

**DEFENCE RESPONSE
TO
THE REPORT OF THE INDEPENDENT
REVIEW ON THE HEALTH OF THE
REFORMED MILITARY JUSTICE
SYSTEM
(THE STREET & FISHER REPORT)**

UNCLASSIFIED



Minute

Chief of the Defence Force

CDF/OUT/2009/584

See Distribution

FINAL STREET & FISHER IMPLEMENTATION PLAN

Reference:

- A. COSC Agendum 31/09 – Defence Response to and implementation plan for the Report of the Independent Review on the Health of the Reformed Military Justice System as considered by COSC on 26 May 09

Introduction

1. On 23 January 2009 Sir Laurence Street, AC, KCMG, QC and Air Marshal Les Fisher (Rtd), AO presented the Final Report of the Independent Review on the Health of the Reformed Military Justice System (Street & Fisher Report) to CDF. The purpose of this review was to assess the effectiveness of the overhauled military justice system following the implementation of the then Government response to the Senate Committee Report as well as the implementation of the Government and/or ADF responses to the nine previous inquiries and reviews into the military justice system.

2. The overall assessment of the Street & Fisher Report is that:

The [military justice system] is delivering and should continue to deliver impartial, rigorous and fair outcomes; has greater transparency and enhanced oversight; is substantially more independent from the chain-of-command; and is effective in maintaining a high standard of discipline both domestically and in the operational theatre. Also, there is evidence that ADF training establishments have embraced the intent and spirit espoused within the [Learning Culture Inquiry]... (p viii)

3. The Street & Fisher Report makes 49 recommendations aimed at consolidating the last decade of reform and ensuring the ADF military justice system is properly positioned for the organisational challenges that lie ahead. The findings reinforce Defence's commitment to delivering impartial, rigorous and fair military justice outcomes.

Implementation Plan

4. On 26 May 09 the Chiefs of Service Committee (COSC) met to consider the proposed Implementation Plan for the Street & Fisher Report. Through thorough consultation, a comprehensive implementation plan has been devised, providing steps for progression for further military justice reforms over the next three years. The Implementation Plan continues Defence's ongoing commitment to responsible maintenance of, and improvements to, the military justice system, and consolidates existing review proposals into a single clearly articulated reform agenda. The Implementation Plan agreed by the COSC is at Annex A.

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Supplementary Recommendations

5. Supplementary recommendations agreed by the COSC have been incorporated into Annex A adjacent to the relevant Street & Fisher recommendation. For ease of reference, the supplementary recommendations are:

- a. **Role of ADFIS in operational theatres.** This recommendation is supplementary to Recommendations 6 and 7 of the Street & Fisher Report. VCDF in conjunction with CJOPS will review and provide recommendations on how ADFIS can best support the conduct of an investigation or inquiry in an operational theatre as part of the current review of DI(G) PERS 45-2 and report back to the August COSC.
- b. **Future role and employment of civilian Defence Investigative Authorities.** This recommendation is supplementary to Recommendation 15 of the Street & Fisher Report. VCDF will provide recommendations on the future role and employment of civilian Defence Investigative Authorities in the conduct of DFDA investigations and report back to the August COSC.
- c. **Legal 06 rotational plan.** This recommendation is supplementary to Recommendations 18 and 19 of the Street & Fisher Report (implementation of which will be led by Head People Capability (HPC) supported by Head Defence Legal (HDL)). A staffing model for all 06 rotational legal positions within the military justice system to take account of the necessary qualifications, experience and skills required for each of these positions due to their pivotal role has been agreed. Implementation will occur in the following manner:
 - (1) In consultation with the Services, Directorate of Senior Officer Management (DSOM) will establish a succession plan for O6 legal rotational positions reflecting an agreed 2 (Navy) 3 (Army) 2 (Air Force) allocation. This rotational plan will be effective from January 2010 and will allow posting action to commence by end of July 2009.
 - (2) The plan will consider the tenure assigned to current officers filling billets and will also assign high priority to staffing of the Director of Defence Counsel Services (DDCS) position.
 - (3) To ensure the Services are better informed about the specific position requirements and required characteristics of the individual to perform in a specific position, all O6 rotational legal positions will be 'profiled' to provide a detailed guide of the necessary qualifications, experience and skills required for each position and to guide the nomination of candidates presented to the O6 Rotational Plot conference conducted by DSOM every 2-3 months as required.
 - (4) The Director General ADF Legal Services will attend this conference in an advisory capacity. As some of these O6 legal positions work to statutory appointees within the military justice system, the statutory appointee may also attend in an advisory capacity.

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- d. **Proposal to enable directions and/or guidelines to be issued to the DMP.** This recommendation is supplementary to Recommendation 20 of the Street & Fisher Report. The COSC agreed to progress this proposal. There are two possible options for this proposal:
- (1) for the directions and/or guidelines to be issued by either the Minister for Defence, following consultation with the Commonwealth Attorney-General, or
 - (2) for directions and/or guidelines to issued directly by the Attorney-General.

A recommendation will be made to the Minister of Defence that both options should be canvassed with the Commonwealth Attorney-General in order to seek his views on the proposal and on the possible roles identified for him.

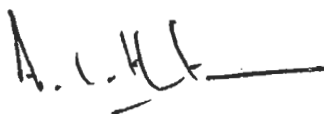
Management of and Reporting on Progress on Implementation

6. Until the Military Justice Coordination Committee (MJCC) (see Street & Fisher Recommendation 28) is established, HDL will coordinate implementation of the recommendations of the Street & Fisher Report. Specific responsibility for implementation of individual recommendations is designated in Annex A. Once established, the MJCC will monitor implementation and report to COSC quarterly on progress.

7. Inspector General ADF (IGADF) will report on implementation progress through quarterly reporting to the COSC and in the IGADF Annual Report to Parliament (following passage of the amending legislation through Parliament). Consistent with the conclusion of the Street & Fisher Report, reporting on the nine previous military justice inquiries and reviews will discontinue, although reporting on implementation progress of the 2006 Defence Investigative Capability Audit Report and the 2006 Learning Culture Inquiry will continue as these inquiries are current and the relevant reforms are still ongoing. IGADF will also incorporate progress on implementation in the IGADF Annual Report to Parliament.

Point of Contact

8. My points of contact are Tony Corcoran, Assistant Secretary Freedom of Information & Records Management, telephone 02 62664080, and Lieutenant Colonel Bronwyn Worswick, Staff Officer (Legal) to CDF, telephone 02 62651067.



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5 Jul 09

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Annex:

A. Final Implementation Plan – Street & Fisher Report

Distribution:

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ANNEX A TO
OCDF/OUT/2009/584
DATED 5 JUL 09

FINAL IMPLEMENTATION PLAN

Rec #	Report Recommendation	RESPONSE
1	Raise a specific pay case recognising the Fundamental Input to Capability ADF Investigators deliver across ADF, and the unique and demanding skill sets required of service investigators to meet legal and civil expectations.	AGREED
2	Raise a second dedicated and significant pay initiative, across tri-Service lines, to encourage Service Police recruitment and retention: this initiative needs to be sufficient to allow the Service Police agencies to compete from within the ADF workforce and attract lateral transfer recruitment from civil policing agencies.	AGREED
3	Encourage greater efforts within the Defence organisation to ensure a joint culture is established within ADF Investigative Service.	AGREED
4	Establish a temporary '07' position as an adjunct to the Provost Marshal Australian Defence Force.	NOT AGREED
5	Establish a service police career model that allows personnel to rotate in and out of ADF Investigative Service.	AGREED
6	Amend DI(G) ADMIN 45-2 Reporting and Investigation of Alleged Offences within the Australian Defence Organisation to reflect a mandatory requirement on all Defence Investigative Authorities (DIA) to report back to a unit commanding officer within seven days of receipt of a notifiable incident, as to whether (or not) they intend to assist/proceed with an investigation. In the absence of response within seven days the matter is deemed to be declined by the DIA and returned to the unit for action.	SUBSTANTIALLY AGREED
7	Amend DI(G)ADMIN 45-2 Reporting and Investigation of Alleged Offences within Defence to clarify the description and purpose of notifiable incidents and to rebalance investigative authority between units and DIA.	AGREED
8	Amend the Discipline Officer scheme to allow personnel down to the rank of WO 2 (E) to be appointed as Discipline Officers.	AGREED
9	Amend jurisdiction of appointed Discipline Officers to discipline personnel 'two or more ranks down'.	AGREED
10	Amend the DFDA to apply a single scale of punishments applicable across all ranks, including 'Extra Duties'.	AGREED
11	Extend Discipline Officer jurisdiction to encompass visiting, transient and attached personnel.	AGREED
12	Revise Discipline Officer reporting arrangements to allow for a single collated Discipline Officer punishments return within individual units.	AGREED
13	Introduce into Discipline Law Manual Vol 3 a simplified checklist/flow chart and simplify the language for election and appeal.	AGREED
14	Introduce an improved 'higher command review' mechanism with authority to take remedial action (to replace the recently adopted 'technical' review of summary level DFDA hearings).	AGREED
15	Create a specific offence in the DFDA for misuse of a Defence Credit Card without authority, which may be tried summarily. This offence should also be a DFDA Class 3 Offence for the purposes of Australian Military Court trial.	AGREED IN PRINCIPLE
16	Review Defence Travel Card administrative arrangements with a view to reducing the risk of misuse.	AGREED
17	Review the classification of all DFDA offences and classes to achieve greater efficiencies.	AGREED
18	Increase the organisational independence of Director of Defence Counsel Services.	AGREED
19	Rebalance permanent and reserve legal officer staffing, facilitating exchange between Director of Defence Counsel Services and the Office of the Director of Military Prosecutions.	AGREED IN PRINCIPLE
20	Director of Military Prosecutions discontinue the practice of appearing in the conduct of prosecutions; a permanent or reserve officer should be briefed on each occasion to appear for the prosecution.	NOT AGREED
21	Establish the new Australian Military Court facility in Canberra as the principal location for hearings and uniformed Court staff be identified to provide support in Canberra and the regions.	SUBSTANTIALLY AGREED
22	Develop a plan where circuit hearings for the Australian Military Court make use of the recently selected Reserve Judges, sitting where appropriate at regional locations and on a fixed calendar basis.	AGREED IN PART

23	Expand the available pool of potential ADF jurors by lowering the minimum rank for panel members to CPL (E), (whilst retaining the provision that no jury member is to be of subordinate rank to the accused) and removing the mandatory requirement for at least one member of the jury to be of LTCOL (E).	AGREED
24	Provision be made for the Registrar of the Australian Military Court to identify and select potential jurors on a 'regional basis' in preference to the current nation-wide pool.	AGREED
25	Amend the DFDA to include the power for a military judge to order a convicted member into custody following conviction but before sentence, together with the authority to order conditional release where appropriate.	AGREED
26	Amend the DFDA so that a stay of execution against a punishment imposed by the summary authority is with the leave or direction of the Australian Military Court, and is not automatic upon appeal notification.	NOT AGREED AT THIS TIME
27	In proceedings in the Australian Military Court the rules of evidence to be applied should be the rules of evidence in the Federal Court.	AGREED IN PRINCIPLE
28	Establish a non executive 'Discipline Coordination and Efficiency Committee' (DCEC), chaired by a senior 'line officer' to oversee and coordinate DFDA action items and facilitate future efficiencies across the principal responsible DFDA agencies.	AGREED IN PRINCIPLE
29	Defence Legal responsible for developing and implementing ongoing law reform within Defence.	AGREED
30	Professional Rules for ADF legal officers be introduced with technical control and professional administrative oversight by the Director General ADF Legal Services on advice from Head of Corps/Category and in consultation with Head Defence Legal.	AGREED
31	a) Disestablish the Judge Advocate General and Deputy Judge Advocate General positions once all legacy DFDA appeals have been finalised and b) Have the Inspector General ADF report annually on the military justice system to the Minister for presentation to Parliament.	AGREED
32	a) Expand the Defence Force Discipline Appeals Tribunal to six members and b) allow a single member to hear and determine sentencing appeals for Class 2 and 3 offences or to refer an appeal to the full tribunal for determination.	AGREED
33	Establish and promulgate Key Performance Indicators (KPIs)/Benchmarks against which the performance of each of the principal military justice system agencies can be assessed.	AGREED
34	Arrangements be established between the principal military justice agencies and the Inspector General ADF (IGADF) to facilitate the transfer of performance data to the IGADF.	AGREED
35	Repromulgate DI(G)ADMIN 10-8 <i>Conduct Reporting and Tracking System</i> to require DFDA case data to be entered by the agency that has carriage of the case at the time, reducing the unit administrative burden after the fact.	AGREED
36	Simplify military justice system data collection systems (in particular, the Conduct Reporting and Tracking System) with the aim of improving the user interface, connectivity, and minimising the growing number of reporting systems and occasions for reporting.	AGREED
37	Review the policy relating to the retention and access of disciplinary investigations and records that do not result in a prosecution, and hearings that result in an acquittal, quashing or direction 'not to proceed'.	AGREED
38	Maintain the co-location of the policy and resolution delivery functions of Fairness and Resolution Branch within People Strategies and Policy Group.	AGREED
39	Adopt and promulgate a 90 day benchmark for the referral of Redresses of Grievance to CDF/Service Chiefs.	AGREED IN PART
40	Review modern illegal drug detection techniques with a view to introduction as appropriate.	AGREED
41	Review the current Service termination process to reduce delays and the exploitation of the Redress of Grievance system by disaffected personnel.	AGREED
42	Amend the <i>Defence (Inquiry) Regulations</i> and <i>Defence Act</i> to provide Inquiry Officers the requisite powers and protections to compel ADF Reserve personnel and Defence APS staff to participate in inquiries.	AGREED
43	Provide administrative support to CDF Commissions of Inquiry from the Office of Inspector General ADF.	NOT AGREED

