Re-Thinking Systems of Inquiry, Investigation, Review and Audit in Defence

Report on Stage B: Models
for the Secretary and Chief of the Defence Force
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Dear Secretary and CDF

RE-THINKING SYSTEMS OF INQUIRY, INVESTIGATION, REVIEW AND AUDIT IN DEFENCE

We are pleased to provide the Stage B report of our review of inquiry, investigation, review and audit systems, processes and structures in Defence.

Yours sincerely

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1.1.1. Overall, Defence’s current arrangements for inquiry, investigation and review are unnecessarily complex, inefficient and legalistic. In many situations, these arrangements do not effectively support commanders and line managers to make optimal decisions. In addition to these organisational impacts, the costs and delays associated with these current arrangements results in unfairness to individuals. It is the remediation of these problems that has been the principal focus of the Re-Thinking Systems Review.

1.1.2. There has been a rolling series of internal and external reviews and inquiries examining discrete aspects of Defence’s inquiry, investigation and review arrangements since the late 1990s. Particular emphasis has been given to ADF military justice arrangements. However, the lesson of decades of previous inquiries and review into Defence’s arrangements for inquiry, investigation and review is that further incremental, piecemeal change will not deliver a simple, coherent and effective system that supports individuals, commanders and line managers.

1.1.3. On 8 November 2011, the then Secretary of Defence and the Chief of the Defence Force commissioned a review of all investigation, inquiry, review and audit systems, processes and structures across the Department of Defence (Defence). Unlike those previous reviews, the Re-Thinking Systems Review looks holistically at the arrangements for inquiry, investigation and review across all of Defence’s ADF and APS integrated workplaces, and proposes a model for reform, from a ‘first principles’ perspective.

1.1.4. While the Re-Thinking Systems Review is sensitive to principles of military justice and uniqueness of the military environment, it is not a review about military justice or only focused on the ADF. It is a review of the most common inquiry, investigation and review processes used by Defence in response to trigger events. These processes must work logically and coherently to enable commanders and line managers to effectively address everything from allegations of serious criminal misconduct to more routine workplace behaviour issues including discipline matters unique to military service. They must also be capable of applying to all personnel involved in the trigger event, whether ADF or APS, and regardless of whether the trigger event occurs in operational or non-operational contexts.

1.1.5. The Re-Thinking Systems Review was undertaken in two stages. While problems with existing arrangements were readily apparent, the scale, complexity and history of the current arrangements demanded a thorough approach. The first (Stage A, which concluded in August 2012) analysed the strengths and weaknesses of the current system and recommended essential components of an optimal system of inquiry, investigation and review on which future models would be based.

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1 In December 2011, it was agreed that the audit phase of the review would report separately.
1.1.6. Following consideration of the Stage A Report, the then Secretary and CDF endorsed the following nine essential components of an optimal system which must underpin the development of future models for reform.

Figure 1. Essential components of an optimal system

1.1.7. This is the report of the second stage of the work (Stage B) to make recommendations regarding the establishment of a system that is fair, timely, simple to implement, provides whole-of-Defence outcomes and takes into account legislative requirements. This Stage B Report proposes conceptual models for reform of Defence inquiry, investigation and review.

1.1.8. Extensive research and consultation has been undertaken to develop the recommended model. Key internal and external stakeholders were engaged as part of this process, providing feedback on their functional interaction with current

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3 Letter from the Secretary and Chief of the Defence Force to Head Defence Legal, Head People Capability and Chief Audit Executive, dated 8 November 2011
processes, identifying beneficial features for consideration in model development and commenting on the recommended model.

1.1.9. Internal stakeholders included representatives of key policy owners, and commanders and line managers from each of the Services and Groups. External stakeholders that were consulted and who indicated broad support for the approach taken included the Commonwealth Ombudsman, the Australian Sex Discrimination Commissioner, the Attorney-General’s Department, the Law Enforcement Integrity Commissioner and the Defence Abuse Response Taskforce. The United Kingdom’s Services Complaint Commissioner also indicated broad support for the Re-Thinking Systems Review’s approach to this reform task.

1.1.10. The Re-Thinking Systems Review also considered the functions of inquiry, investigation and review in terms of achieving the Pathway to Change objectives. In particular, the Pathway to Change strategy committed Defence to developing a reporting culture, providing mechanisms for the timely resolution of matters, ensuring accountability of decision makers, learning better ways of doing things, and improving our professionalism and performance in all areas.

1.1.11. The delivery of this Stage B Report was delayed in relation to the originally projected timeframe of February 2013. This was largely due to three additional requirements added to the project scope. First, the Re-Thinking Systems Review was required to engage in a further round of consultation with key stakeholders following receipt of initial feedback on the draft report in February and March 2013. This included ensuring that military and command issues were adequately addressed in the recommended model. Secondly, the Re-Thinking Systems Review agreed to develop an additional model based on the status quo, as amended by certain recommendations from reports of the Inspector General ADF. Thirdly, as pursuing any of the models would require significant organisational effort, cost and some disruption to Defence, it was considered important that the models were validated before being put to the Secretary and CDF for decision. Accordingly, the Re-Thinking Systems Review engaged PricewaterhouseCoopers (PwC) to analyse the recommended model and its variations to identify risks and mitigation strategies as part of Stage B.

1.2. Defence’s past approach to reform

The Re-Thinking Systems Review has considered almost 500 recommendations arising from over 20 inquiries and reviews into Defence’s current arrangements, particularly as they relate to command and line management decision making in response to trigger events.

1.2.1. Defence has a long history of reviews and inquiries into aspects of decision making regarding military justice, personnel disputes, procurement issues and other matters. Many reviews expressed concerns about similar issues (such as unclear accountability of decision makers and how to apply ADF-specific processes to an integrated workforce) and recommended changes to prevent or mitigate the risk of those issues arising again. As each recommendation was made in a different context, they were not always consistent and implementation failed to take into account the cumulative effect. The net effect is that current arrangements are not a true system, and are largely the product of historical adaptation and reactive reform.
In order to comply with Defence policies, a commander or line manager will need to have regard to 16 separate policies, navigate 39 decision points and liaise with up to 12 policy owners in order to just report an event. This complexity undermines Defence’s work to encourage a reporting culture.

1.2.2. The imposition of more rules and procedures in an effort to prevent inappropriate decisions or behaviour has not necessarily in practice improved organisational outcomes or the standards of fairness afforded to individuals. The onerous procedural burden now facing commanders and line managers can delay actions towards resolution, obscure accountability and encourage a disproportionate focus on process rather than attaining an outcome. In some cases, particularly multi-faceted incidents, the procedural burden is so high that it serves as a disincentive for commanders and line managers to report events and initiate actions, or alternatively, creates a perception that compliance with the reporting requirements alone has satisfied Departmental obligations to manage the matter.

1.3. **Re-Thinking Systems Review conceptual framework**

1.3.1. Fundamentally, inquiry, investigation and review activities are tools that exist to support command and line management decision making. They are not an end in themselves. A review of these functions must focus on how they support Defence decision makers to achieve outcomes for the organisation and how those decision makers can be held accountable for their decisions. Recognising the underpinning role of these functions in Defence decision making is also consistent with Defence’s commitment through the *Pathway to Change* strategy to achieving clarity in processes and accountabilities.

1.3.2. Integrity in decision making is crucial to good governance and sustaining public trust. In order to maintain confidence in Defence decision making, strong and cohesive internal and external integrity systems are essential. Defence’s internal integrity system is made up of legislation, policies, procedures, structures and practices all aimed at ensuring decision makers use their powers responsibly and ethically, and that proper process is followed to achieve evidence-based and proportionate outcomes. In addition Defence, like other Commonwealth departments of State, is subject to an external integrity system that operates on a whole-of-government level. It is held accountable for its use of resources through integrity functions such as Parliamentary oversight and Australian National Audit Office scrutiny. However, its people are also entrusted with unique powers which require specialised oversight. For example, the power of command over subordinates and powers associated with use of force and war-fighting is unique to the ADF and has significant potential for abuse. In 2013, it is no longer credible for any part of Defence to suggest that it should not be subject to scrutiny through the Commonwealth’s external integrity system.

1.3.3. Informed decisions can only be made after learning relevant facts (informing oneself) about the focus of the decision. In Defence, decision making in
response to trigger events is informed by inquiry, investigation and review functions. They are all part of the decision making framework, illustrated in Figure 2.

1.3.4. On this basis, the Re-Thinking Systems Review adopted the following four phases to analyse decision making in Defence:

- **Recording, Reporting and Initial Assessment.** Making a record of relevant information, determining what is known, what needs to be discovered and what immediate actions are required, and advising the military chain of command and relevant areas within and outside of Defence.

- **Fact Finding.** Obtaining information to inform and support decisions.

- **Internal Review.** Re-consideration within Defence of a Defence decision or action.

- **External Review.** Re-consideration by an agency outside of Defence of a Defence decision or action.

1.3.5. These phases are not discrete and will often not follow a linear process. In practice, each phase may contain elements of another. For example, the Recording, Reporting and Initial Assessment, Internal Review and External Review phases may all involve elements of fact finding.

