

**AUSTRALIAN DEFENCE FORCE**

**REPORT TO THE SENATE STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE**

**ON**

**PROGRESS OF ENHANCEMENTS TO THE MILITARY JUSTICE SYSTEM**

**OCTOBER 2006**

**LEGEND:**

	Complete, no outstanding action is required.
	Problematic, requires attention to ensure implementation is on track and/or significant risks to implementation are emerging.
	Highly problematic, requires urgent and decisive attention to get implementation on track and/or major risks are emerging.
	Underway or has not yet started (awaiting precursor actions), no significant risks foreseen.

**COMMITTEE-IN-CONFIDENCE**

<b>Committee Recommendations</b>	<b>Government Response/Action Directed by Government</b>	<b>Planned Completion</b>	<b>Status</b>
1, 2, 3, 7, 8 and 9	<p>In response to Recommendations 1, 2, 3, 7, 8 and 9, the Government agreed that:</p> <ul style="list-style-type: none"> <li>• Defence would work to improve the management and effectiveness of the relationship between the military and civilian authorities on referral issues. This would include:               <ul style="list-style-type: none"> <li>• reviewing and clarifying the guidelines, and examining the need for, and implementing as necessary, formal arrangements with the States and Territories for referral of offences; and</li> <li>• establishing a common database for tracking referrals.</li> </ul> </li> </ul>	<p>Oct 2007</p> <p>Oct 2007</p>	<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>• An ADF policy is being finalised for consideration prior to discussion with civil jurisdictions.</li> <li>• A major upgrade to the Defence Policing and Security Management System (DPSMS) currently underway and is expected to meet this requirement.</li> </ul>
4	<p>The Government agreed in part, noting that the ADF made an initial determination on whether offences of a suspected criminal nature should be retained for investigation and prosecution; and that:</p> <ul style="list-style-type: none"> <li>• Defence would .... as for Recommendations 1, 2 and 3 above.</li> </ul>	<p>As for Rec 1</p>	<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>• Action as per Recommendation 1.</li> </ul>
5	<p>The Government agreed in part that all Service police would act upon accepted recommendations of the Ernst and Young Report, as appropriate to each Service.</p> <p>The Government [also] agreed to:</p> <ul style="list-style-type: none"> <li>• encourage military personnel secondments and exchanges with civilian police authorities;</li> <li>• undertake a reserve recruitment drive to attract civilian police into the Defence Forces;</li> <li>• increase participation in civilian investigative training courses; and</li> <li>• design clearer career paths and development goals for military police personnel</li> </ul>	<p>Jun 2006</p> <p>Dec 2006</p> <p>Dec 2006</p> <p>Dec 2006</p> <p>Oct 2007</p>	<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>• These actions have been informed by the outcomes of the audit of ADF investigative capability and implementation action is underway (Recommendation 6).</li> </ul>

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6	<p>The Government agreed:</p> <ul style="list-style-type: none"> <li>• To conduct a Tri-Service audit of Service police to establish the best means for developing investigative capability.</li> <li>• That Defence would establish a joint ADF investigation unit to deal with more serious disciplinary and criminal investigations.</li> <li>• The [investigative] unit would be headed by a new ADF Provost Marshal outside single Service chains of command. Service police may be supplemented by civilian investigators.</li> <li>• The unit would deliver central oversight and control of ADF investigations and develop common professional standards through improved and consistent training.</li> </ul>	<p>Jun 2006</p> <p>Dec 2006</p> <p>Jun 2006</p> <p>Oct 2007</p>	<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>• The audit was completed and a final report submitted to CDF on 3 Aug 06.</li> <li>• Initial positions, to staff the planned joint ADF Investigation Unit, have been established. The recommendations of the audit report with respect to the mature structure of the Unit are currently being considered within Defence.</li> <li>• The ongoing requirement for secondment of an AFP officer has been informed by the outcome of the audit and will be the subject of discussions with the AFP.</li> <li>• The initial Provost Marshal ADF (Colonel Tim Grutzner, AM) was appointed on 14 May 06.</li> </ul>
10	<p>The Government agreed to legislate as soon as possible to create the statutorily independent Office of Director of Military Prosecutions (DMP).</p>	<p>Jun 2006</p>	<p><b>COMPLETED (DEC 05)</b></p> <ul style="list-style-type: none"> <li>• The statutory position of DMP was established under the <i>Defence Legislation Amendment Bill (No.2) 2005</i> which was assented on 12 Dec 05 and the position has been filled</li> </ul>
11	<p>The Government agreed that it is timely to review the Office of the DMP to ensure that it had sufficient resources to meet current and future work loads and was able to respond to operational requirements.</p>	<p>Dec 2006</p>	<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>• Eleven additional positions, required to implement the enhancements to the military justice system, have been established and are being filled.</li> <li>• Additional resources such as IT and accommodation have been reviewed and identified and are being progressed.</li> </ul>
12	<p>The Government agreed to review the training requirements for permanent legal officers assigned to the Office of the DMP (ODMP). The review would be extended to include the training requirements for reserve legal officers who may be assigned prosecution duties by the DMP.</p>	<p>Dec 2006</p>	<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>• Two new training positions have been established in the ODMP to facilitate the training of newly assigned officers.</li> <li>• The Commonwealth DPP is also providing assistance in the training of newly assigned officers to the ODMP.</li> </ul>

