inquiry Assistants under Part 6 of the Defence (Inquiry) Regulations. Witnesses who provide evidence to COI Assistants should be entitled to the same protections as would apply for evidence they might give during COI hearings.

Recommendation 44: Pursue legislative amendments to allow for the appointment of COI Assistants with similar powers and protections as those currently granted to Inquiry Assistants under part 6 of the Defence (Inquiry) Regulations. Witness protections currently provided for evidence given before a COI should be extended to evidence provided to a COI Assistant and evidence otherwise provided to a COI outside of formal hearings.

PART FIVE – GENERAL

Learning Culture Inquiry

99 **Progress Report** – On 21st June 2008, CDF directed that a detailed assessment be conducted into progress in implementing the recommendations of the 2006 LCI Report. The LCI Progress Report (LCIPR) was completed on the 15th August 2008 and is included at Annex O. Head People Capability (HPC) advice on the implementation of the LCIPR recommendations is at Annex Q of that document. The MJSRT notes the LCIPR and supports HPC's³⁰ response.

100. As discussed in the LCIPR, the ADF's Learning Culture has matured to the point where improvements can be made that reflect community expectations. Although the report indicates that there is 'lag' in the distribution of policy documentation through the ADF training force, the 'intent' of the issues and responses raised by the LCI have been accepted by all levels of the training force. For example the 'Army Instructors' Code'³¹ and 'Army Trainees' Code'³² have changed to 'values' based leadership and training. According to the LCIPR, the ADF's learning culture now reflects a system that not only demands higher outcomes, but also makes its participants responsible for their shared outcomes. Trainees own the training and its successes (and failures) as much as their instructors. The two way information flow between trainees and their instructors is encouraged, as is the independent reporting of incidents.

101. The MJSRT visited ten ADF training establishments³³, with each visit focusing on distinct cultural and operational aspects of the ADF training force. Without exception, all demonstrated a willingness and desire to instil the best military cultural and workforce ideals in their instructional staff and trainees. Administrative and disciplinary procedures seemed attuned to the target audience in a way that reflects very favourably upon those establishments and their staff. Although MJSRT views reflect a 'snapshot' of the operations of these establishments, the dedication of the staff and professional approach taken to eradicate bullying behaviour was reassuring. That is not to say that isolated incidents may not still occur in the future. However, the enormous generational change that the ADF has undergone since the original LCI Report, plus the extensive reporting regimes and safety-nets now provided to trainees and staff, gives the MJSRT confidence that past systemic issues are no longer a risk.

³⁰ 'Head of People Capability' (HPC) has replaced the previous 'Head of Personnel Executive' (HPE).

³¹ Provided by TC-A. Effective date November 2007

³² *ibid.*

³³ RAN Recruit School, HMAS CERBERUS, HMAS WATSON, RAAF Training Group (RAAF Laverton), No2 Flight Training School (2FTS - RAAF Pearce), RAAF No1 Recruit Training Unit (No1 RTU - RAAF Wagga), Army Recruit Training Centre (ARTC - Blamey Barracks), Defence Police Training Centre (DPTC - Holsworthy Barracks), Australian Defence Force Academy, Royal Military College – Australia.

102. **Enlistment Procedures** - As a general observation, some understanding of the key principles of the MJS at recruitment could be valuable in preparing recruits (and their families) for the cultural change/shock on joining the ADF.

Finding: Significant progress has been achieved in Defence's response to the LCI and, in all establishments visited, appropriate attitudes and processes were in place or are being put in place. On recruitment, members and their families or Next of Kin would be assisted by an understanding of the concept and application of the MJS.

Recommendation 45: Provide on recruitment into the ADF, a pamphlet highlighting the application of the DFDA and Performance Appraisal System in a disciplined military force, and emphasising the rights and responsibilities of individuals.

MJS Training Continuum

103. A recurring theme that has arisen from our visits to units has been the desire for a tri-service training program, for the development and preparation of NCOs and Junior Officers, for the roles they play within the DFDA and Administrative System.

Finding: There is a widespread desire from commands and units for a formalised training continuum linked to career development courses, to better prepare personnel for the roles and responsibilities of the disciplinary process, and to generally improve the preparation and quality of unit inquiries.

Recommendation 46: Introduce a training continuum for NCOs and junior officers, to better prepare personnel to perform the duties of summary level prosecutor and defending officer, and to participate in the conduct of administrative sanctions and routine inquiries.

Future MJS Reviews

104. The ongoing development issues raised in this report and those action items still outstanding from the DICA and LCI inquiries, will require about another three years to complete. As such a further MJSRT 'type' review in three years would seem appropriate. The 2005 FADT Report and the nine previous reports should now be placed aside.

Finding: Considering the work already underway from the DICA and LCI inquiries and that proposed in this review, the next similar MJS review should be in three years.

Recommendation 47: Conduct the next Military Justice System review in three years.

Private Submissions

105. In accordance with the TOR, no single issue or private complaint was inquired into; however, each submission was assessed for systemic issues. Overall, only six submissions were received; four of the submissions are at Annexes P, Q R and S, and the two remaining submissions have been withheld at the request of the authors. Below are the key systemic issues that have been identified within the submissions and some general comments.

106. **Compensation for Detriment caused by Defective Administration** - The Service Chiefs and CDF are unable to award any form of 'merit' compensation to aggrieved members even though they may personally recognise the validity of the case and support the claim. The only option for compensation is the inflexible CDDA scheme, which requires a claimant to demonstrate some form of loss or detriment due to administrative error. The MJSRT considers this lack of flexibility to be at odds with best personnel management practices and not in keeping with current norms regarding merit based compensation.

Finding: The current CDDA administrative scheme is not well suited to correct wrongs associated with ADF service. A new discretionary compensatory delegation, controlled by the CDF, needs to be developed to meet the expectations and unique service considerations of the uniformed workforce.

Recommendation 48: Establish a discretionary delegation for CDF to compensate administrative/management/financial errors in addition to the current CDDA format.

107. **Senior Officer Reporting** - Concerns for the procedural fairness and transparency of Senior Officer Reporting within the ADO, have been raised. Discussions with the Directorate of Senior Officer Management and various senior officers, have confirmed that deficiencies remain in the manner in which ADF members of the ADO are reported, and that there is a lack of transparency in how career management decisions and promotion selections are made within the 'Integrated Workforce'.

108. A review of DI(G) PERS 37-1 *Appraisal and Development Reporting of Executive and Senior Executive Officers in the Australian Defence Force* shows that there is sufficient promulgated direction and guidance in place to offer the type of protections and transparency desired by complainants.

Finding: DI(G) PERS 37-1- Appraisal and Development Reporting of Executive and Senior Executive Officers in the Australian Defence Force, requires that performance reports be raised by ADO supervisors for personnel in the O6-O8 rank bracket concerning their performance, developmental needs and potential. Indications are this requirement is not being universally complied with, with potential for dissatisfaction.

Recommendation 49: Reemphasise the requirement for all senior reporting officers (both APS and military) to adhere to the requirements of DI(G) 37-1

Appraisal and Development Reporting of Executive and Senior Executive Officers in the Australian Defence Force.

109. **Personnel Management** - Claims have been made that allege an ADF culture of deficient personnel management practices and a 'hidden' agenda to protect senior officers. An examination of ADF personnel management regulations and performance appraisal guidance, show that providing there is compliance with promulgated procedures, injustices should be avoided. Regulations mandate that personnel are provided the opportunity to respond to critical assessments and performance reports in the ADF performance appraisal system, and decisions for adverse type processes are subject to independent and separate review.
110. The opportunity to respond to adverse comments is also preserved in the 'Notice to Show Cause' (NTSC) process. Workplace assessors are required to identify a work related history of poor performance in justifying their critical comments during evaluation/appraisal process. As the final arbiters of many personnel performance decisions, commanders and managers *must* provide a clear 'Statement of Reasons' (SOR) for their executive decision making, indicating the factors that they have taken into consideration and any specific weightings that were used in making their executive decisions. These processes allow for executive decision making to be challenged and explained, providing a level of protection that should be reassuring for both the individual and ADO.
111. **Service Chiefs/ROGs** - Concern has been raised that Service Chiefs, who have been involved in the decision which triggered an ROG, should not participate in the associated ROG review process. The current Guide to Administrative Decision Making ADFP 06.1.3, paragraph 2.31 adequately addresses this concern. Namely:
- If there is sufficient evidence to show actual or apparent bias by a proposed decision maker then the decision should not proceed and the matter should be referred to another commander or authorized decision-maker for a decision on the issue. If the decision has already been made, then the decision should be invalid and the matter referred to another person for a fresh decision on the facts and merits of the case.*
112. **Summary Hearings** - A proposal made to the MJSRT is that Legal Officers should be appointed as Summary Authorities in preference to current arrangements, 'during peacetime within mainland Australia'. The reasons are freedom from command influence and bias, and that the legal complexity of DFDA (including documentary requirements on appeal to AMC) is beyond the understanding and capability of non-lawyers. This proposal represents a major structural reform to the DFDA which is not supported by 'line' or legal officers (permanent or Reserve) and which is seen to deny the essential link between command and discipline. There is no evidence to justify the claim that the DFDA is beyond the comprehension and skills of ADF commanders. This proposal is rejected by the MJSRT.
113. **Travel Fraud** - The MJSRT can find no evidence of systemic cover-up or attempt to defraud the Commonwealth with regard to Defence Travel contracting.

PART SIX – SENATE ISSUES

114. At Page xiv of FADT's 4th Progress Report, a number of matters were referred for MJSRT review. The following comments are provided in respect of each of the issues raised.

1) 'The jurisdiction of the Australian Military Court (AMC) and the appropriateness of the AMC to hear civilian cases;'

- **Civilians are subject to the DFDA only when they consent to being a 'Defence Member' under the DFDA. This is required when a defence civilian deploys to an operational theatre. The arrangement will generally provide legal protection to defence civilians who may otherwise be subject to the local criminal jurisdiction. It is appropriate that the AMC or a Summary Authority has jurisdiction to deal with a defence civilian in this context.**

2) 'The random and tri-service basis for the selection of military juries;'

- **Defence is currently reviewing the jury selection process. Refer to Recommendations 23 and 24 of this report.**

3) 'Code of conduct for jurors;'

- **The requirement for legislation addressing provisions governing the conduct and protection of military jurors is agreed and is currently being actioned by Defence Legal.**

4) 'The adequacy of the information made available on the work of the AMC including the proposal for the AMC to produce a 'military justice reporter' or similar publication;'

- **The results of court hearings are currently transparent within Defence, via the Defence Restricted Network. There would be deterrent value by the publication of suitably edited court results within service newspapers (edited to prevent the identification of individuals). The publication of full transcripts of proceedings is not supported for reasons of privacy.**

5) 'The accountability of the CMJ to Parliament, including his or her appearance before parliamentary committees;'

- **As a statutory appointment, CMJ should give evidence before the FADT on his report to Parliament and on the operation of the AMC, when invited to do so.**

6) 'The functions and future role of the JAG (if any);'

- The role of the JAG has been superseded by the MJS reforms following finalisation of legacy DFDA appeals and the proposed IGADF's annual report on the MJS to the Minister for presentation to Parliament. Refer to Part Three Recommendation 31 of this report.

7) 'The role of the Inspector General of the ADF (IGADF) and how the IGADF's independence could be strengthened to ensure positive results of reforms to the military justice system, especially to the administrative system, do not dissipate with the passage of time;'

- The role of the IGADF is now well established, with the office enjoying professional respect from both civil and military personnel for the thoroughness and impartiality of inquiries and oversight role.

- The independence of the IGADF as a statutory authority in accordance with Section 110A-S of the Defence Act is considered appropriate and adequate. Should there be agreement to IGADF reporting direct to the Minister, as mentioned above, this will reinforce independence of the appointment.

- IGADFs authorised primary role is the internal audit and review of the entire MJS; this includes the administrative and disciplinary system. IGADF has the necessary credibility and authority to examine and expose shortcomings.

8) 'The relationship between the Australian Defence Force (ADF) and state and territory coroners;'

- The MJSRT is satisfied that Defence has pursued and is continuing to pursue appropriate arrangements with State Coroners.

9) 'The potential for command influence in ADF investigations;'

- As discussed in Part Three of this report, the current investigation arrangements preclude command influence.

10) 'The ADF's tracking system for handling complaints;'

- The ADO's complaint tracking system 'ComTRACK' will shortly come on-line (expected in early 2009) and will facilitate ready access to case tracking data. In the interim, provisional arrangements and individual case management systems, allow administration staff to monitor complaint progression adequately.

11) 'The *Defence Force Discipline Act 1982* (DFDA) and whether it is in line with comparable and up-to-date legislation including the provisions governing people found unfit to stand trial or not guilty of an offence on the grounds of mental impairment;'

- **Mental impairment is addressed in DFDA Section 145 but may benefit from review in line with comparable current civil legislation.**

12) 'The role of the Law Council and the adequacy of Defence's consultative process.'

- **The ADO has a robust consultative legislative process that includes review by the Attorney General's Department. The MJSRT does not support any role for single interest groups in determining the legislative basis of military discipline.**

114. Other matters raised in the FADT's 4th Progress Report for MJSRT comments are as follows.

13) Summary hearing rules must provide sufficient detail and clarity.

- **Summary hearing procedures and review processes are addressed in Part Three. Refer Recommendations 13 and 14 of this report.**

14) Concerns with the ADF's investigative capability.

- **ADFIS issues are at Part Three. Refer Recommendations 1-6 of this report.**

15) The effectiveness of changes to the Administrative Inquires Manual and whether they are sufficiently binding on investigating officers to ensure impartiality and prevent undue command influence.

- **The changes to Australian Defence Force Publication (ADFP) 06.1.4 are sufficient to ensure the impartiality of inquiry officers.**

16) Administration of the Claims for Detriment Caused by Defective Administration Scheme (CDDA).

- **CDDA is addressed at Part Five. Refer Recommendation 48 of this report.**

PART SEVEN - CONCLUSIONS

115. On 14th April 2008 MJSRT commenced the first of the independent reviews of the reformed MJS. The task was to assess the effectiveness of the reformed MJS following the implementation of the then Government's response to the 2005 FADT Report, and nine previous and two more recent inquiries into the MJS. The MJSRT conducted a total of 128 interviews with members and functional groupings from within Defence, along with 58 visits to ADF establishments, commands and units over a period of six months.
116. The final MJS 'structural' reform was completed on 20th September 2008 and as of December 2008, 93% of enquiry recommendations implemented (except DICA and LCI – see below). Notwithstanding the remaining recommendations to be progressed, the MJS is considered to be functionally complete and operating successfully. This undertaking represents an enormous amount of work across all areas of Defence.
117. The overall assessment is that: the MJS is delivering and should continue to deliver impartial, rigorous and fair outcomes; has greater transparency and enhanced oversight; is substantially more independent from the chain-of-command; and is effective in maintaining a high standard of discipline both domestically and in the operational theatre. Also, there is evidence that ADF training establishments have embraced the intent and spirit espoused within the LCI. However, the overall impressions contained in this report should be tempered by the knowledge that MJSRT observations are a relative 'snapshot' of MJS activities and significant portions of the MJS (in particular the summary hearing procedures) have been operating for just a few months. The findings and recommendations in particular, should be viewed as a complement to, or verification of, the regular in-depth monitoring and independent advice provided by ongoing IGADF audit and oversight of the MJS.
118. The two main areas of concern are the reformed DFDA investigation process and AMC arrangements, as both are incurring delays in the delivery of discipline. To address these shortcomings, this report recommends improvements to the investigative service and summary hearing procedures, a rebalancing of legal resources, some changes in practice (including legal representation), and establishing efficiency coordination arrangements and performance indicators across all MJS agencies. ADFIS in particular requires early attention, with only 50% of the DICA recommendations completed. Importantly, COSC has already agreed and CDF directed the implementation of MJSRT Recommendations 1-3 in respect of ADFIS and to establish a Governance Board to provide high level oversight of ADFIS development. COSC has also agreed and CDF directed the implementation of MJSRT Recommendations 23 and 24 in respect of juries, and Defence Legal has agreed to pursue Recommendation 13, in respect of summary hearing procedures.
119. The ongoing development issues raised in this report and those action items still outstanding from the DICA and LCI reports will require about three years to complete. As such, a further review in three years would seem appropriate. The 2005 FADT Report and the nine previous reports should now be placed aside.

120. The MJSRT would like to thank all those personnel, units, commands and agencies who have contributed to the Review. At every level of command and staff, and amongst all ranks, the MJSRT was treated with respect and given the highest level of cooperation. Most impressive, were the RSM/WODs/COXNs, who are the crucial link between command and other ranks for discipline and justice matters. Without exception, they are of the highest quality.

121. The recommendations are:

Recommendation 1: Raise a specific pay case recognising the Fundamental Input to Capability (FIC) ADF Investigators deliver across the ADF, and the unique and demanding skill sets required of service investigators to meet legal and civil expectations.

Recommendation 2: Raise a second dedicated and significant pay initiative, across tri-Service lines, to encourage SP recruitment and retention; this initiative needs to be sufficient to allow the SP agencies to compete from within the ADF workforce and attract lateral transfer recruitment from civil policing agencies.

Recommendation 3: Encourage greater efforts from within all areas of the ADO to ensure a joint culture is established and maintained within ADFIS.

Recommendation 4: Establish a temporary 'O7' position as an adjunct to the Provost Marshall-Australian Defence Force (PM-ADF), to assist with ongoing project implementation.

Recommendation 5: Establish a SP career model that allows personnel to rotate in and out of ADFIS.

Recommendation 6: Amend DI(G) ADMIN 45-2 - *Reporting and Investigation of Alleged Offences within the Australian Defence Organisation*, to reflect a mandatory requirement on all Defence Investigation Agencies to report back to unit Commanding Officers within seven days of receipt of a Notifiable Incident, as to whether (or not) they intend to assist/proceed with an investigation. In the absence of response within seven days the matter is deemed to be declined by the Defence Investigative Agency and returned to the Unit for action.

Recommendation 7: Amend DI(G) ADMIN 45-2 *Reporting and Investigation of Alleged Offences within the Australian Defence Organisation* to clarify the description and purpose of notifiable incidents and to rebalance investigative authority between units and DIA.

Recommendation 8: Amend the Discipline Officer scheme to allow personnel down to the rank of WO2(E) to be appointed as DIPLOs.

Recommendation 9: Amend jurisdiction of appointed DIPLOs to discipline personnel 'two or more ranks down'.

- Recommendation 10: Amend the DFDA to apply a single scale of punishments applicable across all ranks, including 'Extra Duties'.**
- Recommendation 11: Extend DIPLO jurisdiction to encompass visiting, transient and attached personnel.**
- Recommendation 12: Revise DIPLO reporting arrangements to allow for a single collated DIPLO punishments return within individual units.**
- Recommendation 13: Introduce into DLM Vol 3 a simplified checklist/flow chart and simplify the language for election and appeal.**
- Recommendation 14: Introduce an improved 'higher command review' mechanism with authority to take remedial action (to replace the recently adopted 'technical' review of summary level DFDA hearings).**
- Recommendation 15: Create a specific offence in the DFDA for misuse of a Defence Credit Card without authority, which may be tried summarily. This offence should also be a DFDA Class 3 offence for the purposes of AMC trial.**
- Recommendation 16: Review DTC administrative arrangements with a view to reducing the risk of DTC misuse.**
- Recommendation 17: Review the classification of all DFDA offences and classes to achieve greater efficiencies.**
- Recommendation 18: Increase the organisational independence of DDCS.**
- Recommendation 19: Rebalance permanent and reserve legal officer staffing and facilitate exchange between DDCS and ODMP to achieve efficiencies and broaden experience in case disposal before the AMC.**
- Recommendation 20: DMP discontinue the practice of appearing in the conduct of prosecutions; a permanent or reserve officer should be briefed on each occasion to appear for the prosecution.**
- Recommendation 21: Establish the new AMC facility in Canberra as the principal location for hearings, with the capacity to travel as the exigencies of service may dictate, and uniformed Court staff (possibly Reserves) be identified to support the AMC in Canberra and the regions.**
- Recommendation 22: Develop a plan where AMC circuit hearings make use of the recently selected Reserve Judges, sitting where appropriate at regional locations and on a fixed calendar basis.**
- Recommendation 23: Expand the available pool of potential ADF Jurors by lowering the minimum rank for Panel members to CPL(E), (whilst retaining the provision that no Jury member is to be of subordinate rank to the accused) and removing the mandatory requirement for at least one member of the Jury to be of LTCOL(E) rank.**

Recommendation 24: Provision be made for the Registrar of the AMC to identify and select potential Jurors on a 'regional basis' in preference to the current nation-wide pool.

Recommendation 25: Amend the DFDA to include the power for a military judge to order a convicted member into custody following conviction but before sentence, together with the authority to order conditional release where appropriate.

Recommendation 26: Amend the DFDA so that a stay of execution against a punishment imposed by the Summary Authority is by AMC leave or direction, and is not automatic upon appeal notification.

Recommendation 27: In proceedings in the AMC the rules of evidence to be applied should be the rules applicable in the Federal Court.

Recommendation 28: Establish a non executive 'Discipline Coordination and Efficiency Committee' (DCEC), chaired by a senior 'line officer' to oversee and coordinate DFDA action items and facilitate future efficiencies across the principal responsible DFDA agencies.

Recommendation 29: Defence Legal should be the functional agency for developing and implementing ongoing law reform within Defence.

Recommendation 30: Professional Rules for ADF legal officers be introduced with technical control and professional administrative oversight by DGADFLS on advice from Head of Corps/Category and in consultation with HDL.

Recommendation 31: Disestablish the JAG and DJAG positions once all legacy DFDA appeals have been finalised and have IGADF report annually on the MJS to the Minister for presentation to Parliament.

Recommendation 32: Expand the DFDAT to six members and allow a single member to hear and determine sentencing appeals for Class 2 and 3 offences or to refer an appeal to the full tribunal for determination.

Recommendation 33: Establish and promulgate Key Performance Indicators (KPIs)/benchmarks against which all principal MJS agencies' performance can be assessed.

Recommendation 34: Arrangements be established between the principal MJS agencies and IGADF to facilitate the transfer of performance data to IGADF.

Recommendation 35: Repromulgate DI(G) ADMIN 10-8 *Conduct Reporting and Tracking System*, to require DFDA case data to be entered by the agency that has carriage of the case at the time, reducing unit administrative burden after the fact.

Recommendation 36: Simplify MJS data collection systems (CRTS in particular), with the aim of improving the user interface, connectivity, and minimising the growing number of reporting systems and occasions for reporting.

Recommendation 37: Review the policy relating to the retention and access of disciplinary investigations and records that do not result in a prosecution, and hearings that result in an acquittal, quashing or direction 'not to proceed with'.

Recommendation 38: MJSRT supports the current collocation of the policy and resolution delivery functions of FR within PSPG.

Recommendation 39: Adopt and promulgate a 90 day benchmark for the referral of ROGs to CDF/Service Chiefs.

Recommendation 40: Review modern illegal drug detection techniques with a view to introduction as appropriate.

Recommendation 41: Review the current Service termination process to reduce delays and the exploitation of the ROG system by disaffected personnel.

Recommendation 42: Pursue amendments to the Defence (Inquiry) Regulations and Defence Act to provide Inquiry Officers the requisite powers and protections to compel ADF Reserve personnel and Defence APS staff to participate in inquiries.

Recommendation 43: Provide administrative support to CDF COIs from the Office of IGADF.

