

AUSTRALIAN DEFENCE FORCE

REPORT TO THE SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE

ON

PROGRESS OF ENHANCEMENTS TO THE MILITARY JUSTICE SYSTEM

APRIL 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 Recommendations	Government Response/Action Directed by Government	Planned Completion	Status
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"> • 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"> • 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 • establishing a common database for tracking referrals. 	<p>Oct 2007</p> <p>Oct 2007</p>	<p>UNDERWAY</p> <ul style="list-style-type: none"> • An ADF policy is being prepared for consideration prior to discussion with civil jurisdictions. • A major upgrade to the Defence Policing and Security Management System (DPSMS) currently underway, is expected to meet this requirement.
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"> • Defence would as for Recommendations 1, 2 and 3 above. 	<p>As for Rec 1</p>	<p>UNDERWAY</p> <ul style="list-style-type: none"> • Action as per Recommendation 1
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"> • encourage military personnel secondments and exchanges with civilian police authorities; • undertake a reserve recruitment drive to attract civilian police into the Defence Forces; • increase participation in civilian investigative training courses; and • design clearer career paths and development goals for military police personnel 	<p>June 2006</p> <p>Dec 2006</p> <p>Dec 2006</p> <p>Dec 2006</p> <p>Oct 2007</p>	<p>UNDERWAY</p> <ul style="list-style-type: none"> • Action upon accepted recommendations of the Ernst & Young Report, appropriate to each Service has commenced. Further implementation will be informed by the outcomes of the audit of ADF investigative capability (Recommendation 6). • These [additional] actions will be informed by the outcomes of the audit of ADF investigative capability

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6	<p>The Government agreed:</p> <ul style="list-style-type: none"> To conduct a Tri-Service audit of Service police to establish the best means for developing investigative capability. That Defence would establish a joint ADF investigation unit to deal with more serious disciplinary and criminal investigations. 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. The unit would deliver central oversight and control of ADF investigations and develop common professional standards through improved and consistent training. 	<p>June 2006</p> <p>Dec 2006</p> <p>June 2006</p> <p>Oct 2007</p>	<p>UNDERWAY</p> <ul style="list-style-type: none"> The audit, which commenced in Feb 06, is well underway. A final report is due to CDF by 30 Jul 06. A retired AFP Deputy Commissioner has been seconded, initially to assist in the conduct of the audit of ADF Service police investigative capability. The ongoing requirement for secondment of an AFP officer will be informed by the outcome of the audit. Initial positions, to staff the planned investigation unit, have been established. The requirement for and/or shape of the unit will be informed by the outcomes of the audit. A recommendation on the initial selection for the position of Provost Marshal ADF is with CDF for consideration.
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>COMPLETED (DEC 05)</p> <ul style="list-style-type: none"> 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.
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>UNDERWAY</p> <ul style="list-style-type: none"> Additional positions have been identified and are awaiting final endorsement for approval.
12	<p>The Government agreed to review the training requirements for permanent legal officers assigned to the Office of the DMP. 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>AWAITING PRECURSOR ACTIONS</p> <ul style="list-style-type: none"> Action is expected to commence once the additional positions to adequately resource the Office of the DMP are filled.
13	<p>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.</p>	<p>Jun 2007</p>	<p>AWAITING PRECURSOR ACTIONS</p> <ul style="list-style-type: none"> Action is expected to commence once the additional positions to adequately resource the Office of the DMP are filled.

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14	The Government agreed to the statutory appointment of DMP at one star rank	Dec 2005	COMPLETED (MAR 06) <ul style="list-style-type: none"> • DMP has been established at one star rank.
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	COMPLETED (DEC 05) <ul style="list-style-type: none"> • 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>
16	The Government agreed in-principle that: <ul style="list-style-type: none"> • 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 • the matter of their independence would be established through amendment of the Defence Act, and commitment to professional ethical standards (ACT Law Society). 	Oct 2007	AWAITING PRECURSOR ACTIONS <ul style="list-style-type: none"> • Action is expected to commence once the additional positions to adequately resource the Office of the DMP are filled.
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	UNDERWAY <ul style="list-style-type: none"> • The position of Director of Defence Counsel Services has been established and it is expected to be filled in Apr 06.

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18, 19 and 20	<p>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.</p> <ul style="list-style-type: none"> • The Court would satisfy the principles of impartiality and independence through the statutory appointment of judge advocates with security of tenure (five-year fixed terms with a possible renewal of five years) and remuneration set by the Remuneration Tribunal (Cth). During the period of their appointment, the judge advocates would not be eligible for promotion, to further strengthen their independence from the chain of command. • The Court would consist of a Chief Judge Advocate and two permanent judge advocates, with a part-time reserve panel. • The panel of judge advocates would be selected from any of the available qualified full or part-time legal officers. • The remaining functions of the Judge Advocate General would be transferred to the Chief Judge Advocate and the Registrar of Military Justice • The court would be provided with appropriate para-legal support sufficient for it to function independent of the chain of command. • The court would include options for judge advocates to sit alone or, in more serious cases, with a military jury. • The use of a jury would be mandatory for more serious military offences, including those committed in the face of the enemy, mutiny, desertion or commanding a service offence. • Appointments would be made by the Minister for Defence. 	Oct 2007	<p>UNDERWAY</p> <ul style="list-style-type: none"> • Drafting instructions to create the Australian Military Court (AMC) were submitted to the Office of Parliamentary Council (OPC) on 03 Mar 06 with a view to the legislation being introduced in the 2006 Winter sittings of Parliament. Priority was given to this initiative in order that the legislation may be passed by the end of 2006.