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13	The Government noted that the ODMP has been actively engaged in increasing its profile over the last eighteen months, and agreed that action should continue to raise the awareness and profile of the Office.	Jun 2007	<b>UNDERWAY</b> <ul style="list-style-type: none"> <li>• The DMP has commenced a range of briefs to the Services and various command and staff courses to raise the awareness of the ODMP.</li> <li>• A web page has also been developed to further assist in raising the awareness and profile of the DMP.</li> </ul>
14	The Government agreed to the statutory appointment of DMP at one star rank	Dec 2005	<b>COMPLETED (MAR 06)</b> <ul style="list-style-type: none"> <li>• DMP has been established at one star rank and the position has been filled.</li> </ul>
15	The Government agreed to appropriate remuneration for the appointment of the DMP, the remuneration to be determined by the Commonwealth Remuneration Tribunal.	Jun 2006	<b>COMPLETED (DEC 05)</b> <ul style="list-style-type: none"> <li>• The Commonwealth Remuneration Tribunal made a determination on remuneration for the DMP, effective 12 Dec 05. <i>(The determination also covered the Inspector General ADF (IGADF), Chief Judge Advocate (CJA) and Registrar of Military Justice (RMJ)).</i></li> </ul>
16	The Government agreed in-principle that: <ul style="list-style-type: none"> <li>• legal officers in the Office of the DMP would be required to hold Practising Certificates, and other permanent legal officers would be encouraged to take them out; and that</li> <li>• the matter of their independence would be established through amendment of the Defence Act, and commitment to professional ethical standards (ACT Law Society).</li> </ul>	Oct 2007	<b>UNDERWAY</b> <ul style="list-style-type: none"> <li>• All legal officers in the Office of the DMP now hold Practising Certificates.</li> <li>• The statutory appointment of the DMP has established the independence of the ODMP. The relevant professional ethical standards are under consideration.</li> </ul>
17	The Government agreed to establish a Director of Defence Counsel Services (DDCS) as a military staff position within the Defence Legal Division, to coordinate and manage the access to and availability of Defence counsel services by identifying and promulgating a Defence panel of legal officers, permanent and reserve.	Jun 2006	<b>COMPLETED (APR 06)</b> <ul style="list-style-type: none"> <li>• The position of Director of Defence Counsel Services has been established and filled.</li> </ul>

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18, 19 and 20	The Government agreed to create a permanent military court – the Australian Military Court (AMC), to replace the current system of individually convened trials by Court Martial and Defence Force Magistrate. The AMC would be established under appropriate Defence legislation.	Oct 2007	<b>UNDERWAY</b> <ul style="list-style-type: none"><li>• The Bill to establish the Australian Military Court was introduced into Parliament on 14 Sep 06.</li><li>• On 9 Oct 06, the Senate Standing Committee on Foreign Affairs, Defence and Trade held a hearing into the provisions of the Bill. The hearing raised some useful issues which will now be addressed in the further consideration of the Bill.</li><li>• When the legislation is passed, administrative action will proceed to allow the AMC to commence operations by 01 Oct 07.</li></ul>