Recommendation 44: Pursue legislative amendments to allow for the appointment of COI Assistants with similar powers and protections as those currently granted to Inquiry Assistants under part 6 of the *Defence (Inquiry) Regulations*. Witness protections currently provided for evidence given before a COI should be extended to evidence provided to a COI Assistant and evidence otherwise provided to a COI outside of formal hearings.

Recommendation 45: Provide on recruitment into the ADF, a pamphlet highlighting the application of the DFDA and Performance Appraisal System in a disciplined military force, and emphasising the rights and responsibilities of individuals.

Recommendation 46: Introduce a training continuum for NCOs and junior officers, to better prepare personnel to perform the duties of summary level prosecutor and defending officer, and to participate in the conduct of administrative sanctions and routine inquiries.

Recommendation 47: Conduct the next Military Justice System review in three years.

Recommendation 48: Establish a discretionary delegation for CDF to compensate administrative/management/financial errors in addition to the current CDDA format.

Recommendation 49: Reemphasise the requirement for all senior reporting officers (both APS and military) to adhere to the requirements of DI(G) 37-1 *Appraisal and Development Reporting of Executive and Senior Executive Officers in the Australian Defence Force.*



INSTRUMENT OF APPOINTMENT AND TERMS OF REFERENCE

REVIEW OF THE EFFECTIVENESS OF THE OVERHAULED MILITARY JUSTICE SYSTEM

I, Air Chief Marshal A.G. Houston, AC, AFC, Chief of the Defence Force, hereby appoint:

Sir Laurence Street, AC, KCMG, QC and

Air Marshal Leslie Fisher (Retd), AO

to conduct a review into the effectiveness of the overhauled military justice system following the implementation of the then Government response of 5 October 2005 to the 16 June 2005 Senate Foreign Affairs, Defence and Trade References Committee Report, *'The effectiveness of Australia's military justice system'*. The review is to consider the available information and submit a written report upon the matters set out in these Terms of Reference. The review is to be guided by (but not subject to) the provisions of Chapter 4, ADFP 06.1.4, Administrative Inquiries Manual.

You are authorised to interview any member of Defence (Australian Defence Force personnel and APS Civilians) who you consider may assist in conducting the review. You are authorised to liaise and consult with other Government agencies and with business and academic communities in Australia and overseas who you consider may assist in conducting the review. You are also authorised to access any necessary material that may assist in conducting the review subject to considerations of security.

Background

1. In October 2003, the Senate referred the matter of the effectiveness of Australia's military justice system to the Senate Foreign Affairs, Defence and Trade References Committee for inquiry and report. The inquiry was the latest in a series of inquiries into military justice spanning a decade. The Senate Committee tabled its report, *'The effectiveness of Australia's military justice system'* on 16 June 2005 and made 40 recommendations (the Senate Committee Report).
2. The then Government response to the Senate Committee Report, tabled on 5 October 2005, accepted in whole, in part or in principle 30 of the 40 recommendations and advised alternative solutions to meet the outcomes sought by the Report's recommendations concerning the referral of offences to civil authorities, the legislative basis of a permanent military court and the establishment of an ADF Administrative Review Board.
3. The then Government response outlined significant enhancements to the military justice system which are intended to balance the maintenance of effective discipline with the protection of individuals and their rights. Key features include an Australian Military Court independent of ADF chains of command that replace the previous Courts Martial and Defence Force magistrates, a new CDF-authorized Commission of Inquiry in respect of service deaths and suicide with an independent civilian president, a joint ADF investigation unit and a streamlined complaints system. The then Government required Defence to implement these recommendations and enhancements within two years with completion by the end of 2007.

4. The progress of implementation has been reported to the Senate Committee twice a year throughout the two year period.

Purpose

5. The then Government response to the Senate Committee Report, specifically recommendation 35, agreed to commission regular independent reviews of the health of the military justice system, with the first timed to assess the effectiveness of the overhauled military justice system at the conclusion of the two year implementation period.

6. The purpose of this review is to assess the effectiveness of the overhauled military justice system following the implementation of the then Government response to the Senate Committee Report as well as the implementation of the Government and/or ADF responses to the nine previous inquiries/reviews into the military justice system as listed in CDF/Sec Joint Directive 18/2005 dated 7 October 2005 (Enclosed). The review is to also assess whether the implementation of the Defence responses to the *Report of an Audit of ADF Investigative Capability* and the *Report of the Inquiry into the Learning Culture in ADF Schools and Training Establishments* are on track. Subject to paragraph 7, the review is to take into account that the military justice system is critical to the operational effectiveness of the ADF, but that it must be tempered with a concern for individuals and their rights.

General

7. Without limiting the general purpose of this inquiry noted in paragraph 6, the review is to:
 - a. determine the extent to which the enhancements to the military justice system agreed by the then Government have been implemented;
 - b. assess the effectiveness of the military justice system, specifically the extent to which it delivers impartial, rigorous and fair outcomes through enhanced oversight, greater transparency, improved timeliness and the appropriate organisational location of military justice functions;
 - c. make an overall assessment of the health of the military justice system and determine, if appropriate, the likely future state of health of the military justice system;
 - d. determine the extent to which adequate personnel and other resources have been allocated to the military justice system to enable it to operate effectively and efficiently. The personnel resources should include, but not be limited to, legal officers, military investigators, and administrative and other support staff and the other resources should include, but not be limited to, financial and physical resources and the adequacy of military justice training;
 - e. determine the extent to which there are any identifiable irregularities within all of the elements of the military justice system; and

- f. assess the extent to which the enhancements made to the military justice system, as proposed in the then Government response to the Senate Committee Report, have had an observable effect on the disciplinary and administrative systems in:
 - (i) delivering impartial, rigorous and fair outcomes;
 - (ii) enhanced oversight, greater transparency and improved timeliness; and
 - (iii) promoting the maintenance and enforcement of discipline to assist in sustaining an operationally effective ADF.

Recommendations

8. The review's final report should make recommendations, among other things, on the following:

- a. whether the implementation of the enhancements to the military justice system could be improved or expedited;
- b. whether the enhancements to the military justice system require further reform in relation to achieving:
 - (i) impartial, rigorous and fair outcomes;
 - (ii) enhanced oversight, greater transparency and improved timeliness; and
 - (iii) the maintenance and enforcement of discipline to assist in sustaining an operationally effective ADF.
- c. whether any further changes are required to the current military justice system or to ensure the continued improvement of the system;
- d. what, if any, remedial action needs to be taken to ensure the military justice system remains in good health; and
- e. a timeline for regular, ongoing reviews of the health of the military justice system.

Where appropriate, recommendations for further change to the military justice system should include proposed changes to the capacity and capability of the various parts of the military justice system.

Other findings

9. The review's final report is not to make recommendations pertaining to criminal or Defence Force Discipline Act (DFDA) matters. Should you, in the course of the review, discover any criminal or DFDA related offences, you are to refer such matters to the commanding officer of the relevant unit or to other appropriate authorities. The Inspector General ADF is also to be informed of any such referral.

Documentation

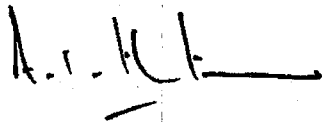
10. The following documentation is to be provided with your report:
 - a. a list detailing authorities or personnel consulted in conducting the review;
 - b. copies of all submissions received;
 - c. citations for all relevant orders or publications referred to in the course of making findings or recommendations;
 - d. extracts from all relevant publications; and
 - e. this Instrument of Appointment and Terms of Reference.
11. The review's final report may include other material if it materially benefits your report. Any material gathered during the course of the review that is not included with your report is to be provided to the Office of the Inspector General ADF for retention and/or disposal as required.

Progress Reports

12. The review is to officially commence on or by 30 June 2008, albeit precursor administration may have commenced earlier. You are to keep me apprised of your progress and meet with me every two months during the duration of the review. A progress report is required by 14 Nov 08 to allow the scope of the review to be examined in order to address any particular matters that may have arisen.
13. The review's final report is required by 10 February 2009 or, if completion is delayed, you are to arrange for an appointment with me seven days before that date, at which time you are to submit to me a progress report and be in a position to justify any request for an extension of time. If completion is further delayed, you are to submit monthly reports until the report is completed.

Administration and Support

14. The review team will be provided with appropriate administrative support.



A.G. HOUSTON, AC, AFC
Air Chief Marshal
Chief of the Defence Force

6 March 2008

Enclosure:

1. CDF/Sec Joint Directive 18/2005 dated 7 October 2005.



Australian Government

Department of Defence

Joint Directive 18/2005

**JOINT DIRECTIVE
BY
CHIEF OF THE DEFENCE FORCE
AND
SECRETARY, DEPARTMENT OF DEFENCE
TO
REAR ADMIRAL M.F. BONSER, AO, CSC, RAN
HEAD MILITARY JUSTICE IMPLEMENTATION TEAM**

INTRODUCTION

1. You are appointed as the Head Military Justice Implementation Team (HMJIT) to implement, *inter alia*, action agreed by Government in respect of the Senate Foreign Affairs, Defence and Trade References Committee Report '*The Effectiveness of Australia's Military Justice System*' dated 16 Jun 05.

PURPOSE

2. The purpose of this document is to set out your specific responsibilities and accountabilities to the Secretary and CDF and to form the instrument against which we will measure your performance.

BACKGROUND

3. There has been widespread criticism of the ADF military justice system over a number of years which has resulted in a growing lack of confidence in the system's ability to produce impartial and fair outcomes for ADF members.
4. This culminated in the Senate, on 30 Oct 03, referring the matter of the effectiveness of Australia's military justice system to the Senate Foreign Affairs, Defence and Trade References Committee for inquiry and report. The Committee's Report, tabled 16 Jun 05, proposed fundamental changes to the existing system of military justice.
5. The Government's response, tabled 5 Oct 05, agrees, in part, in full or in principle, with thirty of the forty Senate Committee recommendations. The significant changes directed in the Government's response will address the concerns of Defence personnel, the Parliament and the community. A copy of the Government's response is attached.
6. Defence has a unique opportunity to make beneficial changes to the ADF military justice system such that, where possible and practicable, it is aligned with community standards, while maintaining effective military discipline.

TERMS OF REFERENCE

7. You are appointed HMJIT and are responsible for ensuring:

- a. The completion of all implementation action in accordance with the Government response to the Senate Report; and
 - b. The completion of all implementation action in accordance with the Government or ADF responses to the following inquiries or review, generally titled:
 - (i) 1997—Abadee Review;
 - (ii) 1998—DFO Own Motion—Responses to Allegations of Serious Incidents and Offences;
 - (iii) 1999—Senate Inquiry - Military Justice Procedures;
 - (iv) 2001—Senate Inquiry—Rough Justice;
 - (v) 2001—Burchett Inquiry;
 - (vi) 2003—Acumen Alliance Review of BOI Processes and Procedures;
 - (vii) 2005—DFO ADF Redress of Grievance Review;
 - (viii) 2004—Ernst and Young Review of Military Police Battalion Investigation Capability; and
 - (ix) 2005—DFO Own Motion - Review of the Administration of Minors.
8. Specifically, you are to:
- a. Act as the Defence point of contact within Defence and with external agencies for all matters relating to implementation of the Government response to the Senate Report.
 - b. Develop a plan for the implementation of the Government response.
 - c. Coordinate through Public Affairs a Corporate Communications Strategy and Media Plan in respect of the implementation of changes to the military justice system.
 - d. Manage assigned financial and non-financial resources in accordance with relevant Defence policy and Government legislation.
 - e. Establish and maintain staff appropriate to the task. You are initially assigned the following personnel resources: yourself, one O-5 officer from each service, one O-5 Legal Officer, one O-3 officer from Army and one APS EL1/EL2 officer from COSADHQ. You may seek additional personnel resources as required. You may seek additional legal expertise through Defence Legal or externally, and other specialist advice or support as required.
 - f. Identify and occupy accommodation appropriate to the task.
 - g. Keep the Secretary and CDF apprised of the progress of implementation.

Finances and Administration

9. The Military Justice Implementation Team will be funded under CDF's budget. Financial and administrative support that you require is to be coordinated through SEC/CDF Business Manager in the first instance and pending other support arrangements.

AUTHORISATIONS

10. To facilitate your implementation responsibilities, you are authorised to:
- a. direct and task any area within the Defence Portfolio pursuant to your responsibilities;
 - b. gather information from all relevant sources within Defence and externally;
 - c. liaise with Ministers and their staffs, Government agencies, all areas within Defence and any external agencies;
 - d. consult widely within Defence, with other Government agencies and with business and academic communities in Australia and overseas to ensure that the changes to ADF military justice reflect or align with current standards, practices and procedures; and
 - e. expend allocated funds in accordance with requirements.

Reporting

11. You are to report as follows:
- a. Chiefs of Service Committee (COSC) monthly or as necessary to meet Government requirements;
 - b. CDF and the Secretary monthly, or at other times as required, on the following:
 - (i) any factors that may impact on implementation action of the Government response;
 - (ii) issues of concern in any area covered by your responsibilities, as well as other matters of interest to Defence that come to your attention;
 - (iii) significant occurrences or developments within your purview that you consider should be brought to the attention of the Minister;
 - (iv) if you wish to change your organisation or business processes in a significant manner;
 - (v) if you receive significant criticism or praise from any other authority; and
 - (vi) if you are unable to meet your responsibilities.

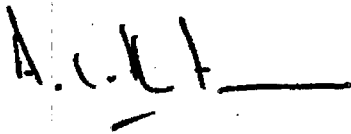
- c. VCDF, CN, CA and CAF periodically as you consider appropriate, keeping them individually apprised on implementation progress and issues that have a Single-Service impact; and
- d. COSC if there is a divergence of +/- five percent between monthly implementation targets and achievements.

REVIEW

12. This Directive will be periodically reviewed to take account of changes in priorities, the ADF's organisation, or other changes. You are to review the appropriateness of this Directive, and raise proposals for any changes by 1 October each year. Nil returns are required.

ACKNOWLEDGEMENT

13. This Directive is effective upon receipt. You are to acknowledge the directive by returning Annex A to CDF Staff Officer (Policy). Further, its contents are to be drawn to the attention of your successor, who is also to acknowledge the Directive.



A.G. HOUSTON, AO, AFC
Air Chief Marshal
Chief of the Defence Force

7 Oct 05



R.C. SMITH AO, PSM
Secretary

5 Oct 05

Annex:

A. Acknowledgment Advice

Enclosure:

1. Government Response to the Senate inquiry Report dated 5 Oct 05

Distribution:

RADM Bonser

For Information:

VCDF	DEPSEC S	COSADHQ
CN	DEPSEC I&S	IGADF
CA	DEPSEC CS	CIO
CAF	CEO DMO	
CCDG	HDPE	

**Annex A to
Joint Directive 18/2005
Dated 7 Oct 05**

Acknowledgement

I acknowledge receipt of Joint Directive 18/2005 and will comply with the directions contained within.

**M.F. BONSER
RADM RAN
HMJIT**

Oct 05



Government Response
to the
Senate Foreign Affairs, Defence and Trade
References Committee
*'Report on The Effectiveness of Australia's
Military Justice System'*

BACKGROUND

In October 2003, the Senate referred the matter of the effectiveness of Australia's military justice system to the Senate Foreign Affairs, Defence and Trade References Committee for inquiry and report. The inquiry was the latest in a series of inquiries into military justice spanning a decade. The Committee tabled its report on 16 June 2005.

The ADF is committed to improving the system to address the concerns of Defence personnel, the Parliament and the community. The Chief of the Defence Force has assured us that he will drive this reform personally.

The Government proposes significant enhancements to the military justice system. These changes balance the maintenance of effective discipline with protection of individuals and their rights. Key features include an Australian military court independent of ADF chains of command that will replace the current Courts Martial and Defence Force Magistrates, a new CDF-authorized Commission of Inquiry for complex or sensitive incidents with an independent civilian president, a joint ADF investigation unit and a streamlined complaints system. The Government has asked Defence to implement these recommendations and enhancements within two years, and to report to the Senate Committee twice a year throughout the implementation period.

In all, 30 of the Senate Committee's 40 recommendations are accepted in whole, in part or in principle. Alternative solutions will be adopted to achieve the intent of the Report's recommendations, including those concerning the referral of offences to civil authorities, the legislative basis of a permanent military court and the establishment of an ADF Administrative Review Board.

GOVERNMENT RESPONSE

AGREED RECOMMENDATIONS

Recommendation 6

The committee recommends that the ADF conduct a tri-service audit of current military police staffing, equipment, training and resources to determine the current capacity of the criminal investigations service. This audit should be conducted in conjunction with a scoping exercise to examine the benefit of creating a tri-service criminal investigation unit.

Government Response: Agreed

The Government will conduct a tri-service audit of Service police to establish the best means for developing investigative capability. Defence acknowledges that the current military police investigation capability has significant shortcomings and is inadequate for dealing with more serious offences that are not referred to civilian authorities. As identified by the Senate Committee, Defence has begun to rectify shortfalls as part of the implementation of agreed recommendations from the recent Ernst and Young review into Army military police, including the establishment of the Provost Marshal - Army. Navy and Air Force have completed or are conducting similar reviews to build on the outcomes of the Ernst and Young review. The recommended audit will bring together this work and establish the best way to develop the investigative capability of all Service police.

To supplement this, Defence will establish a joint ADF investigation unit to deal with more serious disciplinary and criminal investigations. The ADF began work to form a Serious Crime Investigation Unit in February 2004. Establishment of the unit has been in abeyance pending the outcomes of this Review. In-principle agreement has been reached with the AFP for a senior AFP officer to be seconded to mentor and provide oversight of this team, and implementation will now proceed. The unit will be headed by a new ADF Provost Marshal outside single Service chains of command. Service police may be supplemented by civilian investigators. The unit will deliver central oversight and control of ADF investigations and develop common professional standards through improved and consistent training. Greater numbers of more skilled investigators will be available to investigate complex and serious issues in operational environments and contingencies inside and outside Australia.

Recommendation 10

The committee recommends that the Government legislate as soon as possible to create the statutorily independent Office of Director of Military Prosecutions.

Government Response: Agreed

The Government agrees, noting that action has already commenced to establish the Director of Military Prosecutions as a statutory position. The statutory appointment will allow the Director of Military Prosecutions to operate independently and free from perceptions of command influence. It will also promote confidence among ADF members in the independence and impartiality of the appointment and in the functions of the Office.

Recommendation 11

The committee recommends that the ADF conduct a review of the resources assigned to the Office of the Director of Military Prosecutions to ensure it can fulfil its advice and advocacy functions and activities.

Government Response: Agreed

The Government agrees. The Office of Director of Military Prosecutions was established on an interim basis in July 2003; it is timely to review the Office to ensure that it has sufficient resources to meet current and future work loads and is able to respond to operational requirements.

Recommendation 12

The committee recommends that the ADF review the training requirements for the Permanent Legal Officers assigned to the Office of the Director of Military Prosecutions, emphasising adequate exposure to civilian courtroom forensic experience.

Government Response: Agreed

The Government notes that the Committee recognized that the ODMP had been performing an admirable job and agrees to review the training requirements for permanent legal officers assigned to the Office of the DMP. The review will be extended to include the training requirements for reserve legal officers who may be assigned prosecution duties by the DMP.

Recommendation 13

The committee recommends that the ADF act to raise awareness and the profile of the Office of the Director of Military Prosecutions within the Army, Navy and Air Force.

Government Response: Agreed

The Government notes that the ODMP has been actively engaged in increasing its profile over the last eighteen months, and agrees action should continue to raise the awareness and profile of the Office. Increased awareness and profile will help ADF members understand the role of the DMP, and ensure that Commanders have ready access to impartial and independent advice on the proper investigation and prosecution of Service offences, especially those that are serious criminal offences.

Recommendation 14

The committee recommends that the Director of Military Prosecutions be appointed at one star rank.

Government Response: Agreed

The Government agrees to the statutory appointment of the Director of Military Prosecutions at the one star rank.

Recommendation 15

The committee recommends that the remuneration of the Director of Military Prosecutions be adjusted to be commensurate with the professional experience required and prosecutorial function exercised by the office-holder.

Government Response: Agreed

The Government agrees to appropriate remuneration for the appointment of the Director of Military Prosecutions. In accordance with the Government's response to Recommendation 10, action is being taken to create a statutory appointment of the DMP. Remuneration of the statutory appointment will be determined by the Remuneration Tribunal (Cth).

Recommendation 17

The committee recommends that the ADF establish a Director of Defence Counsel Services.

Government Response: Agreed

The Government agrees to establish a Director of Defence Counsel Services (DDCS) to improve the availability and management of defence counsel services to ADF personnel. The DDCS will be established as a military staff position within the Defence Legal Division to coordinate and manage the access to and availability of defence counsel services by identifying and promulgating a defence panel of legal officers, permanent and reserve.

Recommendation 18

The committee recommends the Government amend the DFDA to create a Permanent Military Court capable of trying offences under the DFDA currently tried at the Court Martial or Defence Force Magistrate Level.

Government Response: Agreed

The Government agrees to create a permanent military court to be known as the Australian military court, to replace the current system of individually convened trials by Courts Martial and Defence Force Magistrates. The Australian military court will be established under appropriate Defence legislation. The court will satisfy the principles of impartiality and judicial independence through the statutory appointment of judge advocates with security of tenure (five-year fixed terms with a possible renewal of five years) and remuneration set by the Remuneration Tribunal (Cth). During the period of their appointment, the judge advocates will not be eligible for promotion, to further strengthen their independence from the chain of command. The appointments will be made by the Minister for Defence.

The appointment of new military judge advocates would see the need to consider further, during implementation, the position of the Judge Advocate General. The remaining functions of the Judge Advocate General would be transferred to the Chief Judge Advocate and the Registrar of Military Justice. The Australian military court would consist of a Chief Judge Advocate and two permanent judge advocates, with a part-time reserve panel. The panel of judge advocates would be selected from any of the available qualified full or part-time legal officers. The court would be provided with appropriate para-legal support sufficient for it to function independent of the chain of command. In meeting all of the requirements of military justice, the court would include options for judge advocates to sit alone or, in more serious cases, with a military jury. The use of a jury would be mandatory for more serious military offences, including those committed in the face of the enemy, mutiny, desertion or commanding a service offence.

Recommendation 23

The committee recommends the introduction of a right of appeal from summary authorities to the Permanent Military Court.

Government Response: Agreed

The Government agrees with the concept of an automatic right of appeal, on conviction or punishment, from summary authorities to a judge advocate of the Australian military court. The current process of review will be discontinued. The existing right of appeal from Courts Martial and Defence Force Magistrates (to be the Australian military court) to the DFDA Tribunal will be retained. Currently, the DFDAT may only hear appeals on conviction on points of law, and may quash a conviction or substitute a conviction on an alternative offence. This will be amended to include appeals on punishment, noting that such an appeal might result in an increased punishment.

Recommendation 24

In line with Australian Standard AS 8004-203, Whistleblower Protection Programs for Entities, the committee recommends that:

- the ADF's program designed to protect those reporting wrongdoing from reprisals be

- reviewed regularly to ensure its effectiveness; and
- there be appropriate reporting on the operation of the ADF's program dealing with the reporting of wrongdoing against documented performance standards (see recommendation 25).

Government Response: Agreed

The Government will continue the regular reviews of the Defence Whistleblower Scheme that have been undertaken since its inception. Defence uses the Australian Standard for Whistleblower Protection Programs AS 8004-203, and the scheme is currently undergoing a comprehensive review by the Defence Inspector General. This review and its implementation will emphasise the present provisions against reprisals in the current Defence Whistleblower instruction. The Government supports annual reporting of the operation of the scheme against documented performance standards.