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21	<p>The Government:</p> <ul style="list-style-type: none"> 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 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. 	Oct 2007	<p>UNDERWAY</p> <ul style="list-style-type: none"> Action as per Recommendation 18
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>UNDERWAY</p> <ul style="list-style-type: none"> Action as per Recommendation 18 and will be included in the subsequent changes to summary procedures.
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>UNDERWAY</p> <ul style="list-style-type: none"> Action as per Recommendation 18

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24	<p>The Government:</p> <ul style="list-style-type: none"> 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. Supported annual reporting of the operation of the scheme against documented performance standards. 	<p>Dec 2005</p> <p>Jun 2006</p>	<p>COMPLETED (DEC 05)</p> <ul style="list-style-type: none"> 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>).
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>COMPLETED (DEC 05)</p> <ul style="list-style-type: none"> Reporting of wrong-doing was included in the 2004-05 Defence Annual Report and will continue to be reported. (<i>Wrongdoing is generally accepted as being inappropriate behaviour</i>).
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>UNDERWAY</p> <ul style="list-style-type: none"> Amendments to the Administrative Inquiries Manual are expected to be complete and promulgated by Jun 06. In addition to covering these recommendations, it would also incorporate agreed amendments from the earlier Acumen Alliance Review.
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>UNDERWAY</p> <ul style="list-style-type: none"> As for Recommendation 26

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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	UNDERWAY <ul style="list-style-type: none"> Amendments to the Administrative Inquiries Manual are expected to be agreed and promulgated by Jun 06.
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	UNDERWAY <ul style="list-style-type: none"> Amendments to the Administrative Inquiries Manual are expected to be agreed and promulgated by Jun 06.
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"> 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. 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. 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. 	<p>Dec 2006</p> <p>Dec 2006</p> <p>Dec 2006</p>	COMPLETED (MAR 06) <ul style="list-style-type: none"> Amendments to the Defence (Inquiry) Regulations 1985 (D(I)R) 33 were completed as at 31 Mar 06.

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35	<p>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.</p>	Oct 2007	<p>UNDERWAY</p> <ul style="list-style-type: none"> • 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 early in 2007. • In addition to the Government response, as announced by the CDF in Oct 2005, an audit of the learning culture in ADF schools and training establishments has commenced. A final report is due to be submitted to the CDF by 30 Jun this year. The aim of this audit is to establish a baseline from which to drive change in the ADF's schools and training culture, where necessary.
36	<p>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.</p>	Oct 2007	<p>UNDERWAY</p> <ul style="list-style-type: none"> • Preliminary advice has been requested from the Office of the Australian Government Solicitor which, when received, will form the basis for this examination. The advice will additionally form a basis for further action necessary to develop summary procedures with simplified rules of evidence and the right of appeal on conviction and sentence to the Australian Military Court.
37	<p>The Government supported the need for transparency and parliamentary oversight of the military justice system. The Government agreed to provide, in the Defence Annual Report, reporting on the state of health of the military justice system. Reporting would include: progress in the implementation and effectiveness of reforms to the military justice system, arising both from this report and previous reviews under implementation, and the workload and effectiveness of the key bodies within the military justice system.</p> <p>Defence would also amend the D(IR)s to provide for an annual report on the operation of the D(IR), fulfilling a recommendation of the Burchett report, and report twice a year to the Senate committee [April and October], on progress of the reforms throughout the two year implementation process.</p>	<p>Jun 2006</p> <p>Jun 06</p>	<p>UNDERWAY</p> <ul style="list-style-type: none"> • Reporting on the state of health of the military justice system will be included in the 2005-2006 Defence Annual Report. • Drafting instructions to the Office of Legislative Drafting are currently being prepared to provide for an annual report on the operation of the D(IR). • An initial report to the Senate FAD&T Legislation Committee has been submitted Apr 06.

Committee Recommendations	Government Response/Action Directed by Government	Planned Completion	Status
38	The Government agreed to commission an expert to examine whether the human rights of children are being respected.	Jun 2006	UNDERWAY <ul style="list-style-type: none"> • The expert is scheduled to be engaged before Jun 06.
39	The Government agreed that the ADF take steps immediately to draft and make regulations dealing with the ADF Cadets to ensure that the rights and responsibilities of Defence and cadet staff are aligned, noting that as part of the significant work initiated under the Government's Cadet Enhancement Program, Defence is finalising amendments to the regulations that would more than meet the Committee's recommendations on the human rights of minors.	Jun 2006	UNDERWAY <ul style="list-style-type: none"> • Drafting instructions were issued to the Office of Legislative Drafting in Jan 06, to amend the Cadet Forces Regulations 1977. It is expected that the Federal Executive Council would consider these amendments by Jun 06.
40	The Government agreed that further resources be allocated to the Australian Defence Force Cadets to provide for an increased number of full-time, fully remunerated administrative positions across all three cadet organisations and noted that the Service Chiefs had already provided additional resources to the ADF Cadets to improve administrative support.	Jun 2006	UNDERWAY <ul style="list-style-type: none"> • Further administrative positions across all three cadet organisations will have been established and filled by Jun 06. Recruitment and selection processes have commenced to fill the one remaining vacant position.