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21	<p>The Government:</p> <ul style="list-style-type: none"> <li>• agreed in principle that judge advocates appointed to the Australian Military Court should have appropriate experience, and that appointments should be based on the same professional qualifications and experience that apply to other judicial appointments; and</li> <li>• noted that military judge advocates would predominantly be drawn from the Reserve and would have adequate civilian and military experience, nevertheless, qualified military legal practitioners should not be automatically excluded on the basis that they do not have civilian practice experience.</li> </ul>	Oct 2007	<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>• Action as per Recommendation 18.</li> </ul>
22	<p>The Government agreed in principle with the concept of a right to elect trial. The form of that right and appropriate thresholds would be determined once the structure of the Australian Military Court was established, but would be based on existing determinations that certain classes of serious offence must be tried by a court incorporating a military jury.</p>	Oct 2007	<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>• The form of the right to elect trial from summary procedures to the AMC will be included in legislation to revise summary procedures. This legislation is expected to be introduced into Parliament in 2007.</li> </ul>
23	<p>The Government agreed the concept of an automatic right of appeal, on conviction or punishment, from summary authorities to a judge advocate of the Australian Military Court. The current process of review would be discontinued. The existing right of appeal from Court Martial and Defence Force Magistrate to the Defence Force Discipline Appeals Tribunal (DFDAT) would be retained. Currently, the DFDAT may only hear appeals on conviction on points of law, and may quash a conviction or substitute a conviction on an alternative offence. This would be amended to include appeals on punishment, noting that such an appeal might result in an increased punishment.</p>	Oct 2007	<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>• Amendment to the right of appeal to the DFDAT has been included in the Bill to create the AMC.</li> <li>• The right of appeal from summary authorities to a military judge of the AMC will be included in legislation to revise summary procedures (as per recommendation 22).</li> </ul>

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24	<p>The Government:</p> <ul style="list-style-type: none"> <li>Agreed to continue the regular reviews of the Defence Whistleblower Scheme that have been undertaken since its inception. The current comprehensive review and its implementation would emphasise the present provisions against reprisals in the current Defence Whistleblower instruction.</li> <li>Supported annual reporting of the operation of the scheme against documented performance standards.</li> </ul>	<p>Dec 2005</p> <p>Jun 2006</p>	<p><b>COMPLETED (DEC 05)</b></p> <ul style="list-style-type: none"> <li>The first of a series of regular reviews was completed into the Defence Whistleblower Scheme and the operation of the Scheme is to be reported annually in the Defence Annual Report (<i>This internal review indicates that the scheme is operating satisfactorily</i>).</li> </ul>
25	<p>The Government noted that Defence already reported statistics on reporting unacceptable behaviour in its annual report. The Government agreed in part that Defence would continue to include this data in the Defence Annual Report.</p>	<p>Jun 2006</p>	<p><b>COMPLETED (DEC 05)</b></p> <ul style="list-style-type: none"> <li>Reporting of wrong-doing was included in the 2004-05 Defence Annual Report and will continue to be reported. (<i>Wrong-doing is generally accepted as being inappropriate behaviour</i>).</li> </ul>
26	<p>The Government agreed to amend the Administrative Inquiries Manual to specify that quick assessments, while mandatory, should not replace the appropriate use of other forms of administrative inquiries. The Manual would provide improved guidance on the use of quick assessments.</p>	<p>Jun 2006</p>	<p><b>COMPLETED (APR 06)</b></p> <ul style="list-style-type: none"> <li>Amendments to the Administrative Inquiries Manual were completed and promulgated in Apr 06. In addition to covering these recommendations, the amendments incorporate agreed action from the earlier Acumen Alliance Review.</li> </ul>
27	<p>The Government agreed to amend the Administrative Inquiries Manual to improve guidance to Commanders who are responsible for the selection of inquiry officers to carry out administrative inquiries, such as routine inquiries, or those appointed as Investigating Officers under the Defence [Inquiry] Regulations.</p>	<p>Jun 2006</p>	<p><b>COMPLETED (APR 06)</b></p> <ul style="list-style-type: none"> <li>As for Recommendation 26.</li> </ul>