Recommendation 26

The committee recommends that the Defence (Inquires) Manual include at paragraph 2.4 a statement that quick assessments while mandatory are not to replace administrative inquiries.

Government Response: Agreed

The Government will amend the Administrative Inquiries Manual to specify that quick assessments, while mandatory, should not replace the appropriate use of other forms of administrative inquiries. The Manual will provide improved guidance on the use of quick assessments.

Recommendation 27

The committee recommends that the language in the Administrative Inquiries Manual be amended so that it is more direct and clear in its advice on the selection of an investigating officer.

Government Response: Agreed

The Government will amend the Administrative Inquiries Manual to improve guidance to Commanders who are responsible for the selection of inquiry officers to carry out administrative inquiries, such as routine unit inquiries or those appointed as Investigating Officers under the Defence (Inquiry) Regulations. This will improve independence and impartiality, as well as enhance the quality of inquiry outcomes.

Recommendation 30

The committee recommends that the Government provide funds as a matter of urgency for the establishment of a task force to start work immediately on finalising grievances that have been outstanding for over 12 months.

Government Response: Agreed

The Government has taken action to clear the backlog of grievances, in line with recommendations from Defence Force Ombudsman/CDF Redress of Grievance System Review 2004. This is scheduled to be completed by the end of 2005, with no requirement for additional funding or a task force.

Recommendation 31

The committee recommends that the language used in paragraph 7.56 of the Defence (Inquiry) Manual be amended so that the action becomes mandatory.

Government Response: Agreed

The Government will amend the Administrative Inquiries Manual to require the President to ensure that a copy of the relevant evidence is provided to a person whom the President considers is an affected person but who is not present at the hearings. It will be a matter for the President to determine what evidence should be made available to an affected person having regard to all the circumstances of each case.

Recommendation 32

Similarly, the committee recommends that the wording of paragraph 7.49 be rephrased to reflect the requirement that a member who comes before the Board late in the proceedings will be allowed a reasonable opportunity to familiarise themselves with the evidence that has already been given.

Government Response: Agreed

The Government will amend the Administrative Inquiries Manual as recommended, noting that the matter of what constitutes a reasonable opportunity for familiarisation is a matter for the decision of the President of the Board of Inquiry having regard to the circumstances of each case.

Recommendation 37

The committee recommends that the ADF submit an annual report to the Parliament outlining (but not limited to):

- a. The implementation and effectiveness of reforms to the military justice system, either in light of the recommendations of this report or via other initiatives.
- b. The workload and effectiveness of various bodies within the military justice system, such as but not limited to;
 - Director of Military Prosecutions
 - Inspector General of the ADF
 - The Service Military Police Branches
 - RMJ/CJA
 - Head of Trial Counsel
 - Head of ADR.

Government Response: Agreed

The Government supports the need for transparency and parliamentary oversight of the military justice system and will provide, in the Defence annual report, reporting on the state of health of the military justice system. Reporting will include progress in the implementation and effectiveness of reforms to the military justice system, arising both from this report and previous reviews under implementation, and the workload and effectiveness of the key bodies within the military justice system. Defence will also amend the Defence (Inquiry) Regulations to provide for an annual report on the operation of the D(I)R, fulfilling a recommendation of the Burchett report. Defence will also report twice a year to the Senate committee, on progress of the reforms throughout the two year implementation process.

Recommendation 38

To ensure that the further development and implementation of measures designed to improve the care and control and rights of minors in the cadets are consistent with the highest standards, the committee suggests that the ADF commission an expert in the human rights of children to monitor and advise the ADF on its training and education programs dealing with cadets.

Government Response: Agreed

The Government agrees to commission an expert to examine whether the human rights of children are being respected. The Government also notes that Defence has already implemented significant policy initiatives under the Government's Cadet Enhancement Program to address shortcomings in the care and control and rights of minors in the ADF Cadets, including:

- implementation of a behaviour policy, providing training and materials on the expected standards of behaviour, and including guidance and advice on the handling of sexual misconduct;
- development of a wellbeing program, specifically targeted at the mental health wellbeing of ADFC cadets;
- introduction of an ADFC cadet and adult cadet staff training enhancement program;
- a review of child protection policy and processes in line with State and Territory legislation;
- a review of screening processes for new staff; and
- production of a youth development guide for adult cadet staff.

Recommendation 39

The committee recommends that the ADF take steps immediately to draft and make regulations dealing with the Australian Defence Force Cadets to ensure that the rights and responsibilities of Defence and cadet staff are defined.

Government Response: Agreed

The Government agrees, noting that as part of the significant work initiated under the Government's Cadet Enhancement Program, Defence is finalising amendments to the regulations that will more than meet the Committee's recommendations on the human rights of minors.

Recommendation 40

The committee recommends that further resources be allocated to the Australian Defence Force Cadets to provide for an increased number of full-time, fully remunerated administrative positions across all three cadet organisations. These positions could provide a combination of coordinated administrative and complaint handling support.

Government Response: Agreed

The Government agrees and notes that the Service Chiefs have already provided additional resources to the ADF Cadets to improve administrative support.

AGREED IN PART

Recommendation 4

The committee recommends that, where the civilian police do not pursue a matter, current arrangements for referral back to the service police should be retained. The service police should only pursue a matter where proceedings under the DFDA can be regarded as substantially serving the purpose of maintaining and enforcing Service discipline.

Government Response: Agreed in part

The Government agrees in part, noting that the ADF makes an initial determination on whether offences of a suspected criminal nature should be retained for investigation and prosecution. This determination is based on an assessment of whether dealing with the matter under the DFDA can be reasonably regarded as substantially serving the purpose of maintaining and enforcing Service discipline. Where civilian police do not pursue a matter and it can be regarded as substantially serving the purpose of maintaining and enforcing Service discipline, then the matter may be dealt with under the DFDA. Defence will work to improve the management and effectiveness of the relationship between the military and civilian authorities on referral issues. This will include reviewing and clarifying the guidelines and examining the need for, and implementing as necessary, formal arrangements with the states and territories for referral of offences. Defence also intends to establish a common database for tracking referrals.

Recommendation 5

The committee recommends that the ADF increase the capacity of the Service police to perform their investigative function by:

- Fully implementing the recommendations contained in the Ernst & Young Report;
- Encouraging military personnel secondments and exchanges with civilian police authorities;
- Undertaking a reserve recruiting drive to attract civilian police into the Defence Forces;
- Increasing participation in civilian investigative training courses, and
- Designing clearer career paths and development goals for military police personnel.

Government Response: Agreed in part

The Government agrees this recommendation with one exception. The Ernst and Young Report was a review of the Army police investigation service and did not address the Navy and Air Force police investigation services. Army accepted 53 of the 55 of Ernst and Young recommendations. Two were not accepted on the basis that they appeared to infringe on the individual rights of ADF members. Work to implement the 53 agreed recommendations commenced in August 2004, and is progressing well. 33 recommendations, including the two that are not accepted, are complete, including establishment of the Provost Marshal - Army in January 2005. 22 recommendations are pending additional work which is being progressed by Army.

Some of the recommendations are specific to the Army and not directly relevant to the Navy and Air Force. The Government agrees that all Service police will act upon accepted recommendations of the Ernst and Young Report, as appropriate to each Service.

Recommendation 25

The committee recommends that, in its Annual Report, the Department of Defence include a separate and discrete section on matters dealing with the reporting of wrong doing in the ADF. This section is to provide statistics on such reporting including a discussion on the possible under reporting of unacceptable behaviour. The purpose is to provide the public, members of the ADF and parliamentarians with sufficient information to obtain an accurate appreciation of the effectiveness of the reporting system in the ADF.

Government Response: Agreed in part

The Government notes that Defence already reports statistics on reporting unacceptable behaviour in its annual report. The Government agrees that Defence will continue to include this data in the Defence annual report. The Government does not agree to report on potential under-reporting of unacceptable behaviour, as an exercise necessarily speculative in nature. Defence does, however, have in place a range of initiatives to manage and coordinate its complaints processing function to raise awareness and encourage reporting as appropriate.

Recommendation 28

The committee recommends that the following proposals be considered to enhance transparency and accountability in the appointment of investigating officers:

- Before an inquiry commences, the investigating officer be required to produce a written statement of independence which discloses professional and personal relationships with those subject to the inquiry and with the complainant. The statement would also disclose any circumstances, which would make it difficult for the investigating officer to act impartially. This statement to be provided to the appointing authority, the complainant and other persons known to be involved in the inquiry.
- A provision to be included in the Manual that would allow a person involved in the inquiry process to lodge with the investigating officer and the appointing officer an objection to the investigating officer on the grounds of a conflict of interest and for these objections to be acknowledged and included in the investigating officer's report.
- The investigating officer be required to make known to the appointing authority and potential conflict of interest that emerges during the course of the inquiry and to withdraw from the investigation.
- The investigating officer's report to include his or her statement of independence and any record of objections raised about his or her appointment and for this section of the report to be made available to all participants in the inquiry.

Government Response: Agreed in part

The Government agrees to consider proposals to enhance the transparency and accountability in the appointment of investigating officers. The Government agrees that investigating officers be required to produce statements of independence and to make known any potential conflicts of interest. The Government does not support the proposal that conflict of interest reports be included in reports to the Commanding Officer, rather, the Government will direct Defence to amend the Administrative Inquiries Manual to require that investigating officers must provide statements of independence, and that following receipt of the statement of independence, the complainant must alert the appointing authority to any potential conflict of interest or objection to an investigating officer. Resolution of any conflict would then occur prior to the commencement of the investigation.

Recommendation 33

The committee recommends that the wording of Defence (Inquiry) Regulation 33 be amended to ensure that a person who may be affected by an inquiry conducted by a Board of Inquiry will be authorised to appear before the Board and will have the right to appoint a legal practitioner to represent them. Further that a regulation be promulgated by the ADF that a person who has died as a result of an incident under investigation by a BOI will be entitled to legal representation.

Government Response: Agreed in part

The Government notes that the substance of this recommendation was agreed to following the 1999 senate Inquiry into the Military Justice System, and Defence is finalising changes to Defence (Inquiries) Regulation 33.

The Government agrees that in cases where either the appointing authority, before the inquiry starts, or the President of a Board of Inquiry makes a written determination that persons may be adversely affected by the Board's inquiry or its likely findings, that persons will be entitled to appear before the Board and will have a right to appoint a legal practitioner to appear to represent them before the Board, if they wish.

Further, the Government agrees that where such persons are represented by an ADF legal officer, or some other Defence legal officer, such representation will be provided at Commonwealth expense, in accordance with standing arrangements.

The Government also agrees that the representatives of the estate of deceased persons who have died as a result of an incident and may be adversely affected by the Board's inquiry or its likely findings, will be entitled to be legally represented before the Board of Inquiry into that incident. Consistently, the Government agrees that where the representative of the estate of such persons choose to be represented before the Inquiry by an ADF legal officer, or some other Defence legal officer, such representation will be provided at Commonwealth expense, in accordance with standing arrangements.

It is noted that the identification of 'persons adversely affected' involves the application of the principles of natural justice; it does not automatically encompass every person who is, or may be, a witness or has some other interest in the inquiry.

AGREED IN PRINCIPLE

Recommendation 16

The committee recommends that all Permanent Legal Officers be required to hold current practising certificates.

Government Response: Agreed in principle

The Government notes the Committee's underlying concern that the current ADF structures could give rise to a perception that ADF legal officers may not always exercise their legal duties independently of command influence.

The independence of the ADF permanent legal officers was criticised in the ACT Supreme Court in

Vance v The Commonwealth (2004). In part, the case concerned legal professional privilege. A significant factor in the case was that ADF and Department of Defence legal officers do not normally have practising certificates and this was seen as an indication that they were not independent and impartial and entitled to legal professional privilege. In May 2005, the Commonwealth appealed the decision, and the ACT Court of Appeal unanimously upheld the appeal on 23 August 2005.

Although there are practical difficulties in implementing Practising Certificates, the legal officers in the office of the DMP will be required to hold them, and other permanent legal officers will be encouraged to take them out. The matter of their independence would be established through amendment of the Defence Act, and commitment to professional ethical standards (ACT Law Society).

Recommendation 21

The committee recommends that the bench of the Permanent Military Court include judges whose experience combines both civilian legal and military practice.

Government Response: Agreed in principle

The Government agrees that judge advocates appointed to the Australian military court should have appropriate experience and that appointments should be based on the same professional qualifications and experience that apply to other judicial appointments, such as those applicable to a Federal Magistrate as set out in the *Federal Magistrates Act 1999* (Cth) Schedule 1 clause 1 (2).

The Australian military court will have a permanent panel of military judge advocates with legislated independence. The Government notes that military judge advocates will predominantly be drawn from the Reserve, and would have adequate civilian and military experience. Nevertheless, other qualified military legal practitioners should not be automatically excluded on the basis that they do not have civilian practice experience.

Recommendation 22

The committee recommends the introduction of a right to elect trial before the Permanent Military Court for summary offences.

Government Response: Agreed in principle

The Government agrees in principle with the concept of a right to elect trial. The form of that right and appropriate thresholds will need to be determined once the structure of the Australian military court is established, but will be based on existing determinations that certain classes of serious offence must be tried by a court incorporating a military jury.

Recommendation 35

Building on the report by the Australian Law Reform Commission, *Principled Regulation: Federal Civil and Administrative Penalties in Federal Jurisdiction*, the committee recommends that the ADF commission a similar review of its disciplinary and administrative systems.

Government Response: Agreed in principle

The report of the Australian Law Reform Commission *Principled Regulation: Federal Civil and*

Administrative Penalties in Federal Jurisdiction is focused on commercial and corporate law matters, and not the employment of personnel. Any review of the military justice system would require a broader basis that allows examination of all aspects of the military justice system.

The Government agrees that in addition to ongoing internal monitoring and review, Defence will commission regular independent reviews on the health of the military justice system. Such reviews would be headed by a qualified eminent Australian, with the first timed to assess the effectiveness of the overhauled military justice system proposed in this submission, at the conclusion of the two-year implementation period.

Recommendation 36

The committee recommends that the committee's proposal for a review of the offences and penalties under the Australian military justice system also include in that review the matter of double jeopardy.

Government Response: Agreed in principle

The Government agrees to examine the combination of criminal law and administrative action in terms of best-practice military justice, noting that such a review will also satisfy a recommendation from the Burchett Report to review the nature of the punishments that may be imposed in the light of contemporary standards. This review will be undertaken outside the broad review proposed at recommendation 35, and will be completed within the two-year implementation period.

NOT AGREED

REFERRAL OF OFFENCES TO CIVILIAN AUTHORITIES

Recommendation 1

The committee recommends that all suspected criminal activity in Australia be referred to the appropriate State/Territory civilian police for investigation and prosecution before the civilian courts.

Recommendation 2

The committee recommends that the investigation of all suspected criminal activity committed outside Australia be conducted by the Australian Federal Police.

Recommendation 3

The committee recommends that the Service police should only investigate a suspected offence in the first instance where there is no equivalent offence in the civilian criminal law.

Recommendation 7

The committee recommends that all decisions to initiate prosecutions for civilian equivalent and Jervis Bay Territory offences should be referred to civilian prosecuting authorities.

Recommendation 8

The committee recommends that the Director of Military Prosecutions should only initiate a

prosecution in the first instance where there is no equivalent or relevant offence in the civilian criminal law. Where a case is referred to the Director of Military Prosecutions, an explanatory statement should be provided explaining the disciplinary purposes served by pursuing the change.

Recommendation 9

The committee recommends that the Director of Military Prosecutions should only initiate prosecutions for other offences where the civilian prosecuting authorities do not pursue a matter. The Director of Military Prosecutions should only pursue a matter where proceedings under the DFDA can reasonably be regarded as substantially serving the purpose of maintaining or enforcing Service discipline.

Government Response: Not agreed

The Government does not agree to the recommendations (1,2,3,7,8,9) that taken together propose the automatic referral of investigation and prosecution of criminal offences with a Service connection to civilian authorities.

The purpose of a separate system of military justice is to allow the ADF to deal with matters that pertain directly to the discipline, efficiency and morale of the military. To maintain the ADF in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently. Breaches of military discipline must be dealt with speedily and, sometimes, dealt with more severely than would be the case if a civilian engaged in such conduct.

The maintenance of effective discipline is indivisible from the function of command in ensuring the day-to-day preparedness of the ADF for war and the conduct of operations. Justices Brennan and Toohey of the High Court in *Re Tracey; ex parte Ryan* (1989) (and repeated by Justice McHugh in *Re Colonel Aird; ex parte Alpert* (2004)) said '*Service discipline is not merely punishment for wrongdoing. It embraces the maintenance of standards and morale in the service community of which the offender is a member, the preservation of respect for and the habit of obedience to lawful authority and the enhancing of efficiency in the performance of service functions.*'

As a core function of command, military justice cannot be administered solely by civilian authorities. Recourse to the ordinary criminal courts to deal with matters that substantially affect service discipline would be, as a general rule, inadequate to serve the particular disciplinary needs of the Defence Force. Further, the capacity to investigate and prosecute offences under the Defence Force Discipline Act 1982 is necessary to support ADF operations both within and outside Australia.

The Government does not accept that the DFDA – or more broadly the system of military justice – is a “duplication” of the criminal system. Importantly, jurisdiction under the DFDA for any offence may only be exercised where proceedings can reasonably be regarded as substantially serving the purpose of maintaining or enforcing Service discipline – a purpose different to that served by the criminal law. Moreover, extensive guidelines for the exercise of DFDA jurisdiction and the satisfaction of this service connection test are set out in comprehensive Defence instructions. It is a core element of the DFDA that not all criminal activity is or should be dealt with by the military police.

The Government is also concerned that the civil code does not have the disciplinary provisions required to keep order and encourage discipline and cohesive teamwork, and may actively undermine the ability of commanding officers to address disciplinary issues through the more expeditious summary action

available under the DFDA. This particularly applies to those cases that may be considered insignificant in a civilian context – petty theft for instance – that may have serious implications for service discipline and morale, and may seriously undermine the authority of a commanding officer to maintain effective discipline.

The proposed enhancements to the military justice system seek to provide a balance between military effectiveness and external oversight by ensuring that the system meets legal standards, conforms as far as possible to community expectations, and provides reassurance to the Parliament and the community that ADF members' rights are being protected without compromising the ADF's ability to remain an effective fighting force. It is based on the premise of maintaining effective discipline and protecting individuals and their rights, administered to provide impartial, timely, fair and rigorous outcomes with transparency and accountability.

Where Defence prosecution substantially serves the purpose of maintaining and enforcing Service discipline, offences in Australia will be dealt with under the DFDA. Past challenges to the system of retention or referral of cases in the High Court have been unsuccessful and the current system and thresholds will be maintained, with determination decisions undertaken by the Director of Military Prosecutions. Defence will work to improve the management and effectiveness of the relationship between the military and civilian authorities on referral issues. This will include reviewing and clarifying the guidelines and examining the need for, and implementing as necessary, formal arrangements with the states and territories for referral of offences. Defence also intends to establish a common database for tracking referrals.

The Government is also of the view that outsourcing the criminal investigative function would complicate proposed efforts to address the problem of the capability of the military police. Military police will still be required to perform criminal investigative roles if, for instance, civilian authorities decline to investigate a matter, and subsequently referred it back to the military police. The Government has accepted recommendations 5 and 6, to improve the quality of criminal investigations conducted by Service police, including through the establishment of an ADF Joint Investigation Unit.

Recommendation 19

The Permanent Military Court to be created in accordance with Chapter III of the Commonwealth Constitution to ensure its independence and impartiality.

- Judges should be appointed by the Governor-General in Council;
- Judges should have tenure until retirement age.

Government Response: Not agreed

In response to Recommendation 18, the Government agreed to the option to establish an Australian military court. The Government does not support the creation of a permanent military court under Chapter III of the Constitution. Current advice is that there are significant policy and legal issues raised by the proposal to use existing courts for military justice purposes. Chapter III of the Constitution imposes real constraints in this regard.

Importantly, a military court is not an exercise of the ordinary criminal law. It is a military discipline system, the object of which is to maintain military discipline within the ADF. It is essential to have knowledge and understanding of the military culture and context. This is much more than being able to

understand specialist evidence in a civil trial. There is a need to understand the military operational and administrative environment and the unique needs for the maintenance of discipline of a military force, both in Australia and on operations and exercises overseas. The judicial authority must be able to sit in theatre and on operations. It must be deployable and have credibility with, and acceptance of, the Defence Force. The principal factor peculiar to the Defence Force is the military preparedness requirements and the physical demands of sitting in an operational environment. The Chapter III requirements are not consistent with these factors, and the Government does not support the Chapter III features for a military court.

In addition, a Chapter III court would require its military judicial officers to be immune from the provisions of the DFDA subjecting them to military discipline. While this is appropriate regarding the performance of their judicial duties, the Government does not support making them exempt from military discipline in the performance of their non-judicial duties such as training.

The limitations resulting from those constraints means that having a separate military court outside Chapter III is preferable to bringing the military justice system into line with Chapter III requirements.

The Government will instead establish a permanent military court, to be known as the Australian military court, to replace the current system of individually convened trials by Courts Martial and Defence Force Magistrates. The Australian military court would be established under appropriate Defence legislation and would satisfy the principles of impartiality and judicial independence through the statutory appointment of military judge advocates by the Minister for Defence, with security of tenure (fixed five-year terms with possible renewal of five years) and remuneration set by the Remuneration Tribunal (Cth). To enhance the independence of military judge advocates outside the chain of command, they would not be eligible for promotion during the period of their appointment.

Advice to the Government indicates that a military court outside Chapter III would be valid provided jurisdiction is only exercised under the military system where proceedings can reasonably be regarded as substantially serving the purpose of maintaining or enforcing service discipline.

Recommendation 20

The committee recommends that Judges appointed to the Permanent Military Court should be required to have a minimum of five years recent experience in civilian courts at the time of appointment.

Government Response: Not agreed

The Australian military court will have a permanent panel of military judge advocates with legislated independence. Appointment should be based on the same professional qualifications and experience that apply to other judicial appointments such as those applicable to a Federal Magistrate as set out in the *Federal Magistrates Act 1999* (Cth) Schedule 1 clause 1 (2). While recent civilian experience could be a factor to be taken into account, other qualified military legal practitioners should not be excluded on the basis that they do not have recent civilian experience.