1.4. **Weaknesses of current arrangements**

1.4.1. The current Defence arrangements for inquiry, investigation and review can be incoherent and do not reflect or embed Defence’s organisational and cultural priorities. Current arrangements do not accommodate the integrated workforce or multi-faceted events that cross policy boundaries. They are unnecessarily bureaucratic and legalistic, and reinforce entrenched views. They routinely deliver delayed and irrational outcomes and can have a serious impact on productivity,
morale, and Defence’s reputation. Moreover, decision making flaws have contributed, in some cases, to financial claims against the Commonwealth.

1.4.2. The *Pathway to Change* strategy acknowledged that many of our current challenges in managing bad behaviour are the product of incoherent policy amendments and inconsistent approaches to managing our rules in the past. The *Pathway to Change* strategy committed Defence to simplifying our governance processes with stronger single point accountability and improving our processes through which we respond to and handle incidents of unacceptable behaviour.

1.4.3. In addition to the *Re-Thinking Systems Review’s* analysis of extant policy and procedures, a number of cases managed under the current arrangements were also analysed. Complexity and compartmentalised decision making were common features and contributed to the protracted resolution of these matters. Equally, there was often no apparent overarching visibility or control point in the organisation for the case.

1.4.4. The delays, confusion and errors caused by the inflexible and confusing procedural environment undermine the culture of reporting central to the *Pathway to Change* strategy. Under current arrangements, decision makers are unable to respond promptly, decisively and innovatively to trigger events that confront them, and accountability for outcomes is obscured.

1.4.5. There is a view that within the Defence environment, processes have been implemented in an attempt to eliminate the risk of error and poor judgment, which has resulted in process being substituted for problem-solving. In his valedictory address in November 2006, then Secretary Ric Smith warned of an increasing:

> plethora of directives, guidelines, procedural criteria and so on that we are required to have to deal with in a host of situations that may arise in the course of our work. These compliance requirements are often driven by fear of criticism and of litigation and compensation claims. They are often put in place in response to an administrative error or a breakdown in decision making or advising of ministers. They often substitute for, and indeed limit the scope for, common sense, values-based judgements. And in minimising the scope for reasonable risk-taking behaviour, rules and guidelines, they limit public service creativity and effectiveness.

1.4.6. The weaknesses of each phase of the decision making framework follow.

1.4.7. **Recording, Reporting and Initial Assessment.** Currently, when a trigger event occurs, commanders and line managers must comply with a multitude of reporting policies (each with separate policy ‘owners’). *Annex F: Current Defence reporting requirements* provides an overview of some of the applicable Defence policies that contain reporting requirements.

1.4.8. The typical approach to a trigger event involves making a mandatory report to a specific addressee, often using a particular form, focused on one subject

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4 James Brown, ‘Fifty Shades of Grey: Officer Culture in the Australian Army’ (2013) X:3 *Australian Army Journal* 244, 252

5 Ric Smith, ‘Thirty-eight years toiling in the vineyard of public service’ (November 2006), formal valedictory speech delivered at an Australian Public Service Commission function.
matter. Multiple forms to multiple addressees are potentially required to satisfy the range of reporting requirements for multi-faceted incidents. Forms are conveyed to particular policy areas within Defence who then manage the information, often in a silo. Information exchange between areas is ad hoc at best. This compartmentalised approach means there is little prospect of undertaking meaningful trend analysis or providing accurate periodic reports. If the trigger event does not meet the stipulated threshold of seriousness, there is a real risk that no record will be created as the policy emphasis is on reporting ‘up the chain’.

1.4.9. Current guidance around initial assessment is routinely interpreted as requiring a full investigation before any decisions can be made. The guidance encourages a formulaic approach without command or line management qualitative appreciation and analysis of the problem. The nature and quantity of policy intended to guide the commander or line manager contributes to initial assessments turning into lengthy inquiry exercises, delaying prompt decisions and any prospect of decisive action on the matter.

1.4.10. **Fact Finding.** Current arrangements have elements that are too prescriptive about fact finding processes and others which are too permissive. Different policy areas can conduct duplicate and / or uncoordinated fact finding activities into the same trigger event. This lack of coordination is inefficient and complicates decision making.

The *Re-Thinking Systems Review* has seen fact findings activities around a single workplace incident spanning six years, involving four decisions makers, and costing hundreds of thousands of dollars.

1.4.11. Current arrangements can result in the disproportionate investigative effort compared to the nature of the decisions to be made to manage and resolve an incident. Statutory administrative inquiries are over-used in response to relatively straightforward workplace issues and the application of the existing ADF-focused statutory inquiry framework to integrated work environments is fraught.

1.4.12. Military investigative capacity for fact finding in connection with allegations of serious offences under the *Defence Force Discipline Act 1982* (DFDA) is under-resourced and prioritisation does not reflect whole-of-Defence needs. There is inconsistent capacity to undertake investigations of allegations of medium level disciplinary offending within the three Services and jointly in the ADF Investigative Service. While the intent of the existing model to develop and build ADF investigative capacity from the ranks of the Service Police is appreciated, in our experience the skill set and experience level required to undertake professional investigations is highly specialised. For this reason, it is simply not viable to continue relying on the Service Police capability as the sole feeder group for the ADF Investigative Service.

1.4.13. The capacity to engage external service providers to conduct fact finding on behalf of decision makers is generally unfettered (with the exception of DFDA investigations for ADF members). As the experience of the external service providers and quality of their instructions from Defence are mixed, so too have been their results.
1.4.14. **Internal Review.** Internal review arrangements are multi-layered. While this might appear to provide more avenues for an individual to seek justice, it can in fact delay access to external review, be a source of unfairness to individuals and lead to a situation where finality is difficult to achieve. There is always the prospect that an affected individual can take the outcome to yet another review option in order to pursue their desired outcome.

1.4.15. Internal reviewers often resort to a further round of fact finding activities (including through engaging consultants and external legal service providers) as they cannot be confident of previous efforts. This practice may provide decision makers with more assurance that its decisions will not be criticised by external reviewers, but the practice is not regulated and can come at considerable expense.

1.4.16. The *Pathway to Change* strategy acknowledges the need to set up mechanisms, where appropriate, for increasing contestability to improve the quality of our advice and decision making. A single layer of internal review, which is Commonwealth best-practice, prevents unnecessary delay before external review and, as such, is consistent with this principle and Defence’s work to improve individual accountabilities.

1.4.17. **External Review.** There is currently limited scope for specialised external review of Defence decisions by a Defence-dedicated organisation. The Defence Force Ombudsman appears inadequately resourced at present to undertake significant regular investigations and reviews of Defence matters. This may have contributed to Defence’s increased reliance on internal reviews and expensive ad hoc reviews by external service providers, which are often seen as necessary to credibly validate decision making and address public concern about independence and impartiality. Notwithstanding that the Inspector General ADF performs an important oversight function, the position of that office within the Department means that such review is not of the same character as external review by the Defence Force Ombudsman.

1.5. **Costs**

1.5.1. Defence’s current arrangements for inquiry, investigation and review do not provide central visibility of individual matters or associated costs and so the *Re-Thinking Systems Review* has been unable to determine the cost of current arrangements. Some costs are known, for example, Defence spent approximately $32.4m in 2011-12 in resourcing dedicated areas that undertake fact finding and internal review. However, this figure excludes the internal resource costs of localised fact finding, the costs of engaging external service providers to conduct localised fact finding or quasi review functions, and lost productivity due to workplace disruption and re-deployment of personnel from primary functions.

1.5.2. In addition, Defence has spent significant resources on high-level ad hoc external reviews over the past ten years including:

- DLA Piper Review of Allegations of Sexual and Other Abuse in Defence (over $11m);
Review into the Treatment of Women at the Australian Defence Force Academy (Phase 1 of the Review of the Treatment of Women in the Australian Defence Force, 21 October 2011 (Broderick Phase 1 report) ($4.7m); HMAS Success Commission of inquiry ($6.18m); and Other Commonwealth funded inquiries and reviews such as parliamentary inquiries.

1.5.3. Again, these figures exclude extensive internal costs such as staff and senior management time spent facilitating ad hoc reviews, preparing and clearing documentation, and associated reporting to the Parliament and the public. Ad hoc reviews will continue to be useful for matters requiring expertise or experience not available in an external review agency. The Re-Thinking Systems Review recommends, however, that an enduring external review agency would be more cost effective for most matters.

1.5.4. The total costs for the time and effort of commanders, line managers and senior leadership in connection with inquiry, investigation and review activities will never be directly discernable as involvement in these functions is an incident of their primary responsibilities. However, it is likely that costs are higher where processes and arrangements are complex because the proportion of time that commanders, line managers and senior leaders are required to spend on these activities will be greater.

1.5.5. Presently, Defence maintains several subject matter-specific ICT case management systems. Each has separate operating, training and sustainment costs and we understand that some are not compatible with Defence’s longer term ICT plan and/or will not be technically supportable by their manufacturer in the future. In addition to the direct costs of maintaining these systems, there is an opportunity cost in terms of data analysis and trend tracking because information held on each system is often not available on others. Getting a complete data picture requires significant work and the results are not certain.

1.5.6. Moreover, the current arrangements incur unquantifiable but significant costs arising from the loss of trust in Defence by its own people as well as the Australian community. There has been considerable sustained criticism of Defence arrangements for inquiry, investigation and review which continue to undermine confidence in, and perhaps increase scepticism of, the quality of Defence’s decision making and its institutional integrity. Defence’s reputation affects its ability to recruit and retain quality personnel. Within Defence, lack of individual confidence affects preparedness to report incidents and trust that outcomes will be pursued. This, in turn, can have a detrimental impact on workforce morale, cohesion and productivity.

