

ONLINE MATERIAL

VOLUME 1

Chapter 5 Justice and Fairness in Defence (IGADF Annual Report 2007-08)



CHAPTER 5

Justice & Fairness in the Australian Defence Force

This section provides a condensed version of the Inspector General ADF's Annual report as presented to the Chief of the Defence Force in October 2008.



INSPECTOR GENERAL – ADF

ANNUAL REPORT

2007 – 2008

JUSTICE AND FAIRNESS IN THE

AUSTRALIAN DEFENCE FORCE

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EXECUTIVE SUMMARY

The Australian Defence Force (ADF) military justice system is comprised of four elements: disciplinary arrangements under the *Defence Force Discipline Act 1982* (DFDA); adverse administrative action; the conduct of inquiries; and the right to complain. The system must support commanders in achieving their respective operational objectives in an effective manner while at the same time providing, and being seen to provide, fairness to individual members. Military justice is not a concept that operates intermittently, but every day within every ADF unit. It is an integral component of ADF operational capability and is inseparable from the function of command. Without it the perception and indeed, the reality, of the ADF as a highly capable and reliable volunteer military force would be compromised. Leadership focus to ensure that the ADF is supported by an effective and fair military justice system has therefore properly remained a high priority throughout the reporting period.

During 2007-08 further substantial progress, including the passage of key legislation, was achieved in the maturation and implementation of military justice reforms arising from the Government's agreement to recommendations from the 2005 Senate Standing Committee on Foreign Affairs, Defence and Trade's Report into '*The Effectiveness of Australia's Military Justice System*' (the 2005 Senate Committee Report). Close monitoring of the implementation of the military justice reform program continued both internally and externally with comprehensive updates being provided to the Senate Standing Committee in September 2007 and June 2008.

Of particular interest during the reporting period has been the further development and refinement of a range of reporting systems to monitor discipline, inquiry, and complaints management processes. These reporting systems are intended to enhance transparency and accountability to enable a more effective general oversight of the military justice system. This will assist in the more timely identification of problems and remedy an acknowledged systemic deficiency that has been evident in the past with the ready availability of this type of contemporary military justice data.

The ADF military justice reform program has drawn upon many useful features of the military justice arrangements practised in a number of other allied jurisdictions. There is strong reason to believe that the ADF reform program will offer a unique and capable system that is not only well suited to ADF circumstances but is likely to represent best practice across a range of indicators in military justice activities, both in regard to the maintenance of discipline and protection of the individual.

For the preparation of this report, IGADF relies on a broad source of information collected over the year. Statistical information is provided by Fairness and Resolution Branch, Provost Marshal ADF and the Service provosts marshal, as well as three databases managed by IGADF: the Conduct Reporting and Tracking System (CRTS), the Australian Defence Force Administrative Inquiry Tracking System (ADFAITS) and its own internal Case Management System (CMS). Additional narrative input is provided by the Director Defence Counsel Services and Fairness and

Resolution Branch directors. Comments and observations from statutory authorities under the DFDA are not included as they report separately and independently to Parliament.

Military discipline

Based upon data gained from the ADF unit military justice audits program and data from the Conduct Reporting and Tracking System (CRTS), discipline across the ADF appears to have remained generally well maintained and administered equitably and fairly during the reporting period. Time taken to investigate alleged offences disposed of at the summary level has reduced markedly and, overall, offenders are brought to trial within established time frames (21 days). This compares very favourably with the new summary procedures to be introduced by *Defence Legislation Amendment Act 2008* (DLAA 2008) whereby summary authorities will have up to three months to bring matters to trial once charges have been preferred.

At unit level, discipline training remains an issue. In particular, a significant number of Junior Non-Commissioned Officers (JNCO) lack sufficient DFDA knowledge to recognise that an offence may have been committed and an equally significant number of Junior Officers lack confidence in their ability to discharge their responsibilities as Defending Officers. In the latter case, 'just in time' training is normally provided by the unit discipline staff. The development and delivery of a comprehensive suite of discipline training packages for various categories of ADF personnel in preparation for the introduction of the revised summary justice system in September 2008 can be expected to assist with improving basic knowledge levels.

Overall, the standard of discipline across the ADF is assessed as satisfactory. As was the case in the previous reporting period, absence without leave, failing to comply with a general order and prejudicial conduct present as the more frequently committed lesser offences. Defence Travel card (DTC) fraud was the most frequently occurring offence dealt with outside of the summary justice system.

Adverse administrative actions

Adverse administrative actions are designed to admonish and correct unsatisfactory or unacceptable performance and are initiated and then managed by more senior officers. It might then be expected that this would lead to greater assurance that matters would be dealt with robustly, appropriately and in a timely fashion. However, seniority alone will not necessarily ensure good administrative outcomes. Like other elements of the administrative system, good quality administrative sanction processes and outcomes are directly related to knowledge and experience of administrative officers, local area support by legal officers, local area mentoring for junior administrators, good record-keeping practices and, most importantly, stability in appointments for unit administrators.

There are clear indications that considerable improvement has been achieved in the past twelve months although posting stability in key administrative appointments remains a factor in the quality of administrative outcomes.

Conduct of administrative inquiries

IGADF unit military justice audits indicate that general awareness of and compliance with recently published DI (G) ADMIN 67-2 *Quick Assessment* (QA) is satisfactory. That the process is being used is evidenced by the fact that some 340 QAs were conducted into allegations of unacceptable behaviour alone during the reporting period. Where deficiencies in process were noted in some units these were mostly related to the inexperience of QA officers tending to exceed the stated aim and allowing the QA to become a quasi-Routine inquiry. The main problem with this, apart from the likelihood of procedural fairness obligations being overlooked, is that the QA often takes much longer than it should to complete thereby delaying command's ability to shape the most suitable course of action.

The right to complain

At grass roots level, it is readily apparent that there is a more mature approach to the complaint submission and handling process than has previously existed. This can be largely attributed to a changing culture within the ADF where members are more aware of their rights, and are more willing to place greater trust in the chain of command that they will be treated fairly. Reassuring evidence of this has been noted in the feedback from focus groups conducted as part of IGADF unit military justice audits.

During the reporting period substantial changes, details of which are contained elsewhere in this report, were made to the *Defence Force Regulations* and policy dealing with the redress of grievance process. The changes, which provide for a speedier and more transparent complaints handling process, also impose a number of limitations on who may submit a grievance and the subject matter that may be redressed. Overall, the new arrangements effect some overdue improvements to the complaints handling process and have not, to date, resulted in complaint to the IGADF about their operation.

Conclusion

While it is appropriate to acknowledge that individual instances of unfair treatment do occur from time to time, they are the exception rather than the rule, and it can be stated with considerable confidence that, overall, an appropriate balance between the rights of individuals and operational imperatives is being achieved and maintained.

SECTION 1

INSPECTOR GENERAL ADF

1.1 OVERVIEW

2007-08 presented as another very active period in military justice terms with a number of major reform initiatives being implemented, including the commencement of the Australian Military Court, the passing of DLAA 2008 and the appointment of a team to independently review progress with the military justice reform program in satisfaction of an agreed response to the 2005 Senate Committee Report.

Most of the systemic changes arising from implementation of the current military justice reform program have attracted or required some degree of IGADF involvement, not least because of the assumption by this office of the oversight role formerly undertaken by the *Military Justice Implementation Team* (MJIT) until it disbanded in December 2007. While the additional monitoring and reporting responsibilities inherited from the MJIT are entirely appropriate for this office to perform, they have added considerably to the normal workload which has continued apace in both the inquiry and military justice unit audit roles. Despite this, staffing levels and budget allocations for IGADF were sufficient to meet all requirements during the reporting period.

As the office has gained in experience and its functions have become more widely known, it is pleasing to note that the degree to which it is consulted about issues associated with military justice or approached to provide arm's length assistance in matters requiring inquiry action, has increased commensurately. This was underlined during the reporting period when the office of IGADF was asked to conduct a complex inquiry into the service of a former ADF member as part of a wider inter-departmental review of circumstances leading to the former member's suicide.

During this reporting period considerable emphasis has been placed on the further development of military justice reporting systems to facilitate ongoing IGADF analysis of factors that contribute to the health and effectiveness of the military justice system. Previously, little attempt has been made to support judgements about the effectiveness of the system by the analysis of data because relevant data other than formal outcomes of DFDA action, was not readily available.

In the past, the military justice system, in both its disciplinary and administrative aspects, was largely decentralised and dispersed. Driven primarily by the separate approaches to discipline taken by each of the Services and the separation of their respective personnel, legal and service police branches, there was little central visibility, oversight or analysis of the system as a whole on any routine basis. Reporting systems and processes to collect relevant data were either rudimentary or simply did not exist. There was no particular agency charged with monitoring the health of the overall system other than via the annual report of the Judge Advocate

General, which was essentially limited to the operation of the Defence Force Discipline Act.

That situation has now changed. Central oversight is now provided by the IGADF and there are now in place effective reporting systems for disciplinary and adverse administrative actions, for tracking administrative inquiries and for monitoring the implementation of recommendations arising from them. The case management system for recording police investigations has been upgraded and a new system for maintaining oversight of complaint handling is under development for introduction later this calendar year. Most of these systems are, or will be, accessible by command and IGADF.

The information now available, supplemented by data gained as a result of the rolling IGADF sponsored ADF unit military justice audit program provides the means to permit the health and effectiveness of the ADF military justice system to be continuously monitored to an extent not previously possible.

From the evidence available to the IGADF it is reasonable to conclude that there is a general level of satisfaction with the way the ADF's military justice system has operated in 2007-08. While it must be acknowledged that individual instances of unfair treatment can and do occur from time to time, as they will in any large organisation, they are the exception rather than the rule. Although the incidence of such occurrences is sometimes cited as an indicator of the health of the military justice system, a more useful indicator is likely to be the capacity of the ADF to respond to them with appropriate mechanisms. In this regard the ADF is well served.

1.2 SUBMISSIONS AND INQUIRIES

The Defence Act 1903 (as amended) provides that one of the IGADF's functions is to inquire into or investigate matters concerning the military justice system.

The Act also provides that the IGADF can conduct inquiries or investigations under the following circumstances:

- a. on his own initiative;
- b. when so directed by the Chief of the Defence Force;
- c. when requested by a Service Chief; and
- d. when requested by any other individual.

The Office of the IGADF received 40 new submissions and finalised 52 during 2007-08. 11 administrative inquiries resulted from new submissions received and a further four administrative inquiries were undertaken at the request of CDF and the Service Chiefs.

The number of IGADF inquiries undertaken during the reporting period is slightly down on previous years. It is difficult to quantify the overall inquiry effort by

statistics alone. The size and duration of an inquiry can be influenced by many factors including complexity, scope, timeline parameters, number of personnel involved and external influences. IGADF inquiries may run between two months to two years and may be subject to a number of repeat representations by the complainant or affected parties.

Table 1 is a summary of 327 submissions received and of their disposition since the creation of the Office on 13 January 2003.

| Financial Year | Open at start of FY | Submissions received | Submissions finalised | Open at end of FY |
|-----------------------|----------------------------|-----------------------------|------------------------------|--------------------------|
| 2002–2003 | – | 37 | 6 | 31 |
| 2003–2004 | 31 | 66 | 40 | 57 |
| 2004–2005 | 57 | 56 | 48 | 65 |
| 2005–2006 | 65 | 83 | 88 | 60 |
| 2006–2007 | 60 | 45 | 70 | 35 |
| 2007–2008 | 35 | 40 | 52 | 23 |
| Total | – | 327 | 304 | – |

Table 1 – Submission summary

Table 2 is a summary of the origin of the 40 submissions received during the reporting period.

| Origin | Number |
|--------------------|---------------|
| Navy | 6 |
| Army | 19 |
| Air Force | 11 |
| Joint units | 3 |
| Civilian | 1 |
| Total | 40 |

Table 2 – Submissions by origin

IGADF has no executive power to alter decisions. His function is limited to inquiring into matters raised in submissions received, make findings in relation to Military Justice related issues and, when appropriate, submit suitable recommendations to the appropriate delegate¹ or complainant. Submissions to the IGADF serve two essential purposes:

- a. they are the complainants' last internal resort once all other avenues of complained have been exhausted or the complainant's chain of command is somehow involved in the substance of the complaint; and
- b. they assist in the identification, analysis and rectification of systemic failures in the ADF's military justice system.

¹ Delegates are the Chief of the Defence Force and the Service Chiefs

Although the raw number of submissions received during 2007 – 2008 is less than in previous years, it is noted that the complexity of many of them has in no way diminished. No specific causes for this declining trend have been identified although reduced numbers of matters that come to the attention of IGADF for inquiry may be indicative of improved standards in the way that military justice grievances are being dealt with through the normal channels.

