

# 5

## JUSTICE AND FAIRNESS IN DEFENCE

A comprehensive overview of our justice and fairness systems, including an overview of the military justice system.

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# EFFECTIVENESS OF THE MILITARY JUSTICE SYSTEM

As part of the Government response to the 2005 Senate Foreign Affairs, Defence and Trade References Committee *'Report on the Effectiveness of Australia's Military Justice System'*, Defence undertook to provide a more comprehensive overview of the military justice system on an annual basis as part of the Defence annual report. In addition to reporting on the state of health of the military justice system, issues affecting Defence APS employees are also addressed.

In a number of cases, reforms, such as those involving the establishment of new agencies or restructuring of existing agencies, have only recently been implemented. Reporting on the effectiveness of the operations of these agencies is therefore necessarily limited. More comprehensive evaluation and comment may be expected after experience is gained with their substantive operations during the next reporting period.

Particular observations or comments that are highlighted throughout the chapter are derived from the results of attitude surveys, focus group outcomes and the observed experience of agencies concerned with military justice throughout the reporting period.

The management of Cadets is not covered by the ADF military justice system. For this reason, other than in relation to the summary of the implementation of reforms announced by the Government in October 2005, Cadets are not addressed in this chapter.

## OVERVIEW OF MILITARY JUSTICE REFORM

Military justice in the ADF encompasses four elements: discipline (including investigations), adverse administrative actions, the conduct of inquiries and mechanisms to support an individual's right to complain. It is a fundamental requirement that the military justice system be capable of operating effectively in Australia and on overseas deployment, in peace and war.

The ADF's military justice system strives to balance the maintenance of discipline and the need to ensure fairness to the individual. Tensions can and will arise. We must balance the maintenance of discipline and individual rights and also the ability to recognise failures and to initiate effective corrective action. If the system is not sufficiently robust to deliver against these objectives, then failures can damage reputations and careers, lower morale and, ultimately, affect combat capability and operational effectiveness.

A major issue for Defence is how to deal with public perceptions. We are particularly mindful of the importance of public awareness of, and confidence in, the military justice system. Low confidence in the military justice system can damage the ADF's image and reputation. This is not unique to the ADF. In a recent report about the military criminal justice system in the United Kingdom, the Adjutant General of the British Army remarked on "... *the worrying impact that the*

*debate by some commentators is having on another vital component of our operational efficiency, reputation. Such is the importance of the issue, and such, sadly, is the apparent willingness of some people to undermine elements of our system, on the basis of incomplete knowledge of the facts, and often informed by the media whose agenda runs way beyond the Army..."<sup>(1)</sup>*

In this respect, a significant complicating factor in ensuring better public understanding of military justice issues arises because of limitations in the ADF's ability to respond directly to particular issues for reasons of privacy and sensitivity.

There is a perception that some aspects of ADF culture may cause shortcomings in the military justice system, especially in the training environment. The Chief of the Defence Force and the Service Chiefs are determined to rectify such problems. It was for this reason that the Chief of the Defence Force commissioned an independent inquiry into the learning culture in ADF schools and training establishments. In its final report, the inquiry team says that it did not find any evidence of a 'culture' as such that supports bullying or harassment but that, as will be apparent from statistics quoted later in this chapter, instances of bullying and harassment do occur from time to time.

We are currently assessing in detail the practical aspects of implementing the report's recommendations. We will work strenuously to rectify any shortfalls identified and to enhance those work practices identified by the review team.

The ADF is a large and complex organisation with few parallels in other Commonwealth departments, and indeed in civilian life. Military members, permanent force and reserves, number over 73,000 personnel. Average annual turnover of personnel is

approximately 7,000. Such a dynamic environment will never be totally free of problems that will engage the military justice system. On a per capita basis, the number of reported military justice problems represents a very small percentage relative to population size. We will not downplay the importance or the seriousness of those matters that come to our attention. Defence will deal with those issues expeditiously and fairly and we will make real change in our processes where necessary.

The Parliament's 2005 Military Justice Report has been a major impetus to Defence to make changes. The changes agreed by the Government in response to that report are the most significant made since the military justice system was introduced in 1985. Substantial progress in implementing change has been made and completing the implementation process is one of our highest priorities.

The Government response agreed in whole, in part, or in principle with thirty of the forty Committee recommendations and advised alternative solutions to achieve the intent of a number of other recommendations. (For details, including six-monthly implementation reports, see [www.defence.gov.au/mjs/index.cfm](http://www.defence.gov.au/mjs/index.cfm))

The Head Military Justice Implementation Team, a military two-star officer, was appointed by Joint Secretary/Chief of the Defence Force Directive in October 2005. He is responsible for implementing the Government response to the Committee report, as well as completing the implementation of the Government or ADF responses to nine other inquiries or reviews relating to the military justice system between 1997 and 2005.

Substantial progress has been made in the first six months of the two-year implementation period. Our reforms of the

<sup>1</sup> 'The Military Criminal Justice System—Supporting Operational Effectiveness in the Military Environment' by Lieutenant General F.R. Viggers, CMG MBE, Adjutant General of the British Army.

military justice system will assist in delivering impartial, rigorous and fair outcomes, through enhanced oversight, greater transparency and improved timeliness. At 30 June 2006, 16 recommendations had been completed, including:

- Making statutory appointments of the Chief Judge Advocate, Director of Military Prosecutions, Registrar of Military Justice and the Inspector General ADF.
- Appointing the Director of Defence Counsel Services.
- Appointing the Provost Marshal ADF. Parliament's Military Justice Report identified shortfalls in the performance of Service Police investigations. In its response, the Government agreed to rectify this shortfall by establishing a tri-Service investigative unit headed by a new Provost Marshal ADF, who would be independent from the single service command structure. An audit of the Service Police investigative capability has just been completed. The audit team included a senior retired Australian Federal Police officer. Its recommendations will help shape the new investigation unit and the best ways in which to improve the investigative capability. This will include training and exchanges with civil police forces. In the first instance, 'lead in' investigation teams have been deployed to operational areas, and it is intended that the initial tri-Service investigation unit will be formed by the end of 2006. The report's recommendations are currently being considered, with a view to their rapid implementation, where appropriate.
- Clearing the backlog of redress of grievance cases which previously caused undue pressure on the complaints resolution system.
- Amending the *Defence (Inquiry) Regulations*, which now provides for an annual report on its operation, and incorporating new provisions with respect to the

representation of affected persons at Boards of Inquiry.

- Amending the *Administrative Inquiries Manual* with respect to the conduct of inquiries.
- Reviewing the Defence Whistleblower scheme.
- Improving reporting of wrong-doing (unacceptable behaviour) in the Defence Annual Report.
- Amending the ADF Cadet Regulations to ensure that the rights and responsibilities of Defence and Cadet staff are defined.
- Engaging an expert to study whether the human rights of children who become ADF Cadets are respected.
- Providing additional resources to the ADF Cadets to improve administrative support.

Action in respect of a number of other recommendations is well advanced, including:

- Preparing legislation to establish the Australian Military Court, which is included in Defence's submission for the 2006 sittings of Parliament.
- Implementing interim arrangements for Chief of the Defence Force Commissions of Inquiry. The *Defence (Inquiry) Regulations* have been amended to allow a civilian to preside at a Board of Inquiry. The Chief of the Defence Force Directive 12/2006 promulgates interim arrangements for conducting Commissions of Inquiry pending legislative changes to establish the permanent framework. These are included in Defence's proposals for legislation in the 2006 sittings of Parliament.
- Establishing the Defence Fairness and Resolution Branch in February 2006 to be the central body, outside of normal line management, to handle all complaints and grievances. This allows Defence to streamline the handling of complaints and redress of grievance matters in line with the recommendations of a 2004 joint Defence

Force Ombudsman/Chief of the Defence Force Redress of Grievance System Review.

These changes represent significant improvement in the military justice system, designed to better balance maintaining effective discipline, which is essential for command and preparedness for operations, with the need to protect individuals rights.

The Government requires Defence to implement these recommendations and enhancements within two years. Our implementation plans are on track and progressing in accordance with the endorsed Military Justice Implementation Plan.