1.6. Status Quo Plus

1.6.1. Towards the end of Stage B, the Re-Thinking Systems Review was asked to consider the Inspector General ADF’s preferred model, ‘Status Quo Plus’. This model is based on current arrangements, enhanced by implementation of certain recommendations from recent Inspector General ADF military justice reviews. The Status Quo Plus model is discussed in detail in Chapter 3. Process maps (capturing in diagrammatical form the steps and decision points in managing a trigger event) are contained in Annex K: Process maps.
1.6.2. The *Re-Thinking Systems Review* does not recommend pursuing the Status Quo Plus model. In our assessment, the Status Quo Plus model does not ameliorate the weaknesses of the current arrangements outlined in the preceding section nor does it meet the essential components of an optimal system identified at paragraph 1.1.6. Moreover, we do not consider that the amendments to existing arrangements resolve the procedural (and cultural) problems with existing arrangements. A comparative table of the key features of the Status Quo Plus model with the recommended model follows at 1.13. Detailed analysis is at Chapter 9.

1.7. Recommended model

1.7.1. The *Pathway to Change* strategy identified that our people systems and processes govern a lot of what we actually do every day and translate our cultural principles into the routine ways we experience life in Defence. In recommending a new model for inquiry, investigation and review, the *Re-Thinking Systems Review* has reflected on the following statements of cultural intent:

- **On operations and beyond:** Building our organisation is as important as delivering on operations. We act speedily, with consistency, discipline and clarity. Our reputation for providing sound, frank advice is well-earned, valued and carefully maintained. People know they can trust us to do the right thing and do it well.

- **Our organisation:** We are accountable for our actions. We are outward and forward looking, always seeking to learn better ways of doing things, and to improve our professionalism and performance in all areas. We connect across our expert Services and Groups to deliver more than any part can by acting alone. Our common purpose and strong relationships make us agile, adaptable, collaborative, and aligned to deliver maximum effect.\(^6\)

1.7.2. This Stage B Report recommends a conceptual model for each phase of the decision making framework described in paragraph 1.3.4. If implemented, the recommended model would lead to reform of policy, procedure and structure. However, at its core, the model is about achieving the cultural change required by the *Pathway to Change* strategy. The reforms ask the organisation to value, resource and support the action taken immediately when an incident becomes known as much as it resources ‘damage control’ functions.

1.7.3. The recommended model shifts focus back to the decision maker and the decision. The model does not propose to alter current decision making structures, but rather aims to support decision makers to make their required decisions (noting that not all decisions are presently made by commanders and line managers). Front loading support will prevent unnecessary damage to our people and our organisation and reduce the amount of resources directed to managing poorly-made decisions and their consequences (including legal actions, Parliamentary and media scrutiny, correspondence and ministerial briefings).

\(^6\) Defence Committee (Department of Defence), *Pathway to Change: Evolving Defence Culture (A Strategy for Cultural Change and Reinforcement)*, 7 March 2012 (*Pathway to Change* strategy), para 1.1
1.7.4. A comparative table of the key features of the Status Quo Plus model with the recommended model follows at 1.13. Additionally, a hypothetical illustration has been included in Chapter 9 to provide a narrative of how the recommended model would operate in practice across the four phases of the decision making framework.

1.7.5. **Recording, Reporting and Initial Assessment.** We propose a single, standardised recording, reporting and assessment mechanism that would operate across Defence for all trigger events regardless of subject matter. Ideally this would be supported by an enterprise-wide, ICT-based tool for recording, reporting and case management that would prompt commanders and line managers for only the information necessary for the incident type(s).

1.7.6. Trigger event reports would be simultaneously submitted to the relevant chain of command and a single Defence assessment and reporting area. Completion of the required fields in the trigger event report would require the commander or line manager to provide details of the trigger event and their proposed course of action as applicable. It would therefore constitute an initial assessment without the administrative burden of completing additional paperwork such as currently required through the Quick Assessment process. Subsequent forms can be completed to update details and assessments as a matter progresses.

1.7.7. The single Defence assessment and reporting area would be responsible for providing consistent advice and assistance to commanders and line managers, where requested. It would assess reports based on agreed whole-of-Defence priorities, and consider whether decision makers outside the ordinary chain of command should also be involved in managing the trigger event. It would provide visibility to the Secretary and CDF.

1.7.8. Importantly, consolidating functions would provide support to the working level in Defence, as commanders and line managers will have much simpler processes to follow and greater clarity as to where they can seek consistent advice and assistance. This will empower them to focus on managing trigger events appropriately rather than wasting time complying with unnecessary, inconsistent and duplicate administrative burdens. This is a deliberate departure from models built by specialists in silos, which have inadvertently imposed undue burden and complexity on users.

1.7.9. **Fact Finding.** Fact finding in Defence would be largely conducted on the basis of ordinary command and management authority, with statutory fact finding (such as inquiries under the *Defence (Inquiry) Regulations 1985*) reserved for large scale inquiries only when authorised by the Secretary, CDF, the Service Chiefs or the Group Heads. This would allow decision makers to obtain only the information necessary to make decisions, and to expend resources proportionate to the matter being investigated. Simplified fact finding would reduce the need for specialists (such as lawyers and Service Police) to be involved in routine matters, would allow local people and resources to undertake such fact finding, and would free up specialists to focus on supporting complex, high stakes decision making. Easy to use guidance for non-statutory fact finding would be developed, consistent with the recommendations of the Inspector General ADF’s 2011 *Review of the Management of Incidents and Complaints in Defence including Civilian and Military Jurisdiction.*
1.7.10. A Defence investigation area would facilitate the provision of professional investigators in cases where a Group or Service requires specialised support, or where there are decision makers from multiple Groups and Services. The recommended model proposes that the Defence investigation area own all Defence professional investigative capability except the Service Police capability. Importantly, the intention is to provide an investigation service to commanders, line managers and other decision makers according to whole-of-Defence priorities. The priorities would be set by the Secretary and CDF, informed by Service Chiefs and Group Heads.

1.7.11. The Re-Thinking Systems Review does not propose any changes to existing decision making responsibilities.

1.7.12. Internal Review. The Re-Thinking Systems Review proposes a single layer of formal internal review of decisions and actions that adversely affect individuals in Defence.

1.7.13. The APS Review of Action process would remain unchanged, although the recommended model would see a more holistic view of review applications from APS employees. The ADF redress of grievance process would be replaced with a single layer of ADF internal review. ADF members could apply for review of any Defence action or decision that relates to their ADF service. An ADF member’s commanding officer would indicate support (or otherwise) on the review application form. A single Defence internal review area separate from the chain of command would receive all applications for review from both APS employees and ADF members. Depending on the nature of the decision, the area would either undertake the review itself, or refer the application to the most appropriate reviewer.

1.7.14. Command and line management would retain a broad discretion to review earlier decisions and provide a remedy. Importantly, this review would not be an entitlement, nor would it delay access to external review. Ad hoc reviews or reviews undertaken by externally engaged consultants would cease unless authorised by the Secretary and CDF.

1.7.15. External Review. Credible and robust external review is essential for Defence to learn from errors, and to be accountable for decisions. It is an important safeguard for individuals. Equally, oversight and scrutiny of Defence decisions by an authoritative, robust external review agency that has the confidence of the public and the Parliament serves to promote the trust of the Australian community in the ADF and Defence. External review also offers greater finality on matters than can be achieved by internal reviews.

1.7.16. We propose working with government and the relevant agencies to bolster the Defence-specific external review processes. External review of decisions affecting ADF members should be provided by a Defence-dedicated, and adequately resourced, external agency which understands the unique nature of military service. Practically speaking, this could be achieved through a re-invigoration of the role of the Defence Force Ombudsman.

1.7.17. The external review body would also have the power to investigate Service-related deaths, receive complaints regarding professional investigators in Defence, maintain an inspection program in relation to activities in Defence with a
high risk of abuse (for example, training establishments) and conduct investigations into Defence at Defence’s request and at the direction of a Minister in the Defence portfolio.

1.7.18. In addition, the Re-Thinking Systems Review proposes that the jurisdiction of the Administrative Appeals Tribunal be expanded to allow it to undertake merits review of decision relating to ADF benefits and allowances which are based on objective criteria. This would remedy the present situation in which ADF members do not have a low-cost and accessible avenue to dispute decisions about statutory entitlements other than through the courts. Given the high volume of Defence decision making in this area and the impact on Defence families, trust in independent and effective review is important to Defence’s reputation including as an employer. This aspect of the model is completely severable.

1.8. PricewaterhouseCoopers analysis

1.8.1. Pursuing the recommended model or variations would require organisational effort, cost and some disruption to Defence. For that reason, the Re-Thinking Systems Review commissioned PricewaterhouseCoopers (PwC) to analyse the recommended model and its variations to identify risks and mitigation strategies. PwC’s work, which is at Annex L: PricewaterhouseCoopers analysis, provides an independent, comprehensive and disciplined analysis of the model to supplement the analysis of the Re-Thinking Systems Review.

1.8.2. PwC’s analysis identifies control gaps and risks in the recommended model and variations, and suggests measures to address them. It is clear from this analysis that the greatest risks in the recommended model lie in poor implementation. For the most part, the identified control gaps and risks can be addressed by: providing adequate resources to the proposed Defence assessment and reporting area, Defence investigation area and Defence internal review area; drafting clear policy guidelines; providing training to Defence staff; and using trend tracking and monitoring capability to understand and correct deficiencies.