Table 3 is a summary of submissions received by subject matter.

| Subject matter | Number |
|---|-----------------------|
| Abuse of authority | 9 |
| Abuse of Process | 11 |
| Avoidance of due process | 9 |
| Bastardisation | 1 |
| Comment on military justice system | 2 |
| Complaint against Service Police | 7 |
| Conflict of interest | 1 |
| Cover up/failure to act | 5 |
| Denial of legal rights | 2 |
| Denial of natural justice | 3 |
| Error in disciplinary process | 1 |
| Error in law | 1 |
| Harassment | 7 |
| Victimisation/threats/intimidation | 4 |
| Other | 2 |
| Total | 65² |

Table 3 – Submissions by subject matter

It is worthy of note that the number of submissions finalised exceeded the number of new submissions received every year since 2005-06. This is a positive trend, due mainly to increases in the directorate's staffing level.³ Chart 1 is a summary of Office performance to date.

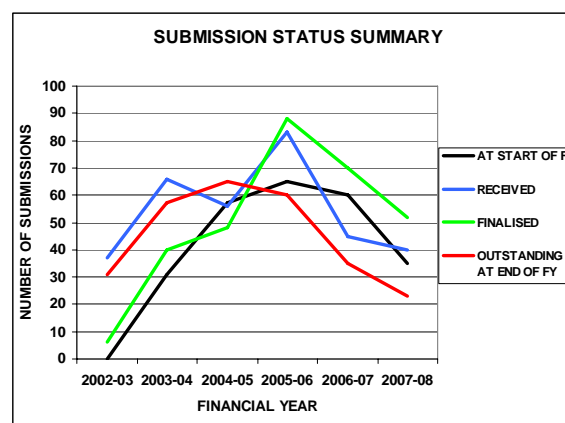


Chart 1 – Submission status trends

² Any one submission may refer to more than one subject matter.

³ The Directorate is now comprised of five case officers, including the Director, and one or more Reserves

Table 4 is a summary of submissions finalised during the period by outcome.

| Outcome | Number | Percentage |
|--|-----------|-------------|
| No failure of the military justice system | 34 | 65.4 |
| Individual failure of the military justice system | 5 | 9.6 |
| Systemic failure of the military justice system | 6 | 11.5 |
| Unable to make a determination or withdrawn | 7 | 13.5 |
| Total | 52 | 100 |

Table 4 – Submissions by outcome

Chart 2 illustrates all finalised submissions by outcome. It is worthy of note that, in relative terms, the number of submissions deemed to represent no failure is similar to Commonwealth Ombudsman outcomes.⁴

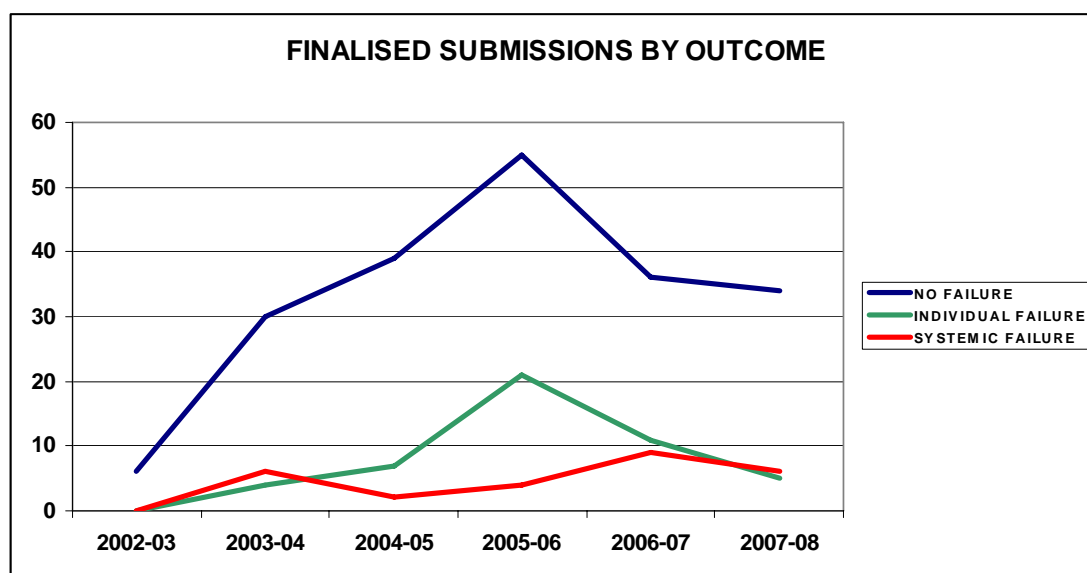


Chart 2 – Submission outcome trends

Although there have been some notable exceptions, the time taken to investigate and finalise submissions has also been declining overall.

With regard to investigations into complaints about Service Police, Table 5 is a summary of IGADF Service Police investigations conducted during the reporting period.

⁴ In 2006-07 only 14% of the 33,332 submissions resulted in some form of remedy. Of the 361 submissions to the Defence Force Ombudsman only 24% resulted in remedy.

| SUBJECT | OPEN AT START OF FY | RECEIVED DURING THE FY | CONCLUDED SUBSTANTIATED | CONCLUDED NOT SUBSTANTIATED | OPEN AT END OF FY |
|----------------|---------------------|------------------------|-------------------------|-----------------------------|-------------------|
| DISCIPLINE | – | 3 | – | 1 | 2 |
| CRIMINAL | – | – | – | – | – |
| ADMINISTRATIVE | 2 | 10 | 3 | 4 | 5 |

Table 5 – 2007-08 Service Police investigations

1.3 MILITARY JUSTICE PERFORMANCE REVIEW

The Directorate of Military Justice Performance Review is responsible for monitoring, evaluating and reporting on military justice indicators across the ADF. This is achieved mainly through:

- detailed on-site audits of ADF units to assess compliance with extant legislation, policies and procedures governing the administration of the disciplinary process, the conduct of administrative inquiries, the imposition of adverse administrative action and the management of applications for redress of grievance and of complaints of unacceptable behaviour
- analysis of available military justice data from all sources, including Defence Annual Surveys and the triennial military justice supplement.

Since first conducted in financial year 2003-2004, considerable progress has been made in developing audit methodologies and benchmarking best practice in unit level disciplinary and administrative activity. Through the post-audit reporting process, confirmation of good practice and identification of opportunities for improvement are advised to Service Headquarters and audited units.

As foreshadowed in last year's report, IGADF has introduced a military justice performance measurement system during the reporting period. The ADF military justice system encompasses a wide range of disciplinary and administrative actions that together form a complex matrix with many interactive components. The identification and measurement of those components that are useful in assisting meaningful assessments about the health and effectiveness of the system as a whole is not a simple task. Moreover, it is not a task for which there is much in the way of precedent. Simply measuring what *can* be measured or what is easily measurable can provide misleading outcomes and/or be misrepresentative in such a complex system.

The performance measurement system that has been developed to pilot stage, known as the Justice and Discipline Health and Effectiveness (JADHE) system, is designed to measure what should be measured in a consistent, auditable and reliable fashion so that the data collected can be used to assess whether the intent of the military justice system is being achieved.

Information technology based, the JADHE system has the ability to assess ADF performance across four Key Reporting Areas (KRA) that correspond to the four elements of military justice namely discipline, adverse administrative action, the conduct of administrative inquiries and the right to complain. The system will report

against Key Performance Indicators (KPI) patterned after the Commonwealth Ombudsman's *A Good Practice Guide for Effective Complaint Handling*: access, timeliness, fairness, accountability, resources and training, and system improvement are the selected KPIs. The system was launched on 26 June 2008 and will be trialled and further developed in 2008-09.

MILITARY JUSTICE AUDIT PROGRAM

Military justice audits were conducted in 63 ADF units over the reporting period. This is the maximum number of unit audits that can reasonably be conducted given available resources. Audited units represented in excess of 27 per cent of ADF full time members.

Since unit audits were first introduced on a trial basis in 2003–04, a total of 167 audits have been conducted representing 78 per cent of ADF full time members. 7738 ADF personnel have participated in the process, representing 19 per cent of unit strength and 15 per cent of ADF full time members.

Charts 3, 4 and 5 are representative of audit performance to date.

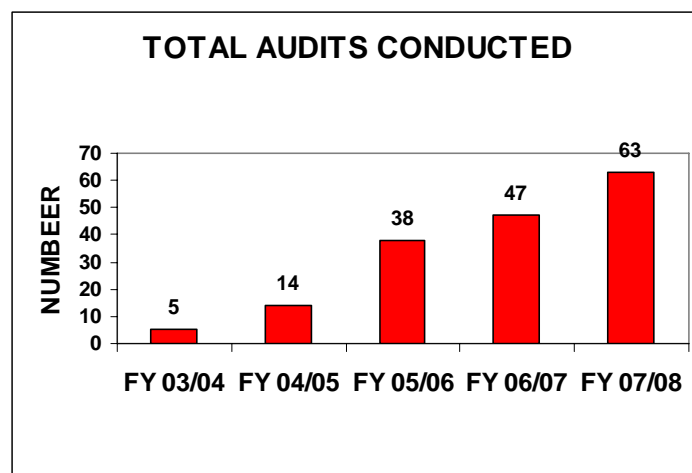


Chart 3 – Audit trends

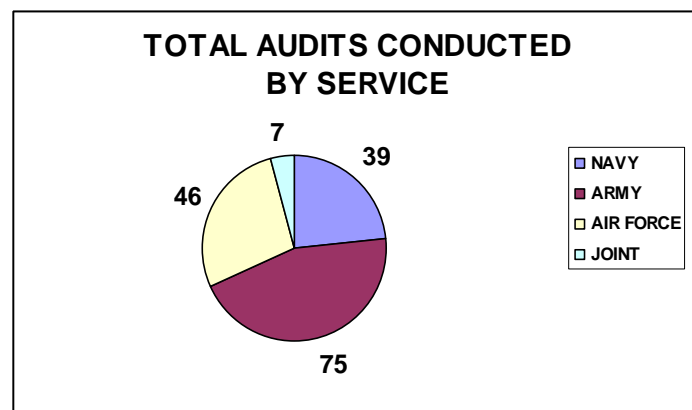


Chart 4 – 2003-04 to 2007-08 audits by Service

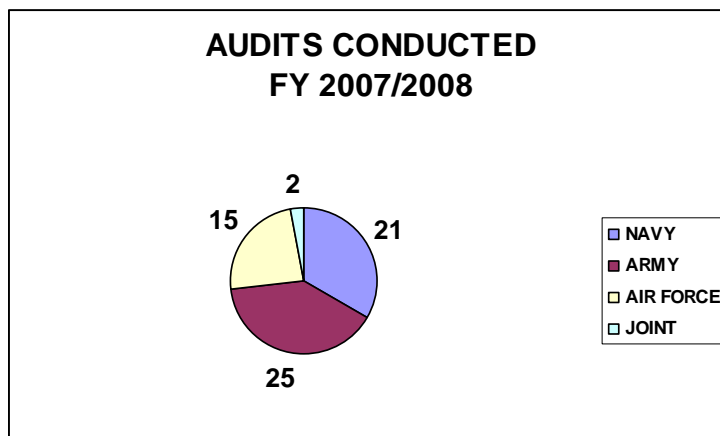


Chart 5 – 2007-08 audits by Service

Unit military justice audits are conducted in three phases:

- verification of compliance with policies and procedures and accuracy of record keeping associated with the maintenance and administration of discipline
- verification of compliance with policies and procedures and accuracy of record keeping associated with the conduct of administrative inquiries, management of complaints and adverse administrative actions
- focus group discussions on a non-attributable basis, including the completion of a military justice survey questionnaire.

Focus group discussions and analysis of survey responses are key indicators of general perceptions of the effectiveness of the ADF's military justice system. Given that most participants in this process are not complainants, their perceptions provide a valid alternate view to that of persons whose adverse experiences with the military justice system are sometimes extrapolated to portray a generalised picture of the system that is not necessarily accurate.

Charts 6, 7 and 8 are representative of focus group participation.