Progress is reviewed monthly by the Chiefs of Service Committee and reported six-monthly to the Senate Standing Committee on Foreign Affairs, Defence and Trade. The first of these six-monthly reports was provided to the Committee on 13 April 2006.

## OFFICE OF THE INSPECTOR-GENERAL AUSTRALIAN DEFENCE FORCE

Establishing the Inspector-General ADF (IGADF) for military justice was one of the principal recommendations arising from the *'Report of the Military Justice Audit'* conducted by Mr James Burchett, QC in 2001. Following the tabling of the Committee's Report on 16 June 2005, the Minister for Defence appointed Mr Geoff Earley AM to the statutory appointment of IGADF for a period not exceeding five years from 23 December 2005. The IGADF does not hold military rank, reports directly to the Chief of the Defence Force and is independent of the normal chain of command. Such independence ensures that the IGADF position is not susceptible to inappropriate command influence.

The IGADF's main functions are to conduct inquiries and to investigate matters concerning the military justice system and to oversee and report on the health and

effectiveness of the military justice system by using performance reviews and unit audits. IGADF is the avenue of last resort internal to the ADF once all other means of complaint have been exhausted. The IGADF also inquires into complaints of unprofessional or unethical conduct by Service Police.

IGADF staffing numbers are expanding from 12 to 25 military and civilian positions and 11 part-time reservists. The Inspector-General will move to new, dedicated premises outside the Defence precinct. This will reinforce the reality and the perception of the IGADF's statutory independence. The two major roles of the IGADF are conducted by the Inquiries Directorate and the Performance Review Directorate.

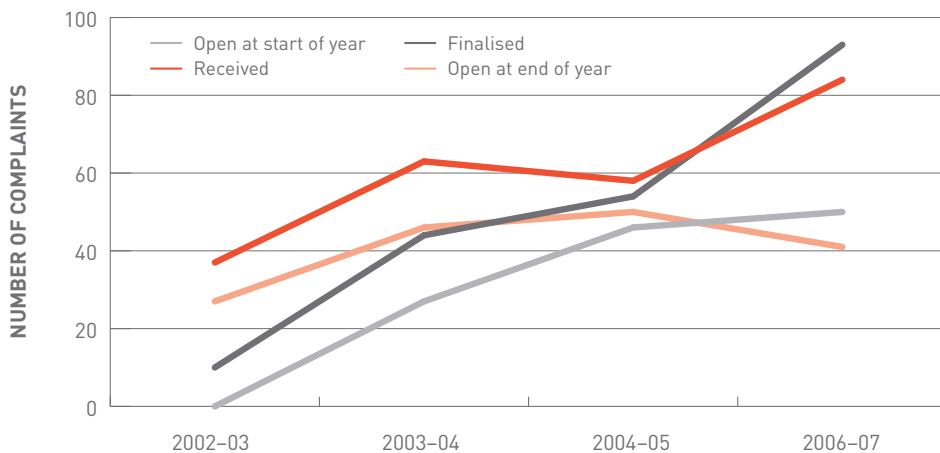
### INQUIRIES DIRECTORATE

The inquiries directorate is tasked to investigate military justice matters as directed by the Chief of the Defence Force, at the request of a Service Chief or any other person, or on the IGADF's own initiative. Submissions may be made by persons affected by a perceived failing of military justice, or by those persons unaffected, but concerned that a failing has occurred.

Some 82 references were received in 2005–06. As reflected in Chart 5.1 below, this is a significant increase over previous years. This is perhaps due to the greater emphasis Defence is placing on military justice and increased awareness of military justice review outcomes. The growing number of unit audits conducted, resulting in greater awareness of the IGADF's roles and functions, is also likely to be a contributory factor.

In addition to factors such as the growing number of submissions received, improved procedures, the posting of a senior Service Police officer and greater use of experienced senior Reserve Officers have resulted in improved output. Caseload statistics are presented in the following graph and tables.

**CHART 5.1: CASE LOAD SUMMARY**



**TABLE 5.1** REFERENCES BY METHOD RECEIVED

Method Received	References	%
Email	31	37.80
Fax	1	1.22
In Person	10	12.20
Letter	25	30.49
Phone	3	3.66
Referral	9	10.98
Whistleblower Scheme	3	3.66
<b>Total</b>	<b>82</b>	<b>100</b>

**TABLE 5.2** REFERENCES BY OUTCOME<sup>(1)</sup>

Outcome	References	%
Individual Failure of Military Justice System (MJS)	5	6.10
Systemic Failure of MJS	2	2.44
No Failure of MJS	27	32.93
Closed on Referral	13	15.85
Referred Individual Failure of MJS	2	2.44
References not yet determined	33	40.24
<b>Total</b>	<b>82</b>	<b>100.0</b>

Note:

1. The outcomes of references dealt with by the IGADF are described in terms of whether or not the matter disclosed a failure of military justice and, if so, whether the failure was of an individual or systemic nature.

**TABLE 5.3** REFERENCES BY SUBJECT MATTER<sup>(1)</sup>

Subject	Occurrences	%
Abuse of Authority	6	5.83
Avoidance of Due Process	7	6.80
Abuse of Process	4	3.88
Comment on Military Justice System	1	0.97
Complaint against Service Police	14	13.59
Conflict of Interest	1	0.97
Cover up / Failure to Act	8	7.77
Denial of Legal Rights	3	2.91
Denial of Natural Justice	16	15.53
Error in Disciplinary Process	3	2.91
Harassment	10	9.71
Other	16	15.53
Victimisation/ Threats/Intimidation	14	13.59
<b>Total</b>	<b>103</b>	<b>100</b>

Note:

1. References may include allegations with more than one subject.

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**TABLE 5.4** REFERENCES BY SERVICE<sup>(1)</sup>

Service	References <sup>(2)</sup>	%
Civilian	3	3.66
Navy	20	24.39
Army	42	51.22
Air Force	12	14.63
Air Force—Reserves	1	1.22
Tri-Service	4	4.88
<b>Total</b>	<b>82</b>	<b>100.0</b>

Notes:

1. 'References by Service' relates to the Service to which the complaint refers to, not the Service of the complainant.

2. References may include more than one originator.

**TABLE 5.5** REFERENCES BY GENDER

Gender	References <sup>(1)</sup>	%
Anonymous or Referred by Another Agency	16	19.05
Female	16	19.05
Male	52	61.90
<b>Total</b>	<b>84</b>	<b>100.0<sup>(2)</sup></b>

Note:

1. References may include more than one originator.

The percentage of references disclosing a failure of the military justice system has remained constant over the last three years, although the overall number of references have increased. Systemic failures, or military justice failures arising from policy, practice or culture and having the potential to adversely affect large numbers of service personnel, were found in 5 per cent of references.

Individual failures, resulting from a process or practice not being properly followed, were found in 22 per cent of references. The remaining references (73 per cent) did not evidence any military justice failure. These figures are generally consistent with Commonwealth Ombudsman complaint outcomes.

Fourteen of the 82 references received concerned Service Police. Although the number represents a relatively large proportion of references received, it is not surprising given that Service Police play such

a central and pivotal role within the military justice system. It is for this reason that Defence authorities are encouraged to notify the IGADF of any perceived or suspected misconduct or neglect by Service Police. A summary of cases is at Table 5.6.

**EMPHASIS ON OVERSIGHT**

The office of the IGADF is not a complaint or dispute resolution agency *per se*, and it does not supplant existing review processes unless exceptional circumstances exist in which recourse to the normal avenues of complaint is, for some reason, inappropriate. The IGADF will not intervene in disciplinary cases for which statutory appeal avenues are prescribed. Of the 93 references closed during the year, 13 were returned to the complainant without proceeding to a formal inquiry or referred to a more appropriate authority for action.

**TABLE 5.6** INVESTIGATIONS INTO CONDUCT OF SERVICE POLICE

Investigation type	Number	Concluded – Charges preferred	Concluded—No charges/ unfounded	Ongoing
Discipline	4	2	1	1
Criminal	1	–	–	1 <sup>(1)</sup>
Administrative	9	–	3	6

Note:

1. Australian Federal Police Investigation.

The IGADF is the principal ADF agency for monitoring military justice and it has oversight of all relevant agencies. It is therefore critical that the office is independent from the normal Defence complaint management processes, so that a proper oversight role is maintained. The ability to access military justice data, particularly in the form of online tracking and reporting systems, is also a key requirement for the IGADF oversight role.