1.8.3. This analysis must be referred to and considered by the implementation team. It will be important to adopt a disciplined approach to address the identified control gaps and risks in the implementation phase.

1.9. Implementation concept

1.9.1. The detail of implementation planning for the Re-Thinking Systems Review will necessarily depend upon the recommendations adopted. An implementation concept has been proposed at Chapter 10 which identifies a series of ‘quick wins’ and other aspects of the recommended model which would require more detailed implementation planning. The quick wins are relatively simply and could be implemented as interim measures using existing Defence legal staffing and resources.

1.9.2. Organisational change of this nature will require clear oversight and accountability by a dedicated implementation team headed by a senior officer with the ability to drive prioritisation, cooperation and resource allocation. This senior officer should have experience in change management, be of sufficient level to
engage at the required levels within and outside Defence, and have strong commitment to the changes inherent in the model to be implemented. We have proposed that the Chief Operating Officer would be well placed to lead this reform. The nature of the organisational changes proposed is significant and therefore the implementation team needs to be solely dedicated to undertaking this work.

1.9.3. Further, the magnitude of this reform will take time to implement. A formal review cycle should be embedded in the implementation strategy and discipline must be applied to consideration of any isolated proposals for reform outside of that cycle. A disciplined approach will also ensure that organisational resources and energy is targeted towards this fundamental reform and not dispersed among isolated (and potentially inconsistent) reforms.

1.10. Support to individuals

1.10.1. The functioning of the recommended model would be practically enhanced by the provision of effective support to individuals involved in, or who wish to enliven, these processes (for example, by making a report or seeking review). While individuals would normally obtain support or advice from their chain of command or line management in the first instance, other support arrangements external to the chain of command or line management would be available, including equity advisors, legal advice, SeMPRO (in the case of sexual misconduct), health services, chaplaincy and a range of counselling options.

1.10.2. While the focus of the Re-Thinking Systems Review is on decision making, that process has a significant impact on individuals and therefore it is essential that support arrangements are coordinated and coherent. Coordination is also required by the Pathway to Change strategy’s intent to enhance our people’s understanding of how to lodge and respond to complaints.

1.11. ICT feasibility study

1.11.1. The recommended model would operate most efficiently if supported by a single, whole-of-Defence Enterprise Recording, Reporting and Case Management System which has the capacity to receive reports of trigger events and track them through to resolution. As stated above, there are currently a number of electronic case management and reporting systems in use or under development in Defence. These are costly to develop and maintain, and most do not have the capability to share information. This means that data relating to a single trigger event is expected to (but may not) be entered into multiple databases, and makes data tracking and trend analysis difficult.

1.11.2. The Re-Thinking Systems Review has commenced work with Chief Information Officer Group to undertake a feasibility study into the viability of a whole-of-Defence system, including whether such could occur through building on one or more of the existing systems already used in Defence or whether a new system (or systems) would better meet Defence’s long-term needs.
1.12. Conclusions

1.12.1. A key conclusion of the *Re-Thinking Systems Review* is that the current arrangements facilitate overlapping, drawn-out investigations which delay meaningful action and frustrate rational outcomes.

1.12.2. A culture of reporting must have at its foundation a system that supports timely and professional action when a report of a trigger event is made. The *Re-Thinking Systems Review* proposes reforms to policy, procedure and structure, but at their core the reforms are about changing culture.

1.12.3. Significant resources are presently invested in functions that respond to internal and external concerns with decisions already made. Those functions include staff work to support internal review of decisions, legal action involving the Department, responses to ministerial representations, questions on notice and Parliamentary hearings and media enquiries among others.

1.12.4. If the reforms were adopted, the organisation would put in place a coherent system to resource, support and explicitly value the action taken by commanders and line managers immediately when an incident becomes known.

1.12.5. The *Re-Thinking Systems Review* argues that resources directed to support frontline command and line management decision making may, over time, reduce the load on those ‘reactive’ functions, improve outcomes for Defence and individuals and reflect Defence’s cultural intent.

1.12.6. The lesson of decades of previous inquiries and review into Defence’s arrangements for inquiry, investigation and review is that further incremental, piecemeal change will not deliver a simple, coherent and effective system that supports individuals, commanders and line managers.
### 1.13. Side by side model comparison: Re-Thinking Systems Review recommended model vs Status Quo Plus

1.13.1. The following table provides a side by side comparison of the key features of the recommended model and the Status Quo Plus model.

<table>
<thead>
<tr>
<th>Phase 1: Recording, Reporting and Initial Assessment</th>
<th>Status Quo Plus model</th>
<th>Recommended model</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Policy guidance</strong></td>
<td>There would be 16 policies outlining requirements for commanders and line managers to record and report trigger events.</td>
<td>There would be one policy outlining requirements for commanders and line managers to record and report trigger events.</td>
</tr>
<tr>
<td><strong>Specialist areas receiving reports</strong></td>
<td>Commanders and line managers would be required to determine which of 12 different specialist areas in Defence should be provided with a report.</td>
<td>Commanders and line managers would provide all reports to one specialist area in Defence.</td>
</tr>
<tr>
<td><strong>Reporting to chain of command</strong></td>
<td>Commanders and line managers would be required to report some trigger events to their chain of command.</td>
<td>All trigger events would be reported to the chain of command and Defence assessment and reporting area simultaneously.</td>
</tr>
<tr>
<td><strong>Reporting form / mechanism</strong></td>
<td>Commanders and line managers would be required to determine which, if any, of nine different forms / mechanisms for reporting must be used. In several cases, the form / mechanism would not be specified.</td>
<td>All trigger events reported to the chain of command and Defence assessment and reporting area would be reported on a single form, or through a single mechanism.</td>
</tr>
<tr>
<td><strong>Recording requirements</strong></td>
<td>The threshold for reporting a trigger event to a specialist area would depend on which reporting obligations apply, and would often be defined in terms of seriousness. As seriousness is a matter of personal judgment, commanders and line managers would be required to determine the seriousness of a trigger event themselves in order to determine their reporting obligations.</td>
<td>The threshold for reporting to the chain of command and Defence assessment and reporting area would not require personal judgment as to the seriousness of the trigger event. Instead, all trigger events in listed categories would be reported.</td>
</tr>
<tr>
<td><strong>Phase 2: Fact Finding</strong></td>
<td>Depending on the nature of the trigger event, trigger events would be recorded through Quick Assessments (where a Quick Assessment is required), or in accordance Service-specific directions and the Defence Records Management policy.</td>
<td>All trigger events would be recorded on a single form and supplementary forms would be completed as a matter progresses.</td>
</tr>
<tr>
<td><strong>Non-statutory fact finding at unit / team level</strong></td>
<td>Commanders and line managers could appoint a ‘routine inquiry’ and conduct it in accordance with the process outlined in ADFP 06.1.4 Administrative Inquiries Manual and general administrative law principles.</td>
<td>Commanders and line managers would conduct whatever fact finding they considered proportionate and reasonable in light of their information needs and what decisions need to be made.</td>
</tr>
<tr>
<td>Statutory fact finding at unit / team level</td>
<td>Commanders and line managers would be required to appoint an ‘Inquiry Officer inquiry’ under Part 6 of the Defence (Inquiry) Regulations 1985 for ‘complex and serious’ matters.</td>
<td>Commanders and line managers would not appoint any statutory inquiries.</td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>Use of professional investigators at unit / work area level</td>
<td>Commanders and line managers could locate and appoint an Inquiry Officer with training from the Inspector General ADF’s office in the conduct of an administrative inquiry.</td>
<td>Commanders and line managers could request that the Defence investigation area provide a professional investigator (or investigation team) to conduct fact finding to inform their decisions. The Defence investigation area would assess this request and facilitate the provision of appropriately skilled investigators as appropriate in accordance with whole-of-Defence priorities.</td>
</tr>
<tr>
<td>Professional investigation structures</td>
<td>Professional investigations in Defence would be conducted by multiple areas.</td>
<td>Professional investigations in Defence would be coordinated and conducted by a single Defence investigation area, except for professional investigation capability retained by the Service Police.</td>
</tr>
<tr>
<td>Prioritising investigations</td>
<td>Each specialist area would conduct investigations in accordance with their own priorities and limited by its own resources.</td>
<td>The Defence investigation area would conduct investigations in accordance with whole-of-Defence priorities set by the Secretary and CDF, in consultation with Service Chiefs and Group heads.</td>
</tr>
<tr>
<td>Statutory inquiries</td>
<td>There would be six species of statutory inquiry available in Defence, which could be appointed at various levels (from commanding officers to Ministers). There would be no central coordination of statutory inquiries. The Inspector General ADF would maintain an administrative inquiry tracking system.</td>
<td>There would be two flexible species of statutory inquiry, which could be appointed by senior leadership within Defence or by a Minister. The Defence investigation area would act as a Secretariat for all statutory inquiries.</td>
</tr>
</tbody>
</table>

### Phase 3: Internal review

<table>
<thead>
<tr>
<th>APS Review of Actions</th>
<th>APS employees would have access to the APS Review of Actions process. These would be submitted to the Directorate of Complaint Resolution for consideration.</th>
<th>APS employees would have access to the APS Review of Actions process. These would be submitted to the Defence internal review area for consideration.</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADF members’ right to apply for review</td>
<td>ADF members would be able to obtain review of any decision, action or omission they consider to be adverse to them, where the adverse effect can be redressed by someone in Defence.</td>
<td>ADF members would be able to obtain review of any decision, action or omission they consider to be adverse to them, where the adverse effect can be redressed by someone in Defence.</td>
</tr>
<tr>
<td>Layers of review for ADF members</td>
<td>There would be two formal layers of review. Command and line management would also retain discretion to review matters outside of the formal process. The Inspector General ADF would have discretion to review ‘matters that relate to military justice’.</td>
<td>There would be one formal layer of review. Command and line management would also have discretion to review matters outside of the formal process.</td>
</tr>
</tbody>
</table>
### Role of Commanding Officer

The first layer of formal internal review would be review by a commanding officer. If the commanding officer made the original decision and there is no new information, or if the commanding officer does not have the authority to grant the redress sought, the commanding officer must refer the matter to the ADF member’s Service Chief or an alternative authority. Otherwise, the commanding officer must inquire into the complaint and determine appropriate action in response.