44	Pursue legislative amendments to allow for the appointment of Commissions of Inquiry (COI) Assistants with similar powers and protections as those currently granted to Inquiry under Part 6 of the <i>Defence (Inquiry) Regulations</i> . Extend witness protections currently provided for evidence given before a COI to evidence provided to a COI Assistant and evidence otherwise provided to a COI outside of formal hearings.	AGREED
45	Provide on recruitment, a pamphlet highlighting DFDA and Performance Appraisal System in a disciplined military force, and emphasising the rights and responsibilities of individuals.	AGREED
46	Introduce a training continuum for non-commissioned officers and junior officers, to better prepare personnel to perform the duties of summary level prosecuting officer and defending officer, and to participate in the conduct of administrative sanctions and routine inquiries.	AGREED
47	Conduct the next military justice system review in three years.	AGREED
48	Establish a discretionary delegation for CDF to compensate administrative/management/financial errors in addition to the current Compensation for Detriment Caused by Defective Administration (CDDA) scheme.	AGREED
49	Reemphasise requirement for all senior reporting officers (both APS and military) to adhere to the requirements of DI(G)PERS 37-1 – <i>Appraisal and Development Reporting of Executive and Senior Executive Officers in the Australian Defence Force</i> .	AGREED

IMPLEMENTATION PLAN

Rec #	Report Recommendation	Response	Comments and Action	Action Authority
1	<p>Raise a specific pay case recognising the Fundamental Input to Capability (FIC) ADF Investigators deliver across the ADF, and the unique and demanding skill sets required of service investigators to meet legal and civil expectations.</p>	AGREED	<p>The Chiefs of Service Committee Agendum 51/08 directs VCDF to assume responsibility for ADF Investigative Service (ADFIS) -related administrative matters including progression of separate pay cases for ADF investigators and Service Police across tri-Service lines.</p> <p>The implementation plan for this recommendation requires VCDF, through Provost Marshal ADF (PM ADF), to take the following actions:</p> <ul style="list-style-type: none"> ▪ In consultation with Directorate of Military Salaries and Allowances – Policies (DMSA), establish and agree a plan for progression of the pay case which appropriately remunerates ADF investigators in light of their specialist skill sets. This was completed in February 2009. ▪ Establish liaison points with single Service industrial relations representatives. This was completed in March 2009. ▪ Seek endorsement from the Director General Personnel from each Service on the proposed way ahead by mid May 2009. ▪ Prepare the supporting submission to the Employment Category Review Committee (ECRC) by late May 2009. ▪ Seek approval from the Workforce Planning Finance Committee (WPFC) as required by early July 2009. ▪ Seek appointment of a DMSA case officer by mid July 2009. ▪ Submit amendments to Defence Force Remuneration Tribunal as part of Graded Other Ranks Pay Structure (GORPS) by mid November 2009. <p>Progress on the pay case will be monitored by VCDF through the ADFIS Governance Board. Progress and outcomes will be reviewed as part of an independent review of ADF investigative capability at the conclusion of the five year remediation period identified in the 2006 Report on the Audit of the ADF Investigative Capability (the DICA Report) in December 2011.</p>	VCDF
2	<p>Raise a second dedicated and significant pay initiative, across tri-Service lines, to encourage service police recruitment and retention; this initiative needs to be sufficient to allow the service police agencies to compete from within the ADF workforce and attract lateral transfer recruitment from civil</p>	AGREED	<p>The Chiefs of Service Committee Agendum 51/08 directs VCDF to assume responsibility for ADFIS-related administrative matters including progression of remuneration initiatives for ADF investigators.</p> <p>The implementation plan for this recommendation requires VCDF, through Provost Marshal ADF (PM ADF), to take the following action:</p> <ul style="list-style-type: none"> ▪ Consult with the single-Service Provost Marshals to establish historical retention rates and vacancy trends, including: <ul style="list-style-type: none"> ○ Identifying issues that adversely affect retention; and ○ Determining if pay and allowances are contributing factors to poor retention rates. 	VCDF

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	policing agencies.		<ul style="list-style-type: none"> ▪ Identify options for remuneration to assist with retention as appropriate. ▪ Oversee the development of a remuneration submission, with approvals through the relevant elements of single-Service Headquarters. <p>This body of work will be commenced after the conclusion of the Pay Case submission identified in Recommendation 1. The estimated completion time is mid 2010.</p>	
3	Encourage greater efforts from within all areas of Defence to ensure a joint culture is established and maintained within ADF Investigative Service (ADFIS).	AGREED	<p>The Chiefs of Service Committee Agendum 51/08 agreed that urgent action is required to maintain momentum in the development of ADF Investigative Service (ADFIS). On 6 Nov 08 CDF directed Provost Marshal ADF (PM ADF) to provide a new direction and to build a 'joint' culture for ADFIS, emphasising the need for strong leadership and extensive communication with stakeholders.</p> <p>The implementation plan for this recommendation has been developed by PM ADF to achieve the following:</p> <ul style="list-style-type: none"> ▪ Provision of leadership and guidance to establish unit identity; provide a sense of place and purpose for individuals; and foster teamwork. ▪ Establishment of closer working relations within and external to ADFIS, particularly with unit commanders and their leadership teams. ▪ Promotion of professionalism, and performance and growth guided by planned capability development. <p>The implementation plan requires PM ADF to take the following actions:</p> <ul style="list-style-type: none"> ▪ Develop a data research proposal. This is currently in progress. ▪ Collect relevant data through surveys/interviews/questionnaires by August 2009. ▪ Re-draft the ADFIS establishment to create tri-Service Investigation Offices and seek Service Chief approval by December 2009. ▪ Prepare an ADF Service Policing Plan (DICA Report Recommendation 2.9) that synergises Service Police tasks through the spectrum of operational environments. <p>Progress on this recommendation will be monitored by Head Military Strategic Commitments (HMSC) and by VCDF through the ADFIS Governance Board. Progress and outcomes will be reviewed as part of an independent review of ADF investigative capability at the conclusion of the five year remediation period identified in the 2006 Report on the Audit of the ADF Investigative Capability (the DICA Report) in December 2011.</p>	VCDF
4	Establish a temporary '07' position as an adjunct to the Provost Marshal-Australian Defence Force	NOT AGREED	<p>This recommendation has been overtaken by the establishment of the ADF Investigative Service (ADFIS) Governance Board and changed command arrangements for Provost Marshal ADF (PM ADF). In combination, these provide PM ADF with the appropriate level of support to enable progression of:</p>	

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	(PM-ADF), to assist with ongoing project implementation.		<ul style="list-style-type: none"> ▪ implementation of the necessary recruitment and retention measures to ensure viable manning levels; ▪ addressing cultural impediments; ▪ introduction of a Quality Assurance Review and Reporting regime; and ▪ implementation of Recommendations 1 to 3, 5 to 7 of the Street & Fisher Report and the outstanding recommendations of the 2006 Report on the Audit of the ADF Investigative Capability (the DICA Report). <p>CDF Directive 17/2008 <i>Establishment of the ADF Investigative Service Governance Board</i> established the ADFIS Governance Board to provide higher level oversight of the development of ADFIS. Membership of the Governance Board comprises VCDF (Chair), Head Defence Legal, Inspector General ADF (IGADF), a Senior Representative of the Australian Federal Police, Head Military Strategic Commitments (HMSC) and PM ADF.</p> <p>PM ADF is now responsible to VCDF through HMSC for the effective administration and development of ADFIS. PM ADF continues to report directly to CDF on operational matters.</p>	
5	Establish a Service Police career model that allows personnel to rotate in and out of ADF Investigative Service (ADFIS).	AGREED	<p>While the need for improved retention and remuneration for Service Police generally, and ADF investigators specifically, are recognised, development of a Service Police career model which is jointly agreed will be problematic. Extensive review with the single Services to ensure balanced trade and career development models is required.</p> <p>The implementation plan for this recommendation requires VCDF, through Provost Marshal ADF (PM ADF), to take the following actions:</p> <ul style="list-style-type: none"> ▪ Review of extant career models for Naval Police Coxswain, the Royal Australian Corps of Military Police (RACMP), and Royal Australian Air Force (RAAF) Security Police (SECPOL) officers and non-commissioned officers in consultation with respective career management agencies, to identify discrepancies and/or similarities. This is to be completed by August 2009. ▪ Conduct a tri-Service Police working group to develop a proposed Service Police career model. This action is to be completed by October 2009. ▪ Review of the proposed Service Police career model by single Service Provosts Marshal and respective career management agencies to determine feasibility and suitability. This action is to be completed by December 2009. ▪ Amend as required and seek endorsement of the Service Police career model by single Service Provosts Marshal and respective career management agencies by February 2010. ▪ Amend Naval Police Coxswain, RACMP and RAAF SECPOL trade structures, Employment Category Standing Orders (and equivalent) to reflect endorsed Service Police career model. This action is to be completed by January 2011. 	VCDF

Rec #	Report Recommendation	Response	Comments and Action	Action Authority
			<ul style="list-style-type: none"> ▪ Implement endorsed Service Police career model by February 2012. <p>Progress on this recommendation will be monitored by Head Military Strategic Commitments (HMSC) and by VCDF through the ADF Investigative Service (ADFIS) Governance Board. The outcomes will be reviewed as part of an independent review of ADF investigative capability at the conclusion of the five year remediation period identified in the 2006 Report on the Audit of the ADF Investigative Capability (the DICA Report) in December 2011.</p>	
6	<p>Amend DI(G) ADMIN 45-2 <i>Reporting and Investigation of Alleged Offences within the Australian Defence Organisation</i> to reflect a mandatory requirement on all Defence Investigation Agencies (DIA) to report back to unit Commanding Officers within seven days of receipt of a notifiable incident, as to whether (or not) they intend to assist/proceed with an investigation. In the absence of response within seven days the matter is deemed to be declined by the Defence Investigative Authority and returned to the Unit for action</p>	SUBSTANTIALLY AGREED	<p>The implementation plan for this recommendation will be completed in conjunction with Recommendation 7 and requires Provost Marshal ADF (PM ADF) to take the following actions:</p> <ul style="list-style-type: none"> ▪ Presentation of agreed DI(G) to VCDF for clearance by the end of July 2009. ▪ Finalisation of any further amendments to DI(G) as required by the end of July 2009. ▪ Submit cleared DI(G) to the Directorate of Administrative Policy for Quality Assurance check and clearance processes by mid August 2009. ▪ Publication of new DI(G) by September 2009. <p>To enable units to receive confirmation that a Defence Investigative Authority (DIA) has received the notifiable incident report, the DIA is to acknowledge receipt of the reported information. The recommended is therefore varied so that DIA will be required to report back to unit commanders within seven days of their acknowledgment of the receipt of a notifiable incident. In the absence of a response within seven days, the matter is deemed to be declined by the DIA and returned to the unit for action.</p> <p>Supplementary to this recommendation, the role of ADFIS on operations has been identified as requiring clearer definition. The current project to revise DI(G) 45-2 (led by PM ADF) provides an opportunity to develop an enduring solution as to how ADFIS can best support both the conduct of DFDA investigations and administrative inquiries in operational theatres. VCDF in conjunction with CJOPS (and supported by Head Defence Legal) will provide recommendations on how ADFIS can best support the conduct of investigations and inquiries in operational theatres as part of the current review of DI(G) PERS 45-2 and report back to the August COSC.</p>	<p>VCDF CJOPS HDL PM ADF IGD CSO</p>
7	<p>Amend DI(G) ADMIN 45-2 <i>Reporting and Investigation of Alleged Offences within the Australian Defence Organisation</i> to clarify the description and purpose of notifiable incidents and to rebalance investigative authority</p>	AGREED	<p>The implementation plan for this recommendation will be completed in conjunction with Recommendation 6.</p>	<p>PM ADF IGD CSO</p>

Rec #	Report Recommendation	Response	Comments and Action	Action Authority
8	<p>between units and Defence Investigative Authorities (DIA). Amend the Discipline Officer scheme to allow personnel down to the rank of WO 2 (E) to be appointed as Discipline Officers.</p>	<p>AGREED</p>	<p>Implementation of this recommendation will assist the broader application of the Discipline Officer scheme to small units, including patrol boats, without the need to refer minor discipline infractions to higher headquarters or other larger units, simply due to rank/personnel limitations.</p> <p>This will be achieved through amendment of the definition of 'warrant officer' under subsection 3(1) of the <i>Defence Force Discipline Act 1982</i> (DFDA). Currently, the definition of 'warrant officer' under subsection 3(1) of the DFDA is 'a sailor, soldier or airman who holds the rank of warrant officer'. This definition excludes the WO2 equivalents in the Navy (Chief Petty Officer) and Royal Australian Air Force (RAAF) (Flight Sergeant). The proposed amendment will rectify this omission.</p> <p>It is appropriate that amendments are also made to the definition of 'junior officer' in section 169A of the DFDA. Currently the definition of 'junior officer' in section 169A expressly excludes Navy Midshipmen, but not Army or RAAF Officer Cadets. Section 169A of the DFDA is, however, amended by regulation 32A of the Defence Force Discipline Regulations (DFD Regs) to exclude Army and Air Force Officer Cadets from the definition of 'junior officer'. There is presently no cross-referencing between the DFDA and the DFD Regs. Therefore, this amendment (and a consequential amendment to the DFD Regs) will clarify the actual definition of 'junior officer' across the three services and properly define the term in the DFDA without requiring cross-referencing to the DFD Regs.</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ Undertake external consultation by 10 May 2009. ▪ Complete drafting instructions by 3 August to coincide with the Spring Bid. ▪ Submit the final version of Explanatory Memorandum and Bill by 26 October 2009. ▪ Commence legislation approval process by 9 November 2009. ▪ Introduce legislative amendments by 16 November 2009 (depending on Parliamentary business priority and allocation of legislative drafting resources). ▪ Amend Discipline Law Manuals following commencement of amending legislation. <p>Note that the implementation of this recommendation is dependent on parliamentary business priorities.</p>	<p>HDL</p>
9	<p>Amend jurisdiction of appointed Discipline Officers to discipline personnel 'two or more ranks down'.</p>	<p>AGREED</p>	<p>Implementation of this recommendation will assist in broadening the application of the Discipline Officer scheme to small units, including patrol boats, without the need to refer discipline matters to higher headquarters or other larger units, simply due to rank/personnel limitations. For Midshipmen, Warrant Officers, non-commissioned officers and members below non-commissioned rank this recommendation will apply with a two or more rank differential; however in order to accommodate smaller units a one rank</p>	<p>HDL</p>