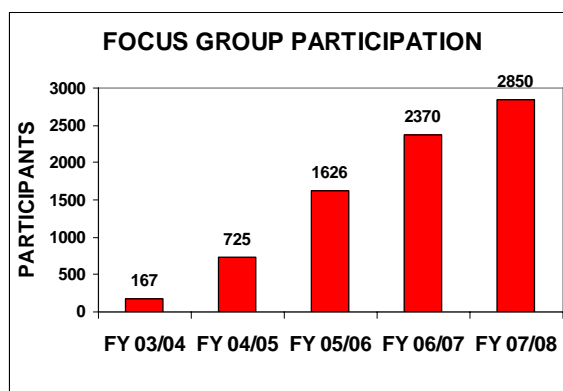


Chart 6 – 2003-04 to 2007-08 Focus Group participation

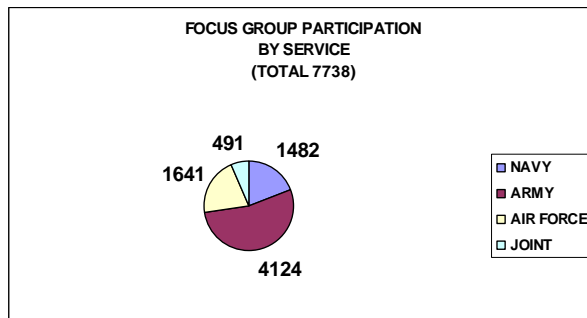


Chart 7 – 2003-04 to 2007-08 Focus Group participation by Service

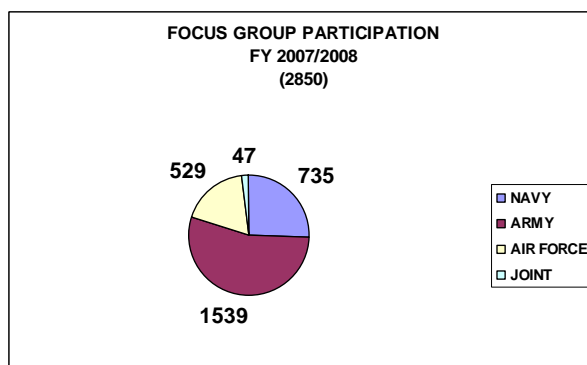


Chart 8 – 2007-08 Focus Group participation by Service

Of the 63 units audited during the reporting period one was assessed ‘unsatisfactory’ and six were assessed ‘satisfactory with significant shortcomings’. These units will be subjected to a partial re-audit within 12 months to verify that identified shortcomings have been rectified.

The IGADF audit program also aims to assist units in improving their overall stewardship of military justice matters. While no fundamental breaches of disciplinary or administrative procedure were identified, a number of recurring problems were noted and highlighted in the respective audit reports. These included poor record keeping, lack of appropriate disciplinary appointments and inadequate knowledge of procedure.

During the reporting period, IGADF staff conducted an IGADF ‘own motion’ inquiry into Prohibited Substance Testing (PST) testing program. Terms of reference for the inquiry included:

- the efficiency, effectiveness, procedural fairness and equity of current PST Program policy, processes and practices;
- whether the application and administration of positive test results is consistent across the Services and ranks;

- the appropriateness of the current approach to random and targeted testing;
- the effectiveness of the policy, processes and practices of contracted laboratories; and
- whether the PST program is achieving its purpose of deterrence.

As the inquiry was recently completed and the report has yet to be considered further comment on the outcome would be premature at this stage.

Other areas regularly identified for continued attention include:

- the need for more military justice training
- induction briefs to stress DI(G) PERS 55-4 *Reporting, Recording and Dealing with Civil Offences, Service and Civil Convictions and Diversionary Programs* provisions requiring ADF members to advise their units of civil charges and their outcomes, including reserve members even when the offence is committed while not on duty
- the need to clarify reserve members' entitlements and financial compensation mechanisms for out of pocket costs resulting from injuries sustained while on duty
- units comprised of full time and reserve members need to develop and promulgate an equitable disciplinary and unacceptable behaviour correction regime that is fair and transparent yet acknowledges the fact that reserves cannot be compelled to parade thereby limiting command's options
- the need for command oversight of remedial training, in particular when imposed by junior leaders, to ensure that a clear nexus exists between the performance shortcoming and the remedy imposed.

1.4 ADVISORY FUNCTION

Key military justice issues to which IGADF has contributed or taken the lead have included revision or amendment of the following policy documents or legislation:

- Defence Legislation Amendment Bill 2008;
- DI(G) ADMIN 67-2 Quick Assessment;
- Australian Defence Force Publication 06.1.4 Administrative Inquiries Manual;
- The Defence Act 1903 (as amended);
- Service Police Professional Standards; and

- Protocol for Investigation and prosecution under the DFDA of serious, complex or sensitive fraud and security incidents committed by ADF members.

1.5 DEVELOPMENTAL FUNCTION

IGADF has continued to provide military justice awareness briefings to newly appointed commanding officers and other senior ADF members such as Warrant Officers Disciplinary in Air Force and Regimental Sergeants Major in Army. The program is not designed to usurp single Service training responsibilities in this most critical area, but rather to amplify formal training and to share with course attendees experience and knowledge gained through the unit military justice audit process. Additionally, a military justice awareness training package intended for annual delivery at unit level has been developed by IGADF for use as required by the Services.

A recent useful Air Force initiative is the creation of Executive Warrant Officers. These Warrant Officers within their respective command, Force Element Group or Wing have responsibilities which include monitoring military justice effectiveness and providing mentoring to subordinate Command Warrant Officers.

Inquiry officer training remains a high priority for the IGADF. As at 30 June 2008, 16 IGADF Inquiry Officer training courses have been conducted, qualifying 393 inquiry officers. Four courses were conducted during the reporting period, adding 104 newly qualified inquiry officers to the pool. The Office of the IGADF continues to maintain a register of course graduates, available to assist Appointing Officers and Appointing Authorities.

A specified function of the IGADF is to 'consult with overseas agencies and authorities having similar or related functions.' During the reporting period, IGADF conducted a benchmarking visit to the United Kingdom, The Netherlands, Canada and the USA. IGADF held liaison discussions with equivalent organisations and personnel in those countries regarding the oversight of military justice in their respective armed forces and to ascertain what arrangements exist, both internally and externally to those defence forces, to achieve this function.

The Defence Forces of all countries visited face similar issues to the ADF in military justice terms although the legal regimes under which they operate, the scale of their forces and resources, and the military justice arrangements they employ may differ markedly between them and in comparison with the ADF. The overall impression gained was that the approach to military justice issues that is being taken in Australia leaves little to be desired in comparison. Much interest was expressed in what the ADF is doing, JADHE being but one example.

During the reporting period, IGADF was invited by the Commonwealth Ombudsman to participate in an Ombudsman's Workshop in Papua New Guinea (PNG) to discuss the ADF's approach to complaint handling both internally and externally as it interlinks with the Commonwealth Ombudsman's Office which also has a specific role as the Defence Force Ombudsman. Following the success of the inaugural workshop, a return visit by a PNG delegation from the PNG's Ombudsman's Office was hosted by the Office of IGADF in conjunction with the

Commonwealth Ombudsman. Future arrangements are in hand for a member of the PNG Ombudsman's Office to accompany IGADF staff when conducting an IGADF ADF unit military justice audit of some ADF units so that first hand experience may be gained.

SECTION 2

HEALTH AND EFFECTIVENESS OF THE MILITARY JUSTICE SYSTEM

2.1 OVERVIEW

Assessment of the health and effectiveness of a complex subject such as military justice is not an exact science. While certain key elements of it can be measured, inevitably judgements made about the effectiveness of the system rely heavily upon opinions formed and perceptions recorded. IGADF is well placed to undertake such an endeavour. The role and functions performed by the office of IGADF provide a wide range of relevant material from which informed assessments about the overall effectiveness of the system may be made.

As mentioned elsewhere in this report, JADHE will become the primary performance measurement tool over time. JADHE data integrity (completeness and accuracy) will be significantly enhanced later in 2008 with full introduction of the Complaint Management, Tracking and Reporting System (ComTrack). Developed under the auspices of Fairness and Resolution Branch, ComTrack will provide a case management and statistical data retrieval system for applications for redress of grievance (ROG), unacceptable behaviour complaints, alternative dispute resolution and submissions to IGADF. ComTrack, in combination with JADHE, will not only satisfy a number of ROG Review recommendations, but will also provide the ADF with an effective tool to assist with the performance measurement of the health and effectiveness of its military justice system.

This report draws on all available sources, objective and subjective, using tables, graphs and narrative to convey IGADF's best assessment to the reader. It is expected that in the future more reliance will be placed on survey results. In the near term Defence Attitude Survey 2008 and its triennial military justice supplement in particular will no doubt be a most useful and informative additional resource. The military justice supplement, first conducted in 2003, was last conducted in 2005, just prior to the commencement of the 2005 Senate Committee report implementation. 2008 survey results, expected to become available in early 2009, should provide ADF senior management with useful data on the effectiveness of military justice reforms as perceived at 'grass roots' level.

The remainder of this section is based on conclusions drawn from the 63 audits conducted during the period and focus group discussions with 2850 participants. This will be followed by detailed reporting and analysis of objective or 'hard' data against each of the four military justice elements.

General conclusions from focus group discussions. No significant departures from conclusions reached in previous years were evident in 2007-08.

- ADF members are generally aware of their military justice rights, obligations and responsibilities.
- ADF personnel will not hesitate to use avenues of complaint when required to do so and have full confidence in the chain of command.
- Although the majority of offenders plead guilty or are found guilty, ADF personnel are satisfied with the ADF disciplinary process as fair and transparent.
- Instances of bullying and harassment are rare. When they do occur, they are relatively minor in nature and normally at the Private(E) – Corporal(E) level.
- ADF personnel acknowledge that if bullying and harassment were to occur, the chain of command (unit executive staff) will act fairly and promptly to stop it.
- Genders are treated equally and equitably, and
- Ranks are treated equitably but not necessarily in an equal manner

Focus group survey result analysis of the past two years indicates no change or an improving trend across issues surveyed. These incorporate issues directly related to military justice and other indicators with a definite potential impact on military justice. Based on 2370 respondents in 2006-07 and 2850 respondents in 2007-08, notable positive shifts in perceptions are in:

- discipline
- morale
- fair treatment and respect for individuals
- prevention of bullying and harassment
- gender equality
- Service and unit pride
- all resource related areas, e.g. workload, compensation for overtime, etc.

The four components of military justice: discipline, adverse administrative actions, the conduct of administrative inquiries and the right to complain are addressed individually below.

2.2 MILITARY DISCIPLINE

Based upon evidence available from military justice audits and data from the Conduct Reporting and Tracking System (CRTS), discipline across the ADF appears to be generally well maintained and dispensed equitably and fairly. Time to investigate alleged offences disposed of at the summary level has improved markedly and, overall, offenders are brought to trial within established time frames (21 days).

Table 6 summarises actual achievement.

| | INVESTIGATION DURATION (DAYS) | CHARGE TO SUMMARY TRIAL (DAYS) |
|-------------|--|---|
| NAVY | 16 | 13 |
| ARMY | 2 | 12 |
| AF | 8 | 20 |

Table 6 – Investigation and time to summary trial duration

At unit level discipline training remains an issue. In particular, a significant number of Junior Non-Commissioned Officers (JNCO) lack sufficient DFDA knowledge to recognise that an offence may have been committed and an equally significant number of Junior Officers lack confidence in their ability to discharge their responsibilities as Defending Officers. In the latter case, ‘just in time’ training is normally provided by the unit Coxswain (Cox’n)/Regimental Sergeant Major (RSM)/Warrant Officer Disciplinary (WOD). Since ADF members in these appointments are focused on prosecution rather than acquittal, such training may be better provided through recourse to local Reserve Legal Officer panels.

In his 2007 report, the Judge Advocate General commented that the MLC continued to provide discipline law training for ADF officers designated to assume command or executive officer (XO) positions across the three Services. This included training given to five RAN courses, the one Army pre-command course, three Royal Australian Air Force commanders’ courses and eleven Squadron Leaders’ courses. Legal Officer professional development training included three Legal Training Module (LTM) level 1 courses and one each at the LTM 2 (graduate diploma level) and LTM 3 (Masters tertiary course) levels. IGADF military justice briefings to the above courses have been covered elsewhere in this report. All newly appointed prosecutors to the office of the Director of Military Prosecutions now receive on-on-one, in-house training and one prosecuting officer was seconded to the office of the ACT Director of Public Prosecutions (DPP) for a period of three months.

Overall, the standard of discipline across the ADF is assessed as satisfactory. Absence without leave, failing to comply with a general order and prejudicial conduct are once again, the more frequently committed lesser offences.

Two specific offences are worthy of special mention. Not surprisingly, the number of ADF members deployed on operations and equipped with personal weapons is generating a significant number of unauthorised or negligent weapon discharge offences. There were 268 such offences during the reporting period against 210 in the previous year, an increase of 27 per cent of which, consistent with relative Service strengths, the majority of offenders are Army. It is understood that Chief of Army is taking steps to remedy the situation.