### PERFORMANCE REVIEW DIRECTORATE

The Performance Review directorate has two main functions: defining military justice performance standards and measurement and the conduct of unit military justice audits.

The directorate is working in close cooperation with Defence's Fairness and Resolution Branch to develop Defence-wide performance standards and measures. We expect to complete this work in 2006–07.

The conduct of military justice audits is a new ADF capability. The aim is to ensure unit compliance with all military justice related legislation, regulations and directives. The directorate will provide guidance to help units

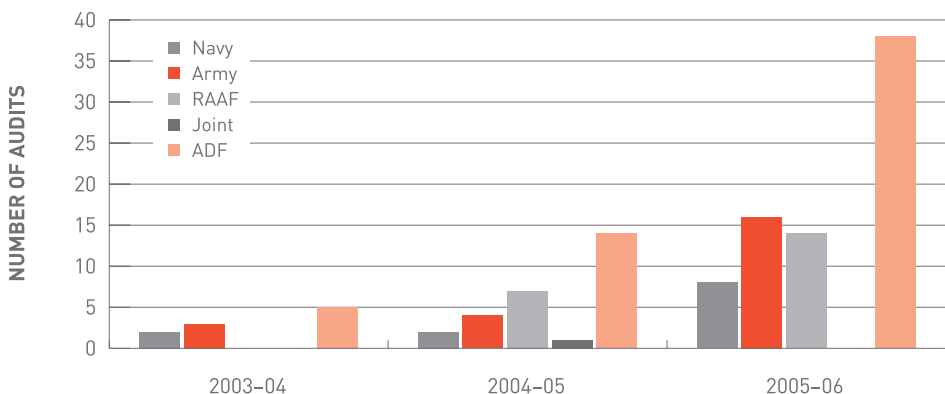
to rectify identified shortcomings. Most importantly, the directorate provides the IGADF with 'grass roots' perceptions of how well or how poorly military justice is administered across the ADF. Information is gained through informal, non-attributable focus group discussions as part of the audit process, and is compared with Defence Attitude Survey conclusions to assist in assessing the health and effectiveness of the ADF's military justice system.

An important element of this process is recognition that focus group respondents are not necessarily complainants. Their perceptions of the military justice system can thus balance the views of a relatively small minority of ADF members who pursue grievances against the ADF.

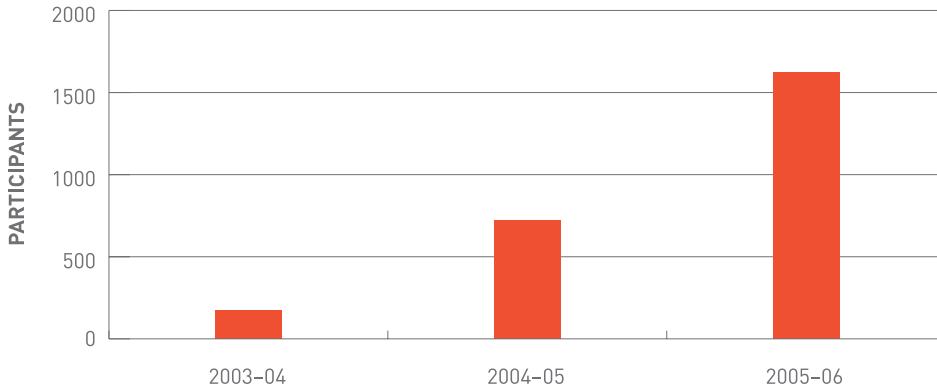
Audits were first conducted in 2003–04. To date, 57 audits have been conducted, 38 in 2005–06 alone. Focus group respondents number in excess of 2,500, with some 1,600 in 2005–06. The graphs below illustrate audit performance.

The IGADF also fulfils two additional roles.

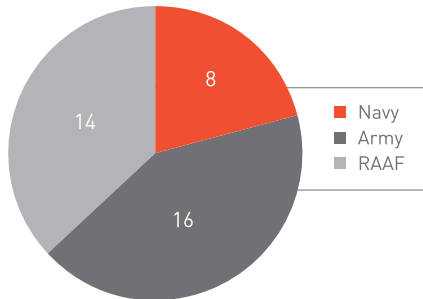
### CHART 5.2: AUDITS CONDUCTED



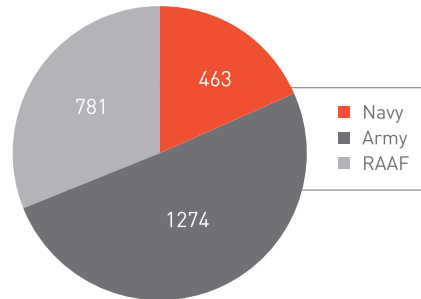
**CHART 5.3: FOCUS GROUP SUMMARY**



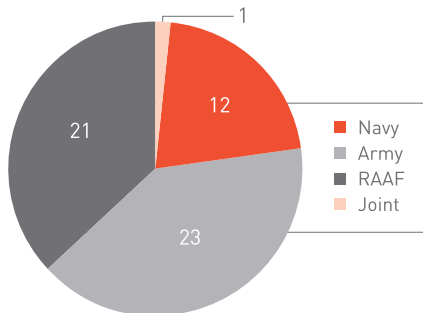
**CHART 5.4  
NUMBER OF AUDITS  
BY SERVICE 2005-06**



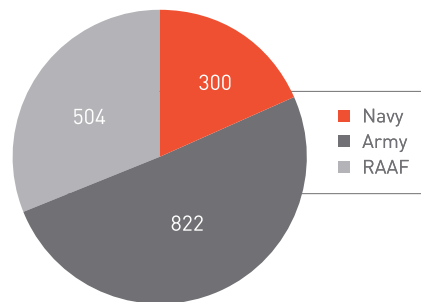
**CHART 5.5  
FOCUS GROUP PARTICIPANTS  
2003-04 TO 2005-06**



**CHART 5.6  
NUMBER OF AUDITS 2003-04  
TO 2005-06**



**CHART 5.7  
FOCUS GROUP PARTICIPANTS  
2005-06**



### ADVISORY FUNCTION

The IGADF may act as an Appointing Authority for investigations (not including Boards or Courts of Inquiry) under the *Defence (Inquiry) Regulations*. The office maintains a register of persons who would be suitable to act as members of inquiries or as Inquiry Officers. When requested, the office advises Appointing Authorities under the *Defence (Inquiry) Regulations* on the conduct of inquiries and panel appointments and can suggest options for dealing with particular incidents by way of inquiry or investigation.

### DEVELOPMENTAL FUNCTION

The IGADF promotes compliance with the requirements of military justice in the ADF. The office liaises with other agencies and authorities interested in the military justice system. It seeks to foster understanding and cooperation and consults with overseas agencies and authorities having similar functions including liaison with the Defence Force Ombudsman with whom an excellent working relationship has been developed.

## OVERVIEW OF MILITARY JUSTICE PROCESSES

This section sets out observations on the health and effectiveness of the ADF's military justice system. This is followed by more detailed comments on each of the military justice system's four components, as informed by standalone reports, the military justice supplement to the Defence Attitude Survey 2005 and IGADF military justice audits and inquiries.

### SUMMARY

Feedback obtained from military justice focus groups indicates that:

- in general, ADF personnel trust and have confidence in military justice as practised in their unit and believe that they are being dealt with fairly; and
- it is recognised in all units that bullying and harassment are never justified as a method of discipline. Members are aware of the appropriate action that should be taken upon identification of bullying and harassment, by referring it to people within the chain of command or to any specialist officers such as chaplains, medical officers or legal officers.

Commencing with the Defence Attitude Survey 2003, the IGADF sponsored 28 questions related to perceptions of military justice issues. The Defence Attitude Survey 2005 supplement repeated those questions. Respondents, spanning all ranks, numbered 4,569 in 2003 and 5,024 in 2005. It is thus possible to identify commonly held views within the ADF on the administration of military justice.

ADF members' perceptions of the 28 military justice issues surveyed remained relatively consistent between 2003 and 2005. In each case where the conclusions summarised below indicate a need for remedial action, this is being addressed as part of the current round of military justice reform measures.