### Role of internal review area re ADF internal review

The Directorate of Complaint Resolution would provide advice to commanding officers about the commanding officer layer of review. For matters referred to a Service Chief, the Directorate would prepare a brief for the Service Chief (or their delegate).

### Secretary and CDF discretionary review

Command and line management would have a broad discretion to review earlier decisions and provide a remedy.

### Phase 4: External review

#### Defence-specific external integrity agency

The Defence Force Ombudsman may investigate complaints relating to an ADF member’s service and make recommendations to Defence. The Defence Force Ombudsman and Commonwealth Ombudsman would be the same person. The Ombudsman’s office no longer has any resources quarantined for Defence Force Ombudsman functions.

### Discipline matters

The Defence Force Ombudsman would not have jurisdiction to investigate discipline matters.

### Pay and conditions

The Defence Force Ombudsman could investigate complaints relating to ADF pay and conditions and make recommendations to the CDF.

Commanding officers would receive applications for review from ADF members, and forward them to the internal review area. The commanding officer may indicate support (or otherwise) for the review application on the review application form.

All review applications would be forwarded to the Defence internal review area for allocation to a review delegate with the authority to re-make the decision under review. Where appropriate, review delegates would be appointed within the Defence internal review area, although some delegations would necessarily remain within the Services.

Command and management would have a broad discretion to review earlier decisions and provide a remedy.

The proposed external review agency could investigate complaints relating to an ADF member’s service and make recommendations to Defence. The agency would have sufficient resources dedicated to its Defence functions, whether or not the agency was part of the Commonwealth Ombudsman’s office.

The external review agency would have jurisdiction to investigate discipline matters.

ADF members could apply to the Administrative Appeals Tribunal for review of decisions relating to pay and conditions. The Tribunal would have power to re-make those decisions where they are incorrect (noting that this is not essential to the implementation of the Phase 4 recommended model).
**Recommendations**

1.14. Phase 1: Recording, Reporting and Initial Assessment

**Recommended model:** a single recording, reporting and initial assessment mechanism; a low recording and reporting threshold; reporting simultaneously to the chain of command / line management and a Defence assessment and reporting area.

1. That you agree that:

   (a) Defence requires a single Defence-wide reporting policy which, by being easy to use and standardised, encourages recording, reporting and assessment of trigger events by commanders and line managers.

   (b) The threshold for recording and reporting trigger events must be low in order to promote a reporting culture in Defence, allow leadership visibility and trend analysis and improve Defence record keeping about trigger events.

   (c) Essential information about trigger events must be reported simultaneously to the chain of command / line management and a single Defence assessment and reporting area for whole-of-Defence purposes, including visibility by the Secretary and CDF as required, even if the responsible Service or Group does not require assistance in managing the event.

   (d) The single area must support commanders and line managers in managing a trigger event, as necessary, but must not supplant command or other decision making responsibility and accountabilities. Decision makers must remain responsible for making the decisions that are within the scope of their delegated authority (noting that not all decisions rest with commanders and line managers, or even the Services and Groups).

   (e) Recording and reporting of trigger events should occur through an Enterprise Recording Reporting and Case Management system, in order to foster transparency in decision making and actions, provide increased visibility for commanders, line managers and other decision makers, improve data collection and accessibility throughout Defence, increase opportunities for trend analysis, and generally improve recording and reporting of inquiry, investigation and review activities.

2. Based on the above principles, Head Defence Legal, Head People Capability and Chief Audit Executive recommend that you endorse the recommended model as the preferred model for recording, reporting and initial assessment of trigger events in Defence.
1.15. Phase 2: Fact Finding

**Recommended model:** the vast majority of fact finding be non-statutory; statutory inquiries be limited to high-level inquiries; a Defence investigation area ‘own’ and manage all professional investigative capability (with the exception of the Service Police organisations).

3. That you agree that:
   
   (a) The purpose of fact finding in Defence is to support internal decision making by commanders, line managers and others, as opposed to being a means of appeasing public or other concern.
   
   (b) Defence requires simple, effective and proportionate fact finding mechanisms to support informed decision making by commanders, line managers and other Defence decision makers. Simplified arrangements would allow most fact finding to be undertaken using local, organic capability, reducing the need for specialist training or assistance.
   
   (c) Defence requires a dedicated professional investigative capability, which is ‘owned’ by a single position and comprises ADF members and APS employees with both generalist and specialist skills, to support some decision making by commanders, line managers and others.
   
   (d) Defence requires a coordinated approach to the setting of priorities and the allocation of resources in relation to professional investigative capability in order to reduce parallel investigations into a single matter (even where there are different evidence requirements). The priorities must be set by the Secretary and CDF, informed by Service Chiefs and Group Heads.
   
   (e) The Services should retain their current Service Police capability, focusing primarily on single-Service requirements with a minor investigative capability.

4. Based on the above principles, Head Defence Legal, Head People Capability and Chief Audit Executive recommend that you endorse the recommended model as the preferred model for fact finding in Defence.

1.16. Phase 3: Internal Review

**Recommended model:** a single layer of review for ADF members and APS employees; a single Defence internal review area receive all review applications; APS Review of Actions remain the same; ADF members to submit review applications through their commanding officer.

5. That you agree that:
   
   (a) Delays caused by multiple layers of internal review are a source of unfairness to individuals. Defence should move to government best practice for the management of internal review of decisions and actions, by entitling ADF members to a single, expeditious layer of review (noting that a single layer of review for ADF members would not reduce the rights
of ADF members). This is consistent with the APS Review of Actions model.

(b) The purpose of internal review is to re-consider and, where appropriate, re-make Defence decisions or actions (rather than to make a recommendation only). Internal review decision makers must have the authority to re-make decisions.

(c) Commanding officers should have an advocacy role regarding members under their command during internal review (even where decisions are not made within the Service) in recognition of their special role in relation to ADF members under their command.

(d) ADF members must be able to obtain reasons for decisions that are reviewable through the internal review process.

(e) Defence requires a single internal review area separate from the chain of command to receive internal review applications from APS employees and ADF members and, depending on the nature of the decision that is being reviewed, either review the decision itself or direct the application to the most appropriate internal review decision maker.

(f) Defence decision makers, including senior leadership, must have the discretion to review earlier decisions and provide a remedy, outside formal internal review procedures. This includes the ability of the Secretary and the CDF to direct expert fact finding into sensitive and complex matters.

(g) ADF members seeking internal review should not ordinarily be provided legal support in preparing an application for internal review unless there are exceptional circumstances.

(h) APS employees currently have a legislative entitlement to a single layer of internal review and this entitlement is sufficient.

6. Based on the above principles, Head Defence Legal, Head People Capability and Chief Audit Executive recommend that you endorse the recommended model as the preferred model for internal review in Defence.

1.17. Phase 4: External Review

ReCOMMENDED MODEL: Merit Protection Commissioner continue to review applications from APS employees; a Defence external integrity agency review applications from ADF members and conduct inquiries into Defence matters; the Administrative Appeals Tribunal review decisions relating to ADF benefits and allowances.

7. That you agree that:

(a) It is in Defence’s interests that external review mechanisms have the confidence of the public and the Parliament. Credible and robust external review mechanisms are essential for transparent and independent oversight. They are also more likely to deliver conclusive resolution of matters, reduce reliance on expensive, ad hoc reviews and support Defence’s cultural intent by providing ongoing feedback.
(b) All decisions affecting ADF members, including command decisions, should be subject to external review to ensure adequate safeguards for individuals and effective oversight of Defence as a whole. Multiple avenues for internal review are not an effective substitute for credible and robust external review.

(c) The advantages inherent in existing external review mechanisms (such as the Defence Force Ombudsman) are not being realised due to inadequate resourcing and Defence’s continued resort to ad hoc reviews.

(d) External review of decisions affecting ADF members should be provided by an external Defence-dedicated agency which understands the unique nature of military service. This agency would make recommendations to Defence.

(e) The Defence-dedicated external review agency should have power to conduct inquiries into Defence matters at the request of the Government, the Department or on its own motion.

(f) Public accountability and transparency in relation to Service-related deaths may be more effectively provided through the operations of an external integrity agency, given that fact finding to inform decision making in Defence following a death does not always require the level of formality currently provided through a CDF Commission of Inquiry.