Recommendation 29

The committee makes the following recommendation –

- a The committee recommends that:**
- the Government establish an Australian Defence Force Administrative Review Board (ADFARB);
 - the ADFARB to have a statutory mandate to review military grievances and to submit its findings and recommendations to the CDF;
 - the ADFARB to have a permanent full-time independent chairperson appointed by the Governor-General for a fixed term;
 - the chairperson, a senior lawyer with proven administrative law/policy experience, to be the chief executive officer of the ADFARB and have supervision over and direction of its work and staff;
 - all ROG and other complaints be referred to the ADFARB unless resolved at the unit level or after 60 days from lodgement;
 - the ADFARB be notified within five days of the lodgement of an ROG at unit level with 30 days progress reports to be provided to the ADFARB;
 - the CDF be required to give a written response to ADFARB findings/recommendations;
 - if the CDF does not act on a finding or recommendation of the ADFARB, he or she must include the reasons for not having done so in the decision respecting the disposition of the grievance or complaint;
 - the ADFARB be required to make an annual report to Parliament.
- b The committee recommends that this report**
- contain information that will allow effective scrutiny of the performance of the ADFARB;
 - provide information on the nature of the complaints received, the timeliness of their adjudication, and their broader implications for the military justice system-the Defence Force Ombudsman's report for the year 2000-01 and 2001-02 provides a suitable model; and
 - comment on the legal and training of staff in the ADFARB and the adequacies of its budget and resources for effectively performing its functions.
- c. The committee recommends that in drafting legislation to establish the ADFARB, the Government give close attention to the Canadian National Defence Act and the rules of procedures governing the Canadian National Grievance Board with a view to using these instruments as a model for the ADFARB. In particular, the committee recommends that the conflict of interest rules of procedure be adopted. They would require:**
- A member of the board to immediately notify the chairperson, orally or in writing, of any real or potential conflict of interest, including where the member, apart from any functions as a member, has or had any personal, financial or professional association with the grievor; and
 - Where the chairperson determines that the Board member has a real or potential conflict of interest, the Chairperson is to request the member to withdraw immediately from the proceedings, unless the parties agree to be heard by the member and the Chairperson permits the member to continue to participate in the proceedings because the conflict will not interfere with a fair hearing of the matter.
- d. The committee further recommends that to prevent delays in the grievance process, the ADF impose a deadline of 12 months on processing a redress of grievance from the date it is initially lodged until it is finally resolved by the proposed ADFARB. It is to provide reasons for any delays in its annual report.**

- e. The committee also recommends that the powers conferred on the ADFARB be similar to those conferred on the CFGB. In particular:
 - the power to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath or affirmation and to produce any documents and things under control that it considers necessary to the full investigation and consideration of matters before it; and
 - although, in the interest of individual privacy, hearings are held in-camera, the chairperson to have the discretion to decide to hold public hearings, when it is deemed the public interest so requires.
- f. The committee recommends that the ADFARB take responsibility for and continue the work of the IGADF including:
 - improving the training of investigating officers;
 - maintaining a register of investigating officers, and
 - developing a database of administrative inquiries that registers and tracks grievances including the findings and recommendations of investigations.
- g. To address a number of problems identified in administrative inquiries at the unit level- notably conflict of interest and fear of reprisal for reporting a wrongdoing or giving evidence to an inquiry- the committee recommends that the ADFARB receive reports and complaints directly from ADF members where:
 - the investigating officer in the chain of command has a perceived or actual conflict of interest and has not withdrawn from the investigation;
 - the person making the submission believes that they, or any other person, may be victimised, discriminated against or disadvantaged in some way if they make a report through the normal means; or
 - the person has suffered or has been threatened with adverse action on account of his or her intention to make a report or complaint or for having made a report or complaint.
- h. The committee further recommends that an independent review into the performance of the ADFARB and the effectiveness of its role in the military justice system be undertaken within four years of its establishment.

Government Response: Not Agreed

The Government agrees there is a need to improve the complaints and redress of grievance management system, and proposes that the shortfalls in the existing system would best be met by streamlining the existing ADF complaints management and redress of grievance system and retaining independent internal and external review and oversight agencies. The committee's recommended ADF Administrative Review Board (ADFARB) would not support the relationship between command and discipline, would reduce contestability and introduce duplication.

The ADFARB concept proposed by the Senate Committee is based on the Canadian Forces Grievance Board (CFGB). The CFGB deals with only about 40 per cent of Canadian Defence Force grievances, is highly resource intensive and does not replace the Canadian internal complaints resolution body, or the Canadian Forces Ombudsman. Defence is concerned that the ADFARB concept would reduce contestability in the system by absorbing the ADF's only independent review authority, noting the proposal that the ADFARB take responsibility for and continue the work of the IGADF. As proposed, the ADFARB would also duplicate the role of the Defence Force Ombudsman.

The Government does not agree to establish an ADFARB on the basis that it would be a costly exercise

that would not provide real benefits in terms of increasing perceived independence. The Government is also concerned that an ADFARB would remove the responsibility and accountability of commanders for the well being of ADF personnel in their command.

The Government proposes instead to reform and streamline the complaints and redress of grievance management system, in line with the recommendations of a joint Defence Force Ombudsman/CDF Redress of Grievance System Review 2004. Implementation of these recommendations has commenced in line with a CDF Directive 2/2005. Changes to the system will improve the rigour, impartiality and timeliness of processing complaints.

The overarching principle guiding the redress of grievance system remains that complaints should be resolved at the lowest effective level and in the quickest possible time. Primary responsibility to resolve complaints remains with the unit commanders.

Defence's Complaint Resolution Agency (CRA) – an existing body which is established outside the ADF – will become the lead agency in the coordination of complaints and redresses of grievance.

In its expanded role, the CRA will have three major functions.

- The CRA will initially provide advice to commanding officers on the management of every application for redress of grievance and monitor the handling of those redress applications at the unit level. It will have an enhanced advisory and oversight function of every application.
- The CRA will have the authority to advise on appropriately trained and qualified investigating officers at this initial stage and, if necessary, will require an alternative investigating officer to that nominated by the commander.
- Where ADF personnel refer their complaint to the Service Chief or the Chief of the Defence Force following the decision of the commanding officer, the Complaint Resolution Agency, as in the present situation, will conduct an independent review of the matter and provide recommendations to the decision maker.

All complaints will be registered with the Complaint Resolution Agency within five days of initiation and it will be empowered to take over the management of all cases unresolved by commanders 90 days after lodgment. In all cases, the Agency will be the central point for monitoring progress and resolution. A single register for tracking complaints across the ADF will be implemented.

Other improvements to the ROG system being implemented include improvements in training of commanding officers and investigating officers, consolidating Defence complaint mechanisms, and managing centrally the various complaint hotlines operating in Defence.

For those ADF personnel who, for whatever reason, do not wish to use the chain of command, there will remain two alternative avenues of complaint – the Inspector General of the ADF and the Defence Force Ombudsman.

The existing Inspector General of the ADF was established as recommended by Mr Burchett QC to deal exclusively with military justice matters. The IGADF was established to provide the Chief of the Defence Force with a mechanism for internal audit and review of the military justice system

independent of the ordinary chain of command and an avenue by which failures and flaws in the military justice system can be exposed and examined so that any cause of any injustice may be remedied.

Although it is not a general complaint handling agency like the CRA, it does provide an avenue for those with complaints about military justice who are, for some reason, unable to go through their chain of command, to have their complaints investigated and remedied. The Government has drafted legislation to establish the Inspector General of the ADF as a statutory appointment in order to further strengthen its independence.

In addition to this review mechanism and completely external to the ADF is recourse to the Defence Force Ombudsman. This position will retain legislative authority to receive and review complaints and to initiate on its own motion investigations into ADF administration processes. The Defence Force Ombudsman has statutory power to investigate a matter, make findings and recommend a course of action to the appropriate decision maker and to table a report in Parliament if deemed necessary.

Recommendation 34

The committee recommends that:

- all notifiable incidents, including suicide, accidental death or serious injury be referred to the ADFARB for investigation/inquiry;
- the Chairperson of the ADFARB be empowered to decide on the manner and means of inquiring into the cause of such incidents (the Minister for Defence would retain absolute authority to appoint a Court of Inquiry should he or she deem such to be necessary);
- the Chairperson of the ADFARB be required to give written reasons for the choice of inquiry vehicle;
- the Government establish a military division of the AAT to inquire into major incidents referred by the ADFARB for investigation; and
- the CDF be empowered to appoint a Service member or members to assist any ADFARB investigator or AAT inquiry.

Government Response: Not agreed

The Government agrees that there is a need to demonstrate that ADF inquiries into notifiable incidents including suicide, accidental death or serious injury are independent and impartial. To meet this principle, the Government will propose amendments to legislation to create a Chief of Defence Force Commission of Inquiry. CDF shall appoint a mandatory Commission of Inquiry into suicide by ADF members and deaths in service. The commission may consist of one or more persons, with one being a civilian with judicial experience. Where the commission consists of more than one person, the civilian with judicial experience will be the President. This form of inquiry will be in addition to the existing arrangements for appointment of Investigating Officers and Boards of Inquiry.

External independent legislative oversight by Comcare will continue in relation to the conduct of all ADF inquiries into notifiable incidents. This includes arrangements for consultation with Comcare on the terms of reference, as well as options for attendance or participation in the inquiry process.

State and Territory Coroners will continue to review the outcomes of ADF inquiries into deaths of personnel. The ADF is working towards completing a Memorandum of Understanding with State and

Territory Coroners. The Defence Force Ombudsman will continue to provide external independent legislative review of the conduct of ADF inquiries. This may occur as a consequence of a complaint or by own motion independently of the ADF.

The Government does not support the concept of an ADFARB, as reflected in the response to recommendation 29, and so can not agree to refer notifiable incidents, including suicide, accidental death or serious injury to an ADFARB for investigation/inquiry.

CONSULTATIONS – INTERVIEWS - BRIEFINGS

1. **DCA:** MAJGEN David Morrison and
LTCOL Arun Lambert 12 June 08
2. **CN:** VADM Russ Shalders RAN and
LCDR Kirk Hayden RAN 16 June 08
3. **COMDT ADFA:** BRIG Wayne Goodman,
CAPT Peter Murray RAN, CMDR Michael Ries RAN,
LTCOL Shaun Whitehouse, LEUT Catherine Cawte RANR,
WOFF Peter Evans 17 June 08
4. **CAF:** AIRMSHL Geoff Shepard 19 June 08
5. Public Hearing **Senate Standing Committee on Foreign
Affairs, Defence and Trade** 20 June 08
6. **'ThinkEvans':** Carolyn Evans (JADHE presentation) 26 June 08
7. **HCP:** RADM Karel de Laat RANR and Mr John Diercks 08 July 08
8. **DGFR:** Di Harris 08 July 08
9. **PM-ADF:** COL Tim Grutzner and
CMDR John Rousseau RAN 08 July 08
10. **CDF-COI:** WGCDR Chris Taylor and
Mrs Leah-Barbara Maguire 08 July 08
11. **COMDT ADC:** RADM James Goldrick RAN,
BRIG Wayne Goodman, BRIG Barry McManus,
CMDR Michael Ries RAN 09 July 08
12. **PM-A:** LTCOL Mark Luscombe and
MAJ Michael Remberton 09 July 08
13. **MJSRT/LCI:** CMDR Des Carney RANR 09 July 08
14. **PM-N:** CMDR George Sydney RAN and
CMDR John Wells RANR 10 July 08
15. **PM-AF:** WGCDR Michael Oliver 10 July 08
16. **COS JTF633:** CAPT Warren Bairstow RAN 10 July 08
17. **IGD:** Mr Ray Bromidge and Mr Terry Riley 10 July 08
18. **JAG:** MAJGEN, the Honourable Justice Richard Tracey 11 July 08
19. **VCDF:** LTGEN David Hurley 21 July 08
20. **DARE:** Ms Helen Marks 21 July 08
21. **DSFC:** Mr Mitchell Jones 22 July 08
22. **DGSHPP:** CDRE Robyn Walker RAN 22 July 08
23. **DLIT:** Mr Michael Lysewycz 22 July 08
24. **DCN:** RADM Davyd Thomas RAN and
LCDR Kirk Hayden RAN 22 July 08
25. **RSM-A:** WO Stephen Ward 23 July 08
26. **WO-N:** WO James Levay 23 July 08
27. **WO-AF:** WO Ray Woolnough 23 July 08
28. **DMP:** BRIG Lynette McDade 23 July 08
29. **DSA:** Mr Fank Roberts, Mr Tim Sculley, Mr Peter Grace 23 July 08
30. **DGNPT:** CDRE Dave Letts RAN 23 July 08

31. **HDL:** Mr Mark Cunliffe, CDRE Vicki McConachie RAN,
Dr David Lloyd, GPCAPT Paul Cronan,
WGCDR Chris Ward 24 July 08
32. **CMJ/RAMC/AMC:** BRIG Ian Westwood, COL Geoff Cameron
LTCOL Jennifer Woodward 24 July 08
33. **HPC:** MAJGEN Michael Slater 24 July 08
34. **DFO:** Prof John McMillan and Ms Anna Glendinning 25 July 08
35. WGCDR Robert Grey (Rtd) 28 July 08
36. **ADFIS - CDR JIO Canberra:** SGT Jeff Lyon 31 July 08
37. **DFO:** Ms Anna Glendinning, Ms Lynly Ducker,
Mr Scott White 01 Aug 08
38. **Command Element HMAS CERBERUS:**
CAPT Sheldon Williams RAN, CMDR Scott Craig RAN,
LCDR Garry Barrow RAN, WONPC Garry Atkinson,
CPOWTR Duncan McCrorie 04 Aug 08
39. Mr Rob Turner and CMDR Jim Unkles RAN 05 Aug 08
40. **Joint Logistics Command - Command Legal Officer:**
LTCOL Tony Ashley 05 Aug 08
41. **Command Element RAN Recruit School:**
CMDR James Hillock RAN, LCDR Sue Cunningham RAN,
LEUT Debra Neil RAN. PONPC Ryan Cetinich 05 Aug 08
42. **Commander Air Force Training Group:**
AIRCDRE Ken Watson, WGCDR Peter Mather,
SQNLDR Michael Golding, SQNLDR Julian Tattersall 06 Aug 08
43. **Soldiers Career Management Agency:**
COL Bruce Murray, LTCOL Rolf Audrins,
LTCOL Gavin Bourke, LTCOL Rowan Martin,
MAJ Peter Cumines 06 Aug 08
44. **COMAUSNAVVSYSYSCOM:**
RADM Stephen Gilmore RAN, CAPT Michael van Balen RAN,
CMDR Martin Fallens RAN 07 Aug 08
45. **CDF:** ACM Angus Houston 07 Aug 08
46. **DDCS:** GPCAPT Chris Hanna and Mr Damien Roberts 08 Aug 08
47. **RAMC:** COL Geoff Cameron 08 Aug 08
48. **ADFIS:** SQNLDR Shane Bryant (Director Personnel and
Professional Standards) 12 Aug 08
49. **ACAUST:** AVM Mark Skidmore and
WGCDR Hans Leyland 18 Aug 08
50. **TC-A:** MAJGEN Ash Power, LTCOL Tracey Garrett, and
WO1 Graeme Smith 18 Aug 08
51. **FCAUST:** RADM Nigel Coates RAN, CDRE Simon Cullen RAN,
and CMDR Peter Bowers RAN 18 Aug 08
52. **Blackhawk '221' BOI:** The Honourable Justice David Levine
QC, RFD 18 Aug 08
53. **DPTC:** LTCOL Peter Fisher, LCDR John Youngman RAN,
and WO1 Kenneth Bullman 19 Aug 08
54. **DCJOPS:** AVM Greg Evans and LTCOL David Bell 19 Aug 08
55. **MLC:** WGCDR Ian Henderson, SQNLDR Nerida Lister 20 Aug 08

56. **HMAS WATSON/TA-MW:** CAPT Ray Leggatt RAN,
CMDR Verran Dutschke RAN, and
CMDR Simon Cannell RAN 20 Aug 08
57. **4 RAR(CDO) Command Element** 21 Aug 08
58. **COMAUSNAVSURFGRP:** CDRE Ian Middleton RAN 21 Aug 08
59. **HMAS SYDNEY:** CAPT Braddon Wheeler RAN,
LCDR William Waters RAN, **HMAS NEWCASTLE:**
CMDR Nick Stoker RAN, CPONPC Sean Lowe and
HMAS KANIMBLA: WO David Munro 21 Aug 08
60. **Sea King '21' BOI:** Mr Michael Slattery QC 21 Aug 08
61. **CDR ALG:** AIRCDRE Ian Scott 22 Aug 08
62. **37 SQN:** WGCDR Matt Hegarty 22 Aug 08
63. **DSG Estate Development:** Ms Liz Clark 23 Aug 08
64. **PM-ADF:** COL Tim Grutzner
and CMDR John Rousseau RAN 28 Aug 08
65. **MLC Training Staff:** WGCDR Ian Henderson and
SQNLDR Nerida Lister 01 Sept 08
66. **DDAPSS:** WGCDR Brock McKinlay 01 Sept 08
67. **HMAS HARMAN:** PONPC Jocelyn Blowfield 09 Sept 08
68. **OCDF:** WGCDR Chris Taylor 12 Sept 08
69. **DDSOM:** LTCOL Elizabeth Khan 12 Sept 08
70. **CSO CN:** CAPT Robert Morrison RAN 12 Sept 08
71. **396 ECSW:** GPCAPT Peter Viggers and
SQNLDR James Field 16 Sept 08
72. **HQ 1 BDE:** LTCOL Anthony Duus, CAPT Lauren Sanders,
and WO1 David Spinks 16 Sept 08
73. **5 RAR:** LTCOL 'Jake' Elwood, WO1 Craig Howe 16 Sept 08
74. **1 ARMD REGT:** LTCOL Duncan Haywood, WO1 Peter
Swinfield, CAPT John Van Hattem, SGT Carol Proudfoot,
And CAPT Lauren Sanders 16 Sept 08
75. **13 SQN:** SQNLDR Glenn, WOFF Michael Osborne and
WOFF Maxwell Schneider 17 Sept 08
76. **JLU-N:** MAJ Peter Williams 17 Sept 08
77. **114 MCRU:** SQNLDR Callum Carmichael, FLGOFF Tod Goldsmith,
and WOFF Gavin Smith 17 Sept 08
78. **321 ECSS:** WGCDR Noel Hinschen 17 Sept 08
79. **COMNORCOM:** COL Ross Bradford. LEUT Angeline Lewis RAN,
and WOFF Phillip Martin 18 Sept 08
80. **NORFORCE:** LTCOL Michael Rozzoli, CAPT Scott Tobias,
and WO1 Stephen Chiesa 18 Sept 08
81. **COMAUSNAVPBGRP:** CAPT Vaughn Rixon RAN, WONPC Paul Hayes,
HMAS COONAWARRA: CMDR Ainsley Morthorpe RAN,
LCDR Brian Froome RAN, LEUT Kurt Ploszczyniec RAN,
CPONPC 'Taffy' Jordan, CPOWTR Sharon Waterson,
CO ATTACK 6: LCDR Steve Taragel RAN, and
CO ATTACK 4: LCDR Victor Pilicic RAN 18 Sept 08
82. **A/RM DS-NT/K:** Ms Sarah-Jayne McBride 19 Sept 08
83. **SASR Command Element** 30 Sept 08

84. **HMAS PERTH:** CMDR Michele Miller RAN,
WOCIS Jeffery Argoon, CPONPC Terry McCarthy,
CPOWTR John Humpherys, **HMAS COLLINS:**
CMDR Mathew Buckley RAN, LCDR Mathew Hoffman RAN,
and CPOCIS Mark Cossey 01 Oct 08
85. **HMAS STIRLING:** CAPT Brett Dowsing RAN and
CMDR Tony Rayner RAN 01 Oct 08
86. **COMAUSNAVSUBGRP:** CDRE Steve Davies RAN 01 Oct 08
87. **HMAS STIRLING HR Cell:** LCDR Simon Gourley RAN,
CPOWTR Allan Purdue, and POWTR 'Muz' Murray 01 Oct 08
88. **HMAS STIRLING COXNs Office:** CPONPC Darren Akerman,
PONPC Stephen Tratt, LSNPC Jacob Adams
LSNPC Kate Evans, LSNPC Elizabeth Balme, and
ABCIS Danielle Sandover,
ADFIS JIO-FBW: CPONPC Patrisha Chaplin and
PONPC Jon Giggins 01 Oct 08
89. **HQ CSUPEA:** WGCDR Russell Page, SQNLDR Ian Kororowski,
FLTLT Peter De Waard and WOFF Ian Griffiths 02 Oct 08
90. **2 FTS:** WGCDR John Wood, SQNLDR Roddy Van Rooyen,
FLTLT Glenda Preston, **79 SQN:** WGCDR Steve O'Halloran,
SNLDR Rob Graham, and FLTLT Nelson Rapp 02 Oct 08
91. **25 SQN:** SQNLDR Ewen Seabrook, FLTLT Jude Chew,
WOFF Ronald Pease, WOFF Warren Everett, SGT Helen McGuire,
CPL Simon Vulinovic, LAC/W Elena Mustard,
and AC Benjamin Shaw 02 Oct 08
92. **IG-ADF:** SGT Lenny Lewis 08 Oct 08
93. **RAMC:** COL Geoff Cameron 13 Oct 08
94. **DMP:** BRIG Lynette McDade 14 Oct 08
95. **ex-CO 114 MCRU:** WGCDR Peter Cooper 15 Oct 08
96. **IG-ADF:** Mr Geoffery Early and BRIG Andrew Dunn, and
WGCDR Belinda Crooks-Bruns 15 Oct 08
97. **CA:** LTGEN Ken Gillespie, LTCOL Arun Lambert, and
WO1 Stephen Ward 15 Oct 08
98. **Minister for Defence Science and Personnel:**
the Honourable Warren Snowdon MP and Mr Peter Reece 16 Oct 08
99. **CMJ:** BRIG Ian Westwood 16 Oct 08
100. **CAF:** AM Mark Binskin 16 Oct 08
101. **IG-ADF:** PONPC Linda Hilton 16 Oct 08
102. **DSCM:** CPONPC David Leeming 21 Oct 08
103. **A/Dir Business Reform PMKeyS:** Ms Fiona Davidson 23 Oct 08
104. **President of the Defence Force Discipline Appeals Tribunal,**
The Honourable Justice Peter Heery, Ms Sia Lagos, and
Ms Nikki Macor 28 Oct 08
105. **COMDT RMC-A:** BRIG Mark Bornholt and
LTCOL Jamie McDonald 29 Oct 08
106. **IG-ADF:** Mr Geoff Early, BRIG Andrew Dunn, and
WGCDR Belinda Crooks-Burn 29 Oct 08
107. **Law Council of Australia:** Mr Bill Grant, Mr Paul Willee,
Mr Ben Salmon, and Mr Nick Parmeter 30 Oct 08
108. **HDL:** Mark Cunliffe, CDRE Vikki McConachie RAN,

	and GPCAPT Paul Cronan	30 Oct 08
109.	NSW DPP/RANR Legal Panel: CMDR Tim Hoyle RANR	30 Oct 08
110.	ADFIS: CMDR John Rousseau RAN	30 Oct 08
111.	DGFR: Ms Di Harris, WGCDR Mary Anne Whiting, and Mr Michael McCulloch	30 Oct 08
112.	HMAS WARRAMUNGA: CMDR Andrew Gordon RAN	04 Nov 08
113.	CDF: ACM Angus Houston	05 Nov 08
114.	SECPOL: PLTOFF Narelle Mason	06 Nov 08
115.	ARTC: COL Bill Hanlon, LTCOL James McTavish, MAJ Roy Pratt, CAPT Matt Fielden, and WO1 Allan Beatty	10 Nov 08
116.	1 RTU: WGCDR David Ashworth, SQNLDR Christine Notting, SQNLDR Alison Lacey and WOFF Calvin Lippiat	11 Nov 08
117.	RANR Legal Panel: LCDR Jane Probert RANR	12 Nov 08
118.	RANR Legal Panel: CAPT Jeffery Hilton RANR	12 Nov 08
119.	ARes Legal Panel: COL Bruce Green	13 Nov 08
120.	LCAUST: MAJGEN Mike Kelly, LTCOL Evan Carlin, LTCOL Michael Sasse, and WO1 Dave Ashley	13 Nov 08
121.	ISG: Leah Middlemass	14 Nov 08
122.	CN: VADM Russ Crane RAN, LCDR Kirk Hayden RAN	24 Nov 08
123.	COSC	25 Nov 08
124.	DFO Seminar	26 Nov 08
125.	Asst CDF Reserves: MAJGEN Greg Melick	27 Nov 08
126.	FADT: Senator Mark Bishop	27 Nov 08
127.	DDMR-DCR: WGCDR Mary-Anne Whiting	03 Dec 08
128.	COMD 5 BDE: BRIG Paul Brereton	17 Dec 08
129.	DMP: BRIG Lynette McDade	15 Jan 09