### KEY ATTITUDE SURVEY FINDINGS OF THE VIEWS OF ADF PERSONNEL ON MILITARY JUSTICE

Percentages from survey responses shown below aggregate 'agree' and 'strongly agree', and 'disagree' and 'strongly disagree'. The high percentages of 'uncertain' responses to some questions could indicate that many people do not have direct experience of the subject matter.

- **Maintenance of discipline in the ADF is about right or too soft** (57% about right: 34% too soft: 9% too harsh).
- **The Defence Force Discipline Act (DFDA) is an effective and efficient tool for the maintenance of discipline** (61% agree: 20% disagree: 19% uncertain) **but is also not easy to understand** (25% agree: 28% disagree: 47% uncertain) **and training is inadequate** (42% agree: 25% disagree: 33% uncertain).
- **Minor breaches of discipline would be better dealt with by counselling and warning rather than charging under the DFDA** (76% agree: 12% disagree: 12% uncertain) **and extras could be a useful option for the discipline system if properly regulated** (72% agree: 6% disagree: 22% uncertain).
- **Chain of command would support personnel if they approached a Fair Go hotline, an equity hotline or the whistleblower scheme** (39% agree: 16% disagreed: 45% uncertain) **and that there are adequate avenues to seek assistance where the chain of command itself is alleged to be the cause or part of the problem** (45% agree: 20% disagree: 35% uncertain).
- **The discipline process** (36% agree: 15% disagree: 49% uncertain) **and the adverse administrative action** (39% agree: 8% disagree: 53% uncertain) **process take too long.**
- **Complaints made to the chain of command are dealt with fairly and impartially** (38% agree: 24% disagree: 38% uncertain).
- **Both genders are treated equally but not all ranks are treated equally under the military justice system** (53% agree: 20% disagree: 27% uncertain). This is in some part due to the inherent provisions of the DFDA that provides, in some circumstances, for different disciplinary arrangements to apply in some cases between ranks.
- **The redress of grievance system is not effective** (25% agree: 22% disagree: 53% uncertain). This outcome is anomalous when compared to similar questions asked during unit audit focus groups. It is likely that the difference is due largely to members' perceptions of the time taken to resolve applications for redress of grievance in the past. This problem has now been largely overcome with the recent elimination of backlogs and other initiatives introduced by Fairness and Resolution Branch.

## MILITARY DISCIPLINE

Overall, the standard of discipline across the ADF remains high. Discipline statistics reflected in the 2005 Annual Report of the Judge Advocate General disclose no marked variation from previous years other than a slight decline in terms of numbers of offences and summary trials. This assessment is consistent with the high standard of operational effectiveness of ADF units in meeting a wide range of commitments throughout the period.

Major improvements in managing discipline across the ADF have been implemented. The strengthening of the Chief Judge Advocate appointment and the creation of the Director of Military Prosecutions, Registrar of Military Justice and Director Defence Counsel Services are of particular note. The independence and impartiality of the higher tribunal process has been boosted by these changes as well as by the concurrent removal of multiple roles of the chain of command. These advantages will be further enhanced with commencement of the Australian Military Court should Parliament pass enabling legislation in late 2006.

## SERVICE POLICE INVESTIGATION CAPABILITY

Coincident with the appointment of the Provost Marshal ADF, investigative teams were deployed on Operations Catalyst (Iraq), Slipper (Afghanistan), Astute (Timor-Leste) and Anode (Solomon Islands). This has in part addressed what previously has been recognised as a deficiency in the military justice system. The evolving roles and functions of the Provost Marshal will be shaped by outcomes of the 'Report of an Audit of the Australian Defence Force Investigative Capability' conducted by Rear Admiral B.L. Adams AO, Ret'd and Mr A.M. Whiddett APM. Major improvements to the ADF's investigative capability are expected to result from it.

Single-Service Provosts Marshal reported a busy year. A summary of caseload and available investigative resources is shown at Tables 5.7 and 5.8.

All three Provosts Marshal reported increasing demands on their investigative services, insufficient human resource capability, training deficiencies and the lack of an effective case management system. The

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**TABLE 5.7**
**SERVICE POLICE INVESTIGATIONS SUMMARY**

	Navy	Army	RAAF
Cases on 1 July 2005	112	845	26
Cases on 30 June 2006	104	1222	77
Cases resolved	292	926	134
Average time to resolve (days)	61	n/a	59

**TABLE 5.8**
**INVESTIGATIVE RESOURCE SUMMARY<sup>(1)</sup>**

	Navy	Army	RAAF
Establishment	42	66	41
Actual	33	53	41
Vacancies	9	13	–

Note:

1. Single-Service police personnel actually performing investigative duties. Service police personnel involved in other duties are excluded.

situation will improve as recommendations from the Ernst and Young report 'Review of Military Police Battalion Investigation Capability' 2004 and the Adams/Whiddett Review take effect. The introduction during the next financial year of a modern, information technology-based case management system for use by Defence investigative authorities will help overcome deficiencies in the current Defence Policing and Security Management System.

**HANDLING DEFENCE FORCE DISCIPLINE ACT OFFENCES**

Handling of offences may be considered in three phases:

- from alleged offence to charge preferred—the investigation phase (Phase 1);
- from charge to trial—the discipline phase (Phase 2); and
- from trial to case closed—the post-trial review/petition/appeal phase (Phase 3).

Phase 1 durations have reduced over the previous year, due in large part to increased efficiency in the conduct of unit level investigations. The Judge Advocate General, as a separate and independent statutory agency, reports annually to Parliament. His report summarises DFDA offences brought to trial during the previous calendar year. A comparison of average Phase 2 times by Service is at Table 5.9.

Phase 3 durations have improved equally, although are considerably longer in Navy than in the other two Services (74 days against 37 for Army and 47 for Air Force). This is attributed mainly to fleet units having limited access to legal officers for the provision of legal reports under the DFDA section 154(1)(b) as part of the conduct of the summary trial review. A relatively flat chain of command in Maritime Command, in which the Chief of Staff Maritime Command is the sole Reviewing Authority, may also account for longer turnaround times in the Fleet.

**OFFICE OF THE DIRECTOR OF MILITARY PROSECUTIONS**

The Office of the Director of Military Prosecutions (DMP) commenced operations on 1 July 2003. The DMP's principal functions include prosecuting offences under the DFDA in trials by court martial and Defence Force magistrate, and also appellate court representation of the Chief of the Defence Force and Service Chiefs.

The legal basis for the DMP's operations for much of the reporting period was Defence Instruction (General) 45-6, but the DFDA was amended with effect 12 June 2006 to establish the independent and statutory position of the DMP. At that time, an acting Director was appointed. By the end of the reporting period, a selection process for a permanent DMP had been undertaken, and the new permanent

**TABLE 5.9**

**CHARGE TO SUMMARY TRIAL (PHASE 2) AVERAGE TIMES (DAYS)<sup>(1)</sup>**

Service	2004	2005
Navy	10	8
Army	15	10
Air Force	28	18

Note:  
1. The expected standard is 21 days.

Director identified to commence duties in the next reporting period.

During 2005–06, 124 cases were referred to the Office of the DMP for prosecution. The office provided 143 advices to commanders in respect of those matters and matters which had been referred in the previous year. The office prosecuted 51 trials. Some 141 matters were completed; that is, the matter was prosecuted or a decision was made not to prosecute or was referred back to the summary level for trial. The Judge Advocate General in his current annual report has commented favourably on the efforts made by the Office of the DMP to reduce turnaround times for matters referred to it.

**Resources**

During the reporting period, Defence agreed to a review of Office of the DMP, based upon current and anticipated caseloads, resources, in accordance with one of the 2005 Committee Report recommendations. Table 5.10 summarises the Office of the DMP’s current and future staffing.

**Training Prosecutors**

Two prosecutors were seconded to State and Territory authorities during the reporting period: one to the New South Wales Police Prosecution Service and the other to the Australian Capital Territory Legal Aid Commission.

With the planned 2007 increase to Office of the DMP personnel, an enhanced training regime

will be introduced for legal officers posted into junior prosecutor positions. Individually tailored education and training programs are also intended. These programs are planned to include formal training as well as secondments to civil prosecution authorities operating in a criminal justice system similar in nature and scope to the ADF disciplinary system.