Rec #	Report Recommendation	Response	Comments and Action	Action Authority
			<p>differential will apply to junior officers.</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ Undertake external consultation by 10 May 2009. ▪ Complete drafting instructions by 3 August to coincide with the Spring Bid. ▪ Submit the final version of Explanatory Memorandum and Bill by 26 October 2009. ▪ Commence legislation approval process by 9 November 2009. ▪ Introduce legislative amendments by 16 November 2009 (depending on Parliamentary business priority and allocation of legislative drafting resources). ▪ Amend Discipline Law Manuals following commencement of amending legislation. <p>Note that the implementation of this recommendation is dependent on parliamentary business priorities.</p>	
10	Amend the DFDA to apply a single scale of punishments applicable across all ranks, including 'Extra Duties'.	AGREED	<p>The recommendation would, if adopted, increase the range of punishment options available to Discipline Officers regardless of the rank of the infringing member and give increased sentencing discretion to suit particular circumstances. Presently, the only punishments available to a Discipline Officer when dealing with Junior Officers, Warrant Officers and Non Commissioned Officers (NCO), are a reprimand or a fine of one day's pay. However, Officer Cadets and members below NCO rank are liable to a range of punishments encompassing a reprimand, extra drill, up to three days' extra duties, up to three days' stoppage of leave, up to two days' restriction of privileges or a fine of one day's pay.</p> <p>The recommendation proposes that Junior Officers, Warrant Officers and non-commissioned officers also be subject to those additional punishments (rather than only having two alternative punishments). However, in keeping with the legislative scheme of the <i>Defence Force Discipline Act 1982 (DFDA)</i>, appropriate consequences of punishments suitable for application to officers and non-commissioned officers, will also be introduced.</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ Undertake external consultation by 10 May 2009. ▪ Complete drafting instructions by 3 August to coincide with the Spring Bid. ▪ Submit the final version of Explanatory Memorandum and Bill by 26 October 2009. ▪ Commence legislation approval process by 9 November 2009. ▪ Introduce legislative amendments by 16 November 2009 (depending on Parliamentary business priority and allocation of legislative drafting resources). ▪ Amend Discipline Law Manuals following commencement of amending legislation. <p>Note that the implementation of this recommendation is dependent on parliamentary business priorities.</p>	HDL

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11	Extend Discipline Officer jurisdiction to encompass visiting, transient and attached personnel.	AGREED	<p>Broadening of the scale of punishments available to Discipline Officers should not occur without a complementary review of the range of punishments (including 'Extra Duties') for the three levels of summary authority. Accordingly, all DFDA punishment scales will be reviewed with a view to modernisation and review of the available punishment options, particularly to ensure they appropriately align with the nature of the particular service tribunal but remain generally consistent with the legislative intent of the DFDA which provides for different punishments for different ranks. This review will be progressed by Head Defence Legal consistent with Recommendation 29.</p> <p>Implementation of this recommendation will resolve a longstanding issue relating to the inability of units to discipline Defence members who are visiting, transiting or temporarily attached to another unit, for example, for training purposes. It is proposed to repeal paragraph 169C(d) of the <i>Defence Force Discipline Act 1982</i> (DFDA) to give effect to this recommendation as it removes the current jurisdictional requirements for a Discipline Officer to be appointed by the commanding officer (CO) of the member being disciplined. Removal of this requirement would allow Discipline Officers to discipline any member of any Service to whom the Discipline Officer scheme applies.</p> <p>However, the expansion envisaged by this recommendation must accommodate concerns as to the lack of visibility the chain of command would have in instances where an infringement is issued to a member who is temporarily undertaking duty at another ADF unit. Therefore, the proposed expansion must be accompanied by the creation of a mechanism to ensure that the outcome of any infringement (including any punishment) issued to a visiting, transiting or member temporarily attached for duty is notified by the Discipline Officer to the chain of command. The mechanism to ensure notification to the chain of command is to operate after the infringement has been dealt with and does not require prior consultation with the infringed member's unit or normal chain of command.</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ Undertake external consultation by 10 May 2009. ▪ Complete drafting instructions by 3 August to coincide with the Spring Bid. ▪ Submit the final version of Explanatory Memorandum and Bill by 26 October 2009. ▪ Commence legislation approval process by 9 November 2009. ▪ Introduce legislative amendments by 16 November 2009 (depending on Parliamentary business priority and allocation of legislative drafting resources). ▪ Amend Discipline Law Manuals following commencement of amending legislation. <p>Note that the implementation of this recommendation is dependent on parliamentary business priorities.</p>	HDL

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12	Revise Discipline Officer reporting arrangements to allow for a single collated Discipline Officer punishments return within individual units.	AGREED	<p>Implementation of this recommendation will coordinate and streamline the routine reporting of punishments imposed by Discipline Officers at a unit level. Implementation does not require legislative change. Changes to Discipline Law Manual Chapter 5, Volume 3 will be sufficient to provide guidance within a unit in relation to the collation of Discipline Officer punishment statistics, for reporting to the Commanding Officer.</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ Review of current procedures completed in March 2009. ▪ First draft of amendments was completed by 1 May 2009. ▪ Undertake consultation with stakeholders by 30 June 2009. ▪ Compile the final report detailing amendments by 1 October 2009. ▪ Consolidate with other changes arising from legislative amendments progressed during 2009. ▪ Publish changes to Discipline Law Manual by 28 February 2010. 	HDL
13	Introduce into Discipline Law Manual Volume 3 a simplified checklist/flow chart and simplify the language for election and appeal.	AGREED	<p>A simplified flowchart to guide summary authorities in dealings and trials existed in the Discipline Law Manual (DLM) prior to its amendment in 2008. The current version of the DLM does not include a similar flowchart, but instead relies on narrative guidance.</p> <p>A simplified flowchart to guide summary authorities in dealing and trials will be added to the DLM. No legislative amendment is required to implement this recommendation. Changes to the language in DLM Vol 3 Chapter 8 (summary procedures/election) and Chapter 12 (appeals) and the reintroduction of simplified flowcharts will be sufficient.</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ Review of current procedures completed in March 2009. ▪ First draft of amendments was completed by 1 May 2009. ▪ Undertake consultation with stakeholders by 30 June 2009. ▪ Compile the final report detailing amendments by 1 October 2009. ▪ Consolidate with other changes arising from legislative amendments progressed during 2009. ▪ Publish changes to Discipline Law Manual by 28 February 2010. 	HDL
14	Introduce an improved 'higher command review' mechanism with authority to take remedial action (to replace the recently adopted 'technical' review of summary level DFDA hearings).	AGREED	<p>Implementation of this recommendation involves a partial return to the review system that existed prior to the 2008 amendments to the <i>Defence Force Discipline Act 1982</i> (DFDA), but would overcome command issues and concerns associated with current review procedures. Unlike the pre-2008 review regime, whereby a Reviewing Authority could address errors made by summary authorities at the finding and/or sentencing stages of a trial, under the current system the Reviewing Authority has limited scope to remedy sentencing errors and no scope to correct unsafe or unsound convictions. If a Reviewing Authority finds</p>	HDL

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			<p>that a summary authority has exceeded his or her sentencing jurisdiction, the Reviewing Authority must write to the summary authority and request that they reopen the proceedings. In the case of a defect in a conviction, or of a sentencing miscarriage in discretionary (not jurisdictional) terms, the Reviewing Authority must give the convicted person a written notice, supported by reasons, recommending that the person consider appealing to the Australian Military Court (AMC).</p> <p>The requirement for a Reviewing Authority to write to the convicted person advising dissent from the actions of the summary authority is inconsistent with military values in a hierarchical chain of command. It has the potential to undermine the authority of superior officers in the eyes of subordinates as it requires the Reviewing Authority to publicise the summary authority's error to his or her subordinate.</p> <p>Implementation of this recommendation will involve re-introducing the automatic review system, including the provision of a legal report to the Reviewing Authority, for all convictions and/or punishments imposed by a summary authority, and providing effective review powers for the Reviewing Authority. This would dispense with a methodology that is inconsistent with military values while continuing to protect the rights of convicted persons. Implementation will mean a Reviewing Authority is empowered to quash punishments and convictions, substitute punishments and convictions (but not beyond the power of the original summary authority) and/or order a new trial.</p> <p>In lieu of seeking a further review of the matter through petitioning a Service Chief (as was the case under the pre-2008 review system), a member would have a right of appeal to the AMC if the member was not satisfied with the review of proceedings conducted by the Reviewing Authority. The requirement for a Reviewing Authority to be bound on questions of law in a legal report, as was the pre-2008 situation, would be reinstated.</p> <p>With the disestablishment of the Judge Advocate General (see Recommendation 31), provision will also be made for an appropriately independent authority to arrange for the provision of an additional, higher level, legal report (drawn from a panel of senior legal officers similar to the pre-2008 situation) to a Reviewing Authority, in the event that a Reviewing Authority was dissatisfied with the legal advice provided to him/her on review.</p> <p>Additional amendments to the DFDA are also recommended in order to maintain consistency between subsections 108A(1) and 150(2) of the DFDA, and clarify the basis for the disqualification of officers acting as reviewing authorities and summary authorities in the summary system. This related amendment will ensure that the bases for the disqualification of officers acting in the capacity of a reviewing authority, or a summary authority, are consistent under subsections 108(1) and 150(2) of the DFDA.</p>	

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			<p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> • Undertake external consultation by 10 May 2009. • Complete drafting instructions by 3 August to coincide with the Spring Bid. • Submit the final version of Explanatory Memorandum and Bill by 26 October 2009. • Commence legislation approval process by 9 November 2009. • Introduce legislative amendments by 16 November 2009 (depending on Parliamentary business priority and allocation of legislative drafting resources). • Amend Discipline Law Manuals following commencement of amending legislation. <p>Note that the implementation of this recommendation is dependent on parliamentary business priorities.</p> <p>Note further that implementation of this recommendation may also be affected by the timing of the High Court's decision in the matter of <i>Lane v Morrison</i>, and the High Court's ruling on the efficacy of the AMC and the disciplinary changes effected by the <i>Defence Legislation Amendment Act 2006</i>.</p>	
15	<p>Create a specific offence in the DFDA for misuse of a Defence Credit Card without authority, which may be tried summarily. This offence should also be a DFDA Class 3 Offence for the purposes of Australian Military Court trial.</p>	<p>AGREED IN PRINCIPLE</p>	<p>Implementation of this recommendation will streamline the disposition of Defence credit card, and particularly Defence Travel Card (DTC), fraud cases by providing that minor infractions may be dealt with by a summary authority, rather than having all Defence credit card matters dealt with by the Australian Military Court (AMC) (with the potential for jury trials on relatively small amounts).</p> <p>The outcome sought by the recommendation will be achieved expeditiously by maintaining section 60 of the <i>Financial Management and Accountability Act 1997</i> (the FMAA) as the primary section dealing with the misuse of Defence Credit Cards, and:</p> <ul style="list-style-type: none"> ▪ 'De-prescribing' section 60 of the FMAA for the purposes of section 104 of the <i>Defence Force Discipline Act 1982</i> (DFDA) and regulation 44 of the Defence Force Discipline Regulations 1985 so that it can be dealt with by a Summary Authority. ▪ Amending the definition of a 'class 3 offence' under subsection 3(1), and Schedule 7, clauses 1 and 4 of the DFDA. ▪ Detailing policy guidance in Chapters 7 and 8 of the Discipline Law Manual Volume 3, to ensure summary authorities are properly aware of their jurisdictional and sentencing boundaries in dealing with more serious section 60 FMAA offences. <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ Undertake external consultation by 10 May 2009. ▪ Complete drafting instructions by 3 August to coincide with the Spring Bid. ▪ Submit the final version of Explanatory Memorandum and Bill by 26 October 2009. 	<p>VCDF, HDL, IGD, CSO and PM ADF</p>

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16	Review Defence Travel Card (DTC) administrative arrangements with a view to reducing the risk of DTC misuse.	AGREED	<ul style="list-style-type: none"> ▪ Commence legislation approval process by 9 November 2009. ▪ Introduce legislative amendments by 16 November 2009 (depending on Parliamentary business priority and allocation of legislative drafting resources). ▪ Amend Discipline Law Manuals following commencement of amending legislation. <p>Note that the implementation of this recommendation is dependent on parliamentary business priorities.</p> <p>This recommendation has implications for the allocation of responsibility for the investigation of allegations of fraud, including Defence credit card fraud, committed by ADF personnel. More generally, there is currently legal uncertainty as to the ability of civilian Defence Investigative Authorities to conduct DFDA investigations. Both of these issues require further in-depth study. Supplementary to this recommendation, VCDF, supported by Head Defence Legal, will provide recommendations on the future role and employment of civilian Defence Investigative Authorities in the conduct of DFDA investigations and report back to the August COSC.</p>	DEPSEC DS
17	Review the classification of all	AGREED	<p>A sub-plan addressing administrative arrangements for the Defence Travel Card (DTC) is already under development as part of the whole-of-Defence Fraud Control Plan and therefore meets the intent of the finding in the Street & Fisher Report.</p> <p>Through the risk assessment process undertaken so far, it is apparent that there are currently reasonable risk controls in place. Nevertheless, Defence Support Group is looking to reduce credit and cash limits in the near future.</p> <p>As progress is already underway on this recommendation, the following future actions will be required to complete its implementation:</p> <ul style="list-style-type: none"> ▪ Submit plan to 15 May Defence Audit Committee (DAC). ▪ Put in place reductions to credit and cash limits following DAC consideration. <p>In addition, Inspector General Division (IGD) suggests that there be established a program of engagement between stakeholders, including IGD, Defence Legal, and Defence Travel to identify and fully explore any deficiencies in DTC administrative processes that underpin DTC fraud, to ensure that this matter is thoroughly understood. This process would also be used to assess, explore and determine how DTC administrative processes might be improved to enhance transparency and accountability and to minimise opportunity for fraud, through redevelopment of robust policy arrangements, guidance materials and (if necessary) appropriate Defence Instructions. This program is supported.</p>	HDL