CANBERRA BASED COMMAND/PERSONNEL/MJS AGENCIES

1. Chief of the Defence Force
2. Chief of Navy
3. Chief of Army
4. Chief of Air Force
5. Vice Chief of the Defence Force
6. Assistant Chief of Defence Force (Reserves)
7. Head Cadet Policy
8. Head People Capability (name change from 'Head Personnel Executive')
9. Director General Navy Personnel and Training
10. Director General Personnel (Air Force)
11. Director General Defence Education and Training
12. Directorate Senior Officer Management
13. Directorate of Personnel – Air Force
14. Director General Education and Training
15. Director General Fairness and Resolution
16. Provost Marshall – Navy
17. Provost Marshall – Army
18. Provost Marshall – Air Force
19. Director General Garrison Health Support (name change from 'Director General Health Policy and Plans')
20. Defence Force Ombudsman
21. Head Defence Legal
22. Chief Military Judge
23. Director Litigation
24. Director of Military Prosecutions
25. Registrar of the Australian Military Court
26. Director of Defence Counsel Services
27. Director of Military Disciplinary Law
28. Director of Military Administrative Law
29. Director Special Financial Claims
30. Defence Security Agency

**MILITARY COMMANDS, FORMATIONS, UNITS, AND MJS
AGENCIES VISITED**

1. Commander Australian Fleet (HMAS KUTTABUL)
2. Commander Navy Systems Command (Campbell Park Offices)
3. Commander Australian Surface Combatant Force Element Group (HMAS KUTTABUL)
4. Commander Australian Navy Submarine Group
5. Commander Australian Navy Patrol Boat Group (HMAS COONAWARRA)
6. HMAS WATSON
7. HMAS CERBERUS
8. HMAS SYDNEY

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Not for Release

9. HMAS STIRLING
10. HMAS KANIMBLA
11. HMAS NEWCASTLE
12. HMAS PERTH
13. HMAS COLLINS
14. HMAS HARMAN
15. HMAS COONAWARRA
16. RAN Recruit School
17. ATTACK 4 (Borne HMAS LARRAKIA)
18. ATTACK 6 (Borne HMAS COONAWARRA)
19. Land Commander Australia (Victoria Barracks Sydney)
20. Training Commander - Army (Victoria Barracks - Sydney)
21. Commander 1 Brigade (Robertson Barracks)
22. Royal Military College - Australia (Duntroon)
23. Army Recruit Training Centre (Blamey Barracks)
24. 5th Battalion, Royal Australian Regiment (Robertson Barracks)
25. 1st Armoured Regiment (Robertson Barracks)
26. Soldiers Career Management Agency (Queenscliff Barracks)
27. Special Air Services Regiment (Swanbourne Barracks)
28. NORFORCE (Larrakeyah Barracks)
29. 4th Battalion, Royal Australian Regiment (Holsworthy Barracks)
30. Air Commander Australia (RAAF Glenbrook)
31. 321 Expeditionary Combat Support Squadron (RAAF Darwin)
32. Commander Air Lift Group (RAAF Richmond)
33. Commander 396 Expeditionary Combat Support Wing (RAAF Darwin)
34. 37 Squadron (RAAF Richmond)
35. 13 Squadron (RAAF Darwin)
36. CSUPEA (RAAF Pearce)
37. No 1 Recruit training Unit (RAAF Wagga)
38. 2 FTS (RAAF Pearce)
39. 79 SQN (RAAF Pearce)
40. 114 Mobile Control and Reporting Unit (RAAF Darwin)
41. 25 SQN (RAAF Pearce)
42. RAAF Training Group (RAAF Laverton)
43. Deputy Commander Joint Operations Command (A.C. Lewis House)
44. Australian Defence College
45. Australian Defence Force Academy
46. Commander Northern Command (Larrakeyah Barracks)
47. Joint Logistic Command (Victoria Barracks - Melbourne)
48. Joint Logistic Unit - North (RAAF Darwin)
49. Inspector General - Australian Defence Force
50. Defence Force Disciplinary Appeals Tribunal
51. Judge Advocate General
52. Australian Defence Force Investigative Service HQ
53. ADFIS JIO: RMC-D
54. ADFIS JIO: HMAS STIRLING
55. Defence Force Police Training Establishment (Holsworthy Barracks)
56. Military Law Centre (Randwick Barracks)
57. Inspector Generals Division
58. Defence Support Group - NT/K

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2009 MILITARY JUSTICE SYSTEM REVIEW

1997 Abadee Review Progress Report

RECOMMENDATION	Status	Date Completed	Comments
1.26.1 – The standard of military justice should not vary according to whether there is a time of peace or war	Complete	2004	ADFP 06.1.1 <i>Discipline Law Manual</i> .
1.26.2 – There is a most powerful case for eliminating the multiple roles of the convening authority	Complete	2005	Defence Force Discipline Act (DFDA) Part XIA – Director of Military Prosecutions.
1.26.3 – Prosecution guidelines similar to those in operation in the various States or the Commonwealth (with suitable modifications) be introduced	Complete	2000	DI (G) PERS 45-4 <i>ADF Prosecution Policy</i> .
1.26.4 – Careful consideration be given to the appointment of an independent Director of Military Prosecution (DMP)	Complete	2003	DMP administrative appointment on 1 Jul 03 and statutory appointment on 12 June 06.
1.26.5 – The matter of DMP appointment and independence requires legislative change	Complete	2006	Statutorily Independent DMP since 12 June 06.
1.26.6 – The present system of the JAG nominating officers for JAs, DFMs and s154 Reporting Officers be retained	Complete	2007	This system has been replaced by the creation of the AMC on 1 October 07.
1.26.7 – There should be no command & control over JAs, DFMs and s154 Reporting Officers	Complete	2007	This system has been replaced by the creation of the AMC on 1 October 07.

2009 MILITARY JUSTICE SYSTEM REVIEW

1997 Abadee Review Recommendation Progress Report

1.26.8 – The Judge Advocate Administrator (JAA) should be under command of the JAG	Complete	2007	This has been addressed by the creation of the AMC on 1 October 07.
1.26.9 – There should be no reporting on JAs, DFMs or s154 Reporting Officers in respect of their judicial duties	Complete	2007	This has been addressed by the creation of the AMC on 1 October 2007.
1.26.10 – There should be a separate administrative authority in respect of non-judicial duties of JAs, DFMs and s154 Reporting Officers which should be reported on by their 'Head of Corps'	Complete	2007	This has been addressed by the creation of the AMC on 1 October 07.
1.26.11 – Duties of a judicial nature be by the JAG delegated to the JAA	Complete	2007	This system has been replaced by the creation of the AMC on 1 October 07.
1.26.12 – The JAA should be under the command of reported on by the JAG and DGDL O	Complete	2007	This has been addressed by the creation of the AMC on 1 October 07.
1.26.13 – Convening orders should include a request for the JAG to appoint a JA or DFM	Complete	2007	This system has been replaced by the creation of the AMC on 1 October 07.
1.26.14 – The subject of fixed tenure should be further considered	Complete	2007	This has been addressed by the creation of the AMC on 1 October 07. DFDA Sec 188AC & 188AP
1.26.15 – JAs, DFMs and s154 Reporting Officers should be able to perform and be reported on the performance of non judicial duties	Complete	2007	This system has been replaced by the creation of the AMC on 1 October 07.

2009 MILITARY JUSTICE SYSTEM REVIEW

1997 Abadee Review Recommendation Progress Report

from time to time			
1.26.16 – Consideration should be given to the establishment of a Court Administration Unit	Complete	2007	This system has been established by the creation of the Registrar of the AMC on 1 October 2007. See amendments to the DFDA (DLA 2005 & 2006).
1.26.17 – The Convening Authority should, subject to Service exigencies, appoint persons outside the accused's unit and command & from a tri-service 'pool'	Complete	2007	This system has been replaced by the creation of the AMC on 1 October 2007 and amendments to the DFDA by DLA 2005.
1.26.18 – Reviews of court martial and DFM trials should be done by an authority other than the Convening Authority	Complete	2007	This system has been replaced by the creation of the AMC on 1 October 2007 and amendments to the DFDA.
1.26.19 – An officer's performance as a member of a court martial should not be used for future promotion, pay or appointment	Complete	2007	This issue has been addressed by the creation of the AMC on 1 October 2007 + DFDA Sec 188AC.
1.26.20 – The present sentencing system which excludes JA involvement should be retained	Complete	2007	This issue has been addressed by the creation of the AMC on 1 October 2007.
1.26.21 – The issue of a trial JA imposing sentence should be further considered	Complete	2007	This issue has been addressed by the creation of the AMC on 1 October 2007.
1.26.22 – Appellate rights from sentence should be considered	Complete	2007	This issue has been addressed by the creation of the AMC on 1 October 2007.
1.26.23 – No case is made for a prosecution appeal as of right or by	Complete	2007	This has been accommodated in the creation of the AMC on 1 October 2007 and amendments to the

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leave against sentence			DFDA.
1.26.24 – Consideration be given to a DFDA ‘no conviction’ option	Complete		DFDA Sec 75 provides for conviction without punishment.
1.26.25 – That Warrant Officers be eligible for membership of courts martial	Complete	2007	Warrant Officers are eligible jury members under DFDA sec 123 for the purpose of the AMC.
1.26.26 – That Warrant Officers be eligible for GCM or RCM if equal or senior in rank to accused	Complete	1 October 2007	Warrant Officers are eligible jury members under DFDA sec 123 for the purpose of the AMC.
1.26.27 – No action be taken for the introduction of rights of appeal from summary authorities	Complete	2007	COBC 42 and 42A/2007 deemed no further actions on this issue.
1.26.28 – Consideration be given to right of appeal from specific punishments	Complete	2007	COSC 42 and 42A/2007 deemed no further actions on this issue but this has been superseded by appeal provisions to the AMC.
1.26.29 – The present review system has generally be proved to be appropriate	Complete	2007	COBC 42 and 42A/2007 deemed no further actions on this issue but this has been superseded by appeal provisions to the AMC.
1.26.30 – Advantages of appeal from summary authorities is outweighed by the disadvantages	Complete	2007	COBC 42 and 42A/2007 deemed no further actions on this issue but this has been superseded by appeal provisions to the AMC.
1.26.31 – Standardised training for s154 Reviewing Officers be considered	Complete	2007	The function of the S154 Reviewing Officer was superseded by the creation of the AMC.
1.26.32 – Subject to the exigencies of service, s154 Reporting Officers should be independent from the	Complete	2007	The function of the S154 Reviewing Officer was superseded by the creation of the AMC.

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Reviewing Authority			
1.26.33 – Military justice Summary Authority training and education be established	Complete		Legal training coordinated by the Military Law Centre, Defence Legal Division.
1.26.34 – Elections for elective punishments to be in writing with explanation	Complete	2008	DLAA 2008 introduces updated election regime.
1.26.35 – Reduction in rank be removed as an elective punishment	Complete	-	Not agreed by the ADF.
1.26.36 – In the absence of appeal rights, the range of elective punishments should be reviewed	Complete	-	Not agreed by the ADF.
1.26.37 – Elections to be in writing with explanation at time of offer	Complete	2008	DLAA 2008 introduces updated election regime.
1.26.38 – A tri-service DFDA training course for all Commanding Officers prior to appointment be introduced	Complete	2005	Legal training coordinated by the Military Law Centre, Defence Legal Division.
1.26.39 – Ongoing education and instruction be given to summary authorities	Complete	2005	Legal training coordinated by the Military Law Centre, Defence Legal Division.
1.26.40 – Sentencing guidelines and statistics for summary punishments be prepared, publicised and made available	Complete	2008	The AMC has committed to providing greater transparency.
1.26.41 – Legal principles discussed in JAG/DJAG reports be provided to	Complete	-	By update to supporting legal officers.

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Commanding Officers			
1.26.42 – This recommendation is identical to Recommendation 33	Complete		By updates to supporting legal officers.
1.26.43 – The Military Law Centre provide uniform training to Commanding Officers as summary authorities before their appointment	Complete		Legal training coordinated by the Military Law Centre, Defence Legal Division.
1.26.44 – Summary prosecutors and defending officers to receive basic legal training and work materials	Superseded	5 Sep 2008	Military Law Training and complete reissue of ADP 06.1.1 (Discipline Law Manual).
1.26.45 – Summary authorities shall not hear or deal with a charge if they have been involved in the investigation or preferring of the charge	Complete	2001	Discipline Law Manual amended in 2001.
1.26.46 – No requirement to change the present system of reporting on Commanding Officers in relation to the performance of duties in maintaining and enforcing service discipline	Complete	-	COBC 42A/2007.
1.26.47 – No reporting of a Commanding Officer in respect of the performance of duties as a service tribunal	Complete	2005	DI(G) PERS 10-8 Performance appraisal in the ADF.
1.26.48 – Consideration to be given to extending the discipline officer	Complete	2008	DFDA 169 extends discipline officer jurisdiction to captain (equivalent) and below.

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jurisdiction to deal with officers of Major (equivalent) and below			
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ANNEX 0
MSRT REPORT
23 JAN 09

1998 DFO Own Motion Responses to Allegations of Serious Incidents and Offences Progress Report

RECOMMENDATION			
	Status	Date Completed	Effect
<p>1 – (2.67) That the ADF:</p> <ul style="list-style-type: none"> Amend DI (G) ADMIN 34-1 to the effect that it is not appropriate for Investigating Officers, Boards or Courts of inquiry to make a finding that a criminal offence has been committed, and where there is sufficient evidence to suggest that an offence has been committed, the matter should be referred to the appropriate authority for investigation under the DFDA and/or the civil criminal law, and Consider amending the sample Terms of Reference provided in the guidance on investigations under the Defence Inquiry Regulations (and in single Service instructions where they exist) to the same effect. 	Complete	2000	ADFP 06.1.4 (admin inquiries manual) amended and updated 5 January 2006.
<p>2 – (2.68) That the ADF consider whether amendments are necessary to the guidance on when to choose a Board of Inquiry rather than an Investigation Officer, in order to encourage consistency and to minimize any perceptions that complaints are not being treated sufficiently seriously.</p>	Complete	2000	ADEP 06.1.4 amended.
<p>3 – (2.70) That the ADF :</p> <ul style="list-style-type: none"> Consider the adequacy of training in the use and value of alternative dispute resolution techniques Review the Defence Instructions on the management of complaints to HREOC of sexual or racial discrimination, or under the Redress of Grievance procedures to ensure that a consistent emphasis is placed on resolving complaints by alternative dispute resolution mechanisms. Collect data in a format similar to that for unacceptable sexual behaviour) for all complaints of discrimination and harassment, and when reported, require units to indicate whether resolution of the complaint by alternative dispute resolution mechanisms was considered, and if not, why not, and 	Complete	2001	DI(G) PERS 34-1 <i>ROG Tri-Service Procedure</i> .
		2003	DI(G) PERS 34-4 <i>Use of ADR in Defence</i> .

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<ul style="list-style-type: none"> Expand the reporting requirements for incidents of unacceptable sexual behaviour to require the same data for incidents of that nature. <p>4 – (3.31) That the ADF :</p> <ul style="list-style-type: none"> Considers removing all reference to ‘informal investigations’ in the guidance. Amend the Defence Instructions to provide clear guidance on the purpose and value of preliminary inquiries, and the extent to which they can be used, and Amend the Defence Instructions to provide clear guidance on accountability requirements for preliminary inquiries. 	Complete	2000 2007	ADFP 06.1.4 and DI(G) PERS 34-1 (<i>ROG – Tri-Service Procedures</i>) and DI(G) ADMIN 67-2 <i>Quick Assessments</i> .
<p>5 – (4.51) That :</p> <ul style="list-style-type: none"> All Instructions on the handling of complaints and grievances, and on the conduct of investigations include reminders of the factors to be considered when selecting or appointing an Investigating Officer. Where particular expertise may be required, the Commanding Officer should be advised to ensure that the Investigating Officer has the appropriate expertise, or that the Investigating Officer consults with individuals with the relevant expertise (preferably before commencing the investigation) All Investigating Officers, under both the DFDA and the DIRs (and members of Boards or Courts of inquiry) be required to declare any actual or potential conflict of interest before commencing an investigation, and The ADF revise its Instructions to ensure that Commanding Officers are provided with guidance on how to develop terms of reference, and in particular, the requirement for terms of reference to be outcome focused and to address context management issues. 	Complete	2000 2001 2007	ADFP 06.1.4 DI(G) Admin 67-2 <i>Quick Assessments</i> .
<p>6 – (5.57 – 5.59) That the ADF develops a training strategy for officers who conduct investigations under the DIRs. That officers should not be appointed to conduct investigations under the DIRs unless they have received training, or they have other experience or expertise which makes them suitably qualified to do so.</p> <p>– That the guidance on such investigations be revised to provide advice to Commanding Officers and Investigating Officers on how to plan and conduct investigations.</p>	Complete	2000 2004 2006 2007	ADFP 06.1.4

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7 - (5.60) That the Defence Instruction on investigations into matters affecting the Defence Force to be amended to clearly indicate that an Investigating Officer investigating under the DIRs cannot compel witnesses to answer questions where the answer may tend to incriminate them for a criminal or service offence, and to indicate that assistants to an Investigating Officer do not have the power to question witnesses.	Complete	2000	ADFP 06.1.4 Annex D To chapter 6.
8 - (5.61) There is also a need to amend Annex C30 to the Instruction to the same effect.	Complete	2000	ADFP 06.1.4 Annex D To chapter 6.
9 - (6.36) That the ADF : <ul style="list-style-type: none"> Implement a process whereby investigating bodies report periodically on the progress of their investigating (if the investigation is to take more than one month), and which allows for an assessment of whether the investigation is being conducted appropriately, and Amend the present guidance to investigators to provide advice on the development of investigation reports and recommendations, and the limits of their authority in this respect (eg. They are not to make a finding on whether a criminal offence occurred). 	Complete	2000	ADFP 06.1.4
10 - (6.37) That where Investigating Officers whose investigation and/ or reports are subsequently found to be flawed are counseled regarding the inadequacy of their investigation and/or report. There may be a need for further training, or even administrative or disciplinary action in cases where more serious errors are made.	Complete	2007	ADFP 06.1.4 paragraph 6.76.
11 - (7.76) That amendments be made to the relevant Instructions: <ul style="list-style-type: none"> Provide Commanding Officers with information regarding the particular support requirements of survivors of sexual incidents or offences and a list of contact points or organisations where the necessary specialist help can be obtained. Clearly state the ADF's policy on what action is to be taken where a member does not wish to make a formal complaint or to be medically examined. Advise Commanding Officers that, in relation to sexual incidents or offences, evidence can be collected up to 72 hours after the event, and within that time frame, the survivor (and the alleged offender, if appropriate) should be referred to 	Complete	2004	DI(G) PERS 35-4 (Management and Reporting of Sexual Offences).

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<p>the authorities immediately so that forensic evidence can be collected.</p> <ul style="list-style-type: none"> • Clearly state the ADF's policy on compassionate travel for members (and their partners or next of kin) where serious offences occur. • Advise Commanding Officers of the need to allow survivors of sexual incidents or offences to make their own decisions wherever possible, and particularly in relation to their movement after an offence has occurred, and • Provide a critical incident stress management checklist for managers and supervisors to assist with observing personnel after an incident to ensure they are receiving adequate support. 			
<p>12 – (8.69) That the ADF:</p> <ul style="list-style-type: none"> • Extend its monitoring of trends in the incidence of sexual harassment and offences to include comparisons among the services. • Undertake regular trend analysis of DFDA and DIR investigations. • Consider analyzing any correlation between alcohol and/or drug abuse and serious incidents, and • Ensure that information and expertise can be readily shared among the Services. 	Complete	2008	DI(G) ADMIN 10-8 (Conduct Reporting and Tracking System).
<p>13 – (8.70) That the ADF:</p> <ul style="list-style-type: none"> • Spell out in the Defence Inquiry Regulations and Instruction, and particularly for Investigation Officers, the principles of procedural fairness and rights of review, and • Ensure that members are advised of the outcome of any DFDA proceedings which affects them. 	Complete	2000	ADFP 06.1.4
<p>14 – (8.71) That the ADF consider including in the guidance advice about the desirability of forewarning a member of any public statement which may affect him/her personally.</p>	Partially complete	2002	ADFP 06.1.4 paragraph 11.69. ADFP 06.1.4 6.87 and 7.1.4 reference to next of kin only.

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ANNEX C
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RECOMMENDATION				Status	Date Completed	Comments
1 – That during peacetime, the convening of a General Court of Inquiry by the Minister of Defence should be mandatory for all inquiries into matters involving the accidental death of an ADF member participating in an ADF activity				Complete	2007	Not agreed by Government but Part VIII of the Defence (Inquiry) Regulations provides for CDF Commissions of Inquiry for the death of ADF personnel.
2 – That the Minister of Defence continue to have the discretion to convene a General Court of Inquiry in cases of major capital loss				Complete	Not applicable	Agreed by Government with the Minister continuing to have the discretion to convene a General Court of Inquiry under Part II of the Defence (Inquiry) Regulations.
3 – That the ADF develop policy to involve the coroner from the outset of inquiries involving any fatality				Complete	2005	Agreed by Government with continuing negotiations by DGSHP with State and Territory Coroners.
4 – That the ADF facilitate the involvement of the coroner in an inquiry into an accident involving death through a liaison officer to the coroner				Complete	2006	Agreed by Government and reinforced in paragraph 25 of DI(G) PERS 20-6 <i>Deaths Within and Outside Australia of ADF Personnel</i> (2008 Complete Revision).
5 – That the Government ensures that State legislation does not preclude state coroners from investigating deaths of military personnel and civilians on military land or property				Complete	2004	Supported in principle but Defence Force Regulation 28 remains to preclude State law subject to preconditions.
6 – That a coroner investigating the death of an ADF member should determine any criminal liability and where appropriate, attribute responsibility for the incident				Complete	Not applicable	Not agreed by Government.
7 – That the practice of specialist civilian personnel on Boards of Inquiry (BOI) be continued				Complete	2007	Agreed by Government with the introduction of Part VIII of the Defence (Inquiry) Regulations which confirms the appointment of a civilian President for

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8 – To provide a reasonable degree of independence, investigating officers for military inquiries should be appointed outside the chain of command and should not be personally acquainted with any of the parties involved in the incident	Complete	2000	CDF Commissions of Inquiry. Agreed in part and incorporated into ADFP 06.1.4 <i>Administrative Inquiries Manual</i> and Ed 2 (Jun 06) paragraph 5.30.
9 – That the ADF provide more extensive guidance to commanders regarding when to invoke the various levels of investigation	Complete	2000	Agreed by Government and addressed in ADFP 06.1.4 Chapter 2 Annex E.
10 – That legal review of the TOR be conducted prior to the commencement of an inquiry. Where possible, the review should be conducted by legal officers outside the chain of command of the Appointing Authority	Complete	2000	Supported in part and addressed in ADFP 06.1.4 and updated in Ed 2 (Jun 06) paragraph 5.59.
11 – That the Government ensure that the Investigating Officer or BOI is empowered by the Defence Inquiry Regulations to make recommendations germane to the Terms of Reference	Complete	2005	Agreed by Government. Defence (Inquiry) Regulations, Regulations 25 & 70B and ADFP 06.1.4 (Ed 2) paragraphs 6.11 & 7.17.
12 – That the ADF amend guidance to ensure that Investigating Officers and BOI are prohibited from finding that a specific offence has been committed but empowered to recommend the referral of a matter for DFDA action	Complete	2000	Agreed by Government. ADFP 06.1.4 (Ed 2) paragraphs 6.4 & 7.4.
13 – That the ADF complete and issue a manual providing comprehensive guidance on the conduct of military inquiries under the Defence (Inquiry) Regulations	Complete	2000	Agreed by Government. ADFP 06.1.4.
14 – That the President of a BOI have the responsibility to ensure that lines of questioning are relevant to the TOR and do not include unnecessary personal questions or pursue personal theories	Complete	2000	Agreed by Government. ADFP 06.1.4 (Ed 2) paragraph 7.36.