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30	The Government has taken action to clear the backlog of grievances in line with recommendations from the DFO/CDF Redress of Grievance Review 2004. This is scheduled to be completed by the end 2005, with no requirement for additional funding or a task force.	Dec 2005	<b>COMPLETED (DEC 05)</b> <ul style="list-style-type: none"> <li>• The backlog of Redresses of Grievance cases has been cleared (<i>There is no longer a backlog of cases which previously caused undue pressure on the complaints resolution system</i>).</li> </ul>
31	The Government agreed to amend the Administrative Inquiries Manual to require the President to ensure that a copy of the relevant evidence is provided to a person whom the President considers is an affected person but who is not present at the hearings. It would be a matter for the President to determine what evidence should be made available to an affected person having regard to all the circumstances of each case.	Jun 2006	<b>COMPLETED (APR 06)</b> <ul style="list-style-type: none"> <li>• As for Recommendation 26.</li> </ul>
32	The Government agreed to amend the Administrative Inquiries Manual as recommended, noting that the matter of what constitutes a reasonable opportunity for familiarisation is a matter for the decision of the President of the Board of Inquiry having regard to the circumstances of each case.	Jun 2006	<b>COMPLETED (APR06)</b> <ul style="list-style-type: none"> <li>• As for Recommendation 26.</li> </ul>
33	<p>The Government noted that the substance of this recommendation was agreed to following the 1999 Senate Inquiry into the Military Justice System, and Defence is finalising changes to Defence [Inquiry] Regulations 33. The Government agreed in part that:</p> <ul style="list-style-type: none"> <li>• In cases where either the appointing authority, before the inquiry starts, or the President of a BOI makes a written determination that persons may be adversely affected by the Board's inquiry or its likely findings, that persons would be entitled to appear before the Board and would have a right to appoint a legal practitioner to appear to represent them before the Board, if they wish.</li> <li>• Where such persons are represented by an ADF legal officer, or some other Defence legal officer, such representation would be provided at Commonwealth expense, in accordance with standing arrangements.</li> <li>• The representatives of the estate of deceased persons who had died as a result of an incident and may be adversely affected by the Board's inquiry or its likely findings, would be entitled to be legally represented before the BOI into that incident. Where the representative of the estate of such persons choose to be represented before the Inquiry by an ADF legal officer, or some other Defence legal officer, such representation would be provided at Commonwealth expense, in accordance with standing arrangements.</li> </ul>	<p>Dec 2006</p> <p>Dec 2006</p> <p>Dec 2006</p>	<b>COMPLETED (MAR 06)</b> <ul style="list-style-type: none"> <li>• Amendments to the Defence (Inquiry) Regulations 1985 (D(IR) 33 were completed as at 31 Mar 06.</li> </ul>

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35	The Government agreed in principle that, in addition to ongoing internal monitoring and review, Defence would commission regular independent reviews on the health of the military justice system. Such reviews would be headed by a qualified eminent Australian, with the first timed to assess the effectiveness of the overhauled military justice system proposed in this submission, at the conclusion of the two-year implementation period.	Oct 2007	<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>• Arrangements for the conduct of a review of the effectiveness of the overhauled military justice system at the conclusion of the two-year implementation period will be made in 2007.</li> <li>• In addition to the Government response, as announced by the CDF in Oct 2005, an independent audit of the learning culture in ADF schools and training establishments was undertaken. The 'Inquiry into the Learning Culture in ADF Schools' was completed in Jul 06 and a final report was submitted to CDF on 7 Jul 06. The Report is being considered within Defence.</li> </ul>
36	The Government agreed in principle to examine the combination of criminal law and administrative action in terms of best-practice military justice, noting that such a review would also satisfy a recommendation from the Burchett Report to review the nature of the punishments that may be imposed in the light of contemporary standards. This review would be undertaken outside the broad review proposed at recommendation 35, and would be completed within the two-year implementation period.	Oct 2007	<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>• Examination of the combination of criminal and administrative law was completed by obtaining independent external advice on double jeopardy from the Australian Government Solicitor. The advice has been taken into account in the development of a revised Defence Instruction (General), which deals with Formal Warnings and Censures in the ADF.</li> <li>• An internal review of offences and punishments is being conducted as part of the process for enhancing summary procedures.</li> </ul>

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