

# PROJECT FULCRUM

*“An enhanced military justice capability now and into the future.”*

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## Drivers for Change

- Investigative jurisdiction in AS should be same as Ops - skills proficiency
- Enhanced MCA profile requires enhanced inputs – investigations
- MCA punishments will meet societal expectations – jurisdiction
- One ADO investigative capability – SRP initiative
- Purpose of Investigations and Inquiries not clear to all – overlap
- Skills growth due to widening of investigative powers – skills recognition
- Current DFDA limitations stymies investigative capability – legislative change
- Difference between discipline and criminal – roles and responsibilities
- Reliance on CIVPOL - priorities not always same as ADO priorities – take responsibility

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- Tenets of Project Fulcrum
  - Review of Victims of Crime procedures
  - Extension of search powers to “off base” locations.
  - Investigation Processes – Expediting investigations by a flexible approach to investigation appreciations and planning
  - Recognition of ADFIS as Law Enforcement Agency
  - The establishment of Summary Authority Mention Courts.
  - The enhancement of DPSMS with access to CRIMTRAC
  - The establishment of one Defence Investigation Agency. (DIA)
  - ADFIS investigators (both civil and uniform) undertake a range of non DFDA investigations including Civilian offences and Administrative inquiry evidence gathering.

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## Coronial Jurisdiction

- A Coronial Court, using MCA structure, to preside over all ADF deaths:
  - conduct coronial inquiries (judicial style inquiries ?) in parallel with or replacement for CDF COI – reduce staff hire issues
  - remains a public court but able to specialise (not subject to State limitations)
  - able to issue Death Certificates not just a record of death
  - more likely to create a full workload for a judge and magistrate in the MCA role of the Federal courts
- A Coercive Inquiry power so that evidence collected may be used for administrative or professional standards action

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## Enhanced Police Powers

- Legislative change to designate the Australian Defence Force Service Police (ADFSP) as a Federal Police Force with a unique dual jurisdiction summarised as follows:
  - Military Jurisdiction – for the purposes of military discipline and the Military Justice System the ADFSP may exercise jurisdiction over members of the ADF both inside and outside of Australia in accordance with the DFDA.
  - Civilian Jurisdiction – for the purposes of the civilian criminal justice system the ADFSP may exercise jurisdiction over any person on Defence establishments or where they are in association with any Defence funded or Defence related activity, undertaking or project where there is an interaction with Defence personnel.
  - Align ADFSP powers to those of the Crimes Act. This will avoid duplicity and confusion, enhance compliance with AGIS, establish one standard equal to other Commonwealth Law enforcement agencies, provide commonality of training and make better use of resources
  - Authority for covert criminal intelligence procedures and processes:
    - to manage a wider range of illicit substances and fraud matters
    - to be able to undertake such operations with civil agencies.

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## Covert Surveillance and Informants

- Create powers to undertake Covert operations and formalise intelligence functions of SPIO

## Professional Standards

- Coercive investigations powers *vis-a-vis* the criminal corruption commissions, but for high level SP misconduct allegations (evidence used in admin proceedings for termination/removal)
- Investigations consolidated for DFDA and Admin Investigations
- Investigative effort for CDF COI and Administrative Inquiries conducted by ADFIS under direction from the IO or president/counsel assisting

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## Summary Authority Mention Court

- Review DLM/Summary Proceeding's to include SvcPol as authorised persons
- Use a statement of facts approach - "agreed facts"
- Guilty pleas proceed without any further brief of evidence and on admissions by the offender
- Penalty discounting for early pleas in accordance with widely practiced sentencing principles (encourage troops to accept responsibility for their actions)
- Create a case management approach for charges to proceed in a timely manner
- Include changed Policing processes under Alignment of SvcPol project where possible
- Amend DFDA section 63 to change restrictions and empower new MCA, ODMP and SP/Defence Investigators (incl civilians) to deal with matters where a Defence nexus exists
- Amend Commonwealth Crimes Act section 3E provision concerning exclusion of DFDA based investigations

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## A Mentions Court System

- Minor offences (those not dealt with by Discipline officers) dealt with in a summary manner equivalent to minor offences in Magistrates courts for pleas of guilty.
- SP prosecute offenders, single summary tribunal sitting in each military area dealing with all offenders and case managing any investigations from a process point of view similar to the civilian Magistrates court and mentions courts.
- One or two authorised SUBSA in each major area to deal with all matters on a regular sittings basis.
- Concept received well by a variety of commanders when briefed on the topic.