**Accommodation**

At the start of the reporting period, the Office of the DMP moved to interim premises at Victoria Barracks, Sydney. With the increase in personnel after January 2007, these premises will be inadequate and new accommodation will need to be found. This, combined with an anticipated caseload increase resulting from planned amendments creating an appellate jurisdiction of the Australian Military Court, may result in a recommendation to relocate the Office of the DMP to Canberra in the future.

**DIRECTOR OF DEFENCE COUNSEL SERVICES**

The first Director Defence Counsel Services, a legal officer at Colonel-equivalent level, was appointed in May 2006 and a directorate under the Director General ADF Legal Services was established. The Director Defence Counsel Services is responsible for coordinating and managing access to Defence counsel services to persons entitled, under Defence Portfolio-sponsored legislation, to legal advice or representation at Commonwealth

**TABLE 5.10** STAFFING SUMMARY OFFICE OF THE DIRECTOR OF MILITARY PROSECUTIONS

Category	Current establishment	Approved future establishment with effect January 2007
APS	2	4
ADF	9	14

## SNAPSHOTS

Feedback from IGADF military justice audit focus groups indicates that:

- **The majority of ADF members agree that the DFDA is an effective and efficient tool to maintain discipline.** There was general agreement that more training was required in the application of the DFDA for all ranks and responsibilities. In percentage terms, the greatest decline in the charge preferred rate was in the Air Force. One reason for this may be inadequate knowledge and low confidence in the use of the system and the absence of a Warrant Officer Disciplinary in many units.
- **The majority of ADF members agree that the Discipline Officer scheme is an effective means of dealing with minor offences.** Although charge rates have declined, the number of Discipline Officer infringements has increased on average across the ADF. It is worth noting current initiatives to simplify the summary hearing processes, including further expansion of the Discipline Officer scheme. There is also strong support for regulation of remedial training (Extras) and for the concept that minor breaches are better dealt with by counselling and warning rather than by DFDA charges. For some minor offences, units use practices such as first occurrence a warning, second occurrence the Discipline Officer scheme and third occurrence a charge.
- **There is little direct evidence of abuse of corrective or remedial training in units.** There is a need for regulation of these practices to ensure transparency, improve awareness, and to expose abuse or the imposition of extra-judicial punishment wherever it might occur.
- **One matter requiring constant attention is the management of members under investigation and those who may be victims.** It is the responsibility of Commanding Officers to provide relevant support and to maintain a keen interest in such matters even though the cases might have been referred to Service Police.
- **Proper use of the Discipline Tracking and Case Flow Management System continued to improve with a high reliability on data quality and therefore the quality of reporting.** Problems such as system reach, through the Defence Restricted Network, and operator access and training are continually being addressed and assisted by the IGADF, the business process owner.
- **There is anecdotal evidence that many units are reluctant to prefer charges when the alleged offender indicates an intention to plead not guilty.** It is presumed that in such cases other means of corrective action are used. In order to confirm or dispel this notion, the Discipline Tracking and Case Flow Management System is being amended to make the capture of an alleged offender's plea mandatory.
- **There is general agreement that improved transparency and feedback is necessary for members directly affected by the DFDA and adverse administrative actions.**
- **There was a very strong response from all ranks in relation to views about equal treatment across the ranks.** The most common view accepts that ranks are treated differently and that the real issue is about equitable treatment. Reference was often made to the acknowledgement that adverse administrative action taken against officers may have a more far-reaching effect on careers than charges preferred against other ranks for similar offences. The limitation by rank, of the Discipline Officer scheme, was also mentioned as an example.
- **Most ADF members believed that both genders are treated equally.**

expense. The creation of this directorate is expected to streamline the assignment of legal counsel to ADF personnel charged with offences under the DFDA or designated as potentially affected persons under the *Defence (Inquiry) Regulations*.

The Director Defence Counsel Services anticipates maintaining a panel of Reserve legal officers built around current regional panels, and augmented by Permanent Force legal officers as their other duties permit.

### MILITARY JUSTICE TRAINING

Although 'military justice' covers many issues, training on this topic is quite limited in the ADF. Spanning across all three Services, a greater emphasis is placed upon discipline law training than other facets of military justice. A limited amount of military justice training occurs primarily on promotion courses for commissioned and non-commissioned personnel. Similar training is provided to junior officers as part of their leadership training.

The Burchett report included a number of recommendations addressing military justice training shortfalls. Significant work has already been completed within the single Services and a more comprehensive tri-Service review of military justice training is planned as part of the current round of military justice reforms.

The Judge Advocate General's 2005 Annual Report to Parliament provided an excellent summary of the status of discipline law training across the ADF. As he has noted, the changes to the military justice system now being implemented are far reaching and will require a concerted training effort to ensure smooth and successful implementation across the ADF.

### MANAGING ADVERSE ADMINISTRATIVE ACTIONS IN THE ADF

There have been no significant changes to policy and procedures governing adverse administrative action management. Unit audits reveal a general tendency by the Navy and the Army to use the DFDA for relatively minor offences more frequently than the Air Force which traditionally has tended to resort to administrative action in such cases, reserving DFDA charges for repeat offenders or more serious matters. Table 5.11 summarising DFDA trials per 1,000 members helps to illustrate this point.

**TABLE 5.11**

**TRIALS PER 1,000 MEMBERS<sup>(1)</sup>**

	Navy	Army	Air Force
2001	78	90	17
2002	95	79	14
2003	68	68	17
2004	77	55	14
2005	75	60	10
2006 <sup>(2)</sup>	25	22	3

Notes:

1. Assumes constant strength at Navy: 12,000; Army: 25,000; Air Force: 13,000 and excludes Reserves
2. To 30 June 2006.

**SNAPSHOTS**

Feedback from IGADF military justice audit focus groups indicates that:

- **There is general agreement that, internally, units handle matters quickly and efficiently.** Of considerable concern to Commanding Officers is that once matters need to be referred outside the unit, control of timeliness is essentially lost.
- **There is a general concern that ADF personnel posted into administrative appointments are inexperienced and undertrained.** Frequent postings perpetuate the process, resulting in less than efficient and effective unit administration. For such personnel, it is essential that they have ready access to more experienced administrators and legal officers for advice.
- **In general ADF members are not sufficiently conversant with adverse administrative actions.** This is not necessarily surprising, as they are normally only exposed to them once they receive a notice to show cause for some proposed action intended against them. This notwithstanding, the majority do understand that they can request legal support to assist them in the preparation of their responses to such notices.

**CONDUCT OF ADMINISTRATIVE INQUIRIES**

Following recommendations contained in the 1995 Abadee study into the Judicial System and the 2001 Burchett Military Justice Inquiry, the Australian Defence Force Administrative Inquiry Tracking System has been introduced. Sponsored by the IGADF, the system is designed to:

- serve as a management tool for authorities ordering administrative inquiries and for personnel appointed to conduct administrative inquiries;

- assist decision makers in review and approval processes dealing with recommendations;
- assisting in overseeing of approved recommendations through their implementation;
- assist in overseeing of due process, timeliness, transparency and standards of military administrative law in the conduct of administrative inquiries;
- act as a reference point for information in the event of like or similar recurrences; and
- capture incremental costs associated with the conduct of administrative inquiries.

Recognising the need for more Inquiry Officer training, the IGADF sponsors a two-day Inquiry Officer course and maintains a register of those qualified. The first course was conducted in September 2004. Three courses were conducted in 2005–06 and five courses are planned for 2006–07. To date, 171 Inquiry Officers have attended the course. A distance learning course is also being considered.

During the reporting period, the *Administrative Inquiries Manual* was amended to clarify any misconceptions regarding processes and procedures to be employed in conducting inquiries. Promulgated in June 2006, principal amendments include:

- Directing that ‘quick assessments’, while mandatory, should not replace the appropriate use of other forms of administrative inquiries.
- Improvements to the guidance provided to commanders responsible for selecting Inquiry Officers to conduct administrative inquiries.
- Requiring all Inquiry Officers to provide statements of independence and, following the receipt of such statements, the complainant and respondent must be afforded the opportunity to alert the Appointing Officer of any potential conflict of interest or objection to the nominated officer, with resolution of any conflict to occur before the commencement of the inquiry.