(g) The Administrative Appeals Tribunal should undertake external review of decisions regarding allowances and other benefits, given that such decisions are based on the satisfaction of statutory criteria. The Tribunal has power to re-make decisions.

(h) APS employees currently have access to external review for all decisions affecting their employment, and these arrangements are sufficient.

8. Based on the above principles, Head Defence Legal, Head People Capability and Chief Audit Executive recommend that you endorse the recommended model as the preferred model for external review of Defence decisions.

1.18. Implementation

9. That you agree that Defence requires discipline both in commissioning future reviews and in accepting internally and externally generated recommendations so that the coherence of the recommended model is not undermined during and after implementation.

10. That you agree that a formal review cycle at programmed intervals is an effective means of applying this discipline after implementation, coupled with continuous improvement processes internal to the recommended model.

11. That you direct the Chief Operating Officer to establish a dedicated and appropriately resourced and skilled implementation team, under his/her oversight, to commence work immediately.

12. That you direct Head Defence Legal to commence work immediately on the ‘quick wins’ identified in the implementation concept in Chapter 10.4.
13. That you direct the Chairs of the Military Justice Coordination Committee to pursue simplification of the summary discipline system, having regard to the three options outlined in Annex G: Specialist roles and processes.

14. That you direct DEPSEC DP to coordinate with Services and Groups to develop a coherent approach to individual support in parallel with the implementation of the Re-Thinking Systems Review recommended model.
1. Introduction

1.1. Overview of Re-Thinking Systems of Inquiry, Investigation, Review and Audit in Defence

1.1.1. On 8 November 2011, the then Secretary of Defence and the Chief of the Defence Force commissioned Mr Mark Cunliffe (Head Defence Legal), Major General Gerard Fogarty (Head People Capability) and Mr Geoffrey Brown (Chief Audit Executive) to conduct a review of all investigation, inquiry, review and audit systems, processes and structures across Defence.

1.1.2. The objective of the Re-Thinking Systems Review was to make recommendations regarding the establishment of a system that is fair, timely, simple to implement, provides whole-of-Defence outcomes and takes into account legislative requirements.

1.1.3. The audit phase of the review, which commenced in November 2012, is currently undergoing further consultation and will report separately.

1.2. Decision making framework

1.2.1. Inquiry, investigation and review functions exist to support decision making. They are not an end in themselves. Our review of those functions therefore focused on how they support Defence decision makers in making timely and professional decisions and how those decision makers can be held accountable.

1.2.2. Integrity in decision making is crucial to good governance and sustaining public trust. In order to maintain confidence in Defence decision making, strong and cohesive internal and external integrity systems are essential. Defence’s internal integrity system is made up of legislation, policies, procedures, structures and practices all aimed at ensuring decision makers use their powers responsibly and ethically, and that proper process is followed to achieve evidence-based and proportionate outcomes. In addition Defence, like other Commonwealth departments of State, is held accountable for its use of resources through integrity functions such as Parliamentary oversight and Australian National Audit Office scrutiny. However, its people are also entrusted with unique powers which require specialised oversight. For example, the power of command over subordinates and powers associated with use of force and war-fighting is unique and has significant potential for abuse. In 2013, it is no longer credible for any part of Defence to suggest that it should not be subject to scrutiny through the Commonwealth’s external integrity system.

1.2.3. In order to maintain confidence in the exercise of these powers, both within and outside of Defence, a strong and cohesive integrity system is essential. The recommended model, which is based around the following four phases of decision making following a trigger event, is underpinned by an internal and external integrity system:

- **Recording, Reporting and Initial Assessment.** Making a record of relevant information, determining what is known, what needs to be discovered and what
immediate actions are required, and simultaneously advising the military chain of command and relevant areas within and outside of Defence.

- **Fact Finding.** Obtaining information to inform and support decisions.
- **Internal Review.** Re-consideration within Defence of a Defence decision or action.
- **External Review.** Re-consideration by an agency outside of Defence of a Defence decision or action.

1.2.4. These phases are not discrete and will often not follow a linear process. In practice, each phase may contain elements of another. For example, the Recording, Reporting and Initial Assessment, Internal Review and External Review phases may all involve elements of fact finding.

1.2.5. The decision making framework and how it is underpinned by individual, institutional and external integrity is discussed in further detail in Annex B: Model development.

### 1.3. Methodology

1.3.1. **Stage A and the essential components of an optimal system.** Stage A of the Re-Thinking Systems Review was undertaken between November 2011 and August 2012. It involved thorough analysis of current arrangements in order to identify the strengths and weaknesses, and derive the essential components of an optimal system of inquiry, investigation and review. The analysis in the Stage A Report will be referred to throughout this Stage B Report.\(^7\)

1.3.2. The eight essential components identified in the Stage A Report, and the ninth added by the Secretary and CDF on 10 August 2012, are as follows:

- Functions effectively in the integrated environment.
- Facilitates sound and timely decision making.
- Promotes flexibility in response options including in deployed environments.
- Governed by lawful procedures that are simple and easy to use.
- Provides transparency in processes and outcomes.
- Incorporates safeguards for individuals.
- Delivers cost-effective outcomes in an adequately resourced system.
- Incorporates coordinating and monitoring mechanisms to ensure consistency.
- Is supported by a training and education concept.

1.3.3. **Stage B and developing the recommended model.** Work on Stage B (this Report) commenced in July 2012 and focused on developing and testing models for a new system of inquiry, investigation and review based on the nine essential

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components. The purpose of this Report is to present the recommended model that can be taken forward for detailed development and implementation planning. The recommended model is conceptual, noting that many of the details would be determined in the implementation planning stage, as well as through business protocols.

1.3.4. This Report provides an outline of the recommended model, possible variations, and an assessment of the strengths and weaknesses. Development and assessment of the recommended model involved the following activities.

1.3.5. Consultation and brainstorming sessions: Extensive internal and external consultation and brainstorming activities were undertaken in Stage B. Comments were sought on the strengths and weaknesses of current arrangements, how the arrangements could be improved, and the perceived viability of the different elements of the draft models. Participants were invited to present their ideal of the functions and processes for each phase of decision making, unconstrained by the present system or by cost.

1.3.6. Annex A: Summary of observations from brainstorming and consultation contains a list of the internal and external areas and representatives who participated in brainstorming and consultation activities, as well as a summary of the observations from these activities. Annex B: Model development contains discussion of how these observations influenced the development of the recommended model.

1.3.7. Research phase and development of draft models: Following the consultation and brainstorming activities, the Re-Thinking Systems Review undertook an analysis of Commonwealth best practice, previous relevant inquiries and reform activities and the approaches of coalition partners. Annex B: Model development provides further detail.

1.3.8. War-games to test models: Two war-game activities were undertaken in order to test the viability of the models. The first was attended by internal stakeholders from the responsible policy areas. The second was attended by commanders and line managers who regularly use the current arrangements in the management of their unit or work areas.

1.3.9. Each war-game was based around a hypothetical workplace with hypothetical characters comprising APS employees, ADF members, contractors, Reservists and cadets. After discussion of the application of the draft models to each scenario, participants were asked to identify the strengths, weaknesses, opportunities and threats of the models. Annex C: Outcomes of war-games provides further detail.

1.3.10. Circulation of draft Stage B Report for comment: On 17 December 2012, the draft Stage B Report was circulated to key internal stakeholders for comment. Comment was also sought from key external stakeholders.

1.3.11. Annex D: Stakeholder comments on draft Stage B Report lists stakeholders who were consulted and reflects the comments made and the Re-Thinking Systems Review’s response, including whether the draft Stage B Report was consequently amended.
1.3.12. Following receipt of these comments, during the first half of 2013 the Re-Thinking Systems Review engaged in a further round of consultation with key stakeholders.

1.3.13. Analysis of previous relevant inquiries: The compatibility of the recommended model and its variations was then assessed against an extensive list of previous relevant inquiries and reviews. An important goal of the Re-Thinking Systems Review has been to take into account related reform activity and ensure that the model aligns with that activity. This analysis was divided into relevant inquiries prior to 2010 and relevant inquiries after 2010, so that the intent of past recommendations that were implemented, and the intent of current recommendations that are in the process of implementation, could be considered separately.

1.3.14. Annex E is an assessment of 16 relevant inquiries prior to 2010, and identifies 146 recommendations from those inquiries that relate to the overall conduct of inquiry, investigation and review arrangements in Defence. These recommendations were then analysed to determine commonalities with the recommended model.

- The intent of approximately 53% of the recommendations is consistent with the recommended model.
- The intent of approximately 42% of the recommendations is partially consistent with the recommended model. This may be because the recommendations are only partially relevant to the model, the model addresses only some aspects of the recommendations, or the model addresses the underlying issue raised by the recommendation in a different way.
- The intent of approximately 4% of the relevant recommendations is inconsistent with the recommended model.

1.3.15. Annex F is an assessment of relevant inquiries and reviews since 2010, including the Pathway to Change strategy, the DLA Piper Review of allegations of sexual and other abuse in Defence and the HMAS Success Commission of Inquiry. This assessment identifies 393 recommendations from these inquiries that relate to the overall conduct of inquiry, investigation and review processes. These recommendations were then analysed to determine, among other things, whether the recommendations of this reform activity were consistent with the recommended model.

1.3.16. Based on this assessment, the Re-Thinking Systems Review is confident that the direction of the recommended model is aligned with the goals of the Pathway to Change strategy.