Recent policy whereby most ADF members are provided a Diners Club Defence Travel Card (DTC) has given rise to a significant number of fraud convictions. See chart 9 below.

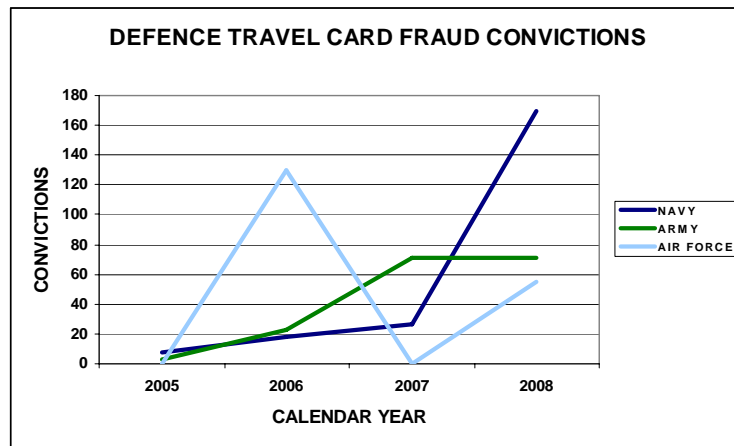


Chart 9 - Defence Travel Card fraud convictions⁵

The downward trend in trials conducted as reported in last year’s annual report stabilised during the reporting period. Although fewer Discipline Officer scheme infringement notices were imposed, total DFDA convictions returned to year 2000 levels, suggesting that the actual overall offending rate (DFDA convictions and Discipline Officer infringement notices) has remained relatively constant over the period 2000 to 2007. Charts 10 through 13 illustrate related trends over the period.

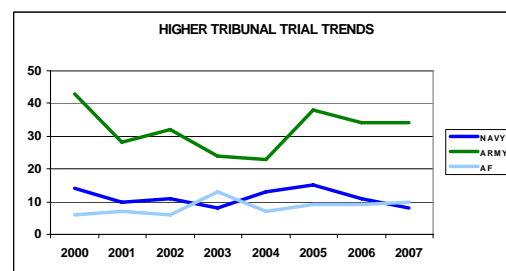
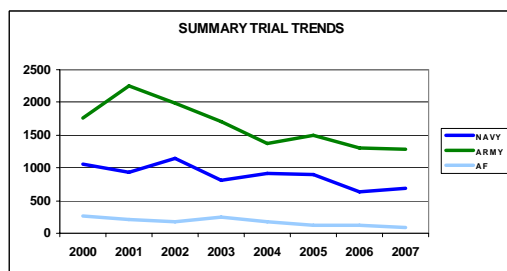


Chart 10 – Summary trial trends Chart 11 – Higher tribunal trial trends

⁵ Inspector General Division reports extensively on DTC fraud. The division reports the number of ADF members convicted of DTC fraud rather than actual convictions. In most cases ADF members are charged with and convicted of multiple offences. This table should be interpreted accordingly

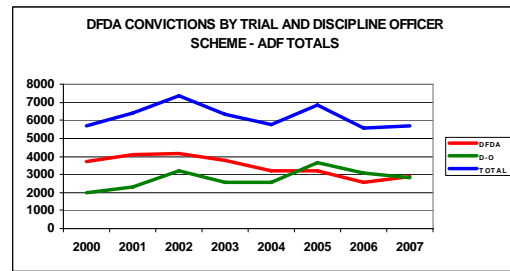
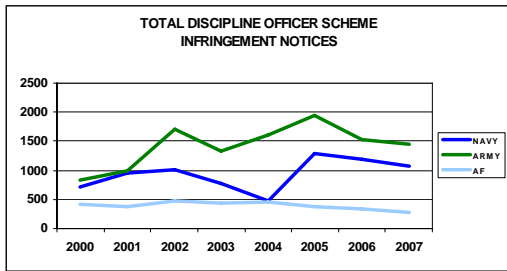


Chart 12 – Discipline Officer Chart 13 – Total conviction trends
Infringement trends

As chart 14 indicates, conviction rates remain highest in Navy. This should not be viewed as a criticism. Commanding Officers have a range of administrative and disciplinary measures at their disposal to deal with behaviour or performance shortcomings, including informal counselling, remedial training, adverse administrative action, infringement notices and charges under the DFDA. It must be left to them to select the most appropriate response taking all factors into consideration.

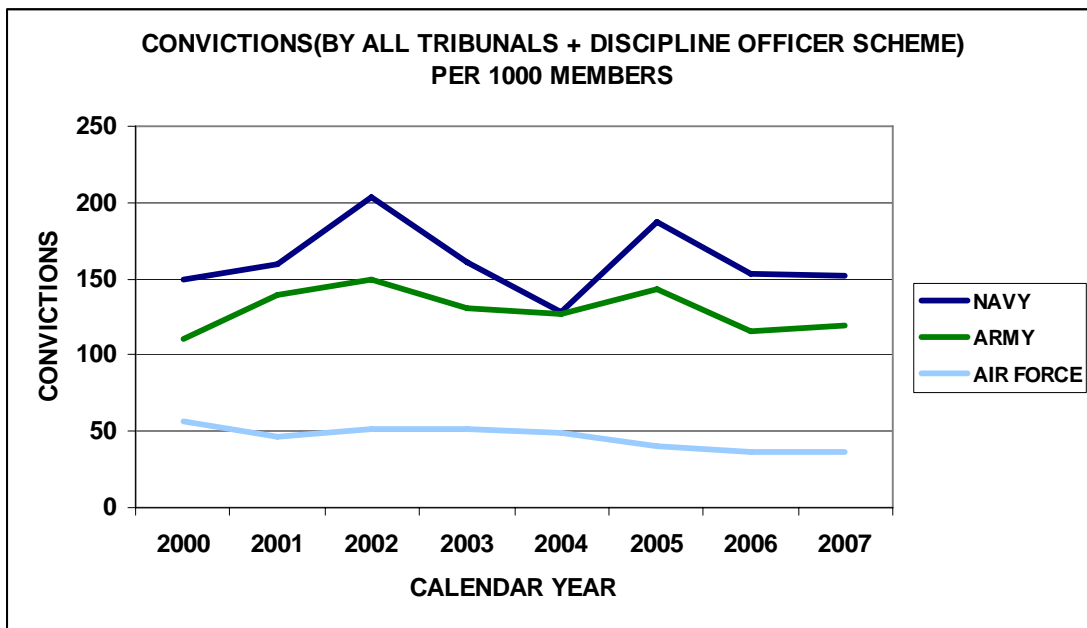


Chart 14 – Conviction trends per 1,000 members

As chart 15 indicates, with total numbers of convictions in the 2500 to 4000 range over the period 2000 – 2007, not guilty findings are relatively few and are consistent with the traditional high rates of guilty pleas. The relatively low numbers of convictions quashed on review as shown in Chart 16 may be indicative of sounder disciplinary trial processes.

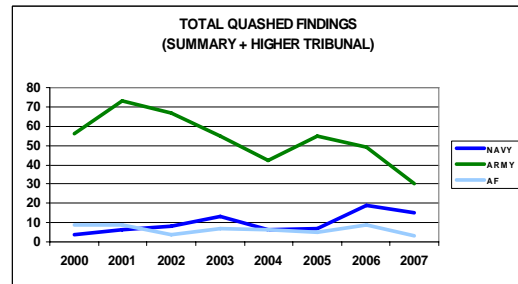
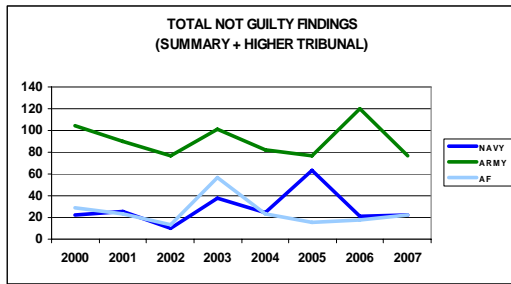


Chart 15 – Not guilty finding trends Chart 16 – Quashed finding trends

As foreshadowed in last year’s report, the Discipline Tracking and Case Flow Management System (DTCFMS) was significantly upgraded in August 2007 and renamed the Conduct Reporting and Tracking System (CRTS). Key enhancements include:

- a. capture of alleged offences from first occurrence through the investigation phase (CRTS does not compete with or duplicate the Defence Policing and Security management System (DPSMS); although they do share a few basic data elements, they serve entirely different purposes);
- b. capture of adverse administrative action and civil convictions;
- c. the ability to identify offences committed on operations; and
- d. the ability to identify offences where the use/misuse of drugs or alcohol was a contributory factor in the commission of the offence.

As charts 17 and 18 illustrate, although data is only available for four months. It is nonetheless significant. Alcohol involvement contributes to a significant number of offences, particularly in Navy. The number of offences committed on operations or while deployed is much lower. The number of offences committed on deployment or operations where alcohol abuse is a contributory factor is negligible.

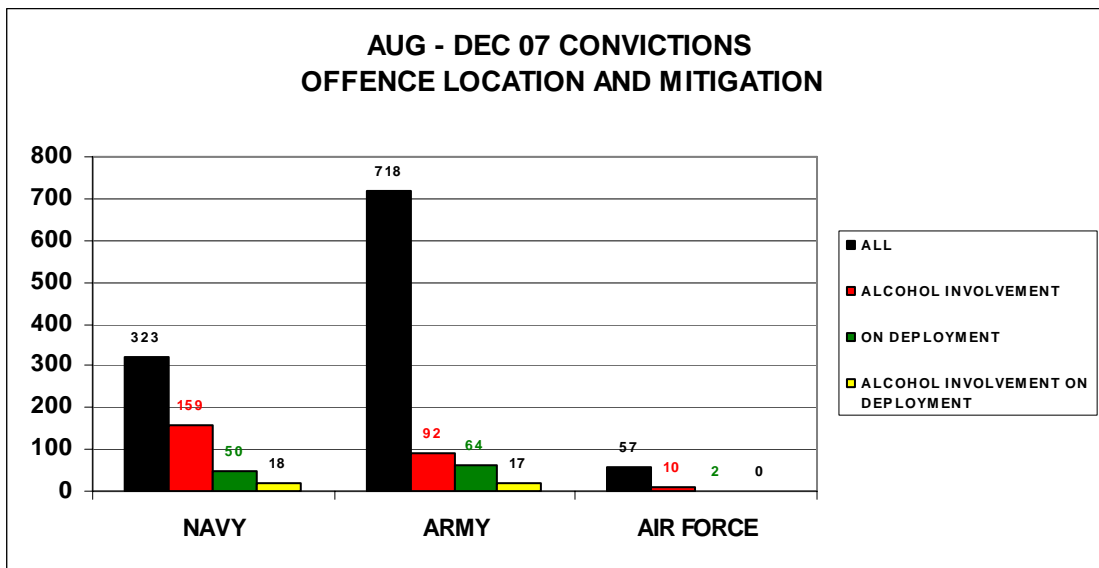


Chart 17 – Offences with an alcohol involvement and/or committed on deployment (total numbers)

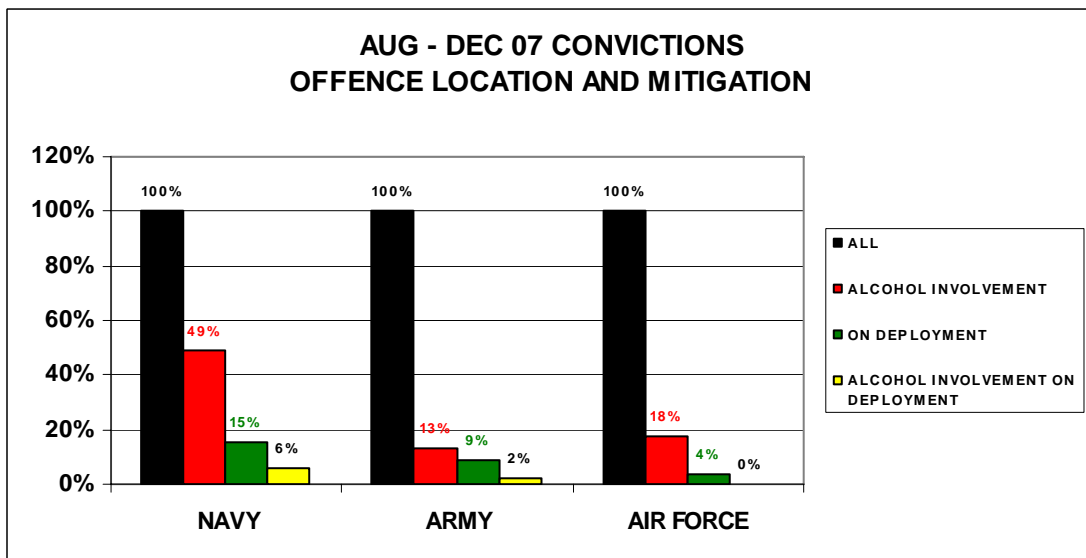


Chart 18 – Offences with an alcohol involvement and/or committed on deployment (percentages)

2.3 ADVERSE ADMINISTRATIVE ACTION

Adverse administrative actions form the second element of military justice as defined in the ADF.