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	DFDA offences and classes to achieve greater efficiencies.	AGREED	<p>of the basis for the three classes of offences and the current classification of each offence, but importantly the definitions for determining what offences fall into any particular class.</p> <p>The current classification used within the <i>Defence Force Discipline Act 1982</i> (DFDA) definitions are often difficult to apply to particular circumstances. Issues associated with the current legislative regime include:</p> <ul style="list-style-type: none"> ▪ jury composition (class 1 offences require 12 person juries – with most class 1 offences relating to offences committed on operations); ▪ the inclusion of minor drug offences as class 2 offences (with potentially a 6 person jury); and ▪ serious war crimes being classified as class 2 offences, despite penalties ranging up to twenty five years' imprisonment. <p>As a matter of both law and policy, it should be relatively simple for service tribunals to identify which charges they may deal with and try, and how section 61 Territory offences are to be classified and dealt with. This is not presently the case.</p> <p>This review will be progressed by Head Defence Legal (HDL) consistent with Recommendation 29. HDL will lead a working party comprising representatives from the Office of the Director of Military Prosecutions (ODMP), the Director of Defence Counsel Services (DDCS), and the Australian Military Court (AMC), to inform a recommendation to the COSC for amendments that address and simplify the class of offence regime.</p> <p>When the DFDA was amended in 2006 to reflect the current classification of offences, three class 2 offences were inadvertently omitted from the table at Schedule 7. They were subsections 58(1), 60(1) and 60(1A). The omission is covered by section 3 of the DFDA, but for the sake of completeness the opportunity will now be taken to include them in the Schedule.</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ Appointed a Review Officer and established a working group panel in April 2009. ▪ Deliver interim report by 31 August 2009. ▪ Complete final report by 30 September 2009 with a view to presentation to the COSC in December 2009. ▪ Develop, progress and implement legislative amendments during 2010. 	
18	Increase the organisational independence of the Director of Defence Counsel Services (DDCS).	AGREED	<p>The Director of Defence Counsel Services (DDCS) is currently a Defence Legal (DL) Directorate responsible to the Director General ADF Legal Services (DGADFLS). Organisational change, on its own, is unlikely to meet the aim of improving the independence of DDCS, given that alternative organisational arrangements (for example, responsible to CDF or VCDF) could possibly only serve to increase the</p>	HPC supported by HDL

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			<p>likelihood of perceptions of command interference. However, while DDCS remains within the DL organisation, it remains structurally subordinate to the military chain of command, and organisationally dependent on DGADFLS, particularly with respect to annual reporting, manning, and resourcing. The current organisational arrangements also create the potential for DDCS to come into conflict with the chain of command with respect to the performance of professional duties and in the course of contributing to military justice policy debate, particularly with respect to the interests of accused and convicted persons. The current arrangements also limit the opportunities for DDCS to contribute directly to policy debate on behalf of current and future clients. DDCS may feel inhibited if, for example, DDCS wished to argue, to the point of criticism, directly against a particular DL policy position.</p> <p>The optimum means of achieving enhanced independence for DDCS is to ensure that DDCS is not liable to be given improper direction, when assisting members who are subject to disciplinary action or who are potentially affected by inquiries, and that an appropriate offence provision is created to protect both current and past Directors and staff from such interference. This could be achieved legislatively by amendment to the Defence Force Discipline Act 1982 (DFDA), the Defence Act 1903 and the Defence (Inquiry) Regulations without the requirement for creation of a new independent statutory appointment. While this will not guarantee independence, it would create the best possible environment for negating the potential for undue command influence. It would also send an important message regarding Defence's intent and desire to ensure that its members are provided with a truly impartial and independent defence counsel service.</p> <p>While greater independence could be achieved for DDCS through a degree of statutory recognition, this does not resolve the policy question of what the proper role is for DDCS in the reformed military justice system. For example, Chief of Navy (CN) considers that DDCS should play an enhanced role in overseeing and facilitating legal services provided to ADF members more broadly as opposed to limiting the role to DFDA matters. DDCS points out that the degree of statutory independence that it is appropriate to afford to the position will be affected by the roles and functions expected of the position. If DDCS is expected to undertake an expanded role that approximates a 'public defender' then it may be more appropriate to establish DDCS as an independent statutory appointment that is comparable to the Director of Military Prosecutions (DMP). If, on the other hand, DDCS is to act as a facilitator providing ADF members with access to legal representation (but not actually conduct the defence of those members) for matters before the Australian Military Court (AMC) and as affected persons in inquiries, then a lesser degree of statutory recognition and independence is likely to be sufficient.</p> <p>At present, DDCS is required to do more than simply allocate counsel. The role was conceived as improving the coordination and management of access to legal representation by accused ADF members who were listed to appear before the AMC. In addition, it was intended that DDCS be given the</p>	

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			<p>responsibility of identifying and promulgating a defence panel of legal officers. Since creation, the assigned duties have expanded significantly into a number of areas and now include the appointment of counsel representing potentially affected members before CDF Commissions of Inquiry (and other levels of inquiry). In addition, DDCS has assumed a number of largely administrative functions associated with supporting defence counsel appearing before the AMC. This includes exercising a specific delegation to 'secure' witnesses on behalf of accused persons. Even though the role has expanded, it remains limited and falls well short of providing a holistic defence counsel service (for example, like the defence counsel service in the Canadian model).</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> • Head Defence Legal, in consultation with DDCS, will undertake a review of possible roles and functions for DDCS and report options to Head People Capability (HPC) by 31 July 2009. • Following consultation with the Services, HPC will deliver an interim report to VCDF by 30 Sep 2009 and a final report by 15 Nov 2009 with a view to presentation to VCDF for the COSC in December 2009. • HDL will develop, progress and implement consequential legislative amendments during 2010. <p>In the interim, administrative steps to enhance the independence of DDCS will be initiated through the issuing of a CDF Directive and initiation of action to improve fiscal independence.</p> <p>Lastly, perhaps one of the greatest threats to the perception of DDCS' independence lies in the fact that DDCS is staffed in the same way as any other line (military) position. See Recommendation 19 for implementation action to address this issue.</p>	
19	Rebalance permanent and reserve legal officer staffing and facilitate exchange between the Directorate of Defence Counsel Services (DDCS) and the Office of the Director of Military Prosecutions (ODMP) to achieve efficiencies and broaden experience in case disposal before the AMC.	AGREED IN PRINCIPLE	<p>The level of resourcing for the Directorate of Defence Counsel Services (DDCS) is well below that of the Office of the Director of Military Prosecutions (ODMP). The current manning levels of DDCS and ODMP are as follows: DDCS. 1 x O-6 and 4 x APS staff. ODMP. 1 x O-7, 1 x O-6, 3 x O-5, 6 x O-4, 3 x O-3, 1 x WO 2 (E) and 5 x APS staff.</p> <p>It must be recognised, however, that ODMP and DDCS were not established or intended to be mirror images of one another but rather, to have quite different and distinct roles and functions.</p> <p>The role of DDCS was established in May 2006 to facilitate the representation of ADF members before the Australian Military Court (AMC), but not to conduct the defence of those members. However, the DDCS role has evolved considerably since its establishment without any concurrent expansion in staffing (see further Recommendation 18). The only formal proposal for additional staffing has been for a deputy O-5 to</p>	HPC supported by HDL, DSOM

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			<p>DDCS and a WO 2 (E). Both remain outstanding.</p> <p>In order to properly address this recommendation, the policy question as to what roles and functions DDCS should perform within the military justice system will be reviewed. See Recommendation 18. As part of this review, Head Personnel Capability will consider the extent to which 'rebalancing' of resources, including personnel, between the ODMP and DDCS will be required to ensure optimal organisational structures for both ODMP and DDCS for the future. Accordingly, the review will incorporate study of the assigned (and in DDCS' case proposed) ODMP and DDCS missions, current workload and the acceptable case load per prosecutor/ defence counsel in civilian counterpart organisations (bearing in mind that one primary function of ODMP is to provide the skill sets for permanent military legal officers unfamiliar with criminal prosecutions). Consultation with relevant stakeholders, particularly DDCS (current and previous incumbents of the position), will be undertaken as part of the review in order to inform the final recommendations to VCDF for presentation to COSC.</p> <p>The second part of this recommendation proposes that an exchange of permanent and Reserve legal officer staff between DDCS and ODMP could occur on a reasonably frequent basis. Given the training and mentoring role provided by the Director of Military Prosecutions (DMP) to ODMP prosecutors, and for practical reasons of managing ongoing caseloads, this proposal is not supported for permanent legal officers except as part of the normal two to three year posting cycle. Further, there is a need to ensure that the independence of both ODMP and DDCS is clearly established and visible to all involved. This may be lost with frequent and regular exchanges of legal staff. It may however be appropriate, practical and beneficial for Reserve legal officers, who are generally retained to undertake single matters, to move between ODMP and DDCS on a more frequent basis (as may well occur at the civilian Bar in several jurisdictions).</p> <p>Examination of Recommendations 18 and 19 also identifies a need to ensure that the staffing model for 06 rotational legal positions within the military justice system takes account of the necessary qualifications, experience and skills required for each of these positions due to their pivotal role. In particular, the role of Director of Defence Counsel Services requires an appropriately qualified individual, and the position needs to be accorded a high priority for manning. However, any plan involving a change in the selection process and rotation cycle for military justice related positions must necessarily accommodate legal 06 positions elsewhere within Defence to be workable because of the small population size of this group of positions.</p> <p>Seven positions will now be incorporated into a new model for staffing 06 Rotational Legal positions:</p> <ul style="list-style-type: none"> 178903 Director Operational and International Law 178909 Director Military Administrative Law 128639 Director Military Discipline Law 539290 Director Defence Counsel Services 	

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			<p>530267 Deputy Director Military Prosecutions 418261 Director Standards, Review and Reporting, Inspector General ADF 179018 Director Legal Headquarters Joint Operations Command</p> <p>The proposed Director Military Law Centre position is not included on this list. The impact of it being included will be assessed once it is established.</p> <p>In consultation with the Services, DSOM will establish a succession plan for O6 legal rotational positions by 31 July 2009 reflecting an agreed 2 (Navy) 3 (Army) 2 (Air Force) allocation. This rotational plan will be effective from January 2010 and will allow posting action to commence immediately. The plan will consider the tenure assigned to current officers filling billets and will also assign high priority to staffing of the Director of Defence Counsel Services (DDCS) position.</p> <p>To ensure the Services are better informed about the specific positions requirements and required characteristics of the individual to perform in a specific position, all O6 rotational legal positions will be 'profiled' to provide a detailed guide of the necessary qualifications, experience and skills required for each position and to guide the nomination of candidates presented to the O6 Rotational Plot conference conducted by DSOM every 2-3 months as required. The Director General ADF Legal Services will attend this conference in an advisory capacity. As some of these O6 legal positions work to statutory appointees within the military justice system, the statutory appointee may also attend in an advisory capacity.</p> <p>Where a Service and the legal representatives cannot reach agreement on succession of a candidate, the matter will be referred through appropriate chains of command for resolution as DSOM does not hold any authority to direct outcomes at these conferences.</p> <p>Profiling each position, developing an agreed succession plan, and regular O6 Rotational Plot meetings with legal representation will ensure that the most appropriate candidate is selected for all O6 legal positions, including DDCS.</p> <p>Like the Director of Military Prosecutions (DMP), all civilian State and Territory Director of Public Prosecutions (DPP) counterparts have a statutory right of appearance in their respective jurisdictions. The fact that some of these DPP choose not to practice in a particular jurisdiction is a matter of their choosing based on their own particular circumstances. To not allow the DMP to appear in matters before the Australian Military Court (AMC) would fundamentally undermine the functions and role of the position including the original reason for establishing the position.</p> <p>The DMP is aware that there may be perceptions of unfairness arising from rank disparity between the DMP's rank and the relative ranks of other participants in proceedings before the AMC. Accordingly, the</p>	
20	Director of Military Prosecutions discontinue the practice of appearing in the conduct of prosecutions; a permanent or reserve officer should be briefed on each occasion to appear for the prosecution.	NOT AGREED		HDL

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			<p>DMP intends to keep the number of occasions that she will personally prosecute to a minimum. The Chiefs of Service Committee will continue monitoring this issue as it is of continuing concern. Additionally, the Inspector General ADF will monitor rank disparity as an issue in cases in the AMC.</p> <p>The COSC has agreed that it would be desirable for the <i>Defence Force Discipline Act 1982 (DFDA)</i> to be amended to enable certain directions and/or guidelines to be legitimately issued to the DMP.</p> <p>The <i>Director of Public Prosecutions Act 1983 (Cth)</i> and the <i>Director of Public Prosecutions Act 1990 (ACT)</i> formed the basis for the 2005 amendments to the DFDA which established the position and functions of the DMP in its current form. While both Acts give the respective Attorneys-General the power to issue directions and/or guidelines to their Directors of Public Prosecutions, the DFDA does not currently provide for any person to issue directions and/or guidelines to the DMP. This appears to have been an unintentional oversight.</p> <p>There are also international military discipline parallels for the issuing of directions and/or guidelines to a prosecutorial authority. Other military discipline systems, including those which the ADF looks to in developing its own military discipline system, have some mechanism through which directions and/or guidelines can be given to their prosecutorial authority.</p> <p>Further to these civilian criminal and military discipline parallels, the proposed amendment to the DFDA will enable directions and/or guidelines to be issued to the DMP. In formulating this proposal, the civilian and military models mentioned above have been considered. However, the proposed model is a reflection of Australia's distinctive political and legal systems, and the ADF's unique military and, in particular, disciplinary requirements.</p> <p>Specifically, the proposed amendment would allow directions and/or guidelines to be issued to the DMP. There are two possible options for the exercise of this power and, in particular, on the possible roles for the Commonwealth Attorney-General in this context. One option is that the Minister for Defence, in consultation with the Attorney-General, issue these directions and/or guidelines. Alternatively, consistent with the role in a civilian context, the Commonwealth Attorney-General may issue these directions and/or guidelines to the DMP.</p> <p>The amendment would be modelled on section 8 of the Commonwealth Director of Public Prosecutions Act. It would, however, require tailoring to reflect the unique military and disciplinary context. It is expected that, in the military discipline context, any such power would be used just as sparingly and in exceptional circumstances (although, importantly, the exceptional circumstances are likely to be quite different than those that might apply in the civilian criminal context). Appropriate limitations and</p>	