- Requiring that the President of a Board of Inquiry will ensure a copy of all relevant evidence is provided to a person whom the President considers to be an affected person but who is not present at the hearings.
- Requiring that persons coming before the Board late in proceedings are to be allowed a reasonable opportunity to familiarise themselves with the evidence already presented.

In March 2006, the *Defence (Inquiry) Regulations* were amended to allow civilians to be Presidents of Boards of Inquiry. In May 2006, the Chief of the Defence Force directed that ADF suicides and deaths in service will be investigated by a Board of Inquiry (see following section) with a civilian with judicial experience as the President. This outcome will help to enhance public and affected persons' perceptions of fairness, impartiality and transparency.

During the reporting period, a number of major Boards of Inquiry were appointed including four involving death in service. Some of these inquiries have attracted very considerable media interest, including the Sea King Board of Inquiry and the Private Kovco Board of Inquiry which remain part-heard at the end of 2005–06. In each case, Board members included persons external to Defence, family interests have been addressed in detail and the process has been as transparent as possible, consistent with national security requirements.

### CHIEF OF THE DEFENCE FORCE COMMISSIONS OF INQUIRY

Defence is in the process of creating a Chief of the Defence Force Commission of Inquiry that will be mandatory for all suicides by ADF members and deaths in service. These Commissions of Inquiry will be presided over by a civilian with judicial experience, rather than a military officer. This process will require some amendments to the *Defence Act 1903* and the *Defence (Inquiry) Regulations*.

In the interim, Boards of Inquiry will be appointed under recently amended (31 March 2006) provisions of the *Defence (Inquiry) Regulations*. The Regulations now allow a civilian to preside at an inquiry. The arrangements have been supplemented by Chief of the Defence Force Directive 12/2006 promulgated on 30 May 2006. Two Boards of Inquiry were appointed during the reporting period under the interim arrangements. Separately, a panel of suitably qualified civilians has been identified, and panel members are now available to participate in both the interim and final arrangements for Commissions of Inquiry. The panel currently consists of six persons, and is expected to increase in the next year.

The Chief of the Defence Force Commissions of Inquiry will be administered by a coordination and support cell comprising a Permanent Force legal officer at the Lieutenant Colonel rank level, a coordination officer at the same rank level and a public servant at the APS 5 level. A legal officer in the rank of Wing Commander has been posted onto the staff of the CDF with responsibility for administering the new arrangements. The remaining staff should be in place in early 2007.

**SNAPSHOTS**

Feedback from IGADF military justice audit focus groups indicates that:

- **There is improved awareness of the administrative inquiry process.** This includes the rights and obligations of both appointing authorities and of personnel forming the subject of inquiries.
- **There is improved awareness of procedural fairness requirements.** This impacts on potentially affected persons and those subject to adverse findings resulting from Routine Inquiries and Inquiry Officer Inquiries.
- **There is general confidence across all ranks that the chain of command will not tolerate improprieties of any nature and will act promptly, vigorously and objectively to determine the facts.**
- **All units see the benefits of having an organic Inquiry Officer course graduate.** They welcome the IGADF registry of qualified Inquiry Officers and are becoming aware of the process to request suitable nominees should the need to order an inquiry arise.

**THE RIGHT TO COMPLAIN**

Although the right to complain is defined as one of the key elements of the military justice system, the complaint handling processes which address this element are part of a wider application across Defence, including the APS workforce. This section therefore addresses both ADF specific aspects and those fairness and justice processes that are also applicable to Defence as a whole.

**REDRESSES OF GRIEVANCE**

Some 277 applications for redress of grievance were received during 2005–06. This represents a 16 per cent decrease from the previous year. Unit military justice audit focus

group feedback indicates that ADF personnel are confident that their complaints will be dealt with fairly and objectively, without fear of recrimination by the chain of command. Some 159 or 53 per cent of these complaints were either not upheld or withdrawn, a further indication that systemic and individual failures of the military justice system are decreasing.

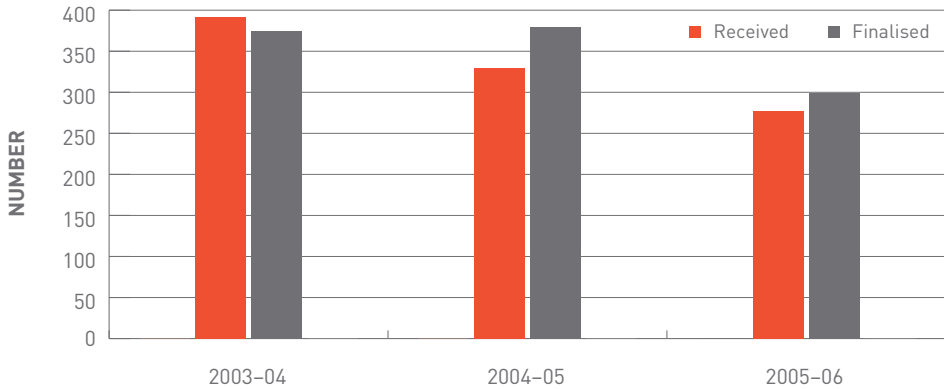
Only 11 of the 277 redress applications submitted involved complaints of unacceptable behaviour. This may be considered to be a significant indication that complaints regarding unacceptable behaviour are being managed more effectively at the lower levels of the chain of command.

Chart 5.8 shows the total number of applications for redress of grievance submitted by ADF members to commanding officers in each of the last three financial years and the number of grievances that were finalised in the period.

**APS REVIEW OF ACTIONS**

Due to the geographic concentration of Defence APS employees, the majority of Review of Actions applications are lodged and determined in the Australian Capital Territory/Southern New South Wales region. Review of Actions applications from other regions are also occasionally referred to Fairness and Resolution Branch for review. This occurs when a regional Review of Actions delegate feels it appropriate to do so, for example a potential conflict of interest has arisen or the matter requires more specialised investigative skills due to its complexity. Referral from regional delegates occurred on 16 occasions during the financial year, an increase of 24 per cent on the previous year. Prior to 2005–06, around 50 per cent of the total number of Review of Actions submitted in Defence each year were managed by regional delegates. In 2005–06, this decreased to about 30 per cent due to the increase in referrals to Fairness and Resolution Branch by regional delegates.

### CHART 5.8: MILITARY REDRESSES OF GRIEVANCE RECEIVED AND FINALISED 2003-04 TO 2005-06



Note:

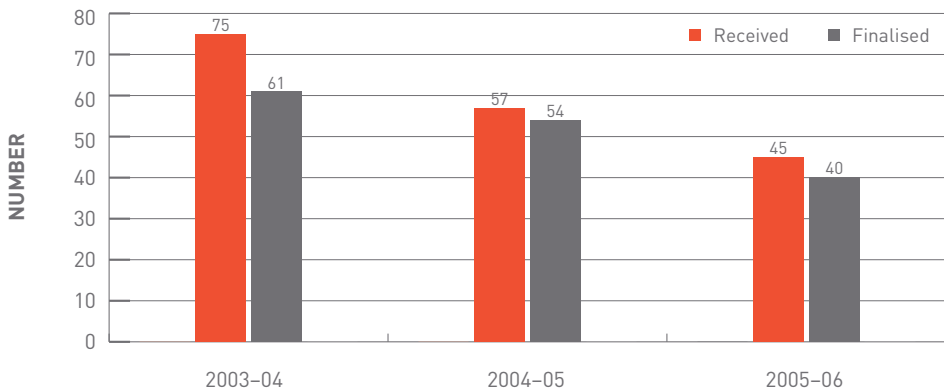
1. Redresses of grievance recorded as finalised may have been received in the previous year. Redresses of grievance are finalised when the complainant chooses not to pursue the grievance further, or the process of investigation and review is complete. A complainant who is not satisfied with the outcome of a redress of grievance submitted at unit level may refer the complaint for review by the Service Chief. Officers and Warrant Officers have a further right to refer their complaint for review by the Chief of the Defence Force.

Chart 5.9 shows the number of review of Actions applications submitted by APS employees in each of the last three financial

years and the number of complaints finalised in the same year.