Whereas disciplinary action is the means whereby alleged offences in contravention of the DFDA are investigated and tried, adverse administrative actions are designed to admonish and correct unsatisfactory or unacceptable performance. These two options available to commanders and managers are complementary and share a number of common features:

- they can both impact adversely on an ADF member's career
- they must both follow accepted principles of procedural fairness
- they are both command tools to maintain discipline and operational effectiveness

Adverse administrative actions include, but are not limited to: formal warnings and censures, termination of service, reduction in rank, removal from an appointment or locality, denial or delay of promotion or revocation of provisional promotion, loss of security clearance and change of employment category. The most common subject of complaint is the imposition of formal warnings and censures, and involuntary termination of service.

Unlike actions under the DFDA which, to a large extent, are initiated by junior officers and non-commissioned officers, adverse administrative action are usually initiated and then managed by more senior officers. It might then be expected that this would lead to greater assurance that matters would be dealt with robustly, appropriately and in a timely fashion. However, seniority alone will not necessarily ensure sound administrative outcomes. Like other elements of the administrative system, good quality adverse administrative action processes and outcomes are directly related to knowledge and experience of administrative officers, local area support by legal officers, local area mentoring for junior administrators, good record-keeping practices and, most importantly, stability in appointments for unit administrators.

Last year's report dealt with identified administrative and procedural shortcomings in some detail. There are clear indications that considerable improvement has been achieved in the past twelve months although posting stability in key administrative appointments remains an issue, particularly in Army.

As mentioned previously, CRTS capability has been expanded, making adverse administrative action capture mandatory. Awareness across the ADF of new data capture requirements is satisfactory and training needs have been largely met.

Recognising that an ADF member's complete conduct record is comprised of DFDA convictions, imposed adverse administrative action and civil convictions, CRTS now captures all three elements. Data retrieval and report generation is available to all concerned agencies such as the chain of command, career managers, the ADF Investigative Service (ADFIS) and Service Police. Information security in compliance with Information Privacy Principles is assured through a rigid access control process managed by PMKeyS Security Management, the main ADF personnel information system.

Capture of civil convictions remains an issue. Although clearly articulated in DI(G) PERS 55-4 *Reporting, Recording and Dealing with Civil Offences, Service and Civil Convictions and Diversionary Programs*, its provisions are not well understood, particularly by the more junior ranks. In essence, the Defence Instruction requires ADF members to formally inform their units whenever they are charged with a civil offence. Driving Under the Influence of Alcohol (DUI) is the most common civil offence. Moreover, many reserve members hold the view that civil offences

committed while not on duty need not be reported. The Defence Instruction makes no such distinction. It is suggested that unit induction briefs to new personnel and periodic refresher training include briefings on members reporting responsibilities in conformance with the Defence Instruction.

Up to this point CRTS, and its predecessor DTCFMS, concentrated solely on the negative aspects of ADF members' conduct history. Since CRTS is the 'one stop shop' for members' complete conduct histories, the need to balance this information with positive or complimentary achievements, CRTS capability expansion to include such things as civil awards/citations, letters of appreciation and the like is intended. The aggregation of all of this information in one concise report would provide a more balanced conduct profile of ADF members, suitable for consideration in any number of circumstances. Punishment mitigation upon conviction and posting/promotion screening are just some examples where such a fairer and more balanced picture would be useful.

2.4 CONDUCT OF ADMINISTRATIVE INQUIRIES

IGADF unit military justice audits indicate that general awareness of and compliance with recently published DI(G) ADMIN 67-2 *Quick Assessment* (QA) is satisfactory. That the process is being used is illustrated by the fact that during the reporting period 340 QAs were conducted into allegations of unacceptable behaviour alone. Insufficient training and experience in the conduct of QAs is evident in some units whereby ordered QAs tend to exceed the intended aim, becoming quasi-Routine Inquiries. The main flaw with such an approach is that they tend to take much longer than expected to complete, thereby delaying command's ability to shape the most suitable course of action. It has been suggested to all audited units that the nomination of a senior member of the command team to attend the IGADF Inquiry Officer course should be considered with the aim of creating a local subject matter expert to advise and mentor unit personnel assigned administrative inquiry duties.

ADFAITS is the management tool for the capture of inquiries conducted under the *Defence (Inquiry) Regulations* (DIR). Its main purpose is to serve as a management tool for personnel conducting inquiries and to assist Appointing and Superior Authorities in the oversight of approved recommendations through the implementation phase.

Compliance with DI(G) ADMIN 65-1, the governing Defence Instruction, had been lacklustre but considerable improvement has been noted more recently. It is encouraging to note that ADFAITS has reached such a level of general acceptance that consideration is being given to adopting it as a platform for a Corrective Action Tracking Tool (CATT) to monitor actions resulting from Boards of Inquiry (BOI) and CDF Commissions of Inquiry (COI) addressing death in service, personal injury and *Occupational Health and Safety* (OH&S) incidents. Table 7 summarises inquiries currently tracked in the system.

| | Inquiry Officer inquiry | Board of Inquiry | Commission of Inquiry |
|------------------|--------------------------------|-------------------------|------------------------------|
| CDF | 2 | 10 | 10 |
| NAVY | 24 | 3 | |
| ARMY | 23 | | |
| AIR FORCE | 3 | | |
| TOTAL | 52 | 13 | 10 |

Table 7 – ADFAITS summary

2.5 CDF COMMISSIONS OF INQUIRY

Amendments to the DIR to enable the appointment of COIs⁶ were passed by the Federal Executive Council on 21 June 2007 and commenced on 26 June 2007. With the introduction of these Regulations, COI superseded Boards of Inquiry (BOI) as the primary mechanism for inquiring into the death of ADF members. A civilian with judicial experience now presides over each COI.

COIs have a very specific purpose. They are appointed by the CDF primarily to inform internal Defence decision-making by thoroughly and impartially examining deaths and other serious incidents — principally with a view to preventing similar incidents from occurring in the future. The outcome of these inquiries, in turn, assists in obtaining timely information on incidents that affect Defence personnel, training and policy, which is vital for the maintenance of Defence’s capability – including operational capability.

The Minister for Defence may dispense with the requirement to appoint a COI where a death occurs in circumstances in which he determines that a COI is not required; a combat fatality for example.

COI reports are submitted to CDF and, after consultation with relevant stakeholders, CDF issues directions concerning the implementation of agreed recommendations and makes recommendations to the Minister concerning the report’s release.

Six COIs concerning the deaths of ADF members were appointed by CDF during the reporting period. Defence appreciates the importance of conducting such inquiries in a way that promotes public confidence in the integrity of COI processes. In November 2007 CDF decided his general practice will be to direct that COI, be held in public subject to considerations of security and the exercise of legal discretions by COI Presidents. The public COIs/BOIs that were appointed or reported during 2007-08 are summarised below.

⁶ Prior to the introduction of changes to the *Defence (Inquiry) Regulations 1985* on 22 June 2007, the term Board of Inquiry was used to describe these inquiries. All CDF appointed inquiries into the death of a member of Defence are presided over by a civilian with judicial experience.

Captain Lawton

Captain Paul Lawton died on 31 August 2006 while aboard the MV Talisman in the Pacific Ocean. CDF appointed a Board of Inquiry (BOI), to inquire into his death on 18 September 2006. CDF determined on 13 February 2007 to dissolve the original Board, which had completed its hearings but not reported, in order to avoid lengthy time delays associated with Federal Court proceedings initiated by an inquiry witness. On the same date CDF appointed a new Board which completed its hearing on 23 October 2007. The Board submitted its report to CDF in December 2007. The report was publicly released on 17 June 2008. It contained 28 findings and 41 recommendations of which 32 were accepted. Nine recommendations were not accepted because Defence is constrained from implementing some of the recommendations due to privacy implications and some of the matters recommended by the Board have already been addressed by Defence separately.

Black Hawk 221

On 7 December 2006 CDF appointed a BOI into the circumstances surrounding the crash of an Army Black Hawk helicopter (Number 221) off Fiji on 29 November 2006. Two members of the Army, Captain Mark Bingley and Trooper Joshua Porter, died in the incident. The Board submitted its report to CDF on 25 January 2008. CDF immediately initiated consultation with key Defence stakeholders in preparation for implementation of the report's recommendations.

Private Baker

Private Ashley Baker died on 5 November 2007 from non-battle gun shot wounds sustained while he was serving with the Timor Leste Battle Group. On 9 November 2007 CDF appointed a COI to inquire into the circumstances of Private Baker's death. The COI conducted hearings in March and April 2008 and submitted its report to CDF on 23 April 2008. CDF immediately initiated consultation with key Defence stakeholders in preparation for implementation of the report's recommendations.

Major McKerron

Major Thomas McKerron died at work at Bulimba, Queensland on 11 May 2007. CDF appointed a COI to inquire into the circumstances surrounding Major McKerron's death on 4 September 2007. The Commission held its hearings in Brisbane during February and April 2008. CDF received the Commission's report on 4 June 2008 and has commenced implementation consultations.

Captain Paljakka

Captain Andrew Paljakka died on 26 Feb 07. CDF determined on 19 August 2007 that a COI was to be held to inquire into the circumstances surrounding this death. The Commission commenced its hearings in Sydney on 23 January 2008 and provided its report to CDF on 6 May 2008. CDF has commenced implementation consultations.

HMAS *Sydney II*

On 28 March 2008 CDF appointed a COI to inquire into the circumstances associated with the loss of the HMAS *Sydney II* on 19 November 1941 and consequent loss of life and related events subsequent thereto. The first day of hearings was held in Sydney on 30 May 2008 and a further four days of hearings were conducted in Perth and Melbourne in late June 2008.

2.6 RIGHT TO COMPLAIN

At grass roots level, it is readily apparent that there is a more mature approach to the complaint submission and handling process than has previously existed. This can be largely attributed to a changing culture within the ADF where members are more aware of their rights, of what constitutes procedural fairness and place greater trust in the chain of command that they will be treated fairly. ADF members acknowledge that if they do make a complaint the chain of command will not tolerate improprieties of any kind and will act fairly, promptly and objectively even if the chain of command is the cause of the issue about which the complaint has been made.

The ADF response to the 2004 Joint Report by the Department of Defence and the Office of the Commonwealth Ombudsman *Review of the ADF Redress of Grievance System* (ROG Review) assigns to IGADF and the later established Fairness and Resolution Branch responsibility for the implementation of six recommendations germane to this sub-section of the report:

- That the IG-ADF take the lead in defining the complaint statistics required for measuring the health of the military justice system across complaint areas and that all complaint areas comply with requirements.
- That IG-ADF provide Key Reporting Area (KRA) guidelines to all complaint handling agencies in Defence.
- That a common case tracking system or complaints database be established.
- That a common complaint management system be developed to manage cases across all avenues of Defence complaint. This system should have the ability to provide information in a form that will support Defence-wide reporting including information required by IG-ADF.
- That Defence establish an integrated complaint measurement, analysis and reporting system.
- That IG-ADF take the lead in an analysis of needs for complaint information across Defence.

As outlined in Chapter Five, Defence has continued to implement the agreed recommendations of the ROG Review. In doing so, better advice is being provided to members submitting complaints and to their commanders, resulting in more

satisfactory outcomes – often through the use of more appropriate informal means of resolution and reduced complaint handling times.

IGADF's JADHE is discussed elsewhere in this report. Fairness and Resolution Branch, with IGADF support, is implementing a Complaint Management, Tracking and Reporting System (ComTrack). A contract was let in June 2007. Portions of the system have already been delivered and the complete system is expected to become operational later this year. Once fully completed later in 2008, the JADHE-ComTrack combination will satisfy the above six recommendations.

ComTrack's main features include:

- individual case management systems to meet Fairness and Resolution Branch Directorates' and IGADF's requirements
- the authoritative source of statistical information to populate JADHE's KPMs against the right to complain KRA, thereby meeting IGADF's performance measurement requirements
- a web based self-service portal available to ADF members to lodge complaints and to monitor their progress through the staffing process.