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			<p>boundaries would be set out in the legislation and its supporting documentation.</p> <p>Examples of matters of policy in relation to which directions and/or guidelines may be appropriate include: international and/or diplomatic factors, national security, whole-of-government interests, and defence interests including, but not limited to, operational factors, factors relevant to maintaining discipline, resource allocation and other financial considerations and the safety of individuals.</p> <p>This proposal will now be briefed to the Minister with a view to advising the Attorney-General and seeking his views on the proposal and the possible roles identified for him. If policy approval is obtained for the proposed amendment, it is intended that it proceed as part of a package of proposed amendments to the DFDA in a future Defence Legislation Amendment Bill.</p>	
21	<p>Establish the new Australian Military Court facility in Canberra as the principal location for hearings, with the capacity to travel as the exigencies of service may dictate, and uniformed Court staff (possibly Reserves) be identified to support the AMC in Canberra and the regions.</p>	<p>SUBSTANTIALLY AGREED</p>	<p>The new Australian Military Court (AMC) facility in Canberra will be used for the most complex jury trials and matters involving classified material. However, it is not possible for all matters to be heard in the Canberra facility due to the volume of work. Additionally, it will not always be more cost efficient for all matters to be heard in Canberra, because it is often cheaper to send the military judge and the prosecutor to the regional location as opposed to bringing the accused, defence counsel and witnesses to Canberra.</p> <p>Sittings in regional settings are important for the purpose of exposing the AMC to the scrutiny of ADF members. It is important that a broad cross section of the Defence Force have the opportunity to see the court in action so as to have an informed view of the standard of justice delivered. The Chief of Joint Operations (CJOPS) also points out that there is also a deterrent value in holding a trial in the accused's unit location which should not underestimated.</p> <p>However, it is recognised that practical difficulties can arise in ensuring the appropriate segregation of military jurors when the court is sitting in regional locations. It is recognised that some prospective regional AMC venues may require special safeguards be put in place to ensure jury separation during the trial. The potential risks of jury contamination due to unsuitable facilities can also be ameliorated by instituting movement protocols which minimise the risk of inadvertent contact between jurors and other persons, and by utilising civilian court facilities if required. In cases where the resources or facilities are irretrievably deficient, proceedings could be adjourned and rescheduled to a later date at an alternate suitable venue.</p> <p>Identification of dedicated court staff, both in Canberra and in regional locations where the AMC is most likely to sit, will reduce the administrative burden on units and assist the administration of the AMC trials. The Services are responsible for providing administrative support for the conduct of trials wherever they are conducted in accordance with CDF Directive 19/2007.</p>	<p>AMC and Service Chiefs</p>

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			<p>To assist with the identification of dedicated Court staff, the three Services have agreed to make Reserve members of the rank of WO1/WO2 (E) available to perform the various duties required. The AMC will provide an estimate of the number of training days and persons required to support trials in both Canberra and the regions.</p> <p>Note that implementation of this recommendation may be affected by the High Court's decision in the matter of <i>Lane v Morrison</i>, and the High Court's ruling on the efficacy of the AMC and the disciplinary changes effected by the <i>Defence Legislation Amendment Act 2006</i>.</p>	
22	<p>Develop a plan where the Australian Military Court circuit hearings make use of the recently selected Reserve Judges, sitting where appropriate at regional locations and on a fixed calendar basis.</p>	<p style="text-align: center;">AGREED IN PART</p>	<p>Once the part-time military judges are appointed, these judges will be incorporated into the court's ordinary listing arrangements. However, circuit hearings, involving regional sittings on a fixed calendar basis, will not work for Australian Military Court (AMC) hearings as effectively as the current arrangements.</p> <p>Trials will be listed as special fixtures which assure a fixed date, accommodating counsel's availability, unit training and operational commitments, general efficiency and the concept of the military jury. Within the limits of firm dates for trial, the AMC currently endeavours to list matters back to back if this can reasonably be accommodated, for example, in the case of guilty pleas.</p> <p>Further, it is not desirable in a court the size of the AMC for a particular military judge to deal with all, or at least a very significant part, of the list in a narrow geographic area. From previous experience under the old court martial/Defence Force magistrate (DFM) regime, such arrangements have the potential to skew the approach to sentencing based on narrow approach of a particular Military Judge.</p> <p>Note that implementation of this recommendation may be affected by the timing of the High Court's decision in the matter of <i>Lane v Morrison</i>, and the High Court's ruling on the efficacy of the AMC and the disciplinary changes effected by the <i>Defence Legislation Amendment Act 2006</i>. Appointment of part-time judges has been postponed pending the High Court's ruling.</p>	AMC
23	<p>Expand the available pool of potential ADF jurors by lowering the minimum rank for panel members to CPL (E), (whilst retaining the provision that no jury member is to be of subordinate rank to the accused) and removing the mandatory requirement for at least one member of the jury to be</p>	<p style="text-align: center;">AGREED</p>	<p>Implementation of this recommendation will increase the pool of available jurors. This proposal is being implemented as directed by the COSC on 25 November 2008 (see COSC Agendum 64/08).</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ Undertake external consultation by 10 May 2009. ▪ Complete drafting instructions issued on 23 December 2008 and 23 February 2009. ▪ Initial Bill Drafting Plan received 17 April 2009 – final consultation by 24 July 2009. ▪ Submit the final version of Explanatory Memorandum and Bill by 28 August 2009. 	HDL

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	of LTCOL (E).		<ul style="list-style-type: none"> ▪ Commence legislation approval process by 2 September 2009. ▪ Introduce legislative amendments by 7 September 2009. ▪ Amend Discipline Law Manuals following commencement of amending legislation. <p>Note that the implementation of this recommendation is dependent on parliamentary business priorities.</p> <p>Note further that implementation of certain recommendations touching the Australian Military Court may also be affected by the timing of the High Court's decision in the matter of <i>Lane v Morrison</i>, and the High Court's rulings on the efficacy of the Australian Military Court and the disciplinary changes effected by the <i>Defence Legislation Amendment Act 2006</i> (including military juries).</p>	
24	Provision be made for the Registrar of the AMC to identify and select potential Jurors on a 'regional basis' in preference to the current nation-wide pool.	AGREED	<p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ● Undertake external consultation by 10 May 2009. ● Complete drafting instructions issued on 23 December 2008 and 23 February 2009. ● Initial Bill Drafting Plan received 17 April 2009 – final consultation by 24 July 2009. ● Submit the final version of Explanatory Memorandum and Bill by 28 August 2009. ● Commence legislation approval process by 2 September 2009. ● Introduce legislative amendments by 7 September 2009. ● Amend Discipline Law Manuals following commencement of amending legislation. <p>Note that the implementation of this recommendation is dependent on parliamentary business priorities.</p> <p>Note further that implementation of certain recommendations touching the Australian Military Court may also be affected by the timing of the High Court's decision in the matter of <i>Lane v Morrison</i>, and the High Court's rulings on the efficacy of the Australian Military Court and the disciplinary changes effected by the <i>Defence Legislation Amendment Act 2006</i> (including military juries).</p>	HDL
25	Amend the DFDA to include the power for a military judge to order a convicted member into custody following conviction but before sentence, together with the authority to order conditional release where appropriate.	AGREED	<p>Implementation of this recommendation would address an apparent "gap" in the <i>Defence Force Discipline Act 1982</i> (DFDA) whereby a Military Judge may not remand a defence member in custody, between the time of conviction and sentencing, particularly in the case of serious matters. However, there are practical issues associated with this recommendation.</p> <p>Consideration must be given to the length of time a person is likely to be held in custody after conviction, but prior to sentencing. Furthermore, options must be developed in relation to the feasibility of using current Defence custodial establishments for holding convicted members prior to sentencing. This requires consideration of issues such as:</p> <ul style="list-style-type: none"> ▪ The availability of such facilities. 	HDL

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			<ul style="list-style-type: none"> ▪ Suitability of facilities – whether they conform to applicable standards for custodial facilities. ▪ Staffing of facilities – is there adequate personnel available to monitor facilities in accordance with the applicable standards. <p>This recommendation will be progressed by Head Defence Legal (HDL) consistent with Recommendation 29. HDL will lead a working party comprising representatives from the Office of the Director of Military Prosecutions (ODMP), the Director of Defence Counsel Services (DDCS), and the Australian Military Court (AMC), to inform a recommendation to the Chiefs of Service Committee to implement the recommendation and address the associated practical issues.</p> <p>There are two related DFDA amendments that should be made in association with this recommendation. First, an amendment to section 171 of the DFDA to allow for sentences of imprisonment to take effect at a specified time in the future, in conformity with the current provision allowing for dismissal to take effect 30 days after the day on which the punishment is imposed (subsection 171(1B) of the DFDA), and secondly amendments to a number of sections (86A, 88, 90, 101AA, 101L, 101Q, 101Y, 170, 175, 191) of the DFDA to allow ‘a Military Judge or the Registrar of the Australian Military Court (AMC)’ to issue/administer oaths, affirmations, affidavits, warrants, orders, etc for searching, custody and investigations.</p> <p>The implementation plan for these related amendments requires the following actions:</p> <ul style="list-style-type: none"> ▪ Complete drafting instructions by 26 June 2009. ▪ Undertake external consultation by 19 June 2009. ▪ Submit the final version of Explanatory Memorandum and Bill by 26 October 2009. ▪ Commence legislation approval process on 9 November 2009. ▪ Introduce legislative amendments by 16 November 2009 (depending on Parliamentary approval). ▪ Amend Discipline Law Manuals following commencement of amending legislation. <p>Note that the implementation of this recommendation is dependent on parliamentary business priorities.</p> <p>Note further that implementation of this recommendation may also be affected by the timing of the High Court’s decision in the matter of <i>Lane v Morrison</i>, and the High Court’s ruling on the efficacy of the AMC and the disciplinary changes effected by the <i>Defence Legislation Amendment Act 2006</i>.</p>	
26	Amend the DFDA so that a stay of execution against a punishment imposed by the Summary Authority is by AMC leave or	NOT AGREED AT THIS TIME	This recommendation is intended to address the possibility of a convicted person lodging a vexatious appeal, for example, on a Friday afternoon, to avoid the immediate consequences of a punishment, for example by negating a punishment of restriction of privileges that would have stopped weekend shore leave for a Navy member (refer to paragraph 72 of the Street & Fisher Report).	HDL

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	direction, and is not automatic upon appeal notification.		<p>On the few appeals received since 20 September 2008, there is no evidence at this time that the summary discipline system is being abused by Defence members appealing their conviction or sentence to the Australian Military Court (AMC) simply to avoid the commencement of punishments. Therefore, the recommendation is not agreed at this time.</p> <p>This recommendation will be reviewed after September 2009 when the amended summary disciplinary system has been in operation for at least 12 months. A study of the number of actual appeals to the AMC can then be undertaken to determine if Defence members are appealing to the AMC for the purpose of delaying the execution of summary punishments.</p>	
27	In proceedings in the AMC the rules of evidence to be applied should be the rules of evidence in the Federal Court.	AGREE IN PRINCIPLE	<p>The current legislative regime to identify the correct evidentiary rules to be applied to particular circumstances under the <i>Defence Force Discipline Act 1982</i> (DFDA) is highly complex, being a combination of ACT, Commonwealth and Defence specific legislation and Regulations.</p> <p>Implementation of this recommendation would address long standing complexities associated with the interpretation of the correct evidentiary rules that apply at any particular time. Application of the rules of evidence applicable to the Federal Court in Australian Military Court (AMC) matters needs to take account of modifications to the existing rules of evidence in the DFDA, which have regard to the service environment and related constraints. This is a complex matter, involving a review of not only the laws of evidence, but also the investigative procedures under the DFDA.</p> <p>To implement this recommendation Head Defence Legal (HDL) will establish a working group led by a Reserve legal officer, with senior counsel (Senior Counsel or Queens Counsel) status, with experience in DFDA and Federal Court matters. The working group will consult with Office of the Director of Military Prosecutions (ODMP), the Director of Defence Counsel Services (DDCS), the Australian Military Court (AMC), the Inspector General ADF (IGADF), and Provost Marshal ADF (PM ADF) and will review and recommend appropriate amendments to the DFDA, the DFD Regulations and AMC and Summary Authority Rules, to simplify evidentiary requirements and modernise Pt VI of the DFDA (Investigation of service offences).</p> <p>Noting that the Federal Court's jurisdiction rarely extends to criminal matters, the working group will also canvass alternative Commonwealth/ State/Territory evidentiary regimes that might better reflect DFDA proceedings before the AMC. This review would also consider the findings and recommendations of the recent IGADF own motion review of Part VI of the DFDA (Investigation of Offences).</p> <p>The implementation plan for this recommendation requires the following actions:</p>	HDL