267

### CHART 5.9: APS REVIEW OF ACTIONS RECEIVED AND FINALISED 2003-04 TO 2005-06



# UNACCEPTABLE BEHAVIOUR

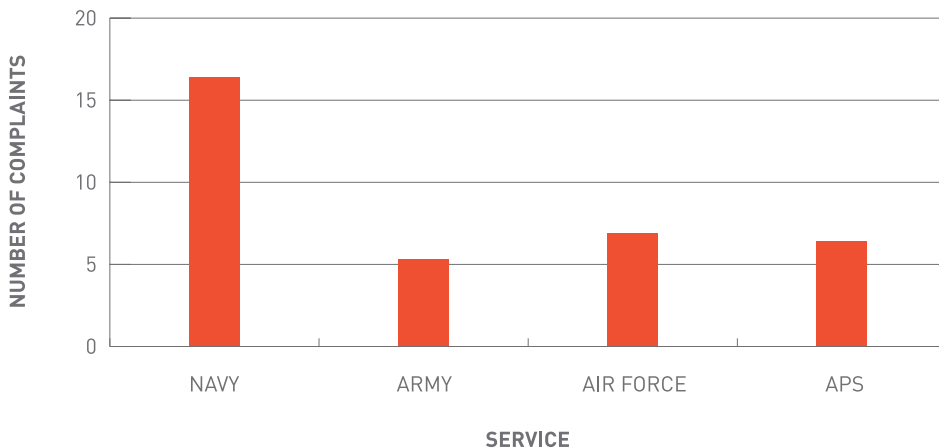
Unacceptable behaviour complaints totalled 685 in 2005–06, a seven per cent decrease over the previous year. 37 were later withdrawn and a further 90 were assessed as unsubstantiated. Some 46 resulted in formal disciplinary or administrative action. Harassment and bullying are the major causes of complaints, representing 3.4 and 1.7 complaints respectively per 1,000 head of the Defence population, which includes permanent and reserve ADF members, Defence APS employees, Defence contractors and their employees. Details of reported complaints, by category, are:

- **Harassment**—301 or 3.4 per 1,000 (decrease of 8 per cent on previous year)

- **Workplace Bullying**—151 or 1.7 per 1,000 (increase of 19 per cent)
- **Sexual Offences**—84 or 0.95 per 1,000 (decrease of 16 per cent)
- **Sexual Harassment**—78 or 0.9 per 1,000 (decrease of 26 per cent)
- **Inappropriate Workplace Relations**—31 or 0.35 per 1,000 (decrease of 10 per cent)
- **Discrimination**—22 or 0.25 per 1,000 (decrease of 25 per cent)
- **Abuse of power**—18 or 0.2 per 1,000 (decrease of 81 per cent)

Chart 5.10 indicates the number of complaints of unacceptable behaviour per 1,000 of single Service and APS population for 2005–06. The percentage calculations are based on the

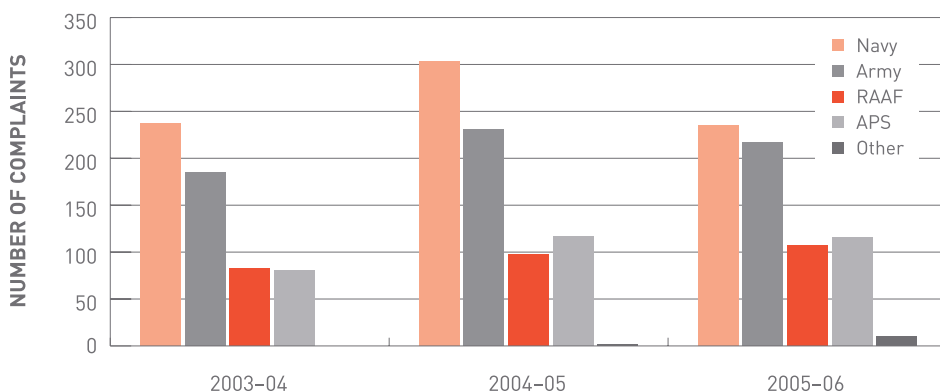
**CHART 5.10: 2005–06 UNACCEPTABLE BEHAVIOUR COMPLAINTS PER 1000 MEMBERS<sup>(1)</sup>**



Note:

1. Personnel numbers include permanent ADF members and Reservists who undertook paid service. Personnel numbers for Defence APS also include those from the DMO.

**CHART 5.11: COMPARISON OF REPORTED UNACCEPTABLE BEHAVIOUR COMPLAINTS 2003-04 TO 2005-06**



number of personnel in each Service (permanent and reserve) and Defence APS employees.

Chart 5.11 shows the total number of unacceptable behaviour complaints reported over the past three years.

While the decreases in 2005-06 in reported complaints in all categories except bullying are welcome, continued vigilance is necessary. The CDF-commissioned *'Audit of ADF Schools and Training Establishments'*, combined with reviews initiated by Fairness and Resolution Branch into the effectiveness of awareness training throughout Defence, the Equity Adviser Network and the experiences of managers and complainants of the complaint process should result in further improvements to the management of complaints of unacceptable behaviour. Additional resources will be committed in 2006-07 to gather more reliable data to improve Defence strategies and programs dealing with all forms of unacceptable behaviour.

### ALTERNATIVE DISPUTE RESOLUTION AND CONFLICT MANAGEMENT

There were 59 requests for Alternative Dispute Resolution interventions during the financial year and a number of additional contacts seeking advice, assistance or training in conflict management and negotiations skills were received. Of these intervention requests, 26 mediations were completed, six workplace conferences conducted and some 30 hours of conflict coaching provided.

### ESTABLISHMENT OF FAIRNESS AND RESOLUTION BRANCH

Structural changes to the complaint handling process are also well in train and producing positive results. Amalgamation of the Complaint Resolution Agency, the Defence Equity Organisation and the Directorate of Alternative Dispute Resolution and Conflict Management into the Fairness and Resolution Branch now permits a holistic approach to complaint handling, the setting of performance standards and, consequently, performance measurement. Still in its infancy, resultant changes to business processes and work flows will translate into more

responsive, efficient and timely complaint handling. Good results are already evident. Past backlogs of outstanding grievances have been eliminated and average complaint handling times are decreasing.

The importance of performance standards and measurement cannot be overstressed. Drawing on the Commonwealth Ombudsman's complaint management attributes, Fairness and Resolution Branch is developing a comprehensive complaint handling performance measurement system. The IGADF is working in parallel and in concert with Fairness and Resolution Branch with the view to introducing performance measurement of ADF complaint handling processes. Concurrent with this activity, work is ongoing to introduce an IT-based complaint management, tracking and reporting system. This work will satisfy a significant number of approved recommendations flowing from the Joint Department of Defence and Commonwealth Ombudsman *Review of the ADF Redress of Grievance System 2004*.

### SNAPSHOTS

Feedback from IGADF military justice audit focus groups indicates that:

- **There is general acknowledgment that complaints are resolved more expeditiously than in the past and general satisfaction with complaint handling policies and procedures.**
- **ADF personnel are more aware of their rights.** They do not feel threatened or ostracised by peers or the chain of command should they feel compelled to submit a formal complaint or grievance.
- **There appears to be an increasing sense of confidence in the chain of command.** ADF members feel that complaints will be dealt with sensitively, fairly and objectively, without fear or favour.
- **At the grass roots level, a more mature approach to complaint handling is evident.** ADF personnel prefer resolution of complaints at the lowest possible level, reserving formal lodgement of a complaint as an option of last resort. Using unacceptable behaviour complaints as the example, of the 685 complaints lodged, 127 were subsequently withdrawn or unsubstantiated. Of the remaining 558, 294 or 53 per cent were resolved informally at unit level.

# COMPENSATION FOR DEFECTIVE ADMINISTRATION

## COMPENSATION FOR DETRIMENT CAUSED BY DEFECTIVE ADMINISTRATION

The Defence Legal Division in Corporate Services and Infrastructure Group manages claims under the Compensation for Detriment Caused by Defective Administration (CDDA) scheme. The Department of Finance and Administration has general oversight of the scheme. An explanation of how the scheme and other discretionary remedies operate can be found on the Department of Finance and Administration website [www.finance.gov.au](http://www.finance.gov.au).

In Defence, the majority of claims under the scheme are from members and former members of the ADF. Claims have become increasingly complex in recent years. These claims may involve adverse administrative action, such as removal from a posting, termination of appointment, lost career progression or adverse reports. Claims involving delays in processing enlistment documents, security clearances and promotions have also become more common.