Since Fairness and Resolution Branch is in the process of transitioning from legacy systems to ComTrack, available data, and in particular trend data, is not as complete as it will be for next year's and subsequent reports. Sufficient data is however available to present a clear picture of ADF complaints during the past 12 months. Trend data is included where available.

Redress of Grievance

At the beginning of the financial year 156 grievances were on hand at unit level and a further 92 with Fairness and Resolution Branch for staffing to Service Chiefs or CDF. 270 new grievances were submitted over the reporting period; 72 Navy, 118 Army and 80 Air Force. The main subjects of complaint are career (112), financial entitlement (79) and termination (42) related. Five new applications for redress of grievance relate to unacceptable behaviour issues.

A total of 103 grievances remain open at unit level and a further 76 at Fairness and Resolution Branch at the end of the reporting period.

A total of 248 grievances were finalised, averaging 3.5 months at unit level and 7.6 months at Service Chief and CDF levels. This is viewed as a most significant and positive achievement. It indicates that the ADF is responding assiduously and vigorously to the 2004 Senate inquiry report and that the creation of Fairness and Resolution Branch was the correct decision.

Unacceptable behaviour complaints

Of the 766 unacceptable behaviour complaints received during the reporting period, 581 or 76 per cent identify an ADF member as the respondent. This is slightly below the percentage of the total Defence workforce made up by ADF members.

Resolution times indicate significant signs of improvement. Of the 425 substantiated complaints resolved over the reporting period, 41 per cent were resolved in less than one month and 71 per cent in less than three months.

Charts 19 through 22 indicate recent trends in reported complaints. Over all, there has been a significant reduction in the number of complaints compared with last year. This achievement would indicate that CDF and Service Chief initiatives through the military justice implementation process are producing the desired and expected results.

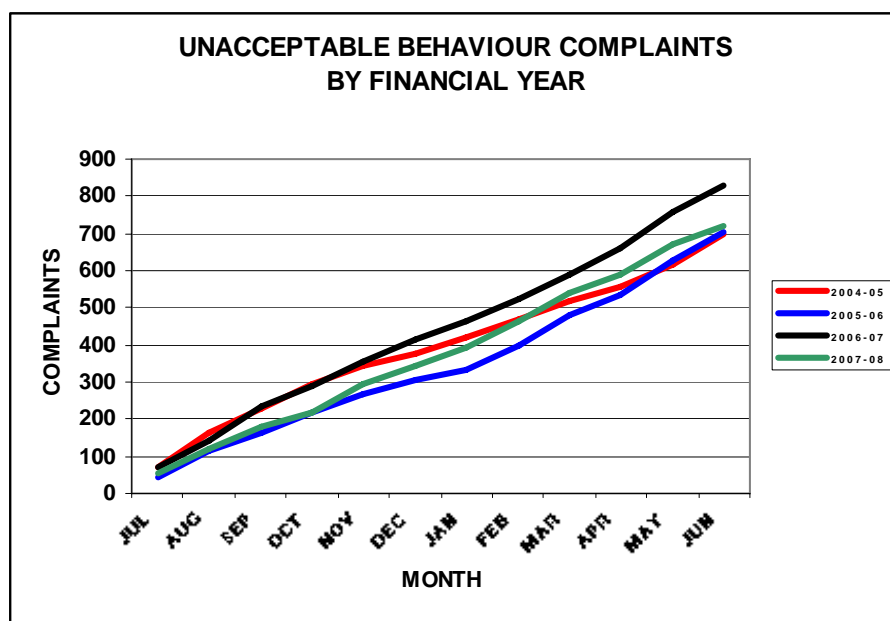


Chart 19 – Unacceptable behaviour complaint trends (all forms of unacceptable behaviour)

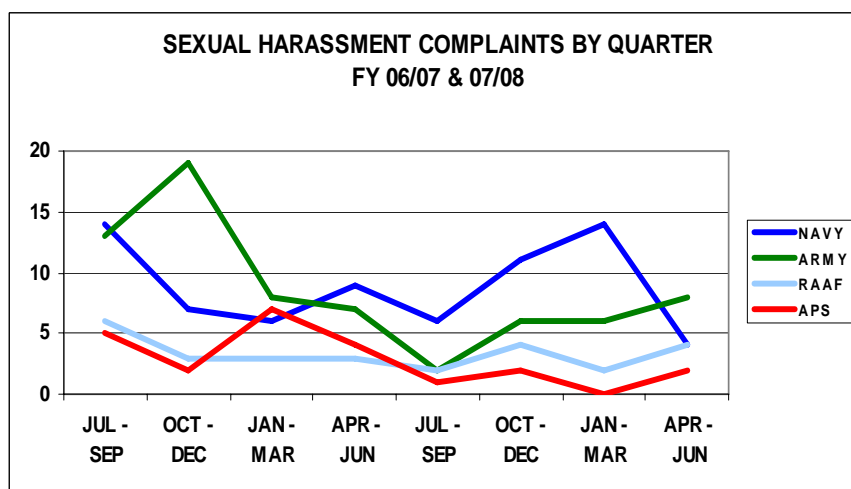


Chart 20 – Sexual harassment complaint trends

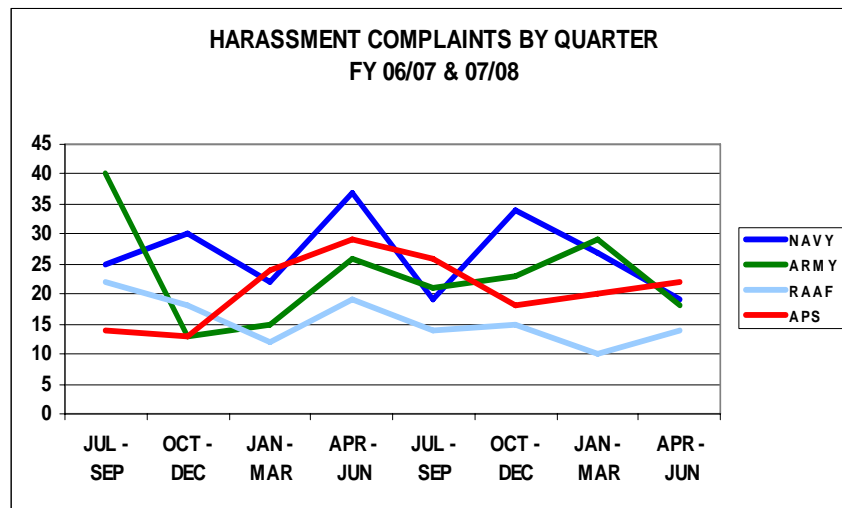


Chart 21 – Harassment complaint trends

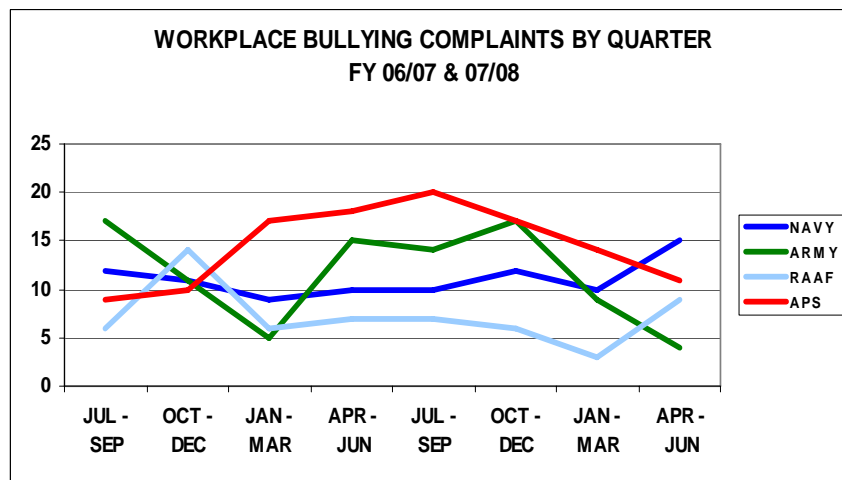


Chart 22 – Workplace bullying complaint trends

Incidents of unacceptable behaviour complaints as illustrated above, when compared to individual Service strengths, strongly supports IGADF military justice audit observations and focus group responses that gender equality and equity and the prevention of workplace bullying and harassment are generally well managed and that occurrences are very low. Specific observations and focus group responses are summarised below.

- Junior respondents of all Services reported general satisfaction with the handling of negative comments in Platoon Commander’s notebooks, Divisional Officer’s notebooks and Records of Conversation, stating that procedural fairness is being applied and that they are given the opportunity to explain or refute negative comments.

- There is a strong preference among more senior members that complaints should be resolved through the chain of command rather than through recourse to external agencies and help lines.
- Supervisors at all levels are fully supportive of injured members acknowledging that well managed rehabilitation will return their subordinates to full duty sooner and thereby reducing the workload of others.
- There is overwhelming evidence that ADF units provide a fair, equitable and inclusive work environment.
- There is no evidence of peer discipline.
- Respondents of all Services commented that they do not believe any ADF unit has a culture of bullying and harassment *per se* while acknowledging that the high operational tempo of many units does give rise to increased tensions and stresses.
- All respondents appear to have a clear understanding of what constitutes bullying and harassment and hold the view that such incidents, were they to occur, would not be condoned or tolerated by the chain of command.
- There is general agreement, at all rank levels, that complaint resolution at the lowest level is the preferred initial course of action.
- There is general confidence, at all rank levels, that the chain of command would react appropriately to reported or witnessed incidents of workplace bullying or harassment.
- All ranks appear to have a clear understanding of the difference between bullying/harassment and robust encouragement, acknowledging that in some situations robust encouragement, including some forms of inappropriate language, is acceptable and warranted provided that it is confined to the task at hand and the action addresses the behaviour and is not public personal belittlement.
- The majority of respondents who have undergone post-injury rehabilitation feel that they are well supported by their unit, well managed and not treated unfairly.

SECTION 3

MILITARY JUSTICE REFORM UPDATE

3.1 MILITARY JUSTICE REFORMS

In October 2007, the two year period provided for implementation of the agreed recommendations arising from the 2005 Senate Committee Report ended. The dedicated Military Justice Implementation Team (MJIT) established by the CDF to oversee the implementation process was disbanded in December 2007 and responsibility for oversight of the remaining reform initiatives passed to the Inspector General ADF (IGADF). Although impressive progress was made with the implementation of most of the agreed recommendations to December 2007, for various reasons, including the need for legislative changes, a number of the recommendations could not be completed within the two year implementation period. At 30 June 2008 six of the 32 agreed recommendations from the 2005 Senate Committee Report remained to be fully implemented. It is expected that the majority of these will be completed by the end of 2008. IGADF will facilitate the appointment of a high level selection committee to recruit up to eight part time military judges to supplement the existing three permanent judges early in 2008-09.

The 32 recommendations that were agreed for implementation are not minor. The changes to the military justice system that will result from these initiatives are the most far reaching since introduction of the Defence Force Discipline Act (DFDA) in 1985. They will, moreover, have been introduced over a considerably shorter timeframe than was the case with the DFDA which took over 20 years to bring to full fruition.

One of the major recommendations to be implemented during the reporting period was the establishment and commencement of the Australian Military Court (AMC) in October 2007. The AMC is a standing court and replaces the previous system of ad hoc trials by courts martial and Defence Force magistrates. The Chief Military Judge's first annual report on the operation of the AMC covering the period 1 October – 31 December 2007, was tabled in Parliament on 26 May 2008.

Another important milestone achieved during the reporting period was the passage of the DLAA 2008 which received Royal Assent on 20 March 2008. Some amendments took effect on commencement and the balance will take effect from 20 Sep 08. DLAA 2008 introduces a wide range of enhancements to the ADF disciplinary system, particularly with regard to the conduct of Summary Proceedings. The need for an efficient, fair, and speedy method of disposing of less serious disciplinary offences is a basic requirement for the day to day maintenance of discipline in the ADF. The changes being made will address a number of long standing issues that should greatly improve the ability of the summary process to provide relatively simple, quick and fair disciplinary responses for command and ADF individual members alike.

For example, under the new arrangements for Summary Proceedings accused persons will be given the right to elect to be tried before the Australian Military Court

(AMC) for all but a limited number of less serious commonly occurring service offences, as well as a right to appeal summary convictions and punishments to the AMC. Other key provisions of DLAA 2008 amendments regarding summary proceedings include:

- a framework directing summary authorities to apply the rules of procedural fairness and the basic principles of the rules of evidence (relevance, reliability, weight and probative value) under a more simplified evidentiary system;
- the imposition of summary trial time frames through the introduction of the requirement that members are brought to trial within three months of being charged;
- automatic review of summary convictions by a 'Reviewing Authority' in respect to technical errors related to the awarding of punishments and orders and the approval of certain more severe punishments; and
- an expanded Discipline Officer Scheme enabling minor disciplinary infractions by ADF members up to and including the rank of Lieutenant/Captain/Flight Lieutenant to be dealt with, if they so choose, in a more efficient manner and without a permanent record.