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28	<p>Establish a non executive 'Discipline Coordination and Efficiency Committee' (DCEC), chaired by a senior 'line officer' to oversee and coordinate DFDA action items and facilitate future efficiencies across the principal responsible DFDA agencies.</p>	AGREED IN PRINCIPLE	<ul style="list-style-type: none"> ▪ Appointed a Review Officer and establish a working group in May 2009. ▪ Deliver interim report by 31 August 2009. ▪ Complete final report by 30 September 2009 with a view to presentation to the Chiefs of Service Committee in December 2009. ▪ Develop, progress and implement legislative amendments during 2010. <p>Note that implementation of this recommendation may be affected by the timing of the High Court's decision in the matter of <i>Lane v Morrison</i>, and the High Court's ruling on the efficacy of the AMC and the disciplinary changes effected by the <i>Defence Legislation Amendment Act 2006</i>.</p>	
			<p>Street & Fisher found that the ongoing <i>Defence Force Discipline Act 1982</i> (DFDA) reform process and associated workload warranted a centralised coordination and efficiency body. In this regard, it is worth repeating in full the explanatory paragraph provided by Street & Fisher Report:</p> <p><i>“A feature that characterises much of the reformed military justice system is the independent ‘stovepipe’ nature of the new DFDA agencies [Australian Military Court (AMC), Director of Military Prosecutions, Director of Defence Counsel Service (DDCS), Registrar of the Australian Military Court (RAMC) and ADF Investigative Service (ADFIS)]. Some perceptions regarding ‘statutory independence’ by individual agencies are inhibiting the effective coordination and efficiency of DFDA procedures, and the generation of improvements. In some instances, independence is misconceived as involving freedom from need to operate as an integer in the military justice system and conforming with the requirements for serving that system. The independence is to insulate the office holder from interference in the discharge of the duties of the relevant office; it does not impart freedom from accountability that inevitably accompanies all holders of high office, both within and outside the ADF. To address this issue, a single high level coordination and efficiency committee needs to be established across the major DFDA agencies [AMC, ODMP, DDCS, RAMC, ADFIS and DL, with IGADF as a permanent observer]. This non-executive committee should be chaired by a senior ‘Line Officer’ to ensure that DFDA agencies remain clearly focussed upon the efficient delivery of their DFDA responsibilities to the ADF.”</i></p> <p>In response to this recommendation, the Chiefs of Service Committee (COSC) has agreed the establishment of the Military Justice Coordination Committee (MJCC) chaired by Head Defence Legal (HDL) to ensure proper coordination across the military justice system. The role of the MJCC will be one of coordination and not one of decision making. Head Personnel Capability will provide the senior line officer representation for the MJCC.</p> <p>It is envisaged that the MJCC will be a non-executive working group whose purpose will be to act as a ‘clearing house’ for the COSC on all military justice issues, particularly military justice reform proposals.</p>	VCDF, HPC and HDL

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			<p>It may also be open for the MJCC to have a role in prioritising military justice proposals to reflect organisational priorities and resourcing challenges.</p> <p>The MJCC will not affect the right of relevant areas to discharge their own duties and functions, and statutory responsibilities. Rather, the MJCC will ensure that military justice functional areas and other interested stakeholders are consulted and can act in the knowledge of what other participants require at a practical policy level.</p> <p>Appointing HDL as Chair is consistent with Recommendation 29, which recommends that Defence Legal (DL) should be the functional agency for leading the development and implementation of ongoing law reform within Defence. It is envisaged that the independent statutory appointees who fulfil military justice functions would be permanent observers. A Secretariat for the MJCC will be maintained by Defence Legal. Governance rules detailing the roles and composition of the MJCC will be developed by HDL in consultation with VCDF for subsequent endorsement by the COSC at the August meeting. Additionally, VCDF will act as the permanent COSC sponsor for all future military justice related issues requiring COSC approval.</p> <p>The COSC will keep the progress of the MJCC under review to ensure it is meeting its intended aim of coordinating military justice action items and facilitating future efficiencies across the military justice system.</p>	
29	Defence Legal should be the functional agency for developing and implementing ongoing law reform within Defence.	AGREED	<p>Defence Legal (DL) is the principal legal adviser to the Minister for Defence, Minister for Defence Science and Personnel, the Parliamentary Secretary for Defence Support, CDF, the Secretary and the Department generally on all military discipline and military administrative law policy issues. This includes advice not only on current issues, but particularly on development of relevant discipline and administrative law policy as it affects the ADF and the Department. In this regard, DL is well placed to formally assume the recommended law reform role proposed by the Street & Fisher Report.</p> <p>By vesting the ADF's military justice law reform role in one entity, namely DL, implementation of this recommendation will assist the coordination and consistency of policy advice across all military justice agencies and to government.</p> <p>Street & Fisher recommendations together with issues identified during the Street & Fisher consultation and implementation planning process will now be the priority for the reform agenda. Additional reviews flowing from Street & Fisher are:</p> <ul style="list-style-type: none"> ▪ Recommendation 10 - Review of punishment scales within the <i>Defence Force Discipline Act 1982</i> (DFDA) with a view to modernisation and review of availability of punishment options. 	HDL

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			<ul style="list-style-type: none"> ▪ Recommendation 17 - Review DFDA classes of offence with a view to simplification. ▪ Recommendations 18 and 19 – Two-phased review (to be led by VCDF): <ul style="list-style-type: none"> ○ Proper role, function and organisational structure of the Directorate of Defence Counsel Services (DDCS); and ○ At an appropriate time, contribute to the VCDF led workload study of changes in case load of the Office of the Director of Military Prosecutions arising from implementation of Street & Fisher reforms together with an assessment of the optimal case load per prosecutor / defence counsel in light of the revised DDCS organisation. ▪ Recommendation 25 - Review practical considerations associated with ordering convicted persons into custody. ▪ Recommendation 27 – Evidentiary Rules to apply in proceedings in the AMC. 	
30	<p>Professional Rules for ADF legal officers be introduced with technical control and professional administrative oversight by the Director General ADF Legal Services on advice from Head of Corps/Category and in consultation with Head Defence Legal.</p>	<p>AGREED</p>	<p>Holding legal officers to an appropriate professional standard is essential to ensure the integrity of the military justice system.</p> <p>In recent years there have been examples of legal officers being dealt with by commanding officers for matters which may have amounted to professional misconduct, without reference to senior legal officers. This has meant that the full culpability of the conduct may not have been understood when consequences are imposed. Additionally it is important that there be a framework to enable professional misconduct to be dealt with equitably. If there was an allegation relating to the conduct of both reserve and permanent legal officers, it is possible that the conduct would currently be judged by different standards. In this example one lawyer may belong to a state law society, another to a state bar association and another may not have a practising certificate. There have also been examples of civilian Bar Associations and Law Societies taking different views as to whether the conduct of a lawyer while acting as a reserve legal officer is the concern of that association or society.</p> <p>The implementation of this recommendation will ensure that there is a mechanism for dealing with misconduct and professional failings. Professional technical proficiency requires oversight by an appropriately qualified specialist in the field, be that legal, medical, engineers, seaman, arms corps or flying expertise. This will in turn provide ADF commanders with consistency, transparency and accountability regarding the legal support they receive and the legal officers with an assurance of what is expected and knowledge of what the consequences for failing to maintain that professional standard may be. The exercise of technical control and administrative oversight by the Director General ADF Legal Services will also bolster claims for legal professional privilege and should ensure the maintenance of quality legal advice to non-legally qualified commanders.</p> <p>This recommendation requires further research and evaluation to ensure that any professional conduct rules</p>	<p>HDL</p>

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31	a) Disestablish the Judge Advocate General and Deputy Judge Advocate General positions once all legacy DFDA appeals have been finalised and	AGREED	<p>developed are appropriate and enforceable. Additionally, the exercise of technical control and administrative oversight requires further consultation with the Services to evaluate any means proposed to implement this recommendation.</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ Undertake consultation with Services by 30 July 2009. ▪ Present draft CDF Directive or Defence (Instruction) General for consideration by 30 September 2009. ▪ New directive or instruction issued by 30 March 2010. <p>The replacement of the petition and higher review system with a new appeals process, establishment of the Australian Military Court (AMC) and an enhanced role for the Defence Force Discipline Appeal Tribunal, makes the role of the Judge Advocate General (JAG) and Deputy Judges Advocate General (DJAG) under the <i>Defence Force Discipline Act 1982</i> (DFDA) effectively redundant.</p> <p>Part XI of the DFDA should be repealed, with transition provisions for the final disposition of reviews under sections 154 or 155 of the DFDA, and the provision of a final report by the JAG in 2010.</p> <p>Drafting instructions are currently being prepared for submission to the Office of Parliamentary Counsel to abolish the position and functions of the JAG and DJAGS in a Defence Legislation Amendment Bill in 2009. Drafting instructions will include appropriate transitional arrangements.</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ Complete drafting instructions by 30 April 2009. ▪ Undertake external consultation by 10 May 2009. ▪ Submit the final version of Explanatory Memorandum and Bill by 26 October 2009. ▪ Commence legislation approval process on 9 November 2009. ▪ Introduce legislative amendments by 16 November 2009 (depending on Parliamentary approval). ▪ Amend Discipline Law Manuals following commencement of amending legislation. <p>Note that the implementation of this recommendation is dependent on parliamentary business priorities.</p> <p>The Directorate of Senior Officer Management will quarantine the organisational establishment positions for the JAG and the three DJAG for possible future military justice purposes.</p>	HDL, DSOM

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	<p>b) have the Inspector General ADF report annually on the military justice system to the Minister for presentation to Parliament.</p>	<p>AGREED</p>	<p>In line with the Government's response to Recommendation 10 of the draft Government response to the Senate Foreign Affairs, Defence and Trade Committee's Report: Reforms to Australia's Military Justice System – Fourth Progress Report, action will be taken to amend section 110R of the <i>Defence Act 1903</i> to include a specific requirement in future for the Inspector General ADF (IGADF) to prepare, as soon as practicable after 31 December each year, an annual report on the functions of his or her office to be furnished to the Minister for presentation to the Parliament.</p> <p>Section 110R provides for the IGADF to prepare and give to the CDF such reports on the operations of the IGADF as the CDF directs. Pursuant to this section, the IGADF prepares an annual report on the functions of his office for the CDF. For the past three years, extracts of this report have appeared in the 'Justice and Fairness in Defence' chapter of the Defence Annual Report. In addition, the substantive IGADF Annual Report has been made available as part of the online material associated with the Defence Annual Report 2007-08.</p> <p>In addition to the annual report by the IGADF to the Minister, there will be regular external independent reviews of the military justice system (see Recommendation 47).</p> <p>An implementation plan to amend section 110R of the <i>Defence Act 1903</i> will follow after the Government response to the Senate Foreign Affairs, Defence and Trade Committee's Report: Reforms to Australia's Military Justice System – Fourth Progress Report has been tabled.</p>	<p>HDL and IGADF</p>
32	<p>a) Expand the Defence Force Discipline Appeal Tribunal to six members and b) allow a single member to hear and determine sentencing appeals for Class 2 and 3 offences or to refer an appeal to the full tribunal for determination.</p>	<p>AGREED</p>	<p>This combined recommendation is one of a number of proposals considered by the Senate, the Chiefs of Service Committee, Defence Legal (DL), Office of Director of Military Prosecutions (ODMP), Australian Military Court (AMC) and the Director Defence Counsel Services (DDCS) to amend the <i>Defence Force Discipline Appeals Act 1955</i> (DFDAA) to reflect an enhanced role for the Defence Force Discipline Appeal Tribunal (DFDAT) following recent changes to military discipline legislation and the establishment of the AMC, in particular.</p> <p>The Federal Court would have a diminished role as an appellate court in disciplinary matters. The DFDAT has recently been experiencing a high turnover of members (due to retirement age limits and resignation from State/Territory Courts). Given this recommendation, and other proposed amendments to the DFDAA to increase the jurisdiction of DFDAT, the expansion of the DFDAT to six members is supported noting the likely increase in the Tribunal's workload.</p> <p>Given that the Tribunal has Registries in most States, there is merit in having a geographical spread of membership, but it is noted that the Attorney-General is responsible for DFDAT appointment recommendations and it is likely that appointments will reflect a range of considerations but mainly be</p>	<p>HDL</p>

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			<p>based on merit and suitability generally. Equally, an increase in the number of matters that could be heard by a single member of the DFDA T sitting alone is supported in terms of efficiency and effectiveness.</p> <p>The Attorney-General's Department (AGD) is responsible for the administration of the DFDA A. Any proposal to amend the Act will need the approval of the Attorney-General and AGD.</p> <p>In respect of the first part of this recommendation, increasing the membership of the DFDA T would not require legislative amendment, as subsection 7(1) provides that the Tribunal "...shall consist of...such other persons who are appointed to be members of the Tribunal..." (By the Governor General on the recommendation of the Attorney-General). Appointment action is by the Attorney-General.</p> <p>Implementation of this part of the recommendation is underway and involves consultation with AGD and the President of the DFDA T. Changes to the Discipline Law Manual to reflect the additional appointments will be completed by 31 December 2009.</p> <p>The implementation plan for the second part of this recommendation requires the following actions:</p> <ul style="list-style-type: none"> • Undertake external consultation by 19 June 2009. • Complete drafting instructions by 26 June 2009. • Submit the final version of Explanatory Memorandum and Bill by 26 October 2009. • Commence legislation approval process on 9 November 2009. • Introduce legislative amendments by 16 November 2009 (depending on Parliamentary approval). • Amend Discipline Law Manuals following commencement of amending legislation. <p>There are a number of other proposed amendments to the DFDA not canvassed by the Street & Fisher Report. These will be discussed with AGD in conjunction with the above proposal.</p> <p>Note that the implementation of this recommendation is dependent on parliamentary business priorities.</p> <p>Note further that implementation of certain recommendations touching the Australian Military Court and the Defence Force Discipline Appeals Tribunal may also be affected by the timing of the High Court's decision in the matter of <i>Lane v Morrison</i>, and the High Court's rulings on the efficacy of the Australian Military Court and the disciplinary changes effected by the Defence Legislation Amendment Act 2006 (including military juries).</p>	
33	Establish and promulgate Key Performance Indicators (KPIs)/Benchmarks against which all principal military justice system	AGREED	The absence of defined and promulgated performance standards and measures applicable to the functions of the military justice system is a significant system capability shortfall requiring attention.	IGADF