Although the scheme has not been developed specifically to deal with ADF personnel disputes, it is a means by which ADF members can seek compensation, whether or not their grievance has been upheld. The limited criteria of the scheme mean that compensation cannot be awarded in many instances.

An emerging trend is that a military member who is dissatisfied with the outcome of an application for redress of grievance may seek to reopen the matter by lodging a CDDA claim. As a general rule, where an ADF member is

dissatisfied with the outcome of the redress of grievance process, the Defence Force Ombudsman may be the appropriate body to review the member's complaint, although the Ombudsman does have a discretion not to investigate grievances. While the CDDA scheme may be available where the redress of grievance has shown that the ADF member has grounds for complaint, it is not an appropriate avenue through which to reopen matters that have already been investigated and decided through the chain of command, but where the claimant simply remains dissatisfied with the outcome of the grievance process.

There have been a number of achievements over the past 12 months in the way that Defence deals with the scheme. More resources have been devoted to older claims on hand, with a significant reduction in their number. New claims are acknowledged upon receipt and the more straightforward ones are decided as soon as possible.

The scheme is a remedy of last resort and, not surprisingly, complaints may be many years old before they are considered under the scheme. An emerging area of concern is an increase in the number of claims for the non-payment of the Military Superannuation Benefits Scheme Retention Benefit. These matters comprise approximately ten per cent of all claims on hand. In the majority of cases, the claimant states that he or she has received incorrect advice about the time in which to apply for the Retention Benefit. Defence Legal Division is working with relevant stakeholders to ensure ADF members are provided with the correct advice about Retention Benefits.

The Department of Finance and Administration has completed a review of the CDDA scheme and other discretionary measures. Defence Legal Division will, in consultation with the Chief Finance Officer Group, need to consider what effect the revised instructions will have on current matters, and to amend current policies and procedures to ensure Defence complies with the new instructions.

Details of claims over the previous four financial years are at Table 5.12.

**TABLE 5.12**

**COMPENSATION FOR DETRIMENT CAUSED BY DEFECTIVE ADMINISTRATION CLAIMS SUMMARY**

Financial year	Claims received	Payments made <sup>(1)</sup>	Amounts paid
2005-06	50	20	\$321,660
2004-05	47	29	\$332,062
2003-04	54	21	\$359,010
2002-03	37	36	\$287,983

Note:

1. In some instances, more than one payment has been made to the same claimant, for example, payments through instalments or where expenses have been made separately. Payments made in any one financial year can relate to claims received in previous financial years.

# APS CODE OF CONDUCT

The APS Code of Conduct and values are set out in the *Public Service Act 1999*. The Code sets out the conduct expected of public servants and obliges all employees to uphold the APS values. The values establish the framework in which the public service operates, underpinning relationships and behaviour.

The Secretary of Defence has established procedures under the Act for determining breaches of the code. The procedures are set out in the Defence Workplace Relations Manual.

The procedures reflect the Public Service Commissioner's directions that the process is to be carried out with as little formality and as much expedition as possible, the decision maker is independent and unbiased, and provides for information to be provided to the employee.

During 2005–06, Defence finalised investigations of suspected breaches of the Code of Conduct against 96 employees. An employee may be suspected of more than one breach and the total number of suspected breaches was 327. Of the 96 employees investigated, 73 were found to have breached at least one element of the Code and 94 sanctions were imposed. Employment was terminated in 11 cases and a financial penalty was applied in 35 cases. The remaining sanctions involved formal reprimands, warnings and counselling.



Australian Government  
Department of Defence

## Defence whistleblower scheme

an alternative and independent  
way to report alleged  
misconduct or unethical  
behaviour

a scheme managed by the  
Inspector General of Defence

1800 673 502

## WHISTLEBLOWING REVIEWED

The operation of the Defence Whistleblower Scheme was reviewed by the Inspector General Division.

The present scheme replaced an earlier fraud-related scheme that was managed by the Inspector General for over 10 years. When the scheme was expanded in July 2002, its operations were to be reviewed after three years to see whether any changes were needed.

The review was also consistent with Recommendation 24 of the June 2005 Senate Committee Report, *The Effectiveness of Australia's Military Justice System*. This report recommended, among other things, 'that the ADF's program designed to protect those reporting wrongdoing from reprisals be reviewed regularly to ensure its effectiveness'.

The legislative basis for the scheme lies in section 16 of the Public Service Act 1999, Public Service Regulations 2.4 – 2.7 and Public Service Commissioner Directions, which require agency heads to:

- prohibit victimisation or discrimination against an APS employee because the employee has reported alleged breaches of the Code of Conduct;
- establish procedures for dealing with whistleblower reports; and
- ensure that employees are made aware of procedures and encouraged to make disclosures.

With the aim of maintaining consistency of treatment across Defence the scheme extends to all of our personnel, including contractors, through the application of Defence Instruction (General) PERS 45-5, Defence Whistleblower Scheme.

A total of 690 whistleblower allegations were made between 1 July 2002 and 30 June 2006, with 178 allegations made in 2005–06. Allegations of fraud and unethical conduct account for about two-thirds of all reports made through the scheme. The remainder consists of matters such as harassment, mismanagement of resources, use of drugs, discrimination, occupational health and safety, security and assault.

A pleasing feature of the scheme is that there are relatively few vexatious allegations. This is not to suggest that all allegations are totally sound or completely accurate. Many are found, to varying degrees, to be erroneous. Many suffer from the fact they only reflect one dimension of the story. But there are only a relatively small number that could be described as genuinely vexatious, mischievous or malicious.

While the level of allegations remains high, a substantial proportion of matters reported through the scheme are not progressed to the investigation stage. Each allegation is assessed and a decision is made as to whether the allegation warrants investigation.

In many cases, an initial assessment reveals that the allegation is incapable of being substantiated because of the lack of evidence. Further, there may be little prospect of identifying a suspect and therefore obtaining a criminal conviction, a conviction under the Defence Force Discipline Act 1982 or a breach of the APS Code of Conduct.

Of the 178 allegations made in 2005–06, 90 proceeded to investigation, 75 were unfounded and 13 are still under consideration for investigation. 58 investigations were completed in 2005–06 resulting in the following outcomes:

- Unfounded 34;
- Administrative Action 12;
- Action under the Defence Force Discipline Act 1903 (eight guilty and one not guilty); and

- Action under the Public Service Act 1999 (guilty) 3.

Another positive feature of the scheme is the absence of virtually any reports by whistleblowers claiming that they have been the subject of some form of reprisal after making an allegation.

## CONCLUSIONS

The incidence of reports suggests that Defence people have confidence in our capacity to protect their identity in the event that they decide to use the scheme to report some form of wrongdoing. The figures also indicate that there is a fair amount of confidence we will actually do something about any allegations made. There is no doubt that we have a much better picture of fraud and related matters across Defence since the introduction of the scheme.

The scheme has established itself as one of the principal means we have of gathering information about the conduct of Defence personnel and management practices, thus providing yet another level of scrutiny.

## POLICING

In close collaboration with the Information Systems Division, the Defence Security Authority and the Services, the Inspector General Group is presently upgrading the Defence Policing and Security Management System.

The system is a case management tool that assists Defence investigators in investigating policing and security matters. It is used by the Defence investigative authorities—that is, the Defence Security Authority, Navy, Army and Air Force Service Police as well as fraud and whistleblower investigators within the Inspector General Division. Its use is mandated in Defence Instruction (General) ADMIN 45-2, Reporting and Investigation of Alleged Offences within the Australian Defence Organisation.

The introduction of Stage 2 of the system will mean that, for the first time, Defence will have the capability to track and report on any policing or security matter from a comprehensive source.

Stage 2 will provide visibility of all of the information relating to matters being dealt with by the Defence investigative authorities. This capability has the clear potential to influence the behaviour of those people operating within the system, thus enforcing a higher level of accountability.

The Defence Security Authority has the most pressing need for an upgraded database system. Accordingly, the incident reporting system and investigation management capability will be implemented there first, around the end of 2006 or early in 2007. Following this, Stage 2 will be phased in for the other Defence investigative authorities.