Other significant generic changes to the military justice system introduced by the DLAA 2008 legislation include:

- provision to ensure that legal officers are able to provide advice independently of potential undue command influence;
- increased AMC and summary jurisdiction to try offences involving drugs, including cannabis, narcotic substances (amphetamine, cocaine, heroin, methamphetamine etc) and anabolic steroids;
- extension of the summary jurisdiction to try members up to the rank of Rear Admiral/ Major General/ Air Vice Marshal;
- provision to disqualify a summary authority from dealing with a charge where he or she was involved in the investigation of, issuing a warrant in relation to, or charging the accused person with the offence in question;
- where an accused intends to plead guilty in a summary authority trial, provision to allow the accused to apply for the trial to be conducted in his or her absence if there are exceptional circumstances;
- AMC and summary authorities will be given increased flexibility in sentencing, namely, the ability to suspend part of a punishment or order; and

- standardisation of the powers of punishment of summary authorities regardless of the Service of the convicted person. The current differences in the punishments applicable to members of the Navy, from those applicable to Army and Air Force members, will be removed.

One of the final recommendations to be implemented in response to the 2005 Senate Inquiry Report is the requirement to provide for periodic independent review of the military justice system by a suitably qualified eminent person or persons. The first such independent review, administratively supported by the office of IGADF, commenced in April 2008. Former Chief Justice of NSW, Sir Laurence Street, AC, KCMG, QC and a former Chief of the Air Force, Air Marshal Les Fisher, AO (Retd) were appointed by the CDF to report on the effectiveness of the current reform program. The calibre of the review team reflects the importance placed by CDF on this task. The team will provide its report to CDF by 10 February 2009. Their report will be an important indicator as to whether the many reforms to the military justice system have been, or are likely to be, appropriate and effective and whether further evolutionary change is required.

3.2 DEFENCE INVESTIGATIVE CAPABILITY

Implementation of the 2006 Audit of the Australian Defence Force Investigative Capability Report (Whiddett/Adams Report) has continued during the reporting period under the direction of the Provost Marshal ADF (PMADF). The aim is to establish the ADF Investigative Service (ADFIS) as a highly trained unit capable of investigating Service offences independently, impartially and to a standard that equals best practice in the Australian civilian police and comparable military police investigative services overseas. The five year implementation plan is guided by an internal action plan, which includes milestones for achievement, methods to promote change and measures of success.

Of the 99 Whiddett/Adams Report recommendations 45 were completed during the reporting period. While action is generally on-track with respect to the remaining recommendations to meet the five year implementation plan, recruitment and retention issues will require ongoing attention.

Highlights include:

- rollout of the *Defence Policing and Security Management System* (DPSMS)
- clearer career paths and development goals for Service Police have been enhanced by the creation of the ADF Investigative Service. Further work in this regard, and revised recruiting targets, will be informed by the reviews of Service Police functions and roles either underway or completed by the Services
- Defence Investigations Standards - based on the Australian Government Investigative Standard and Service Police Professional Standards - based on the AFP model, are nearing finalisation

- the ADF Policing Plan has been completed
- protocols are being developed with service career management agencies that will form the basis for better management of the movement and transition of ADF Investigative Service personnel
- a review of Defence Police Training Centre syllabi against Australian Federal Police best practice has been completed
- recruitment and retention strategies for investigators are being developed
- development work is ongoing in the following areas:
 - common professional standards through improved and consistent training (including training and secondment with civilian police)
 - foundation policy and procedural documents, including the ongoing series of ADF Investigative Service Standing Instructions and ADF Investigative Standards based on the Australian Government Investigation Standards
 - new procedures to replace the Defence Investigations Technical Instructions
 - formal arrangements, additional to new or established Memoranda of Understanding, for closer cooperation with, principally, the Australian Federal Police on a number of matters including policy development, exchanges and secondments, training, forensic support and technologies
 - a centralised ADF policing intelligence capability
 - ADF training, awareness and education approaches for ADF commanders, Service Police and other personnel
 - a change program aimed at developing a new joint culture shared by all ADF Investigators
 - review of the organisation and resourcing of the ADF Investigative Service.

In addition the PMADF has continued to implement a number of professional development opportunities to enhance the investigative capability of Service Police investigators. Training and secondment agreements have been initiated with Federal and State police to train ADFIS investigators in: forensic digital photography and video recording of incident scenes, scene of crime officer, skeletal remains, investigation management and law enforcement intelligence

To prepare investigators for deployment on operations REACT (Review, Evaluate, Assist, Control and Take notes) has been initiated as the governing doctrine.

As foreshadowed in last year's report, the Service Police Central Records Office (SPCRO) stood up during this reporting period. DI(G) OPS 13-14 *Australian Defence Force Investigative Service — Service Police Central Records Office* was published on 19 May 08.

SPCRO integrates the investigation records of the three Service Police (SP) organisations into a single unit responsible for the management of all ADFIS and SP investigations and associated records. It is capable of providing both statistical data and trend analysis and will produce an annual report.

DI(G) OPS 13-14 also provides for periodic performance audits by IGADF. This is a most welcome feature of the policy, underlining the ADF's commitment to the transparency, accountability and probity of its investigative capability.

Table 8 summarises ADFIS and Service Police personnel resources.

| | ADFIS | NAVY | ARMY | AIR FORCE |
|----------------------------|--------------|-------------|-------------|------------------|
| Allocated | 152 | 229 | 332 | 405 |
| Actual | 126 | 181 | 284 | 352 |
| ADFIS Investigators | | 29 | 67 | 38 |

Table 8 – ADFIS resources

ADFIS commenced the year with 429 cases on hand. 178 cases remained on hand at the end of the reporting period. A total of 1,766 investigations were conducted by ADFIS and Service Police averaging 27 working days. This is significant improvement over past years.

96 Briefs of evidence (BOE) by ADFIS were submitted to requesting units and a further 196 BOEs were submitted to the Director of Military Prosecutions (DMP). 59 matters were referred to the civilian authority.

Table 9⁷ illustrates ADFIS achievement over the past two financial years.

| | INVESTIGATIONS | | BRIEFS OF EVIDENCE SUBMITTED | |
|----------------|-----------------------|-------------------------|-------------------------------------|---------------|
| | COMPLETED | AVERAGE DURATION | TO UNITS | TO DMP |
| 2006-07 | 1677 | 40 | N/A | 140 |
| 2007-08 | 1766 | 27 | 96 | 196 |

Table 9 – ADFIS output summary

As mentioned elsewhere in this report, fraud, in particular DTC fraud, predominated.

⁷ Only Navy retains a limited investigative capability. As part of on-going initiatives, all three Services are developing a minor incident investigation capability.

Under Inspector General Division sponsorship, DPSMS Stage 2 is expected to become fully operational during the coming year. More detailed statistical reporting, including trend analysis, is planned commencing with next year's annual report.

Single Service initiatives underway include:

Navy

- improvements to the transfer of category and recruiting numbers
- recruitment of State and Federal Police members as Naval Police Coxswains into the Naval Reserve
- streamlining of the process for recognition of prior learning and recognition of current competencies
- implementation of direct recruiting of Naval Police Coxswains
- reduction to workforce demand and review of the category structure
- reduction of separation rate to 8.5 per cent
- improvements to remuneration for qualifications and skills through the Graded Other Ranks Pay Structure Review.

Army

- transfer of Army Special Investigation Branch members to ADFIS
- progress on an Army Domestic Policy New Policy Proposal (DP NPP) to establish a Garrison Policing and Minor Criminal Investigation (MCI) capability.

Air Force

- development of a career, training and advancement strategy to provide a minor investigative capability from which to support and grow the joint capability
- transfer of RAAF Security Police members in the mustering stream of Service Investigations to ADFIS.

3.3 LEARNING CULTURE INQUIRY

By March 2007, the Chiefs of Service Committee (COSC) had endorsed a three phased approach to the implementation of the 46 agreed recommendations of the inquiry into the learning culture in ADF schools and training establishments (Learning Culture Inquiry). The first phase focused on articulating doctrinal, policy and procedural changes along with training courses requiring consequential amendment. The second phase is focused on amending courses and documenting and implementing the amended policy, in particular at the training institution level. The third phase is intended to be focused on confirming Defence's achievements and completing outstanding recommendations.

Defence's implementation of this approach has progressed steadily during 2007-08. Phase one is substantially complete, Phase two is well underway and Defence commitments against 25 recommendations have been completed. Preliminary work has also commenced on Phase three. CDF has commissioned a detailed assessment of Defence's progress towards implementing the inquiry report

recommendations, the findings of which will contribute to an independent review of progress with implementation of the military justice reform program scheduled for completion in February 2009.

Notable milestones include:

- Documenting the optimal learning culture outlined in the Inquiry report in Defence doctrine.
- Developing or refining policy on the difference between tough training and bullying, fraternisation within ADF training, trainer / learner codes of conduct, the conduct of focus groups and the management of *ab initio* learners who are between courses or who have been removed from course.
- Implementing measures to ease the transition into the ADF including; providing more detail to potential recruits on what they can expect when they join an ADF training establishment and what is expected of them; and mentoring women through both recruitment application and initial training.
- Reviewing mandatory Equity and Diversity awareness training to increase the focus on explaining the rationale behind the rules and procedures in a language and format learners understand.
- Identifying courses to be reviewed and, where necessary redeveloped, to ensure that assessments of attitudinal change are robust and reliable.

SECTION 4

FAIRNESS AND JUSTICE AGENCIES

FAIRNESS AND RESOLUTION BRANCH

4.1 REDRESS OF GRIEVANCE

The relevant authorities received 270 new applications for redress of grievance during the period 2007-2008. Of the complaints submitted 129 (48 per cent) were withdrawn⁸, not granted or not reviewable; the remainder being granted, partly granted or still under review. During the period 248 applications were finalised⁹ at unit level. Of these, 181 (73 per cent) were withdrawn, not granted or not reviewable; the remainder being granted or partly granted. There has been an increasing trend during the period for members dissatisfied with the decision by their commanding officer to refer their complaint to their Service Chief and, where an entitlement exists to Chief of the Defence Force, for further review. The primary focus of complaints under the redress of grievance system remains the application of financial entitlements policies (particularly housing entitlements, retention benefits and pay structure reforms), termination of service decisions and career management issues (particularly promotions, postings and performance appraisal reports).

The initial advice process introduced in July 2006 continues to prove its worth to the redress of grievance system, with generally positive feedback from commanding officers about the value of the administrative and legal advice provided by the Directorate of Complaint Resolution. The Directorate of Complaint Resolution has also observed a general improvement in the quality of decisions being provided to members by their commanding officer since the introduction of the process.

In May 2008 Part 15 of the *Defence Force Regulations 1952* was amended to preclude certain issues from the redress of grievance process and to place time limits on the submission and referral to higher authority of a redress of grievance. The amendment also requires the Service Chiefs to consider any redress of grievance at unit level where a decision has not been made by the commanding officer within 90 days of having received the complaint, and make a decision on whether to remove the redress of grievance from the control of the commanding officer and have it dealt with by the Service Chief. This has resulted in a more interventionist approach by the Directorate of Complaint Resolution to ensure commanding officers make a timely decision on a member's redress of grievance, including the ability to ask the Service

⁸ Withdrawn complaints are those withdrawn by the member prior to the authority making a formal decision on the merits of the complaint. This includes complaints withdrawn due to an acceptable outcome being provided through administrative resolution or alternative dispute resolution, and those withdrawn because the member does not wish to proceed with the complaint.

⁹ Redresses of grievance recorded as finalised may have been received in the preceding year. Redresses of grievance are finalised when the complainant chooses not to pursue the grievance further or when the process of inquiry and merit decision is complete. A complainant who is not satisfied with the outcome of a redress of grievance submitted at unit level has a right to refer the complaint for inquiry by the Service Chief. Officers, warrant officers, chief petty officers and flight sergeants have a further right to refer the complaint for inquiry by the Chief of the Defence Force if not satisfied with the Service Chief-level inquiry.

Chief to prompt action from other individuals and authorities from whom the commanding officer is awaiting information on which to base a decision. Another important element in the amendments was the alignment of the rights of chief petty officers and flight sergeants with those of warrant officers class 2 to refer their complaint to the Chief of the Defence Force if they are not satisfied with the Service Chief level decision.