1.3.17. Development of Status Quo Plus model: At the suggestion of the Inspector General ADF, the Re-Thinking Systems Review spent considerable time developing a model based on current arrangements, as they would be changed by the implementation of some recommendations from a number of recent reviews. This is contained in Chapter 3.

1.3.18. PricewaterhouseCoopers analysis: As pursuing any of the models would require significant organisational effort, cost and some disruption to Defence, it was
considered important that the models were validated before being put to the Secretary and CDF for decision. Accordingly, the Re-Thinking Systems Review engaged PricewaterhouseCoopers (PwC) to analyse the recommended model and its variations to identify risks and mitigation strategies as part of Stage B. PwC’s work, which is at Annex L: PricewaterhouseCoopers analysis, provides an external, comprehensive and disciplined analysis of the model to supplement our analysis.

1.3.19. Implementation planning: An implementation concept including options for implementation of the recommended model has been drafted and included in Chapter 10. Looking ahead, implementation of all or part of the recommendations of the Stage B Report is dependent on endorsement by the Secretary and the CDF.

1.3.20. An appropriately skilled and resourced implementation team would be a necessary starting point for development of a detailed implementation strategy. The nature and timing of engagement with the Minister and the Senate Foreign Affairs, Defence and Trade Committee on reforms (particularly those requiring legislative change) would also warrant careful consideration.
2. Current Inquiry, Investigation and Review Arrangements

2.1. Introduction

2.1.1. The Stage A Report contained an analysis of the strengths and weaknesses of the current inquiry, investigation and review arrangements as well as generally identifying opportunities for reform. This analysis was based on the findings of a questionnaire to internal stakeholders, the findings of an anonymous survey of commanders and line managers, a legal framework analysis, an analysis of previous relevant inquiries and research into Commonwealth best practice.

2.1.2. This Chapter does not endeavour to repeat that content, but rather provides an overview of the major shortcomings of current arrangements, and provides a case study analysis. It also contains a description of the training and education that is currently available to users and an indication of the cost of the current arrangements.

2.2. Shortcomings of the current arrangements

2.2.1. The current arrangements for inquiry, investigation and review do not focus on supporting commanders and line managers to make the decisions they are required to make to manage a trigger event. This is particularly evident where a single trigger event relates to multiple subject matters, and therefore multiple stakeholders are involved.

2.2.2. The present arrangements have been accumulated over time. Issues are managed by policy imposed by subject matter leads. Prioritisation of inquiry, investigation and review activities do not always reflect whole-of-Defence priorities. For example, what may seem a low priority in terms of policing may, in fact, be a high priority in terms of reputational risk or organisational cultural reform.

2.2.3. Trigger events are also complicated by high levels of integration in Defence workplaces generally. Thousands of APS employees work directly for ADF supervisors in the Services or in Groups that would traditionally be considered the domain of the ADF. Similarly, thousands of ADF members work for APS supervisors or in Groups that are headed by APS executives. These figures are markedly higher in the MAJ / APS6 to COL / EL2 ranks. In response to similar circumstances, supervisors are expected to understand and apply different processes to ADF members and APS employees that they manage. This phenomenon is not limited to the Canberra region. Annex B: Model development contains further details of the level of integration. To this end, as identified as one of the essential in the Stage A Report, any processes must operate effectively in the integrated environment.

2.2.4. The following section summarises the key shortcomings of the current arrangements.

2.2.5. Phase 1: Recording, Reporting and Initial Assessment. The current processes for recording, reporting and initial assessment can be convoluted,
legalistic and cloud accountability when a trigger event with multiple components crosses policy boundaries and therefore policy owners.

2.2.6. Currently, following the occurrence of a trigger event, commanders and line managers are required to determine the nature of the trigger event and then identify the relevant policies and reporting requirements that relate to that particular subject matter. These policies have different policy owners, each imposing different reporting formats and timeframes. For example, in the event that a trigger event raises potential issues of unacceptable behaviour, a breach of security and fraud (which is not uncommon, given that many trigger event are multi-dimensional) the commander or line manager would be required to refer to DI(G) PERS 35-3 Management and Reporting of Unacceptable Behaviour, the Defence Security Manual and DI(G) FIN 12-1 The Control of Fraud in Defence and the Recovery of Public Monies. In accordance with these documents, the commander or line manager would be required to report the matter to the Directorate of Fairness and Resolution by completing a report on Comtrack, to the Defence Security Authority by completing and submitting the XP188 form, and reporting the matter orally or in writing to Inspector General – Defence. To complicate matters further, the trigger event may also be considered a ‘notifiable incident’ for the purposes of DI(G) ADMIN 45-2 Reporting and Management of Notifiable Incidents, which gives rise to additional reporting requirements. Annex H: Current Defence reporting requirements provides a list of some of the applicable Defence reporting policies. The procedural burden is so high that it serves as a disincentive for commanders and line managers to report trigger events and initiate actions or, alternatively, creates a perception that compliance with the reporting requirements alone has satisfied Departmental obligations to manage the matter.

2.2.7. Upon a report being made to the relevant policy owner in the specified format, the information is often managed in a silo. Information exchange between some areas is ad hoc at best. Communication and coordination is not fluid and staff resources are expended to overcome demarcation issues. Not only does this approach do little to assist commanders and line managers in managing a trigger event, but it also means that there is little prospect of Defence leadership developing a holistic picture of trigger events or receiving meaningful trend analysis. Conversely, if the trigger event does not meet the stipulated threshold of seriousness as understood by the commander or line manager, there is a real risk that no record will be created whatsoever.

2.2.8. These shortcomings have been previously identified. In particular, the 2011 Army submission forwarded to the Review of Policies Governing ADF Personal Conduct acknowledged the existence of a multitude of incident reporting requirements, but a lack of clear guidance to commanders and line managers ‘to take action subsequent to reporting’. The Pathway to Change strategy committed Defence to adopting a reporting culture. While the recent reviews into Defence by the Sex Discrimination Commissioner and DLA Piper focused on the cultural disincentives to individuals reporting complaints, MAJGEN Orme’s Personal Conduct

8 Major General C.W. Orme AM CSC, Beyond Compliance: Professionalism, trust and capability in the Australian profession of arms (Report of the ADF personal conduct review), 2011 (Orme review 2011)

9 Army Submission, Review of Policies Governing ADF Personal Conduct, 24 June 2011, paragraph 43
Review acknowledged that the red tape is a deterrent to individuals and a disincentive for commanders to take action. While under-reporting is obviously a cultural matter, a culture of reporting must be underpinned by a system that can deal with reports once made. The culture of reporting in the Pathway to Change strategy must have at its foundation a system that supports timely and professional action when a report is made. In relation to recording, as discussed in the annexes, previous inquiries including: The Hon Roger Gyles AO QC, HMAS Success Commission of Inquiry: Allegations of Unacceptable Behaviour and Management Thereof, Part Three Report: Further recommendations, December 2011 (HMAS Success Part Three report); and Rumble, G. et al, Report of the Review of allegations of sexual and other abuse in Defence, Volume 1, October 2011 (DLA Piper report); have identified the deficiencies in Defence record keeping.

2.2.9. In relation to the mandated Quick Assessment process that must be undertaken following an occurrence, the interaction of DI(G) ADMIN 67-2 Quick Assessments with other Defence policy documents is at times confusing and problematic. This includes when to undertake a Quick Assessment, the timeframes for completion, the level of detail required, and the decisions that can be made following a Quick Assessment. Quite often, Quick Assessments turn into quasi-inquiries, rather than functioning as an immediate assessment and record of an incident or complaint. Current guidance is routinely interpreted as requiring a full investigation before any decisions can be made, and encourages a formulaic approach that does not prompt qualitative appreciation and analysis of the problem by command and line management. The Re-Thinking Systems Review has considered case studies where the propensity for Quick Assessments to become quasi-inquires has resulted in duplication of effort and delayed resolution of matters, as well as flawed processes. Further details regarding the weaknesses of the Quick Assessment is contained in the Stage A Report and Annex B: Model development.

2.2.10. Current case management and reporting systems: There are a number of different formats in which trigger events must be reported to stakeholders. In addition, many of those stakeholders have electronic case management and reporting systems to track the trigger event. These include:

- Defence Policing and Security Management System (DPSMS). DPSMS is primarily a case management tool for the Defence Investigative Authorities (Defence Security Authority, ADF Investigative Service, Inspector General - Defence and the Service Police), as well as some other areas in Defence. Another important function includes incident reporting (for example, the security incident reporting form XP188 is linked into DPSMS and reports directly on to the system). DPSMS is PeopleSoft software and is connected directly to PMKeys (the Defence human resources database). DPSMS data is siloed so that each Defence Investigative Authority has limited access to information from other areas.

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10 See Annex B: Model Development, Annex E: Assessment of compatibility of recommendations from reviews prior to the 2011 ADF cultural reviews, DLA Piper and HMAS Success, and Annex F: Assessment of compatibility of Pathway to Change recommendations
• Discipline Tracking and Case Flow Management System (DTCFMS),\(^{11}\) which is part of PMKeys (data entry has been mandatory since 1 January 2003) \(^{12}\)

• Comtrack is used primarily as a reporting tool for incidents of unacceptable behaviour (including sexual misconduct), although case management capabilities could be added. Currently individuals are only identified if the unacceptable behaviour or sexual misconduct has been substantiated, but work is underway to change this.\(^{13}\) Like DPSMS, Comtrack is a PeopleSoft product, giving it advantages in terms of communication with PMKeys.