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15 – That the Government ensures that legislation removes privilege against self incrimination before an Investigating Officer but preserves it in any civil or criminal proceedings against the witness	Complete	2007	Agreed by Government. ADFP 06.1.4 (Ed 2) Annex D to Chapter 2 paragraphs 4-7 and Defence Act Section 124 2(A) & 2(C) and Defence Inquiry Regulations 14(5), 32(5), 74(3A) & 96(3).
16 – That the ADF amend guidance on the drafting of TOR to ensure that investigating bodies are not empowered to make specific findings apportioning blame.	Complete	2000	Agreed by Government. ADFP 06.1.4 paragraph 4.14. Updated Ed 2 (2006) paragraphs 6.11 & 7.33.
17 – That where the case before a BOI is serious and of legitimate public interest, that BOI should be open to the public, with the option to take certain evidence <i>in camera</i>	Complete	2000	Agreed by Government. Defence (Inquiry) Regulation 29 and ADFP 06.1.4 (Ed 2) paragraph 1.52 & 7.55.
18 – That members of the ADF should be promptly informed of any complaint or allegation against them where any action under the Defence Inquiry Regulations is to result, subject to the exception where an offence is suspected and forewarning may result in the destruction of evidence	Complete	2000	Agreed by Government. ADFP 06.1.4 (Ed 2) paragraphs 6.43 & 7.61 with ADFP 06.1.3 <i>Guide to Administrative Decision Making</i> (2003).
19 – That a report which is critical of a member should not be made to an Appointing Authority without the member having been afforded an opportunity to appear before the inquiry and to make submissions	Complete	2000	Agreed by Government. Defence (Inquiry) Regulation 33 and ADFP 06.1.4 with ADFP 06.1.3 <i>Guide to Administrative Decision Making</i> (2003).
20 – That a member against whom action is to be taken should have access to any evidence relied upon except if disclosure may constitute a threat to a witness	Complete	2000	Agreed by Government. Defence (Inquiry) Regulation 34 and ADFP 06.1.4 with ADFP 06.1.3 <i>Guide to Administrative Decision Making</i> (2003).
21 – That members who may be adversely affected by an inquiry report should be afforded access to the report within the provisions of the Privacy Act	Complete	2000	Agreed by Government. Defence (Inquiry) Regulation 34 and ADFP 06.1.4 paragraphs 6.85 & 7.103 with ADFP 06.1.3.
22 – That witnesses be informed of their rights of review when informed of the inquiry outcome	Complete	2000	Agreed by Government. ADFP 06.1.4 (Ed 2) paragraph 6.84 & 7.100.

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23 – That guidance on confidentiality and privacy be included in the proposed military inquiry manual	Complete	2000	Agreed by Government. ADFP 06.1.4 (Ed 2) 1.62, 4.44, 6.45, 7.55, 7.80 & Chapter 9.
24 – That next of kin or other immediate relatives should always be permitted to attend the inquiry and exclusion should only be temporary in cases of matters of national security	Complete	2000	Agreed by Government. ADFP 06.1.4 (Ed 2) paragraph 7.55.
25 – That next of kin or other immediate relatives should within the provisions of the Privacy Act and relevant security considerations, be provided with a copy of the inquiry report and advice on all actions taken as a result of the inquiry.	Complete	2000	Agreed by Government. Defence (Inquiry) Regulation 34 & 63 and ADFP 06.1.4 (Ed 2) paragraph 7.103.
26 – That next of kin or other immediate relatives be warned prior to the release of information to the press regarding the inquiry	Complete	2007	Agreed by Government. ADFP 06.1.4 (Ed 2) paragraph 104 (AL 1).
27 – That the Government ensure that legislation provides a right to Service legal representation, at Commonwealth expense, for any ADF member who is likely to be affected by a BOI	Complete	2005	Agreed by Government. Defence (Inquiry) Regulation 33 and ADFP 06.1.4 paragraph 7.21 & 7.23.
28 – That where the deceased member is likely to be affected by an inquiry, the next of kin or other immediate relative should be afforded representation by Service legal counsel	Complete	2000	Agreed by Government. Defence (Inquiry) Regulation 33 and ADFP 06.1.4 paragraph 7.23.
29 – That the appointment of Counsel Assisting should be strongly recommended in guidance to Appointing Authorities	Complete	2000	Agreed by Government. ADFP 06.1.4 (Ed 2) paragraph 5.45 -5.46 & 7.43.
30 – That the ADF establish processes for counseling services if required to inquiry witnesses, next of kin and close relatives of ADF members killed in the incident	Complete	2000	Agreed by Government. ADFP 06.1.4 (Ed 2) paragraphs 1.58, 5.84, 6.58 & 7.75.
31 – That all correspondence between the Appointing	Complete	2000	Agreed by Government. ADFP 06.1.4 (Ed 2)

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Authority and the investigating body should be in writing and should be disclosed to all legal representatives			paragraph 5.78 & 7.26.
32 – That the ADF should issue guidance to Appointing Authorities regarding their duties in monitoring a military inquiry	Complete	2000	Agreed by Government. ADFP 06.1.4 (Ed 2) paragraphs 5.73 & 7.26.
33 – That to protect the independence of the process, guidance be provided to Appointing Authorities warning against any direct involvement with the conduct of the inquiry	Complete	2000	Agreed by Government. ADFP 06.1.4 (Ed 2) paragraphs 5.76, 6.21 & 7.28.
34 – That within the limitations of privacy and secrecy, and at the conclusion of all resultant disciplinary and administrative action, the ADF publicly account for its actions and decisions in discharging the recommendations of a BOI	Complete	2000	Agreed in part. Defence (<i>Inquiry</i>) Regulation 63 and ADFP 06.1.4 paragraph 5.93.
35 – That subjects to the limitations above (recommendation 34) the Minister of Defence should table in Parliament: the inquiry report, recommendations, details of action taken and any reasons for rejection of a recommendation	Complete	2005	Supported in principle. Defence (<i>Inquiry</i>) Regulation 20A.
36 – That informal investigations be referred to as ‘preliminary inquiries’	Complete	2000	Supported in principle. ADFP 06.1.4 Chapter 4 (Routine Inquiries) and DI(G) ADMIN 67-2 <i>Quick Assessments</i> .
37 – That the ADF should issue guidance for the conduct of preliminary inquiries to be used to assist in determining the best course of action for dealing with an incident	Complete	2000	Agreed by Government. ADFP 06.1.4 Chapter 4 (Routine Inquiries) and DI(G) ADMIN 67-2 <i>Quick Assessments</i> .
38 – That the ADF should issue guidance to ensure that the requirements for procedural fairness are satisfied in the conduct of preliminary inquiries	Complete	2000	Agreed by Government. ADFP 06.1.4 paragraphs 4.38-41 and DI(G) ADMIN 67-2 <i>Quick Assessments</i>

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39 – That the ADF should include detailed guidance on the issue of secret investigations under D(1)R in the proposed military inquiries manual	Progressing		Agreed by Government. Defence (<i>Inquiry</i>) Regulations 11, 29, 63, 64, 72, 94 & 117. Nil detailed guidance in ADFP 06.1.4.
40 – That guidelines should be established to ensure that members making knowingly false, malicious or vexatious accusations are held accountable, that guidelines are promulgated and action be taken transparently to ensure justice is seen to be done and to put right any detriment	Complete	2000	Agreed by Government. Defence (<i>Inquiry</i>) Regulation 56 and ADFP 06.1.4 paragraph 1.47.
41 – That the ADF ensure that an adequate level of training is provided to officers required to conduct a D(1)R investigation	Complete	2004	Agreed by Government. IGADF conducts Inquiry Officer Training Courses quarterly.
42 – That the ADF provide comprehensive guidance to investigating officers under D(1)R	Complete	2000	Agreed by Government.
43 – That the ADF provides clear guidance to Appointing Authorities regarding the level of training or experience required for officers selected to conduct investigations under D(1)R	Complete	2000	Agreed by Government. ADFP 06.1.4 paragraph 5.34.
44 – That the ADF examine the feasibility of capturing the cost of the military justice system	Progressing		Agreed in part. DEFGRAM 93/2006 ADFAITs directs inquiry cost capture but no overall system is in place to cost capture the overall military justice system.
45 – That the ADF provide a single annual report on the operation of the military justice system to the Minister of Defence and that the Minister table the report in Parliament	Complete	2006	Agreed in part – agreed the Defence (<i>Inquiry</i>) Regulations would be amended to provide for an annual report. Did not agree to change reporting requirements for the DFDA or the administrative system although IGADF is including an overview of reporting in the Defence Annual Report.
46 – That after the post Abadee arrangements have been in operation for three years, the issue of institutional	Complete	2006	Agreed by the Government. The Australian Military Court and supporting entities have been created.

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independence in relation to the prosecution in Courts Martial and DFM trials be reviewed			
47 – That considerations be given to allowing the ADF to deal with all cases involving straightforward acts of indecency without requiring the consent of the DPP	Complete	2004	Agreed by the Government. DI(G) PERS 35-4 <i>Management and Reporting of Sexual Offences</i> .
48 – That the ADF ensure that existing guidelines on the right to privacy are adhered to in the conduct of DFDA action	Complete	2005	Agreed by the Government. MLC has advised that guidance is included in pre command training modules.
49 – That the ADF undertake a formal training needs analysis with respect to the use and implementation of the DFDA as a basis for the development and introduction of appropriate education and training courses	Complete	2006	Agreed by the Government. DFDA training included in pre-command training modules.
50 – That the ADF consider the introduction of structured continuation training for DFMs and JAs on the DFDA	Complete	2007	Agreed by the Government. The Chief Military Judge (CMJ) has responsibility for continuation training of military judges.
51 – That as part of a comprehensive public disclosure of the matter of the AAT, the Meecham report, a comprehensive report on the matter of AAT and any relevant documents relating to AAT should be tabled in the Parliament	Complete	1999	Agreed by the Government. Meecham report tabled 12 March 1999.
52 – That the report on the operation of the DFDA should be tabled in a more timely manner	Complete	2002	Agreed in principle. JAG and AMC reports prepared and tabled in accordance with the DFDA.
53 – That where professional failure involves negligence of a criminal nature, subject to the weight and probity of evidence being sufficient, criminal proceedings should be instituted	Complete	2000	Agreed in principle. DI(G) PERS 45-4 <i>ADF Prosecution Policy</i> paragraphs 6 & 7.
54 – That the ADF prepare and issue guidelines regarding the use of the administrative action rather than	Complete	2000	Agreed by the Government. DI(G) PERS 45-4 <i>ADF Prosecution Policy</i> paragraphs 6 & 7.

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the disciplinary process for cases of professional failure			
55 – That the ADF review current procedural arrangements to ensure organizational separation between the initiating officer and the decision-maker for all administrative action involving the termination of a member's service with the ADF	Complete	2006	Agreed by the Government. Defence (<i>Personnel</i>) Regulations 85(6) & 87(6).
56 – That the ADF consider the implementation of a revised framework for administrative censure and formal warning that applies to all members and separates the role of initiating officer and decision-maker	Complete	2003	Agreed by the Government. DI (G) PERS 35-6 <i>Formal Warnings and Censures in the ADF.</i>
57 – That the ADF prepare and issue revised policy for the imposition of administrative censure and formal warning	Complete	2003	Supported subject to the outcomes of implementation of Recommendation 56. DI (G) PERS 35-6 <i>Formal Warnings and Censures in the ADF.</i>
58 – That where a member affected by administrative censure makes a statement in extenuation/rebuttal, that statement should form part of the censure document and be taken into account during deliberations when the censure is considered	Complete	2003	Agreed by the Government. DI (G) PERS 35-6 <i>Formal Warnings and Censures in the ADF.</i>
59 – That the ADF incorporate specific guidance in the revised policy covering administrative censure and formal warning which requires that an individual affected by a censure or formal warning to be advised of his or her rights of appeal	Complete	2003	Agreed by the Government. DI (G) PERS 35-6 <i>Formal Warnings and Censures in the ADF.</i>

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RECOMMENDATION		Status	Date Completed	Comments
1 – That educating Defence personnel of their rights and responsibilities be part of an ongoing program, commencing at recruit training	Complete	2001	Equity and Diversity annual training.	
2 – That officers in the direct chain of command and SNCO's responsible for the discipline system in units not be appointed as Equity Officers. The two roles cannot be adequately reconciled	Complete	2003	DI(G) PERS 35-7 <i>Defence Equity Advisor Network</i>	
3 – That Army establish a pool of investigators held centrally for the conduct of larger investigations. These investigators should not be routinely drawn from outlying areas	Complete	2007	Not supported by Government but superseded by ADFIS.	
4 – That Army investigate the feasibility of placing MPs with Federal, State and Territory Police Forces as part of their training	Complete	2004	Addressed in the Ernst & Young (2004) report and the DICA report with established training and ongoing negotiations with civil police.	
5 – That Army review the conditions for reserve Military Police, with the view to better utilising the investigative skills in the Military Police Reserve units, especially for major cases	Complete	2004	Addressed in the DICA report (Recommendation 6.2) and RACMP Trade Management Plan.	
6 – There be a formal review of the Defence Legal Office, with terms of	Complete	2002	McClelland Review (2002) although Government response did not support	

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reference and timetable for completion, and that the review be made public			any direct any action with respect to this recommendation.
7 – That officers transferring to the Defence legal specialization on completion of a law degree necessitate relinquishment of rank commensurate with their legal expertise and experience	Complete	2005	Defence Legal Career and Professional Development Committee (CPDC) practice. See CPDC decision of 10 Nov 05.
8 – That legal officer selection boards have a legal officer on the panel	Complete	2005	DI(A) PERS 47-4 Army Officer Selection Boards (1996) Australian Book of Reference (ABR) 6289 (2005) DPO-AF SI PERS 1-10 (2004).

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ANNEX C.0
MJST REPORT
23 JAN 09

2001 – Burchett Inquiry Progress Report

RECOMMENDATION

A – It is recommended that: <i>Training in relation to the Defence Force Discipline Act</i>	Status	Date Completed	Effect
1. Common legal training courses in Disciplinary Law should be produced for Australian Defence Force personnel at all levels as soon as practicable.	Progressing		A common Military Justice functional Competency Framework awaiting COSC endorsement. Implementation expected in 2010. Services have confirmed that appropriate training included on relevant courses.
2. In particular, a course for all officers covering basic legal principles should be introduced.	Complete	2005	Services have included training on pre command courses conducted by the MLC.
3. The training for officers about to assume command appointments should, for all services, include a component comparable to that presently provided in the case of the Air Force in respect of Disciplinary Law.	Complete	2006	As per recommendation 1.
4. Competency Standards should be devised and introduced for personnel involved in the disciplinary process at the summary level (for example, Defending Officers might be required to complete an interactive module on pleas of mitigation and attend a summary hearing before being available to represent someone).	Progressing		MJIT summary refers to inclusion as part of Summary Proceedings but no reference apparent.
5. Steps should be taken to encourage a closer involvement of junior officers in the disciplinary process.	Progressing		

6. The introduction of annual awareness training in military justice issues should be considered.	Progressing		Same as recommendation 1 and 4.
B - Discipline Officer Scheme			
7. Consideration should be given to making the appointment of a Discipline Officer mandatory in all units.	Complete	2004	DFDA Sec 169B provides a CO may appoint a discipline officer.
8. The ranks subject to the Discipline Officer Scheme should be all ranks to and including Captain equivalent.	Complete	2008	
9. The record of matters dealt with under the Discipline Officer Scheme for an individual member should be discarded not, as at present, upon departure from his or her unit or after twelve months, but upon promotion to higher rank.	Not agreed	Not applicable	
10. The period allowed for members to elect to be dealt with by a Discipline Officer should be reduced from 7 days to 1 day, subject to a discretion in the officer who would bring the formal charge (if one were to be brought) to extend the time up to 7 days.	Complete	2004	
11. The offences to which the Discipline Officer Scheme relates, and also the maximum penalties, should be reviewed if the scheme is extended to higher ranks.	Progressing		
C - Extras			
12 - The nature, purpose and sphere of extras should be clarified by tri-service guidelines, so as to ensure that they may be lawfully imposed.	Progressing		IGADF has carriage of these recommendations.
13 - The guidelines should make it clear that, as a matter of policy, extras are to be regarded as an administrative response that may be appropriate in some cases, falling outside the disciplinary measures established by the DFDA	Progressing		

It

14 - The guidelines should address the questions who may award extras, upon whom they may be imposed, monitoring arrangements, the types of activity covered and the nature of the failure on account of which an order for extras may be made	Progressing		
15 - The power to award extras not be delegated below the rank of Corporal equivalent in respect of subordinates within his or her command	Progressing		
16 - All ranks up to and inclusive of Captain equivalent should be subject to orders for extras made by a superior	Progressing		
D - Utility of Punishments 17 - Consideration should be given to reviewing: a. the nature of the punishments which may be imposed under the <i>Defence Force discipline Act</i> in the light of contemporary standards; b. whether some form of service oriented community work could usefully be made an alternative sanction; c. whether the Act should be amended to confer a power, not merely to impose no punishment, but also, for a special reason, to decline to enter a conviction.	Progressing Progressing Progressing		Defence Legal has carriage.
18 - The question be examined whether a separate scale of punishments for Navy members is any longer necessary.	Complete		
19 - A review be undertaken of the applicability of the present scale of punishments to Reservists who are not on full time service or undergoing periods of continuous training.	Progressing		
E - Time taken for commencement and review of summary and other trials. 20 - The feasibility be investigated of securing a "readiness" undertaking from	Complete	2004 - 2006	Complimented by the creation of the Directorate of Legal Reserve

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Reserve legal officers offering themselves for Australian Defence Force work.			
21 - A mandatory requirement be introduced for a prosecutor to provide a statement specifying the time taken to bring a matter to trial, together with a statement of the reasons for any delay.	Progressing		Management (2004) and Defence Counsel Services (2006).
F - Training Charges 22 – Consideration should be given to the establishment by regulation of the concept of a training charge, and to its definition and scope.	Not agreed	2003	Not agreed. Defence Legal (DMJ) advised MJIT that training charges were not necessary.
F – Administrative Consequences and Administrative Action in relation to Disciplinary Breaches 23 – The policy work currently being undertaken to achieve standardization of application and outcome of administrative sanctions, should be regarded as requiring an urgent resolution.	Complete	2007	DI(G) PERS 35-6 <i>Formal Warnings and Censures in the ADF</i> .
24 – Steps should be taken to improve the dissemination of information upon the true career effects of convictions under the <i>Defence Force Discipline Act</i> and of various administrative sanctions.	Complete	2007	DI(G) PERS 35-6 although the Burchett Implementation Team considered no further action could be taken due to the number of variable involved.
G – Equity and Diversity Issues 25 – Consideration should be given to providing more balancing emphasis in training at initial entry establishments on the obligations of discipline enshrined in the <i>Defence Force Discipline Act</i> and equity and diversity.	Complete	2005	Service HQs confirmed initial training institutions have been instructed to provide balanced training

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H – <i>Unequal Treatment and consistency of punishments</i>			
26 – Consideration should be given to the institution of a system of traffic tickets in military bases for minor infringements of general orders and traffic regulations.	Progressing		
27 – Considerations should be given to the issue of policy guidance on summary punishments including the dissemination of information as to the general level of punishments for particular offences while making it clear a CO's discretion would not thereby be limited.	Not agreed	Not applicable	Not agreed on advice from HDL.
28 – Complete and accurate statistics concerning prosecutions under the <i>Defence Force Discipline Act</i> and administrative action having punitive effect be compiled on a common basis for all three services and be made available to legal and administrative agencies of the ADF.	Complete	2008	DI(G) ADMIN 10-8 <i>Conduct Reporting and Tracking System</i> (CRTS) & DI(G) ADMIN 65-1 <i>ADF Administrative Inquiry Tracking System</i> (ADFAITS)
I – <i>Transparency and Victim Feedback</i>			
29 – Ways of achieving fair and effective transparency of military justice outcomes (in relation both to prosecutions and administrative actions) be investigated and appropriate steps be taken.	Complete	2008	Legislative changes to DFDA, creation of the AMC and policy changes addressed in recommendation 28 complete this.
30 – Guidelines be issued to commanders designed to ensure effective feedback to complainants, victims and offenders in relation to administrative action or summary proceedings.	Complete	2007 & 2008	DI(G) PERS 35-6 <i>Formal Warnings and Censures in the ADF</i> (Feb 07) addresses adverse administrative action and new summary procedures introduced in Sep 08 complete this recommendation.

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J – Access to Legal Advice				
31 – The policy regarding the provision of legal assistance to members be reviewed.	Progressing			DI(G) PERS 12-1 <i>General Scope of Legal Assistance Provided to Service Personnel and Legal Aid to Australian Defence Force Members Overseas</i> under review by Defence Legal.
32 – Steps be taken to reduce the incidence of conflict of interest situations arising out of the location of a single legal officer without an alternative.	Complete	2008		Defence Act Sec 122B reinforces the independence of legal officers and Professional Rules for Legal Officers is being finalised by Defence Legal. New military justice positions were created in 2006.
33 – The total number of legal officers and their location and organization, required in the modern Defence Force be reviewed.	Complete	2006		
K – Legal Officers at Summary Proceedings				
34 – <i>The Defence Force Discipline Rules</i> be amended to provide that a member who desires to be legally represented at a summary trial must first obtain from the proposed Registrar of Courts Martial a certificate that, for a special reason, legal representation is appropriate.	Complete	2007		COSC determined it would remain at a commanders discretion as to whether legal representation was permitted at a summary hearing (COSC Agendum 14/07). Included in pre command course training.
35 – Pre – command legal training of commanding officers should include guidance on the factors to be taken into account in deciding whether to grant leave for legal representation at summary trials.	Complete	2006		
L – Need of Commanding Officers to seek legal advice during trial				
36 – Pre-command legal training of commanding officers should include clear guidance on how legal assistance during the course of a summary trial may be sought without prejudice to the rights of the parties.	Complete	2006		Included in pre command course training.
M – Effects of Defence Reorganisation				
37 – Command and line management responsibility for the discipline of	Complete	2004		DI(N) ADMIN 30-3

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personnel in joint and integrated organizations, and the dissemination of information about it, be reviewed.			DI(A) ADMIN 3-2 AFOD 7/01
38 – Rationalisation of command and line management responsibility for the discipline of personnel in joint and integrated organizations take account so far as possible of geographic convenience.	Complete	2004	DI(N) ADMIN 30-3 DI(A) ADMIN 3-2 AFOD 7/01
39 – Common familiarization training on military justice issues and civilian disciplinary processes be developed for use in joint and integrated organizations.	Complete	2006	Supervisor's Handbook – A Guide for APS & ADF Supervisors of APS Employees & Decision-Maker's Handbook – Making personnel-related decision for APS and ADF.
N – Investigation Issues 40 – The level of resources available for police investigative work across the three services be reviewed.	Complete	2006	Defence Investigative Capability Audit (Jul 06).
41 – A register of suitable persons to act as Investigating Officers under the <i>Defence (Inquiry) Regulations</i> be developed (as to which see the Role and Functions identified for the Military Inspector General).	Complete	2003	IG-ADF maintains a register of trained Inquiry Officers.
O – Peer Group Discipline 42 – Specific guidance on the use of peer group discipline be included in pre-command training of COs and in standing orders for training institutions.	Complete	2006	Included in pre-command course training
P – Drug Policy 43. Section 59 of the Defence Force Discipline Act be reviewed in conjunction with DI (G) PERS 15-2, with a view to the amendment of the legislation to enable military tribunals to deal with charges in respect of small quantities of all appropriate illegal drugs.	Complete	2008	Introduced with DLAB 2008.