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	agencies' performance can be assessed.		<p>Performance standards and measures are needed not only for the Inspector General ADF (IGADF) to meet its monitoring and reporting requirements on the health and effectiveness of the military justice system but, also, to provide the users of the system with reassurance that it is serving its purpose of delivering timely, efficient and effective military justice necessary for the successful operation of the ADF.</p> <p>IGADF's performance measurement system is structured around the four elements of military justice (discipline, adverse administrative actions, conduct of administrative inquiries and the right to complain) as Key Reporting Areas (KRAs) and six Key Performance Indicators (KPI) derived in part from the Commonwealth Ombudsman guidelines (Access, Timeliness, Fairness, Accountability, Resources and Training, and System Improvement).</p> <p>All military justice agencies have agreed that these KPIs will be used as a basis to report on the performance of their particular responsibilities within the military justice system. To date Key Performance Measures (KPMs) are largely limited to quantitative measures. As a first step KPMs will be developed by individual agencies in consultation with IGADF (who will provide facilitation and coordination) to assess the Timeliness KPI. This indicator is often the subject of complaint and concern from users of the military justice system including commanders, accused persons, respondents and complainants. During 2009 qualitative KPMs will also be added through the introduction of a formal feedback regime initially targeted at ADF members with immediate and direct involvement in the discipline and complaint processes.</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ It is proposed to implement and report on agreed KPMs for Timeliness for each military justice area by the end of 2009. ▪ KPMs for the remaining KPIs will be progressively developed and introduced during 2010/11. 	
34	Arrangements be established between the principal military justice system agencies and the Inspector General ADF (IGADF) to facilitate the transfer of performance data to IGADF.	AGREED	<p>This recommendation will be implemented in conjunction with recommendation 33.</p> <p>It is expected that reporting against all agencies' promulgated performance standards will be made available on an incremental basis to IGADF for inclusion, in appropriate form and detail, in the 2010 IGADF annual report.</p>	IGADF
35	Repromulgate DI(G)ADMIN 10-8 <i>Conduct Reporting and Tracking System</i> , to require DFDA case data to be entered by the agency that has carriage of the case at the time, reducing unit administrative	AGREED	<p>The Conduct Reporting and Tracking System (CRTS) is the ADF's only available tool for the oversight and management of disciplinary and administrative matters from incident to conclusion of resultant actions. To be effective, data integrity must be complete and accurate and to occur as near to 'real time' as possible. As a general principle, the required level of data integrity could best be achieved if data entry responsibility is accepted by all agencies with direct carriage of individual steps in these processes.</p>	IGADF

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	burden after the fact.		<p>With the exception of ADFIS, all military justice functional areas have agreed to undertake responsibility for data entry subject to any additional resource and training requirements being met. The requirement to enter such data in no way interferes with the exercise of their independence in respect of their core functions.</p> <p>The Inspector General ADF (IGADF) will provide training and other assistance to undertake CRTS data entry. Human resource requirements will need to be identified by these agencies and either absorbed from current allocations or pursued through normal channels. Unit data entry responsibility will not be entirely removed but will be reduced. Units will still be responsible for entry data for actions taken at the unit level which are the vast majority of actions.</p> <p>IGADF will initiate action to amend Defence Instruction (General) (DI(G)) ADMIN 10-8. Pending the formal repromulgation of the DI(G), military justice entities could commence entering data in CRTS as soon as resource and training requirements are met.</p> <p>During consultation, the Provost Marshal ADF (PM ADF) commented that reallocation of responsibility for data input to the ADF Investigative Service could reduce the level of interaction between Defence Investigative Authorities (DIA) and their customer 'units'. PM ADF also considers there is potential for the transfer of responsibility of data entry in connection with the conduct of investigations by DIA to erode the unit commander's overall responsibility for command and discipline decision-making. In response to this concern, IGADF points out that DIA will only be responsible for data entry in connection with the commencement, conclusion and referrals of investigation outcomes to the appropriate authorities. DIA will not be responsible for input of data in connection with decision-making in connection with the outcomes of DIA investigations. Command responsibility in connection with decision-making as to the disposition of DIA investigations is not altered by this recommendation.</p> <p>PM ADF is also concerned about duplication of effort in that DIA will be required to input data to both the Defence Policing and Security Management System (DPSMS) and CRTS. In response to this particular concern, IGADF has initiated action with the view to establishing limited but automatic and seamless links between DPSMS and CRTS. However, some technical issues will need further consultation before a seamless interface can be established.</p>	
36	Simplify military justice system data collection systems (the Conduct Reporting and Tracking System (CRTS) in particular), with	AGREED		IGADF

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37	<p>Review the policy relating to the retention and access of disciplinary investigations and records that do not result in a prosecution, and hearings that result in an acquittal, quashing or direction 'not to proceed'.</p>	<p>AGREED</p>	<p>these reporting systems should be minimised, while understood, should only be considered where it can be shown that such reporting serves no purpose.</p> <p>There is scope to simplify some of the processes. As currently structured, CRTS requires that six mandatory sub-events be captured to record each DFDA investigation, the disciplinary process once a charge has been preferred, and the administrative sanction process. It has been recognised that capture of essential elements of information can be achieved through a reduction in the number of mandatory steps associated with some of these processes. A PMKeyS System Change Request was submitted on 16 January 2009. Once implemented, the capture of data in connection with investigations conducted under the <i>Defence Force Discipline Act 1982</i> (DFDA) will be reduced from six to four sub-events, disciplinary process capture will remain at six and adverse administrative action capture will be reduced from six to two sub-events.</p> <p>Further, as discussed under Recommendation 35, the successful linkage of CRTS and Defence Policing and Security Management System will result in two of the four remaining DFDA investigation sub-events being automatically and seamlessly transferred to CRTS. The latter step of linking DPSMS and CRTS is only in its preliminary stages and no time frame can put on its implementation.</p> <p>The Inspector General ADF (IGADF) has explained the rationale for retaining the records that fall within the scope of this recommendation:</p> <ul style="list-style-type: none"> ▪ The IGADF requires access to data for all cases for the essential and necessary reporting and monitoring requirements in respect of the Defence Force Discipline Act 1982 (DFDA) through the Conduct Reporting and Tracking System (CRTS) and other records in order to assist in measuring the health and effectiveness of that part of the military justice system. ▪ If retention of CRTS and other data, such as the Service Police DPSMS data is limited to confirmed (positive) outcomes only, the IGADF and other agencies would be unable to adequately inquire into any subsequent complaints made by acquitted persons and others about aspects of the military justice system and processes applicable to that case. ▪ Historical data, irrespective of outcome, is essential in the event of new and similar allegations referred to ADF Investigative Service (ADVIS) for investigation. Such data is also maintained by the Fairness and Resolution Branch in respect of unsubstantiated unacceptable behaviour complaints which may be relevant if future complaints are made. ▪ If resources were expended they should be auditable at any time after such matters are closed. ▪ In some cases deletion potentially may be in contravention of the <i>Archives Act 1983</i> (Cth), or other policies concerning the retention of documents. <p>Implementation of this recommendation will aim to prevent those who do not have a legitimate need to</p>	<p>IGADF</p>

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			<p>know this information from accessing records concerning acquittals, unsubstantiated allegations or other sensitive records that fall within the scope of this recommendation.</p> <p>Implementation will take the form of a review aimed at reinforcing the need for better and tighter access control and promulgation of amplifying instructions as to who may access such information, under what circumstances and what end use limitations are imposed, in particular in cases where wrongful use of such information may have adverse career implications.</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ Undertake review the current procedures by 27 March 2009. ▪ Complete a first draft of amendments by 1 May 2009. ▪ Carry out consultation with stakeholders by 31 July 2009. ▪ Compile the final report by 1 October 2009. ▪ Consolidate with other changes arising from legislative amendments progressed during 2009. ▪ Publish changes by 28 February 2010. 	
38	Maintain the current collocation of the policy and resolution delivery functions of Fairness and Resolution Branch within People, Strategies and Policy Group.	AGREED	<p>The role of People, Strategies and Policy Group (PSPG) is to focus on policy, planning and evaluation in relation to the essential drivers of Defence human resources: recruiting, retention, remuneration and reward, people development, leadership and the working environment. Fairness and Resolution Branch (FRB) contributes to the PSPG role by assisting Defence in creating and maintaining a working environment that values diversity, in which people treat each other fairly and with respect.</p> <p>FRB is responsible for:</p> <ul style="list-style-type: none"> • Policies and programs for diversity (indigenous employment, women, ethnicity, religion, disability and age), privacy, alternative dispute resolution, and the management of unacceptable behaviour and complaints. • Advice, training and alternative resolution interventions for commanders, managers, supervisors, ADF members and APS employees. • Managing formal complaints. <p>FRB is structured on the model of a 'centre of excellence' that deals with the full spectrum of workplace culture and climate activities, from the development of strategic-level policy to the delivery of workplace conflict and complaint resolution services. Lessons learned from service delivery are harvested in order to enhance policies and programs, to improve and expand informal resolution options and to streamline formal complaint management.</p>	DEPSEC PSP
39	Adopt and promulgate a 90 day		The implementation of benchmarks for handling Redresses of Grievance (ROG) referred to the Service	DEPSEC

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	<p>benchmark for the referral of Redresses of Grievance (ROG) to CDF/Service Chiefs.</p>	<p>AGREED IN PART</p>	<p>Chiefs and the CDF is supported. However, any benchmarks need to be both reasonable and achievable. Experience in Fairness and Resolution Branch over the past three years shows that an overall performance benchmark of 90 days would far exceed the current capability to process ROG. Instead, a two-tier benchmarking system is proposed.</p> <p>The primary cause of delay in ROG referred to a Service Chief is the time taken to allocate the grievance to a case officer (due to a shortage of case officers), rather than the time taken for the inquiry itself. While this issue has been recognised as a problem for some years and action has been taken to address it, it remains difficult to attract and retain Reserve officers of appropriate rank who possess the suitable skills and experience to fill Reserve case officer positions. Other options have been, and are being, explored, such as remote Reserve service arrangements, civilian case officers and external service providers, but have not yet proven successful.</p> <p>The management of case officers has been further complicated by the need to seek reserve funding for positions on an annual basis. To retain these case officers, they need to be treated as permanent part-time staff rather than casual workers who may or may not be offered further work. Agreement from the Services to secure ongoing long-term funding for ten case officer positions will provide a stable platform for the management of case officers.</p> <p>It should also be noted that the significantly improved performance of unit commanders in handling ROG since mid-2006 has been achieved through the provision of more detailed advice and guidance from the case officers whose primary task is to manage ROG referred to the Service Chiefs and the CDF. In effect, this reduces the time taken at the unit level but increases it once referred to a Service Chief, due to the higher workload of case officers.</p> <p>As one of the central elements of the military justice system, the ROG process is thorough and rigorous. As such, it has a number of levels of review as well as the initial complaint handling, and these reviews inevitably add considerably to case handling time.</p> <p>Under the current process, unit commanding officers have 90 days to finalise a ROG. Defence currently allocates Service Chief-level ROG for management in accordance with the urgency of the matter under consideration. ROG relating to 'termination of service' decisions, for example, are the highest priority, and for these ROG a benchmark of 90 days is both reasonable and achievable. For lower priority matters, however, 180 days for finalisation would be a more reasonable benchmark.</p> <p>A further benchmark would need to be set for those ROG that are referred for review by the CDF. A 90-day benchmark is considered appropriate for these cases and could be applied from the time the member</p>	<p>PSP</p>

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			<p>decides to refer the matter to CDF.</p> <p>This response has also been put forward as part of the draft Government response to the Senate Foreign Affairs, Defence and Trade Committee's Report: Reforms to Australia's Military Justice System – Fourth Progress Report.</p> <p>The benchmarking system will be implemented immediately.</p>	
40	Review modern illegal drug detection techniques with a view to introduction as appropriate.	AGREED	<p>The Prohibited Substance Testing Program (PSTP) was introduced in 2005. Before the testing regime was implemented, the ADF canvassed a range of testing options which included oral fluid, hair, blood and urine. The ADF determined that urinalysis was the most appropriate technique based on scientific integrity, reliability and the ability for non-health specialist to undertake the training.</p> <p>It is acknowledged that continued review of testing techniques is necessary to ensure the regime remains contemporary with respect to accuracy, cost effectiveness, sustainability and accreditation. The Directorate of Military Personnel Policy (DMPP) has therefore sought specialist advice from a range of testing authorities in order to review the current detection techniques, policies and processes with the option of introducing new techniques if appropriate.</p> <p>The DMPP review has found that, when considered against the benchmark of urinalysis, other techniques are not viable alternatives due to factors such as evasiveness, testing complexity, accuracy, reliability, the need for specialist practitioners, risk and cost.</p> <p>In addition, the Inspector General ADF (IGADF) recently conducted an own motion inquiry into PSTP in response to member concerns relating to the intention, application and overall effectiveness of the Program. This involved examining the prohibited substance testing techniques. The IGADF concluded that urinalysis is the most efficient, cost-effective and reliable indicator of prohibited substance use and should remain the prime PSTP collection method.</p> <p>On 27 February 2009, the Chiefs of Service Committee (COSC) considered the IGADF Inquiry Report and agreed to all of the recommendations as follows:</p> <ul style="list-style-type: none"> • COSC agreed that the Services adopt common policy and processes in relation to the prohibited substance testing program, including a realistic explanation of the 'zero tolerance' policy. • COSC agreed that the annual percentage of ADF personnel to be tested for prohibited substances be increased to at least 25%, including in non-Service Groups. • COSC agreed that the Program and policy should adopt a more holistic approach, including enhances education, awareness and training. 	DEPSEC PSP

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			<ul style="list-style-type: none"> • COSC agreed that targeted testing be exercised to a more significant degree at a commander's discretion. • COSC agreed that prohibited substance testing of trainees in recruit initial basic training establishments be increased to 100%. • COSC noted that testing would not occur within the first six weeks of initial basic training. • COSC agreed that an ADF coordination cell be established within PSP to administer the PST program. • COSC agreed that HPC examine options, taking into account associated costs, to establish a dedicated tri-service ADF Drug Detection Team to conduct PS testing. • COSC Agreed that the remaining recommendations detailed in the Inquiry report be considered by a tri-Service working group and implemented by Services. <p>To implement the COSC recommendations, the following actions are required:</p> <ul style="list-style-type: none"> ▪ Establish the ADF PSTP coordination cell. ▪ Ensure implementation of a 25% annual testing rate is in place by 31 July 2009. ▪ Establish a tri-Service working group to consider, coordinate and implement the remaining recommendations. 	
41	Review the current Service termination process to reduce delays and the exploitation of the Redress of Grievance (ROG) system by disaffected personnel.	AGREED	<p>Fairness and Resolution Branch (FRB) is not aware of any specific examples of exploitation of the Redress of Grievance (ROG) system; however, the potential for any complaint system to be exploited regardless of the level of regulation is acknowledged. FRB is also aware that members pursuing ROG are exercising a legal right of review provided by the Defence Force Regulations 1952.</p> <p>FRB recognises the need to balance Service requirements and the rights of individuals and supports the opportunity to undertake a review of the ROG process in regard to termination and discharge matters. Any review must be cognisant of a person's right to seek review, either through the existing mechanisms within Defence, or through external complaint handling agencies and the courts. Any financial and human resource costs that may result from removing internal review options must also be considered in any proposal.</p> <p>FRB recommends that such a review could be undertaken in preparation for the next external review of the military justice system.</p>	DEPSEC PSP
42	Pursue amendments to the <i>Defence (Inquiry) Regulations</i> and <i>Defence Act</i> to provide Inquiry Officers the requisite powers and protections to	AGREED	<p>This amendment to the Defence (Inquiry) Regulations 1985 (D(I)R) was raised as part of the second stage of the current D(I)R Review. The amendment has been supported by the Stage Two working group. Further consultation with People Strategies and Policy Group (PSP) [and potentially the Australian Public</p>	HDL