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## Support for Victims of Crime

- Increase investigators skills for dealing with Victims.
- Create protocols and procedures and enlist support from agencies like DCO and Psychological Support for victims.
- Match Police practice in state criminal jurisdictions.
- Improve the results of incidents and divert the potential for adverse media attention and other comment.
- Currently addressed on an ad hoc basis.
- May assist in managing compensation and liability claims as a result of incidents.
- Low cost but high potential return.

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## **Link DPSMS to CRIMTRAC**

- CRIMTRAC is an all encompassing Police information exchange that is managed by a Board of Management consisting primarily of State and Federal Police Commissioners and run by an executive. It is a government executive agency which operates under the Commonwealth Attorney-Generals Department.

## **Replace DPSMS**

- Consider AFP ICT solution under ADF/AFP interoperability
- Specific-to-task Policing system
- Enhanced job management, reporting and measurement

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## One DIA

- All ADO Investigations are undertaken by SP/Defence Investigator where a Defence nexus exists
- Briefs can be sent to ODMP for ADF members then to the AMC, and to CDPP /Civilian Agencies for any other non-ADF offenders
- Introduce civilian investigators into ADFIS for some areas or move them from DSA/IG Div
- Combined with extended search powers, a unified investigation agency would enhance the ADFIS status as a recognised law enforcement agency

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## Benefits of Change

- Authority to:
  - access bank records in fraud cases
  - investigate drug use in MQ's / dwellings on and off base
- Recognition as a Federal Law Enforcement agency will substantially improve information sharing and collaboration on incidents
- Alignment of victims of crime management with CivPol
- Better exchange / sharing of information through CRIMTRAC
- Efficiencies / economies of scale provided by a single DIA.
- Rapid finalisation of summary matters utilising mentions court and enhanced "interlocutory" opportunities for more complex matters.

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## Facilitation of Project Fulcrum initiatives:

- DFDA Investigative and Arrest powers for ADFIS Investigators read in conjunction with or migrated to Commonwealth Crimes Act.
- Off-base third party search warrant powers for ADFIS investigators
- Clarify SvcPol authority for laying charges
- Appoint “duty” summary authorities on the large bases to deal with all offences in a Mentions system (SvcPol lay charges and prepare a summary for minor offences / plea of guilty)
- ODMP retains prescribed offence trials and pre-trial matters, and can assist on serious matters in the Mention system which are likely to be referred to the MCA
- Change section 101 Search Powers to include all prohibited substances and expand authority to take other biological samples for investigations.

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## Areas for discussion

- **Coronial Investigations** - ADFIS will investigate all deaths within the ADF domestic and operational spheres and also any deaths as a result of ADF activities. CivPol could conduct their own concurrent /complimentary investigations. ODMP liaison with civilian prosecutions to determine preferred prosecutorial pathway.
- **Coroner's Court** - MCA be empowered to sit as a Coroner's court for ADF related deaths and then grow to deal with all deaths and serious crimes where there is a Defence nexus to the deaths. Creates a Commonwealth coroner to manage ADF deaths on operations rather than State coroners. Some constitutional issues to be resolved concerning powers and jurisdiction

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## Areas for discussion

- **ADF Police Act** - similar to the AFP Act and with similar powers especially in regard to professional standards and career management. Note the Singapore, Canadian SP models on this
- **Coercive Inquiry power** - so that although evidence collected may not be admissible for DFDA offences it can still be used for administrative processes and professional standards actions
- **Wider policing powers** – over personnel on a Defence base or undertaking a Defence related activity (working from the models found in the US, UK, Canada and Singapore). Enhances BSIP and provides environment for SvcPol to refine their skills in preparation for deployment into an operational environment

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discussion



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