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44 – In the meantime, consideration be given to prosecuting in cases involving cannabis where the civilian police regard the quantity as too small, limiting the military prosecution to the statutory quantity of 25 grams.	Complete	2008	Introduced with DLAB 2008.
Q – <u>Presumption of Guilt</u> 45 – Greater emphasis should be placed on the concept of a prima facie case in the training of NCOs, WOs and officers in relation to summary proceedings under the <i>Defence Force Discipline Act</i> .	Complete	2005	Services confirmed incorporated into training courses.
46 – The training of prosecutors in summary proceedings should emphasize the principle, which civilian prosecutors are required to observe scrupulously, that a prosecutor does not seek a conviction at any price, but with a degree of restraint so as to ensure fairness.	Complete	2005	Included in Defence Law Manual and training packages.
R – <u>Director of Military Prosecutions and administrations of Courts martial and Defence Force Magistrate Hearings.</u> 47 – An independent Australian Defence Force Director of Military Prosecutions, with discretion to prosecute, be established.	Complete	2003	Interim DMP authorised by DI(G) PERS 45-6. DLAB 05 created an independent statutory DMP from 12 Jun 06. DLAB 05 created the Registrar of Military Justice in DFDA Subsec 188F-188FM which was amended by DLAB 08 to create the Registrar of the AMC.
48 - A Registrar of Courts Martial be established for the Australian Defence Force.	Complete	2005	
S – <u>Keeping things "In-House"</u> 49 – Guidance be included in (a) Command Directives at all levels, and (b) pre-command training courses, designed to discourage any tendency to	Complete	2001	DI(G)ADMIN 45-2 <i>Reporting and Investigation of Alleged</i>

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conceal potential military justice problems from higher authority.			<i>Offences within the ADO & DI(G) ADMIN 61-1 Inspector General ADF issued in 2003 and each Service has confirmed the intent of this recommendation in pre-command training.</i>
T – <u>Availability of Avenues of Complaint</u> 50 – Consideration be given to reviewing what means (if any) exist for achieving closure on the cases of chronic complainants.	Complete	2003	Establishment of IGADF and the Fairness and Resolution Branch addresses this recommendation.
U – <u>Professional Reporting – the ‘Whistleblower’ scheme</u> 51 – Current policy covering treatment of “Whistleblowers” be reviewed as to its applicability to deal with more general military justice issues.	Complete	2002	DI(G) PERS 45-5 Defence Whistleblower Scheme issued 1 Jul 02 with DI(G) ADMIN 61-1 Inspector General ADF issued 27 Aug 03.
V – <u>Regional DFDA Units</u> 52 – Consideration be given to the usefulness of establishing a regional DFDA unit in a particular location where the ordinary arrangements are difficult to implement in practice.	Complete	2005	Not supported by the services.
W – <u>Medical Issues</u> 53 – General guidance be provided to Commanders (and included in appropriate training courses) concerning the weight to be given to medical certificates, and the course to be taken if there is reason to be doubtful about a particular certificate.	Complete	2005	DI(G) PERS 16-21 Absence Due to Illness and Absence Due to Convalescence.
X – <u>Procedural Fairness and Command Prerogative</u> 54 – General policy guidance be developed as to the exercise of the command prerogative, and as to the extent and nature of the observance of the dictates of natural justice which is required in connection therewith.	Complete	2003	ADFP 06.1.3 Guide to Administrative Decision Making.

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<i>Y – Military Inspector General</i>			
55 – A Military Inspector General be appointed with an independent Military Justice supervision function.			
Complete	2005	DI(G) ADMIN 61-1 Inspector General ADF.	

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RECOMMENDATION

	Status	Date Completed	Comments
1. That TDLs further instruct Commanders and legal officers in alternative applications of the administrative inquiry options. Instruction could entail a combination of training, briefing sessions and communication (eg, rewriting relevant sections of ADFP 202).	Complete	2004	ADFP 06.1.4 paras 5.20 – 5.21. 14 April 2004
2. That TDLs provide guidance to Appointing Authorities regarding the skills and experience Appointees need to act efficiently and effectively in the various Board positions and contexts. Guidance may entail revision of ADFP 202 and a briefing session for Appointing Authorities prior to the formation of a Board. In the interim, monitoring of appointments as per DGTDLs Directive No. 2/2003 will assist in the selection and appointment of Board members and counsel.	Complete	2004	ADFP 06.1.4 paras 5.40 – 5.50
3. That TDLs provide further guidance to Appointing Authorities in regard to drafting and amending Terms of Reference. Guidance regarding drafting and amending should be principles-based and could entail revising the ADFP 202. In addition, legal officers who assist Appointing Authorities in drafting Terms also require guidance. TDLs should instruct them appropriately.	Complete	2004	ADFP 06.1.4 paras 5.59 – 5.72
4. That TDLs provide guidance via ADFP 202 in regard to scoping or planning. At minimum, the Appointing Authority and TDLs should be provided with a project plan prior to the commencement of a Board. Appointing Authorities should sign the plan and, preferably, sign off so that it can be used as a basis for performance monitoring and reporting.	Complete	2004	ADFP 06.1.4 paras 5.24 - 5.27
5. That TDLs review the policy in regard to progress reports and monitoring to ensure it provides sufficient authority to the Appointing Authority and also to ensure that Appointing Authorities understand	Complete	2004	ADFP 06.1.4 paras 5.74 – 5.79

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their responsibility in the area of monitoring and reporting.			
6. That TDLs provide data in relation to any costs borne by them for each particular Board of Inquiry to the Appointing Authority for their information.	Complete	2004	ADFP 06.1.4 para 5.22 and DI(G) Admin 65.1 (ADFAITS)
7. That sessional fees should not be applied to Board of Inquiry work. The determination may still have relevance for the urgent work for which it was originally created. Boards of Inquiry, however, do not meet those criteria.	Not Agreed	Not Applicable	Minute 2005/1039488/4 HDL/OUT96199/2007 dated 13 Sep 07
8. That TDLs undertake an examination of alternative remuneration structures to determine more appropriate ways of recompensing Reserve Legal Officers financially affected by their appointment to a Board of Inquiry.	Complete	2007	DMAL brief to DGADFLS confirmed that alternatives had been examined and new sessional rate determinations had been implemented in 2004.
9. That TDLs establish a process whereby Board members and counsel are briefed regarding the nature of a Board of Inquiry and the respective accountabilities of the Board members, counsels and the Appointing Authority. The briefing should be accompanied by a documented accountability framework and monitoring process.	Complete	2004	ADFP 06.1.4 paras 5.5 and 5.53
10. That, as the process sponsor, TDLs establish a process to manage and monitor Board performance. Once the process has been established, it should be documented in ADFP202 and appropriate training and briefing in regard to managing and monitoring provided.	Complete	2004	ADFP 06.1.4 paras 5.22, 5.70 - 76, 7.10, 7.26 - 28
11. That a determination of the resources required to manage and monitor Board performance form part of the establishment of a process to monitor and manage that performance.	Complete	2004	ADFP 06.1.4 para 5.71

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12. That capturing 'lessons learnt' form a standard phase of the Board process and that the lessons learnt be made available to subsequent Board. DMAL should be the coordinator of this process and be responsible for using this information to update policy documentation as required.	Complete	2004	ADFP 06.1.4 para 7.106
13. That further analysis be conducted to create a matrix of the skills and capabilities required to conduct Boards of varying complexity.	Complete	2004	ADFP 06.1.4 paras 5.35 - 49
14. That TDLs provide guidance to Appointing Authorities and Presidents regarding PAPs, how they can appear and what type of appearance is advisable. Guidance may comprise rewriting ADFP 202 or briefing Appointing Authorities or Presidents during the establishment of the Inquiry.	Complete	2004	ADFP 06.1.4 paras 5.78 – 80 & 7.21 - 24
15. That, where there are a number of PAPs will be appearing with legal representation, the President and Counsel Assisting are both of appropriate rank and are experienced in managing counsel.	Complete	2004	ADFP 06.1.4 paras 5.38 - 39 & 5.43
16. That, the inherently risky nature of Boards be acknowledged and promoted. The factors contributing to risk should be enumerated and risk mitigation strategies detailed.	Complete	2004	ADFP 06.1.4 paras 5.3 – 5.6
17. That guidance be provided in regard to the reducing risk via the selection of the appropriate Board format or combination of formats. See also Recommendation 1.	Complete	2004	ADFP 06.1.4 paras 5.5, 5.20 - 21
18. That a process be established to select Board members and counsel based on the nature of the incident being investigated. The selection process should form an integral part of the scoping and planning phase.	Complete	2004	ADFP 06.1.4 paras 5.28 – 30 & 5.35 - 47
19. That the resources beyond members and counsel necessary to conduct an efficient and effective Board be specified and guidance issued. Information gathered via a 'lessons learned' process could assist in identifying the resources required.	Complete	2004	ADFP 06.1.4 paras 5.51 – 2 & 7.106
20. That technical expertise and experience as a serving officer form	Complete	2004	ADFP 06.1.4 paras

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part of the criteria for appointments to Boards. Legal qualifications or experience should not act as the sole criterion. For complex inquiries, however, the appointment of judges, magistrates or similar as Board President should be considered. Complex inquiries refer to Boards entailing multiple Counsels Representing and likely to arouse extensive public interest or scrutiny.						5.35 – 5.41
21. That a cadre of senior officers available to serve in the event of a Board of Inquiry occurring be established. A pool of appropriately skilled members and counsel should be established from Board or counsel appointments can be drawn. The pool should be open for a two-year period and suitable candidates should have the endorsement of their Service Headquarters, where appropriate.	Complete	2007	DGADFLS Decision Brief dated 12 Sep 07. List of Counsel Assisting and Panel of Former Judicial Officers as Presidents established.			
22. That TDLs develop a resource management strategy that addresses employment preferences for both TDLs and individuals within the organization.	Complete	2007	DGADFLS Decision Brief dated 12 Sep 07.			
23. That TDLs continue to develop and maintain the TDLs Personnel Management System (an inhouse database of legal officer skills, experience and work preferences). This would supplement other strategies to improve the selection and appointment of BOI members and counsel.	Complete	2007	DGADFLS Decision Brief dated 12 Sep 07.			
24. That TDLs monitor the implementation of DGTDLS Directive 2/03 and relevant Reserve Legal Officer Standard Operating Procedures and enforce the application of the instructions.	Complete	2005	Superseded by DGADFLS Directive 01/2005 and DGADFLS Decision Brief dated 12 Sep 07.			
25. That TDLs recognize the significance of any change to work allocation and eligibility practices and develop a change or transition program to assist with the move to the new way of managing the	Complete	2007	DGADFLS Decision Brief dated 12 Sep 07.			

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practice.			
26. That TDLIS develop a briefing program for Appointing Authorities and their staff and a second program for those appointed to the Inquiry to be given prior to any involvement with a Board of Inquiry.	Complete		ADFP 06.1.4 Chapter 5.

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2004 DFO ADF Redress of Grievance Review Progress Report

RECOMMENDATION

	Status	Date Completed	Comments
1 – For the purposes of the ROG provisions of the Defence Force Regulations 'service' be defined as service in the permanent or active reserve forces	Progressing		
2 – That the scope of matters about which a member can submit a grievance be changed to "any decision, act or omission relating to a member's service that is considered or perceived to be adverse or detrimental to the member and which is capable of being redressed by a member of the ADF or civilian employee of the Department of Defence". As a pre requisite to submitting a grievance, a member must have attempted to resolve their problem by other means through the normal chain of command and such efforts must be documented in the grievance.	Complete	2008	Defgram 234/08 – Amendments to Defence Force Regulations and Changes to the Redress of Grievance Process.
3 – That, in order to avoid duplication of effort, action in relation to a ROG should be terminated where the member has applied to have the action reviewed by a Court or Tribunal or has referred the matter to an external review body (eg HREOC, DFO) that opts to investigate the complaint.	Progressing		
4 – That complaints of the following types be excluded/prohibited from the ROG system <ul style="list-style-type: none"> • Complaints regarding a process which seek to anticipate a decision that hasn't yet been made • Complaints against the assessments, ratings or gradings in performance evaluation reports except where the member can demonstrate that there were serious defects in the evaluation process • General complaints against the merits of Defence policies 	Progressing		

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<p>5 - That, where a CO does not have a authority to grant the redress sought in a ROG, after having explored direct means of obtaining possible resolution, the CO should refer the ROG and any associated documentation gathered at unit level to the CRA for investigation and referral to a senior level redress delegate</p>	Complete		DI(G) PERS 34-1 <i>Redress of Grievance Tri Service Procedures</i>
<p>6 - That members should be required to submit a ROG no later than 6 months after the occurrence of the issue raised in the grievance, or the day the member knew, or ought reasonably to have known, that the offending decision, act or omission in question occurred. A redress delegate should have the discretion to accept a delegate can foresee some tangible benefit or value in doing so</p>	Progressing		
<p>7 - In order to overcome the long-standing staffing problems within the Military Redress Section of the CRA, the Service Chiefs should undertake to :</p> <ul style="list-style-type: none"> • Ensure that personnel posted to permanent positions within the CRA have the requisite skills and abilities to perform the duties of their position: • Endeavour to provide relief manning where permanent positions within CRA are expected to be vacant for more than 2 months; and • Formulate agreements for the ongoing provision of adequate Reserve manpower to the CRA 	Complete	2005	

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ANNEX L
MJSRT REPORT
23 JAN 09

2005 DFO Own Motion Review of the Administration of Minors Progress Report

RECOMMENDATION		Status	Date Completed	Comments
1 – That the ADF seek legal advice as a matter of priority on the extent of its duty of care to minors and how that should be interpreted in service and training establishments. The advice should address the interaction of Commonwealth and State/Territory laws, the implications of society's expectations about care owed to minors, and the ADF's liability if adequate levels of care are not provided.		Completed	2006	
2 – That legal advice on care for minors be used to develop a Defence Instruction (General) (DI(G) that would define the ADF's responsibilities for the administration of minors. It should include examples of the risks associated with care of minors that must be covered in any service arrangements to give effect to the DI (G).		Completed	2008	DI(G) PERS 33-4 <i>Management and administration of Australian Defence Force members under 18 years of age</i>
3 – That, consistent with good administration practice, each service develop its own instruction of identifying how minors will be managed within service personnel management and training structures. The DI (G) should address risks specifically associated with that service. It should inform the development of procedures to manage those risks within individual training establishments.		Progressing		Agreed – with minor clarification. The single Services continue work on their own orders and instructions.
4 – That comprehensive and accurate information about the ADF's duty of care for minors (and what this means within each service and training establishment, where appropriate) be provided for all potential enlistees who are minors, and their parents/guardians. This information should include examples of how the duty of care will be delivered day-to-day, as well as the limits of the ADF's responsibilities.		Completed	2008	Agreed - in principle
5 – That service Training Commands take a more active role in directing and supporting Commanding Officers (Cos), and their staff, in the delivery of care		Progressing		Agreed – with comment. The single Services

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<p>to minors. This could include the following.</p> <ul style="list-style-type: none"> • Issuing instructions for incoming Cos in training establishments for management of minors. These instructions would be tied to the relevant Service Instructions and specify expected outcomes and performance measures against which Cos will be assessed annually. • Ensuring Cos have the resources – time, staff and administrative support – necessary to deliver expected outcomes. This could include designation of a staff member with specific responsibility for assessing risks and monitoring/reporting on outcomes for minors. • Facilitate exchange of information about best practice in managing minors within and between services. This could include regular meeting/exchanges of instructional and support staff, as well as COs, across training establishments and services. 			continue work on their own orders and instructions.
<p>6 – That the ADF consider developing a tri-service strategy for training and maintaining consistent, high quality instructional and support staff in training establishments. The strategy would recognize the critical role of recruitment and initial employment training to maintaining a strong ADF. It could include the following.</p> <ul style="list-style-type: none"> • Developing consistent selection procedures for instructional and support staff in training establishments, which will ensure they have the capacity to communicate effectively with minors; and developing standard minimum training requirements to ensure all staff involved with minors have the necessary skills to provide an appropriate level of care. • Reviewing the priority given to provision of support services, particularly health services, in training establishments to ensure resources available for minors who may be at risk of physical, psychological or emotional injury are sufficient. • Establishing benchmarks for qualifications, experience and number of 	Progressing		

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instructional and support staff, and timeliness of support services, in training establishments responsible for the management of minors.			
<p>7 – That the ADF review accessibility of support arrangements for minors, including by the following:</p> <ul style="list-style-type: none"> • Conducting surveys of the opinions of minors on current arrangements. Surveys should be anonymous, include minors who do not complete their training, and provide the option for free comment on barriers to access. Given that many minors lack broad life experience, it would also be appropriate to suggest options for improvement, on which they can comment. Examples could include greater access to their families (such as more opportunity for telephone contact) and tighter confidentiality when a problem is raised. • Analysing factors, which contribute to successful support arrangements for minors; and using these as a basis for developing a best practice model for application across the ADF. • Regularly seeking feedback from minors to ensure high standards set by the best practice model are maintained. Results from feedback should be consolidated across all services and form the basis of an annual report to the Chief of the Defence Force on the effectiveness of support arrangements for minors. 	Complete	2008	DI(G) PERS 33-4 <i>Management and administration of Australian Defence Force members under 18 years of age</i>
<p>8 – That the ADF review administration of the Equity Adviser Network within training establishments to identify barriers to use of the network by minors. This review should include the nature and timing of information about the network provided to minors and training for advisors in communicating effectively with younger people.</p>	Complete	2007	
<p>9 – That the ADF review the collection of qualitative and quantitative data relating to delivery for care for minors with a view to improving consistency of collection across services and facilitating analysis of trends across the ADF. This data should be used as a basis for preparation of regular reports for</p>	Complete	2008	

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made available to all participants in the inquiry			
29 – That the Government establish an Australian Defence Force Administrative Review Board	Progressing		Not agreed by the Government. Note CDF Directive 32/2007 dated 11 Dec 07 directed responsibility to DGFR to amend Defence Force Regulations and promulgate DI(G) PERS 34-1 <i>ROG Tri-Service Procedures</i> which is awaiting finalisation.
30 – That the Government provide funds as a matter of urgency for the establishment of a task force to start work immediately on finalising grievances that have been outstanding for over 12 months	Complete	2006	Agreed by Government. Fairness and Resolution Branch created 1 Jan 06.
31 – That the language used in paragraphs 7.56 of the Defence (Inquiry) Manual be amended so that the action becomes mandatory	Complete	2006	ADFP 06.1.4 para 7.21.
32 – That the wording of paragraph 7.49 be rephrased to reflect the requirement that a member who comes before the Board late in the proceedings will be allowed a reasonable opportunity to familiarise themselves with the evidence that has already been given	Complete	2006	Agreed by Government. ADFP 06.1.4 para 7.58.

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33 – That the wording of Defence (Inquiry) Regulation 33 be amended to ensure that a person who may be affected by an inquiry conducted by a Board of Inquiry will be authorised to appear before the Board and will have the right to appoint a legal practitioner to represent them	Complete		Agreed by the Government in part.
34 – That all notifiable incidents including suicide, accidental death or serious injury be referred to the ADFARB for investigation/inquiry and other ADFRB related matters	Progressing		Not agreed by the Government. But CDF Directive 32/2007 dated 11 Dec 07 directed responsibility to DGSHP to put protocols in place with ACT, NSW and NT Coroners regarding the review of outcomes of ADF inquiries into deaths of personnel. Not all Coroners have reached agreement with Defence and negotiations continue.
35 – Building on the report by the Australian Law Reform Commission, <i>Principled Regulation: Federal Civil and Administrative Penalties in Federal Jurisdiction</i> , that the ADF commission a similar review of its disciplinary and administrative systems	Progressing	2008	Agreed in principle. CDF Directive 32/2007 dated 11 Dec 07 directed responsibility to IGADF to oversee the first independent review of the military justice system. The first review by Sir Laurence Street AC, KCMG, QC and Air

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			Marshall Fisher AO (Retd) is due to CDF by Feb 2009.
36 – That the committee's proposal for a review of the offences and penalties under the Australian military justice system also include in that review the matter of double jeopardy	Complete		Agreed in principle.
37 – That the ADF submit an annual report to the Parliament outlining (but not limited to): the implementation and effectiveness of reforms to the military justice system, either in light of the recommendations of this report or via other initiatives & the workload and effectiveness of various bodies within the military justice system, such as but to limited to – Director of Military Prosecutions, Inspector General of the ADF, the Service Military Police Branches, RMJ/CJA, Head of Trial Counsel and Head of ADR	Complete	2008	Agreed by the Government and included in the IG ADF online supplement to the Defence Report. CMJ and DMP provide an annual report to Parliament.
38 – That the ADF commission an expert in the human rights of children to monitor and advise the ADF on its training and education programs dealing with cadets	Complete	2006	Agreed by the Government. The President of the Human Rights and Equal Opportunities Commission recommended Ms Jenni Whelan who has been

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			engaged under a Standing Offer since 2006.
39 – That the ADF take steps immediately to draft and make regulations dealing with the Australian Defence Force Cadets to ensure that the rights and responsibilities of Defence and cadet staff are clearly defined	Complete	2006	Agreed by the Government. The amended Regulations came into effect on 4 July 2006.
40 – That further resources be allocated to the Australian Defence Force Cadets to provide for an increased number of full-time, fully remunerated administrative positions across all three cadet organisations. These positions could provide a combination of coordinated administrative and complaint handling support	Complete	2006	Agreed by the Government. A limited number of positions were created by the Services in June 2006 to address this recommendation.

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RECOMMENDATION

	Status	Date Completed	Comments
1.1 – The ADF adopt one definition of a Service Police (SP) investigation and reflect that in all relevant policy and doctrine, whether Departmental or ADF. <i>‘An inquiry into matters involving ADF members or Defence Civilians and the collection and presentation of relevant material to a standard acceptable for use, if required, by competent ADF and civilian authorities.’</i>	Progressing		Agreed by the Government. Subject to finalisation of DI(G) ADMIN 45-2.
1.2 - Ensure consistency between the different sources of policy on ADF aircraft crash investigation.	Progressing		Agreed by the Government.
1.3 – Decide whether it is appropriate to empower civilian investigators of non-ADF Defence Organisation to investigate ADF people for alleged breaches of the DFDA.	Complete	2007	Agreed by the Government.
1.4 - Adopt a common investigation standard promulgated in one Defence investigation policy to be complied with by all Defence Investigative Authorities (DIAs) and all their investigators.	Progressing		Agreed by the Government.
1.5 – ADF members empowered to initiate investigations and inquiries receive formal familiarization with the types and methods available to them. Agreed by the Government	Progressing		Agreed by the Government.
2.1 - Each Service review and clarify the function and roles of its SP Organisation.	Complete	2008	Agreed by the Government.
2.2 - Action be taken to dispel the strong perception that exists amongst Service Police and some ADF officers that special forces units and some infantry units are exempt from ADF disciplinary policy and processes.	Progressing		Agreed by the Government.
2.3 – Action continue to ensure that the [Office of the Director of Military Prosecutions] ODMP is provided with sufficient numbers of qualified and	Complete	2007	Agreed by the Government.