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	<p>compel ADF Reserve personnel and Defence APS staff to participate in inquiries.</p>		<p>Service Commission] is required as the amendment may affect the rights and conditions of APS employees. Legal advice from the Australian Government Solicitor confirmed that there is no legal impediment to pursuing the amendment. While this amendment will go some of the way to ensuring the utility and value of the Defence inquiries, in the complex Defence environment which involves consultants, contractors and service providers, merely having APS members compelled to give evidence during Defence Inquiries may not be sufficient.</p> <p>By way of background, a comprehensive, staged D(I)R Review was initiated by Defence Legal (DL) with approval from CDF in mid 2007. The first stage of the review included extensive internal consultation. External input was sought from Attorney-Generals Department, the Defence Force Ombudsman, Administrative Review Council, Veterans Review Board, Australian Defence Association and Centre for International and Public Law (within Australian National University). An Agendum went before the Chiefs of Service Committee (COSC) in December 2007 which sought agreement to various Stage One amendments to the D(I)R and also asked the COSC to approve a second stage of the Review to look at some of the more complex issues and proposed amendments. The COSC endorsed the Stage One amendments and agreed that Stage Two be pursued by DL in December 2007.</p> <p>The Minister approved the Stage One amendments to the D(I)R in April 2008. Drafting instructions were provided to Office of Legislative Drafting and Policy (ODLP) in July 2008. The Directorate of Military Administrative Law (DMAL) within DL is currently working through a draft of the amended Regulations, which will shortly be distributed more widely to CDF, VCDF, the Services and the Inspector General ADF (IGADF) for consideration. The final version of the amended D(I)R will require Ministerial approval before going to the Executive Council.</p> <p>Stage Two of the Review commenced in April 2008. A working group which included representatives from the Services, IGADF and the Defence Force Ombudsman was formed to discuss proposed changes to the Regulations that involved more complex legal and policy issues. Recommendations 42 and 44 are included in issues for consideration in Stage Two.</p> <p>A Stage Two D(I)R Review COSC Agendum will be finalised in the second half of 2009. Subject to further consultation with the PSP Group and other key stakeholders, the Agendum will recommend that the D(I)R be amended to implement this recommendation. Following COSC approval of the proposed amendments, the Minister's approval will be required before drafting of the amendments can commence.</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ Consultation with PSP Group during April 2009. ▪ Seek further COSC approval for the Stage Two D(I)R Review amendments by 30 September 2009. 	

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43	Provide administrative support to CDF Commissions of Inquiry from the Office of Inspector General ADF (IGADF).	NOT AGREED	<ul style="list-style-type: none"> ▪ Seek Ministerial approval by 31 October 2009. ▪ Complete drafting by February 2010. ▪ Amend Regulations by March 2010. (Subject to Ministerial approval being given with timeframe and the timelines and workload of the Office of Legislative Drafting and Publishing)	
44	Pursue legislative amendments to allow for the appointment of Commissions of Inquiry assistants with similar powers and protections as those currently granted to Inquiry Assistants under part 6 of the <i>Defence (Inquiry) Regulations</i> . Witness protections currently provided for evidence given before Commissions of Inquiry should be extended to evidence provided to a Commissions of Inquiry Assistant and evidence otherwise provided to a Commissions of Inquiry outside of formal hearings.	AGREED	<p>Because the IGADF is responsible for providing a mechanism for internal audit and review of the military justice system independent of the ordinary chain of command, and an avenue by which failures of the military justice system may be exposed and examined so that the cause of any injustice can be remediated, it would be inconsistent for the IGADF to become the internal manager of administration for the Commission of Inquiry Directorate (COI). It is considered that this proposed organisational change would undermine IGADF's independence from the chain of command and therefore be undesirable.</p> <p>Since the completion of the Street & Fisher Report, there have been a number of changes to the structure and composition of COI administration infrastructure. A Directorate within the Office of the CDF has been created and a Director (06 level), directly responsible to CDF, now coordinates matters of administration and finance. Consequently, it is considered that the reasoning upon which this recommendation was based has now been overtaken by events.</p> <p>This amendment to the Defence (Inquiry) Regulations 1985 (D(I)R) was also raised for consideration in Stage Two of the D(I)R Review. An options paper will need to be developed (in consultation with Directorate of Commissions of Inquiry (DCOI) and the Inspector General ADF (IGADF)) to determine the legal and policy implications of such an amendment. The paper will recommend the most appropriate model for the appointment of Commissions of Inquiry (COI) Assistants and articulate their functions, powers and protections.</p> <p>The extension of the witness protection provisions to include evidence provided to COI Assistants will be considered in conjunction with the options paper. External legal advice may also be necessary to adequately address the legal implications of the proposed amendments.</p> <p>See also Recommendation 42.</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ Appointed a review officer for the proposal in March 2009. ▪ Complete the Options paper on proposal by 29 June 2009. ▪ Obtain external legal advice by 27 July 2009. ▪ Undertake final consultation with IGADF and DCOI by 10 August 2009. 	HDL

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45	Provide on recruitment into the ADF, a pamphlet highlighting the application of the DFDA and Performance Appraisal System in a disciplined military force, and emphasising the rights and responsibilities of individuals.	AGREED	<ul style="list-style-type: none"> ▪ Seek further COSC approval for the Stage Two D(I)R Review amendments by 30 September 2009. ▪ Seek Ministerial approval by 31 October 2009. ▪ Complete drafting by February 2010. ▪ Amend Regulations by March 2010. (Subject to Ministerial approval being given with timeframe and the timelines and workload of the Office of Legislative Drafting and Publishing)	DEPSEC PSP and HDL
46	Introduce a training continuum for Non commissioned Officers and junior officers, to better prepare personnel to perform the duties of summary level prosecutor and defending officer, and to participate in the conduct of administrative sanctions and routine inquiries.	AGREED	<p>The information will be included on www.defencejobs.gov.au in addition to the development of a published brochure, resulting in greater accessibility of information prior to involvement in the recruiting process.</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ Develop appropriate content on <i>Defence Force Discipline Act 1982 (DFDA)</i> for inclusion in brochure (Defence Legal (DL) (lead) to be completed by 31 August 2009. ▪ Develop appropriate content on Performance Appraisal Systems (PAS) for inclusion in brochure (Directorate of Military Personnel Policy (DMPP) lead) to be completed by 31 August 2009. ▪ Develop design for brochure from provision of content (Defence Force Recruiting (DFR) lead) to be completed by 30 September 2009. ▪ Seek approval of brochure by DL/DMPP (DFR lead) to be completed by mid-November 2009. ▪ Incorporate distribution into recruiting process (DFR lead) to be completed by 31 December 2009. <p>Implementation of this recommendation will be achieved through the introduction of the military justice competency framework as directed by the Chiefs of Service Committee (COSC) on 25 March 2009 (see COSC Agendum 13/09). Introduction of the framework will address in general terms the training continuum required by this recommendation. The framework will be in place immediately; and training consistent with the identified competencies would be fully implemented by December 2010.</p> <p>It should be noted that under the military justice competency framework, having the necessary competency before performing the relevant duty is specified as 'should' rather than 'must'. This allows for flexibility of application and is consistent with an accused's right under the <i>Defence Force Discipline Act 1982</i> to ask for any 'reasonably available' member of the Defence Force to act as his or her defending officer at a summary hearing.</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ HDL to coordinate the establishment of the Military Justice Training – Training Advisory Group which will include representatives from each of the three Service, VCDF and the Inspector General ADF (IGADF). The inaugural meeting is likely to be held in June. ▪ At the 1st meeting of the Training Advisory Group, the agenda will include endorsing the Group's 	HDL

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			<p>terms of reference, adopting a implementation timeline for existing training to be aligned to the competencies (which must occur by the COSC directed deadline of December 2010), and seeking agreement to the draft competency units or setting a timeline for agreement.</p> <ul style="list-style-type: none"> ▪ A draft Defence Instruction (General) (DI(G)) is also under preparation to promulgate the COSC agreed training continuum. The anticipated completion time for the DI(G) is envisaged to be December 2009. 	
47	Conduct the next military justice system review within three years.	AGREED	<p>There is considerable benefit to be gained from the conduct of an external independent military justice system review to provide an external assessment of the extent to which agreed reforms to the system have been implemented and the overall effectiveness of the system that will complement the ongoing oversight role of the Inspector General ADF (IGADF).</p> <p>In addition, a commitment to regular external independent reviews will also reinforce Defence's commitment to ensure the military justice system remains open and adaptive to change. Accordingly, it is proposed that external independent review will occur regularly in future based on a comparable model to that used for the Street & Fisher review (led by a senior judicial figure and accompanied by a former Service Chief). This external review function could eventually be incorporated into legislation.</p> <p>As to the frequency of such reviews, past experience has shown that the limited ability of Defence to progress legislative amendments means that it can take up to at least three years before the effect of previously agreed change can be implemented, let alone assessed. This inability to affect the pace at which legislation can be amended by the Parliament may mean that the three year period is too short. Equally a five year period may be too long given the cyclical nature of Defence positions such as those of the CDF, the Service Chiefs and also the Secretary (which all potentially change as often as every three years). This process may mean that issues (and even awareness of the need for formal reviews to occur) are lost during such transitions. Further, there are other transitions, such as those reflected in posting cycles of personnel working on any agreed changes that will have an impact. Finally, often there may be changes to the Parliamentary composition over a five year period.</p> <p>Therefore, holding a review within three to five years is more appropriate. Potentially, a process might be initiated three years from the date of Defence's response following the previous Review, with an expectation that it will be completed and Defence's further response will be prepared and agreed within the following two years.</p>	CDF
48	Establish a discretionary delegation for CDF to compensate administrative/management/financi	AGREED	Such a scheme could accommodate special instances not covered by the Compensation for Detriment caused by Defective Administration scheme (CDDA scheme), and for which there is a demonstrated valid case. For transparency reasons, the Defence Minister should be allowed to approve amounts up to	HDL

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	<p>al errors in addition to the current Compensation for Detriment Caused by Defective Administration (CDDA) scheme.</p>		<p>\$100,000 per single incident/case, and the CDF, as a delegate of the Minister, amounts up to \$50,000. The range of circumstances where it would apply would need to be very narrow, to prevent any perceptions that it was being used as a mechanism to circumvent other transparency mechanisms such as Act of Grace. There are also budgetary considerations that Service Chiefs would need to plan for.</p> <p>It is legally possible to amend the <i>Defence Act 1903</i> to insert an equivalent provision to section 73 of the <i>Public Service Act 1999</i> which allows the Public Service Minister, or the Secretary as delegate of the Minister, to make a payment of up to \$100,000 in special circumstances, (a power often used for administrative/management/financial errors in the code of conduct process). It should be noted that the Secretary has used this power very infrequently – only once or twice in the last five years. Once the Defence Act is changed, Chief Finance Officer Group (CFO) could prepare an Instrument of Delegation for CDF’s signature and a new Schedule of Delegations for inclusion in FINMAN 2.</p> <p>With respect to comment from People, Strategies and Policy Group (PSP) regarding expansion of the proposed new discretionary scheme to include debt waiver and write-off powers, FINMAN 2 Schedule 5.2 Debt Write-off already includes a range of delegates in Defence with the authority to write-off debt, while Debt Waiver is covered by section 34 of the <i>Financial Management and Accountability Act 1997</i> and is confined to the Finance Minister, the Parliamentary Secretary of the Finance Minister, or the Finance Minister’s delegates in the Department of Finance and Deregulation. CFO Group does not consider it appropriate to seek to have this appropriately small group expanded into agencies and the ADF.</p> <p>The implementation plan for this recommendation requires the following actions:</p> <ul style="list-style-type: none"> ▪ Defence Legal has engaged in consultation internally with PSP Group, CFO Group and externally with the Department of Finance and Deregulation and Department of Education, Employment and Workplace Relations in May 2009 and is now awaiting their responses. ▪ Seek policy approval from Minister for Defence, Minister of Finance and Deregulation, Minister for Education Employment and Workplace Relations and Prime Minister by 22 June 2009. ▪ Develop, progress and implement legislative amendments for Spring sittings. 	
49	<p>Reemphasise the requirement for all senior reporting officers (both APS and military) to adhere to the requirements of DI(G)PERS 37-1 – <i>Appraisal and Development Reporting of Executive and Senior Executive Officers in the Australian Defence Force.</i></p>	<p>AGREED</p>	<p>Since the completion of the Street & Fisher Report, it is considered that the reasoning upon which this recommendation was based has now been overtaken by events and necessitated a broadening of the recommended remedial action.</p> <p>In addition to the directive reinforcing the importance of senior officer appraisals, the Directorate of Senior Officer Management (DSOM) continues to work proactively with the Service career management agencies to process the appraisals through to CDF in a timely way. Raising the initial document is a matter for the respective Services and the officer, noting that the officers must take an active role in the process</p>	<p>DEPSEC PSP</p>

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			<p>themselves. When they do not receive feedback they should contact their respective Service agencies.</p> <p>Importantly, a new strategy for senior officer education and development is being developed in tandem with a Senior Executive Service (SES) Career and Talent Management strategy that was directed by the Secretary. Development is an iterative process that will, in due course, assess the veracity of current performance management regimes and recommend changes where required. What is important to note is that a formal strategy guiding ADF senior officer education and development, based on sound analysis, is well under way. The performance appraisal itself forms only one part of this strategy.</p> <p>Note DI(G) PERS 37-1 applies only to ADF senior officers. The recommendation applies to civilian supervisors of ADF members, not APS members being reported on.</p>	