Chart 23 shows the total number of redresses of grievance submitted by ADF members from 2005-06 to 2007-08 and the number of grievances that were finalised at unit level in that period.

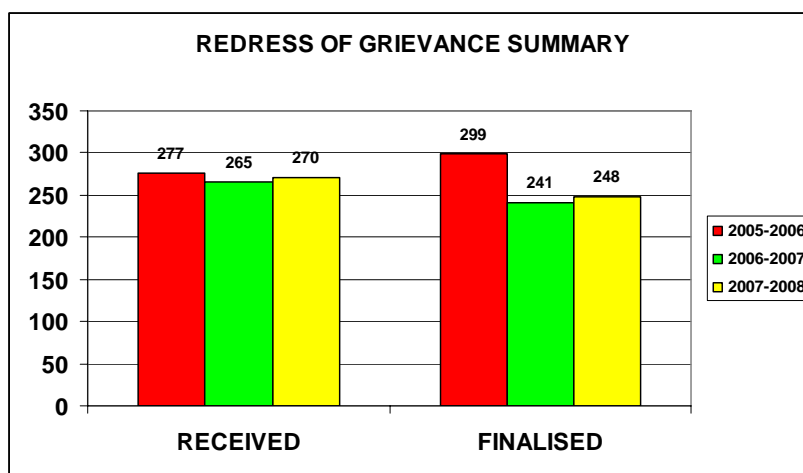


Chart 23 - Military redresses of grievance received and finalised 2005-06 to 2007-08

4.2 UNACCEPTABLE BEHAVIOUR

In May 2008, the Secretary and Chief of Defence Force issued statements on unacceptable behaviour confirming their commitment to ensuring that everyone in Defence has a fair and equitable workplace in which they can do their job to the best of their ability.

In 2007-08 there were 766 complaints received. While continuing to be of concern, this figure represents complaints from less than one percent of the Defence workforce and a ten percent reduction from last year. During the reporting period 559 complaints were finalised with 425 (76 percent) being substantiated.

The June 2007 report of the Defence Force Ombudsman's investigation into the management of complaints of unacceptable behaviour¹⁰ found that Defence has a complaint management system that is widely recognised, effective and has the confidence of personnel. Action continued throughout 2007-08 to implement the report recommendations. Significant achievements included the launch of 'ComTrack' the Defence Complaint Management Tracking and Reporting System and the production of an Equity and Diversity Awareness DVD, with an introduction by Defence Senior Leaders, for distribution to all personnel. Defence continues to offer a

¹⁰ Available at http://www.comb.gov.au/commonwealth/publish.nsf/Content/publications_investigationreports_2007

range of training which aims to expand management knowledge and capability in dealing with unacceptable behaviour.

Chart 24 shows the total number of complaints reported over the past three years. The category of 'other' includes complaints against contractors or where the identity of the respondent is unknown.

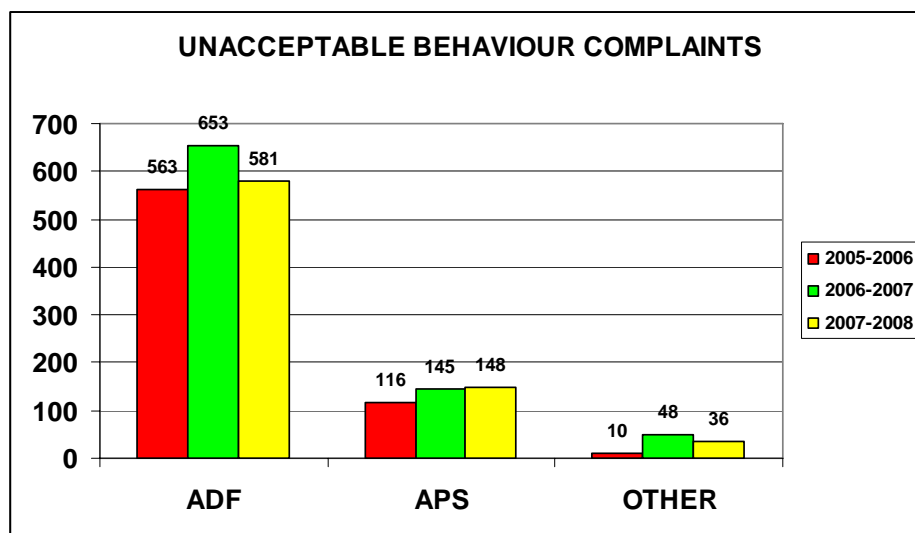


Chart 24 - Reported unacceptable behaviour complaints, 2005-06 to 2007-08

4.3 ALTERNATIVE DISPUTE RESOLUTION

The interventions offered by Defence for APS employees and ADF members encompass interactive problem solving, conflict coaching, mediation and workplace conferencing. Fairness and Resolution Centres have been established in each mainland capital city to provide a one-stop-shop for assistance and support in relation to dispute resolution and equity issues for the Defence population.

From 2006 to 2007 the use of ADR interventions almost doubled, and a similar increase is expected for 2008-09. This reflects a greater awareness across Defence of the effectiveness of ADR, increased access to skilled practitioners, successful outcomes, and an external assessment undertaken over the formative years of the program enabling better shaping of the product.

Mediation and workplace conferencing continue to be accessed as appropriate, successful strategies for individuals and work groups in dispute over workplace issues. Conflict coaching provides individuals, at any level, with opportunities to be guided through the causes of their conflict and to identify suitable responses and strategies to deal with that conflict.

Since the official launch of the Fairness and Resolution Centres in May 2008 there has been a surge in interest and uptake of services. The most significant increase relates to workplace conferencing, which is an emerging capability of Fairness and Resolution branch. On a positive note this demonstrates a growing willingness by managers to critically assess the nature of their worksite interactions and adopt

positive measures to achieve an acceptable outcome for the entire workplace. Historically, workplace conferencing when provided by external service providers has cost in the vicinity of tens of thousands of dollars for each intervention.

Chart 25 shows the total number of alternative dispute resolution interventions for the period 2005-06 to 2007-08.

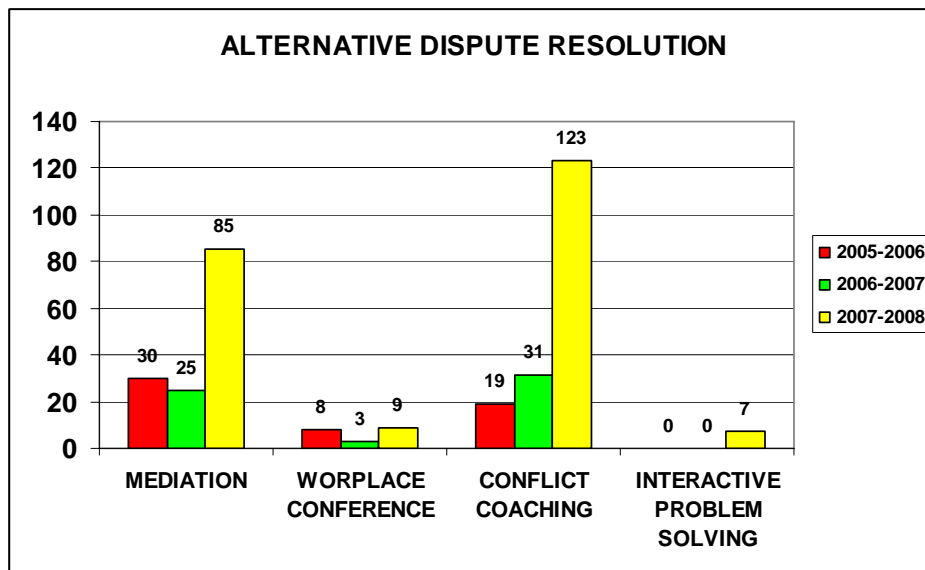


Chart 25 - Alternative dispute resolution interventions, 2005-06 to 2007-08

DIRECTORATE OF DEFENCE COUNSEL SERVICES

The position of Director of Defence Counsel Services (DDCS) was established in May 2006 as part of the military justice reforms. The Directorate of the same name, headed by DDCS, sits within the Defence Legal Division (DLD) reports to the Director General Australian Defence Force Legal Services. While not a statutory independent position, day-to-day DDCS operates semi-autonomously from DLD. Moreover, DDCS is located separately from DLD in Fyshwick, ACT (in close proximity to the Australian Military Court (AMC)).

DDCS continues to have responsibility for a number of key military justice functions. Central to work of the Directorate is the management of the Defence Counsel Services Panel (DCS Panel). This panel consists of those ADF legal officers who have made themselves available to provide advocacy services to those ADF members and civilians who have an entitlement to legal representation under Defence-sponsored legislation. Such entitlements arise under the provisions of the DFDA, as well as under the DIR in relation to BOIs and CDF COIs. The panel now consists of around 170 mainly, but not exclusively, reserve ADF legal officers from all three services.

With respect to the DFDA, following the commencement of the AMC's operations in October 2007, CDF's formal delegations to DDCS of a number of statutory roles in relation to the courts martial and Defence Force magistrate system

were reviewed and renewed to take into account the creation of the new court. Under these delegations DDCS:

- provides legal representation from the DCS Panel to accused persons facing charges at the Australian Military Court (AMC)
- secures witnesses required by the accused at AMC trials. This involves providing services such as identifying and locating prospective witnesses, procuring summonses from the Registrar of the AMC, arranging for the service of summonses and arranging for the movement of civilian witnesses to trial venues, as well as paying witness expenses

DDCS existing delegation from CDF to maintain the list required by DFDA section 101F of legal officers who are willing to assist ADF personnel who are in custody in respect of service offences, has also continued. During the course of 2007, the list was reviewed, amended and re-distributed across the ADF.

In addition to exercising these formal delegations, DDCS was able to make representations on matters of legal policy and legislation from the perspective of accused persons and their Defending Officers in the case of trials under the DFDA. DDCS has also liaised closely with other participants in the AMC processes, such as the Registrar of the AMC and the Office of the Director of Military Prosecutions, in support of both accused persons and their Defending Officers in relation to specific trials.

With respect to CDF COIs and BOIs established under the DIR, when tasked by CDF or in the case of BOIs, by another appointing authority, DDCS provides legal representation from the DCS Panel for persons who are potentially affected by the outcome of the inquiry. In the case of CDF COIs, DDCS provides legal representation to the 'single representative' of the deceased person to ensure that the perspective of the deceased is properly accounted for during the inquiry. This has required close liaison between DDCS and the next of kin of deceased ADF members.

Through the DCS Panel, DDCS has also been involved in providing legal assistance to a significant number of ADF members involved in high profile and/or complex matters.

SPECIAL FINANCIAL CLAIMS

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

In Defence, the majority of claims made under the CDDA scheme are from members and former members of the ADF. 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 redress of grievance has

been upheld. The restrictive criteria that apply under the scheme means that compensation cannot be awarded in many instances, although the member may have grounds for complaint.

A continuing trend of concern is that ADF members, who are dissatisfied with the outcome of an application for redress of grievance, seek to reopen the matter through a CDDA claim. As a general rule, where an ADF member is dissatisfied with the outcome of a redress of grievance process, the Defence Force Ombudsman may be the appropriate body to review the member's complaint, noting that the Ombudsman has discretion not to investigate grievances. Other remedies may include seeking judicial review. While the CDDA scheme may be available to pay compensation where the redress of grievance has been upheld in full or in part, it is not an appropriate avenue through which to reopen matters where the member remains dissatisfied with the outcome of the grievance process.

Defence is currently reviewing all Chief Executive Instructions. The Chief Executive Instruction on the CDDA Scheme, incorporating Finance Circular 2006/05, is expected to be published in the coming months

Details of CDDA claims in 2007 – 2008 and the previous four financial years are shown in Table 10.

| | Claims Received | Payments Made | Amounts paid (\$) |
|------------------|------------------------|----------------------|--------------------------|
| 2003 - 04 | 54 | 21 | 359,010 |
| 2004 – 05 | 47 | 29 | 332,062 |
| 2005 – 06 | 50 | 20 | 321,660 |
| 2006 – 07 | 40 | 20 | 652,035 |
| 2007 - 08 | 34 | 19 | 451,497 |

Table 10 – CDDA claim trends

STATUTORY AUTHORITIES

Under the DFDA, the Judge Advocate General, Chief Military Judge, and Director of Military Prosecutions are statutory appointments. Comment on those functions is not included in this report as all appointees reported separately to Parliament. Their reports, the first for CMJ and DMP, have been tabled in Parliament.