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experienced staff.			
<p>2.4 – Training of ADF commanders and commanding officers at all levels emphasise:</p> <ul style="list-style-type: none"> • The importance of high quality Service Police investigations to the maintenance of discipline and delivery of military justice. • Their responsibilities to support the conduct of investigations; and • The consequences of impeding or obstructing a Service Police investigation. 	Progressing		Agreed by the Government.
<p>2.5 - Signs at the entrance to ADF units be amended to remove any reference to a need for Service or civilian police to report to unit guard houses.</p>	Complete	2008	Agreed by the Government. Completed January 2008.
<p>2.6 – Protocols should be developed between investigators and Service personnel posting authorities to ensure that the timeliness of Service Police investigations is not jeopardized by the posting or discharge of ADF members while investigation or prosecution work involving them is in progress.</p>	Progressing		Agreed by the Government.
<p>2.7 – In the interest of focusing effort on major investigations, Service Police investigators be given the discretion to prioritise and choose not to investigate, but to simple record, minor, 'one off' offences, where a successful conviction would be unlikely to justify the time, effort and other resources involved in the investigation.</p>	Complete	2007	Agreed by the Government.
<p>2.8 – Only in exceptional cases should Service Police investigators investigate matters of minor indiscipline more properly dealt with by commanders and their staffs.</p>	Complete	2007	Agreed by the Government.
<p>2.9 – Develop an ADF policing plan</p>	Progressing		Agreed by the Government.
<p>2.10 – Use of the Discipline Officer scheme be mandatory in all units except where grounds not to do so have been identified and explained and approved by the relevant Service Chief.</p>	Complete	2008	Agreed in Principle.

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2.11 - PM ADF and the ODMF develop guidance for Service Police to use in the preparation of briefs of evidence to a standard acceptable for use by competent ADF and civilian authorities.	Complete	2007	Agreed by the Government.
4.1 - Urgent action be taken to prepare and make available to all ADF investigative agencies and their operatives, one common source of investigation policy published under the signatures of the CDF and Sec and binding on all agencies. The policy should in so far as is possible be based on the Australian Government Investigation Standards (AGIS) 2003 and Australian Federal Police (AFP) investigation standards and be available in one document, separate from and not to be confused with, investigation procedures and techniques that should be published elsewhere.	Progressing		Agreed by the Government.
4.2 - PM ADF be made responsible and accountable for the development and maintenance of ADO investigation policy and doctrine.	Complete	2007	Agreed in Principle.
4.3 - The one common source of ADO investigation policy should contain a direction to the effect that: "Without exception, notifiable incidents are to be reported simultaneously to Service police and the appropriate chain of command. Service police are to inform civilian police and other Defence Investigative Authorities as appropriate."	Progressing		Agreed in Principle.
4.4 - The ADO prohibit in its investigation policy and procedures any Service or other organization-centric exclusions.	Progressing		Agreed by the Government.
4.5 - ADO investigation policy and doctrine be of sufficient specificity and clarity to negate the need for local interpretation and expansion by subordinate commanders.	Progressing		Agreed by the Government.
4.6 - There should only be one extant version of ADFP 06.1.4 - Administrative Inquiries Manual.	Complete	2007	Agreed by the Government.
4.7 - In ADO investigation policy the emphasis be placed on ensuring that incidents are handled lawfully, ethically and professionally and that everything else, including informing superiors, military or civilian, is secondary.	Progressing		Agreed in Principle.

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<p>4.8 – 4.12 - Quick Assessments (QA)</p> <ul style="list-style-type: none"> • The ADO adopt a new QA policy • The purpose of a QA be defined as being “.. to assess rapidly the then known facts of an incident and decide what is proper course of action to be taken in response to it”. • ADF Quick Assessment policy be published separate from ADFP 06.1.4. It should be applicable to all matters whether administrative or otherwise. • ‘Context management’ not be part of QA policy. 	Complete	2007	Agreed by the Government.
4.13 – Defence review the DFDA	Complete	2008	Agreed by the Government. Completed Feb 08.
4.14 - The ADF explore the exceptionally powerful provisions of the Law Enforcement (AFP Professional Standards and Related Matters) Act 2006, and the complementary, internal measures to distinguish between levels of misconduct and to speed up their disposition, with a view to introducing similar legislation for the ADF.	Complete	2008	Agreed by the Government.
4.15 - In parallel with development of one Defence investigations policy, DI (G) ADMIN 45-2 – Reporting and Investigation of Alleged Offences within the Australian Defence Organisation be reviewed and repromulgated to focus on the reporting of offences, and to reflect the establishment of the PM – ADF position and decisions, to be made by CDF as to which DLA will investigate offices under the DFDA.	Progressing		Agreed by the Government.
4.16 – The [Defence Investigations Technical Instructions] DITI should not be revised. As soon as the common investigation policy and procedures are prepared and made available throughout the ADF, the DITI be cancelled.	Progressing		Agreed by the Government.
4.17 - The ADO adopt the definitions and standards set for the classification of reported offences by the Australian Bureau of Statistics through the National Centre for Crime and Justice Statistics (NCCJS) and the National	Complete	2008	Agreed by the Government. Completed Jan 08.

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Crime Statistics Unit (NCSU).			
4.18 – Development of DPSPMS Stage 2 conform to NCSU requirements.	Complete	2008	Agreed by the Government. Completed Jan 08.
5.1 - Service Police and investigator training needs be reviewed to emphasize and reinforce the basic core skills and competencies of policing. These include the taking of statements from witnesses, interviewing suspects and offenders, and the rules governing the admissibility of evidence, including the value and use of exculpatory as well as inculpatory evidence.	Progressing		Agreed by the Government.
5.2 – The DPTC development wing be staffed to incorporate an effective research capability that will permit Service Police curricula to be amended in a timely manner to reflect changes in Australian law and policing practice.	Progressing		Agreed by the Government.
5.3 – The Police training wing of the RAAF SFS should close and all ADF Service Police and investigator training, except needs based refresher training, be conducted at the DPTC.	Progressing		Agreed by the Government.
5.4 – DPTC achieve best practice standard and Service Police leadership in all services should encourage, demand and enforce adherence to that standard amongst all Service Police.	Progressing		Agreed by the Government.
5.5. – DPTC develop a refresher module for investigators that could be offered at the DPTC and at concentration locations around Australia in order to maintain a high common standard of investigator professional knowledge.	Progressing		Agreed by the Government.
5.6 - Consideration should be given to conducting refresher training by distance learning means.	Progressing		Agreed by the Government.
5.7 – Consideration should be given to affiliating the DPTC with a credible civilian law enforcement teaching institution such as Charles Sturt University.	Complete	2008	Agreed by the Government.
5.8 - The proper care and management of incident and crime scenes, at least in terms of basic protection and preservation techniques, ought to be an element of all pre-command training courses in the ADF and be reinforced periodically during career advancement.	Progressing		Agreed by the Government.

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5.9 - The ADF renew or develop formal MOU with the AFP, principally, and also State and Territory police on the attendance of Service Police on relevant, accredited training courses as an essential supplement to DPTC training and to improve professional competencies and advancement prospects.	Progressing		Agreed in Principle.
5.10 - Attachments to civilian policing organizations be reserved for Service Police personnel only and be coordinated by the PM ADF rather than by the Service personnel organizations.	Progressing		Agreed in Principle.
5.11 - The PM ADF be appointed the Training Requirements Authority (TRA) for all ADF investigator training courses and for the investigation element of all other courses including Service Police courses, staff colleges, pre-command training and leadership and management training.	Complete	2007	Agreed by the Government.
5.12 - Navy and Air Force identify and begin preparing suitable officers to command the DPTC in due course, and share a proportional load of the Centre's trainer liability.	Progressing		Agreed in Principle.
5.13 - When the commandant DPTC is an Army Officer he should not be 'double hatted' as the Head of Corps of the RACMP. The current commandant should divest himself of this role as soon as possible in order to permit him to concentrate on renewing and reinvigorating Service Police training.	Progressing		Agreed by the Government.
5.14 - Service Police personnel posted to DPTC as instructors be screened to ensure that they have the skills and attributes required for such duties.	Progressing		Agreed by the Government.
5.15 - Fill the ADF staff vacancies at the DPTC.	Complete	2008	Agreed in Principle.
5.16 - CDF's Directive establishing the DPTC be rewritten to incorporate the changes proposed by this audit report and be re promulgated. The new CDF Directive for the DPTC should incorporate specific Service Police training reform objectives to be achieved by the Commandant by specified times during his appointment.	Complete	2008	Agreed by the Government.
5.17 - Navy and Air Force senior leadership become more involved with the	Complete	2008	Agreed in

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DPTC.			Principle.
5.18 – A formal and funded ADF investigator Development Program should be developed and coordinated by the PM-ADF with the assistance of Service personnel authorities.	Progressing		Agreed in Principle.
5.19 – ADF commanders of all ranks be informed that a Service Police [member] of any rank who has undergone scene of incident and crime scene management training at the DPTC is more qualified than they to assess and control a crime or incident scene.	Progressing		Agreed in Principle.
5.20 - All Service Police and all other ADF people be taught and understand that knowing what <i>not</i> to do at an incident or crime scene is equally important as knowing what to do.	Progressing		Agreed by the Government.
5.21 – PM ADF establish a feedback loop between his office, ODMF and DPTC to, inter alia, facilitate improvement in the standard of briefs of evidence.	Complete	2007	Agreed by the Government.
6.1 - A consistent application of additional administrative support to the ADF investigative capability be made in order to help improve their timeliness.	Progressing		Agreed by the Government.
6.2 - While also taking action to improve the recruitment and retention of investigators, the thrust of reform be on improving the effectiveness and efficiency of the existing workforce.	Progressing		Agreed by the Government.
6.3 – ADF investigative capability be provided with information technology support that aids in the planning, execution, management, quality control and periodic evaluation of investigations and operations. A new system must; allow interviews, statements, photographic and graphic material, and exhibit identification and tracking, formatted into a brief of evidence suitable for transmission to the ODMF or other recipient and cater for more sophisticated link analysis in relation to single, multiple and related incidents and events, offences, people of interest (suspects, offenders, and associates), witnesses, vehicles, addresses, telephone numbers and other data highly relevant to operations.	Complete	2008	Agreed by the Government. Completed August 2008.

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6.4 - Defence proceed with the Stage 2 upgrade of DPSMS as a matter of urgency.	Complete	2008	Agreed by the Government. Completed August 2008.
6.5 - An experienced Service Police member be nominated to assist in the development of DPSMS Stage 2.	Complete	2007	Agreed by the Government.
6.6 - DPTC become a centre of excellence in DPSMS instruction. To avoid the detrimental effects of ADF posting 'churn', appropriately experienced and trained civilians should provide DPSMS training at the DPTC. Action be taken now to recruit, train and appoint to appropriate DPTC civilian DPSMS instructors.	Progressing		Agreed by the Government.
6.7 - Analysts Notebook be funded by DPSMS Stage 2 and made available to all ADO investigators.	Complete	2007	Agreed in Principle.
7.1 - ADFIS be established outside the Service chains of command answerable directly to CDF through its commander the PM - ADF, as the most effective, efficient and economic future use of ADF investigative resources.	Complete	2007	Agreed by the Government.
7.2 - Any Service plans to reduce existing investigator establishment positions or staffing levels, by means of the Army Personnel Establishment Plan (APEP) for example, should be cancelled and posting priority should be given to staffing the ADFIS.	Progressing		Agreed in Principle.
7.3 - Review the ADF's need for garrison policing.	Complete	2008	Agreed by the Government.
7.4 - The draft CDF Directive at Attachment 1 to Chapter 7 of this report be used to establish the ADFIS.	Complete	2007	Agreed in Principle.
7.5 - The role of the ADFIS be established as : 'to assist the CDF to maintain ADF discipline through the lawful, ethical and effective investigation of matters involving ADF members, independent of Service chains of command'.	Complete	2007	Agreed by the Government.

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7.6 – The functions of the ADFIS be established as to: a. <i>“Inquire into matters involving ADF members and Defence Civilians and collect relevant material to a standard acceptable for use, if required, by competent ADF and civilian authorities.”</i> b. <i>Keep CDF informed of results of, and trends in, ADF discipline matters.</i> c. <i>Maintain a police intelligence capability to support investigations and operations and provide effective crime prevention and detection measures.</i> d. <i>Monitor developments in Australian civil and allied military law enforcements in order to adjust ADF policy, training and procedures as required to maintain best investigative practice ”</i>	Complete	2007	Agreed in Principle.
7.7 – ADFIS investigators be empowered to investigate any matter within the jurisdiction of the DFDA and all other Service Police who have completed the Service Police Basic Course and/or the Military Police Investigations Course, and non-Service Police SNCO or officers appointed under Section 101 of the DFDA, be limited to the investigation of; <ul style="list-style-type: none"> Insubordination, failure to comply, absence without leave, creating a disturbance, prejudicial behaviour, disobedience, negligent performance of duty, and insulting or provocative words. 	Complete	2007	Agreed in Principle.
7.8 – ADFIS workforce should be comprised of suitably qualified ADF investigators and suitably qualified civilians, either Defence APS members or Professional Service Providers, all engaged under suitable employment terms in order to undertake investigations.	Complete	2007	Agreed by the Government.
7.9 – The ADFIS is commanded by the PM ADF and his duties be as described in the draft duty statement at Attachment 2 to Chapter 7 of this report.	Complete	2007	Agreed by the Government.
7.10 – CDF approach the Commissioner of the AFP to identify and obtain the services of a suitably qualified and experienced AFP member to advise the PM ADF in the implementation of the agreed recommendations of this audit report.	Complete	2007	Agreed in Principle.

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7.11 – ADFIS incorporate a Major Investigations Team (MT) comprised of highly qualified and experienced investigators with the primary role of conducting major, complex and sensitive investigation.	Complete	2007	Agreed by the Government.
7.12 – ADFIS base its professional policing standards on those of Australian law enforcement agencies.	Complete	2008	Agreed by the Government.
7.13 – ADFIS introduce a Quality Assurance Review and Reporting regime to ensure the quality and standard of its output.	Progressing		Agreed by the Government.
7.14 – All appropriate ADF training and education include content aimed at generating amongst ADF officers an acknowledgement that an effective and efficient Service Police investigative capability is an essential aid to them in fulfilling their responsibility to maintain discipline amongst those ADF members they command.	Progressing		Agreed by the Government.
7.15 – ADF officers be informed that when a QA suggests to them that a serious Service or civilian offence may have been committed they no longer have any choice of action – they must refer the matter to Service Police forthwith, who will then arrange for civilian police involvement where necessary. This content should stipulate that, in the case of death or serious injury, a QA is irrelevant and the incident must be reported forthwith to Service Police.	Complete	2007	Agreed in Principle.
7.16 – A program of work be prepared aimed at developing a new joint culture shared by all ADF investigators in order to begin the process of rebuilding the confidence of ADF people in the ADF investigative capability.	Progressing		Agreed by the Government.
7.17 – Disciplinary action be taken against ADF commanders who knowingly fail to report a serious Service or civilian offence to Service Police or are otherwise found to have kept knowledge of such a matter within their command or to have sought to have it dealt with it by inappropriate administrative or other means.	Progressing		Agreed in Principle.
7.18 – PM ADF be made responsible for the control and coordination of the development and maintenance of all ADF policy and doctrine relating to	Complete	2007	Agreed by the Government.

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investigations.			
7.19 – Establish the ADF Investigation Policy and Coordination Committee (ADFPCC) to subsume and expand on the role currently undertaken by meetings of the Heads of the Defence Investigative Authorities. Proposed Terms of Reference for the ADPCC are at Attachment 3 to Chapter 7 of this report.	Complete	2007	Agreed in Principle.
7.20 – PM – ADF be allocated responsibility for development of an ADF Policing Plan and a Major Investigation Plan (MIP) – in order to overcome the deficiencies associated with the absence of any ADF policing and investigation planning and or coordination measures.	Complete	2007	Agreed by the Government.
7.21 – Particular care be taken in appointing suitable officers and SNCOs to leadership and instructional positions at the DPTC.	Progressing		Agreed by the Government.
7.22 – Use of the term Special Investigations Branch (SIB) cease in the ADF	Complete	2007	Agreed by the Government.
7.23 PM ADF establish and maintain formal and informal lines of communication and liaison with Federal, State and Territory law enforcement bodies, and will build on existing membership or observer status of the relevant professional forums of those bodies, noting that such arrangements commenced at the 2006 Commissioners' Conference.	Progressing		Agreed by the Government.
7.24 – ADFIS investigators continue the practice of selectively wearing plain clothes in Australia and that the decision when to do so be left to the discretion of investigator supervisors.	Complete	2008	Agreed by the Government. Completed March 2008.
7.25 – ADFIS personnel be issued with a suitable form of identification badge and card.	Complete	2008	Agreed by the Government. Completed March 2008.
7.26 – Amend the DFDA if necessary (see also related Recommendation 1.3) to remove the uncertainty over the legality of employing civilians to	Progressing		Agreed by the Government.

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investigate offences by ADF members under the DFDA.			
7.27 - The matter of compensating Service Police for the costs of wearing plain clothes be reviewed by Defence pay and employment conditions authorities with a view to obtaining approval for the payment of an allowance to members of the ADFIS.	Complete	2008	Agreed by the Government. Completed March 2008.
7.28 - ADFIS investigators undertake selected training courses and suitable secondments available in the Federal, State and Territory police forces within a personnel management and development framework based on an equitable, regulated and deliberate policy of <i>essential skills acquisition</i> , career development and advancement for the right people at the right time.	Progressing		Agreed by the Government.
7.29 - PM ADF coordinate the appointment of investigators within this development framework, with the assistance of Service personnel authorities.	Progressing		Agreed in Principle.
7.30 - ADFIS establish a police intelligence capability in support of operations and to inform ADF leadership of the nature, extent of existing and emerging criminal threats, to enable timely effective counter-measures.	Complete	2007	Agreed by the Government.
7.31 - APS officers be appointed to develop and maintain the ADF policing intelligence capability.	Complete	2007	Agreed in Principle.
7.32 - To meet the need for organic ADFIS legal capability, the Major (E) legal officer position at 1 MP Battalion be transferred to the ADFIS and that the ADFIS establish a means of obtaining from ODMP a direct and authoritative source of legal advice.	Complete	2007	Agreed by the Government.
7.33 - ADFIS incorporate a technical capability sufficient to support operations that are not dependent at the present stage of ADFIS development, on specific legislative sanction.	Progressing		Agreed by the Government.
7.34 - As an urgent priority, the ADF enter into formal arrangements with, principally, the AFP, for the provision of forensic services in Australia and overseas with specific emphasis given to major incidents or crimes involving the non-combat related death of or serious injury to, ADF personnel	Progressing		Agreed in Principle.
7.35 - ADF formulate a service level agreement with the AFP for the ADF to	Progressing		Agreed in

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contribute to the maintenance of a modestly priced forensic capability in the AFP and, in exchange, receive priority in major incidents and crimes.			Principle.
7.36 – AFP consider implementing a fingerprint and DNA signature recording program for all its members.	Progressing		Agreed by the Government.
8.1 – The action plan as proposed in Chapter 8 be implemented.	Complete	2007	Agreed in Principle.

**ANNEX O TO
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NOT FOR RELEASE



ANNEX P TO MJSRT
REPORT 23 JAN 09

DEPARTMENT OF DEFENCE
JOINT OPERATIONS COMMAND
20A Wylde Street, POTTS POINT NSW 2011, AUSTRALIA

C1340727

Sir Laurence Street, AC, KCMG
Chairman
Military Justice System Review Team

Sir,

Thank you for the opportunity to speak with you regarding our recent operational experience with the military justice system. This experience has, since the deployments to East Timor in 1999, involved large segments of the ADO in lengthy deployments in difficult circumstances, although I would note that none of these deployments have involved large-scale warfighting. That said, many soldiers in particular, have operated in very threatening circumstances.

Throughout this period our experience has been that both the military inquiry system and the Defence Force Discipline system have worked well for us on operations. The inquiry system has proven a useful and efficient tool for the determining truth and for improving our system through analysis of what happened and why. It has been a significant factor in our ability to keep casualties low and learn effectively from our mistakes.

The DFDA has also proven fit for its purpose on operations, although I note that in serious cases where it is used, the individual concerned is usually returned home to be dealt with by his or her parent service. For minor offences and lapses, it is an effective tool for commanders while deployed, and seems to provide effective procedural fairness for deployed members.

Once again, thank you for visiting to gain an operational perspective.

G.J. EVANS
Air Vice-Marshal
Chief of Staff/Deputy Chief of Joint Operations

Tel: (02) 9359 5719

19 Aug 08



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COLONEL BRUCE GREEN

ANNEX Q TO
MJSRT REPORT
23 JAN 09

DX: 28500 PARRAMATTA
TEL: (02) 9635.1000
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LACHLAN MACQUARIE CHAMBERS
16 GEORGE STREET
PARRAMATTA NSW 2150

9 November 2008

Sir Lawrence Street AC, KCMG, QC
and
Air Marshal Les Fisher AO

Dear Sir Lawrence and Air Marshal Fisher,

Submission to Your Inquiry

It is my submission to your inquiry that Legal Officers should also be appointed as Summary Authorities at all levels and should be used (subject to service exigencies) in preference to unit-based Summary Authorities during peace time within mainland Australia.

By the use of military judges independent of the Chain of Command, the higher echelons of the Defence Force disciplinary scheme have moved towards a system which is less capable of being criticised for possible command influence or institutional service bias.

Unfortunately the lower echelons of the Defence Force disciplinary scheme (such as a CO's trial) do not have similar built-in safeguards which can readily be seen as being free of possible command influence or institutional service bias.

There is no reason why in peace-time within mainland Australia a member's CO should hear and determine a matter which can result in loss or rank, a fine of up to 28 days's pay and/or 28 day's detention or a member's OC should deal with a matter which can result in a fine of up to three days's pay.

Reasons why Legal Officers should also be appointed as Summary Authorities and should be used in preference during-peace time within mainland Australia include:

- a. can be more readily seen as being free of possible command influence or institutional service bias,
- b. less possibility of actual bias occurring,
- c. the increased complexity of the DFDA takes it beyond the scope of non-lawyers,

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COLONEL BRUCE GREEN

- d. on appeal, the AMC has a need for sufficient documentary evidence and reasons for judgment, to determine an appeal - particularly one on the papers,

Should you have any questions in regard to the above, please do not hesitate to contact me.

I look forward to discussing this and other matters with you on Thursday 13 November 2008 at 0930 hrs at Sir Laurence Street's chambers at 133 Macquarie Street, Sydney.

Bruce Green

B.M. GREEN

Colonel

Head of NSW AALC Panel

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**ANNEX R TO
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NOT RELEASED DUE TO PRIVACY RESTRICTIONS

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NOT RELEASED DUE TO PRIVACY RESTRICTIONS