• Army Incident Management System (AIMS) is used to track incidents in Army. Unlike DPSMS and Comtrack, which focus on investigation and reporting respectively, AIMS is a holistic incident management system that tracks the management of an incident from start to finish. Access to the system is based on role – typically two individuals per unit will have access and will report incidents, while access and visibility increases up the chain of command. A very limited number of individuals have access to the entire database. AIMS is a LotusNotes product, and there are questions about its long-term viability. For example, it does not connect with some of the newer systems operating on a broader Defence level, so data needs to be input more than once in relation to a single incident.

• ADF Administrative Inquiries Tracking System (ADFAITS)\(^{14}\) is a mandatory recording tool for all Inquiry Officer inquiries and assists in managing costs, reviews and implementation of recommendations. It is essentially a database with report generation and search capabilities hosted on the DRN. The Inspector General ADF is assigned overall ownership responsibility.

• At Fleet Headquarters, Navy is maintaining a Quick Assessment register in an excel spreadsheet, whereby units provide monthly returns of incidents to Fleet. On a quarterly basis this data is analysed by the Administrative Inquiries Manager, the Fleet Legal Officer and the Fleet Commander Australia for trends and risk management. The Administrative Inquiries Manager also utilises ADFAITS to manage administrative inquiries initiated from Fleet Command.

• The Case Management system is managed by the Defence Community Organisation and used for social worker interaction with Defence families. This is built in Changepoint™.

• DMO utilises the Assurance Management Information System (DAMIS) to manage the annual DMO-wide assurance program. It enables day to day management and reporting of all assurance activities and remedial actions arising from those assurance activities. This is built in Changepoint™.

\(^{11}\) See DI(G) ADMIN 10-8 Conduct Reporting and Tracking System, issued 10 July 2008

\(^{12}\) See DI(G) ADMIN 61-1 Inspector-General of the Australian Defence Force—role, functions and responsibilities, issued 27 August 2003

\(^{13}\) This work is being undertaken Directorate of Complaint Resolution in response to Rumble, G. et al, Report of the Review of allegations of sexual and other abuse in Defence, Volume 1, October 2011 (DLA Piper report), issues 8 and 10; and Elizabeth Broderick, Review into the Treatment of Women in the Australian Defence Force (Phase 2 report), 8 August 2012 (Broderick Phase 2 report), recommendation 27.

\(^{14}\) DI(G) ADMIN 65-1 Administrative Inquiry Tracking, issued 4 July 2006
The Work Health and Safety Management Information System project (Sentinel project) is under development. It is an information system that will capture all work health and safety incidents, systematically manage internal WHS compliance audits, and initiate and monitor preventive and corrective actions.

The proposed Joint eHealth Data and Information system (JeHDI) will record patient diagnosis, alcohol consumption and self-harm status (in both routine and mandated health consultations).\(^{15}\)

2.2.11. Most of the above systems do not have the capability to communicate and share information with one another. This results in duplication of effort in inputting data, and creates difficulties in tracking matters. They are also expensive to establish and maintain.

2.2.12. **Phase 2: Fact Finding.** The current arrangements for fact finding in Defence are too prescriptive about fact finding processes in some cases and too permissive in others.

2.2.13. In the ADF in particular, statutory administrative inquiries under the *Defence (Inquiry) Regulations 1985* are over-used in response to relatively straightforward workplace issues. Statutory inquiries impose a level of formality that can be vastly disproportionate to the issue under consideration. That is, the investigative effort and resources required are excessive in comparison to the decisions to be made. This heightened formality then requires specialists such as lawyers to be involved in what are often routine matters. The application of the existing statutory inquiry framework to integrated work environments is fraught.

2.2.14. Trigger events which involve multiple policy owners and stakeholders often result in the conduct of uncoordinated fact finding activities into the same trigger event. This lack of coordination is inefficient and complicates decision making, particularly for the commanders and line managers who may not be informed of the fact finding but are nevertheless responsible for making decisions in relation to the affected individuals. Compartmentalised fact finding can also lead to failures to adequately manage Defence personnel in circumstances where the individual components of a trigger event are dealt with in isolation rather than holistically.

2.2.15. Equally, Defence permits uncontrolled, uncoordinated engagement of external service providers to conduct fact finding on behalf of decision makers. As the experience of the external service providers and quality of their instructions from Defence are mixed, so too are their results.

2.2.16. Military investigative capacity for fact finding in connection with allegations of serious offences under the DFDA is under-resourced and prioritisation does not reflect whole-of-Defence needs.

2.2.17. **Phase 3: Internal Review.** Current internal review arrangements are multi-layered. While this might appear to provide more avenues for an individual to seek justice, it can in fact delay access to external review, be a source of unfairness

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to individuals and lead to a situation where finality is never achieved. There is always the prospect that an affected individual can take the outcome to yet another review option in order to get the outcome they perceive is desirable. While multiple layers of internal review may allow Defence more opportunities ‘to get it right’ to avoid some adverse commentary, it does so at considerable expense and can damage general perceptions of justice.

2.2.18. For APS employees, the APS Review of Actions process is a whole-of-government process by which APS employees can obtain review of actions related to their employment. The statutory requirements for APS Review of Actions are broad, and Defence does have scope to adjust current processes and structures. Additionally, this scheme does not prevent employees from engaging in informal resolution of a matter.

2.2.19. In relation to ADF members, the redress of grievance process contained in the *Defence Force Regulations 1952* provides multiple layers of review for ADF members to review decisions or actions relating to their service. This is in addition to other formal internal review mechanisms such as Medical Employment Classification or military justice reviews by the Inspector General ADF.

2.2.20. **Phase 4: External Review.** ADF members can seek external review through the Defence Force Ombudsman, while APS employees have access to the Merit Protection Commissioner. All Defence personnel can also make a complaint to whole-of-government external review mechanisms (such as the Australian Human Rights Commission).

2.2.21. The Defence Force Ombudsman is a credible, independent external review mechanism. The Defence Force Ombudsman appears, however, inadequately resourced to undertake the number of significant investigations and reviews of Defence matters that are required to meet Defence leadership and public expectations. This may have contributed to Defence’s increased reliance on internal review and expensive ad hoc reviews by external service providers, which are often seen as necessary to validate decision making and address public concern about independence and impartiality.

2.2.22. The *Pathway to Change* strategy commits us to being accountable for our actions, to learn better ways of doing things, and to improve our professionalism and performance in all areas. Defence does not currently have access to an adequately resourced, contextually aware and external review function to provide credible, arm’s length review of decisions, and ongoing feedback to drive continuous improvement.

2.3. **Case studies**

2.3.1. The *Re-Thinking Systems Review* analysed the activities undertaken in relation to a number of matters that were managed under current arrangements. The matters illustrate the scope in current Defence arrangements for uncoordinated, duplicative and indeterminate fact finding and internal review of decisions and the consequent unnecessary delays, costs and damage to Defence’s reputation. The matters include personnel disputes, allegations of unacceptable behaviour, allegations of fraud, and security matters.
2.3.2. While these matters are among the worst examples, and therefore represent the extreme end of the spectrum in terms of time and cost to resolve, they are nevertheless products of Defence’s current complex arrangements. Additionally, they are not the only matters of this scale. The magnitude of their negative effect could be sufficient reason for comprehensive reform. There are equally many lesser-scale examples in Defence where the same systemic failings are evident even though the matters have not to date caused the same degree of organisational cost.

2.3.3. Overlapping, drawn-out investigations delay meaningful action and frustrate timely positive outcomes for Defence and the affected individuals.

- The complexity and absence of an integrated approach within the current arrangements directly contributed to the protracted resolution of the matters.
- All matters demonstrated an uncoordinated, duplicative and indeterminate array of processes that appear not to have any overarching visibility or control.
- All matters resulted in significant expense to Defence. This included external legal costs and the costs of external service providers engaged to undertake ‘external review’ of the matter. It also included extensive diversion of internal costs such as staff and senior management time spent reviewing and clearing materials, lost productivity, decrease in morale and damage to reputation. In most matters, Defence also paid settlement amounts to affected individuals due to the inadequate management of the matter.

2.3.4. The Re-Thinking Systems Review is of the view that under a more efficient system matters such as these would be resolved in a more timely manner and with a greater level of fairness to individuals. This would reduce the likelihood of views becoming entrenched which resist resolution and therefore draw out the workplace impact, individual impact, cost and escalation.

2.4. Current training and education approach

2.4.1. Defence currently has a significant body of programs which train Defence personnel in aspects of managing trigger events, often by reference to existing policies, and conducting fact finding process according to particular subject matters or roles. Current mandatory training and education programs reflect the shortcomings identified in the overall structure of inquiries, investigations and review in Defence. Overall, the current approach does not provide a common, consistent, well-published and mandatory system of training for all ADF members and APS employees (or indeed, for all Defence personnel who are involved in fact finding).16

2.4.2. There are many targeted training programs in Defence led by specific areas in Defence and focused on specific functions. For example, each Defence Investigative Agency develops its own targeted training program to equip investigators with the specific skill sets required to undertake particular types of investigations.

16 The research did not consider issues and processes explicitly related to medical reviews and assessments, tribunal processes, boards of inquiry, work health and safety investigations, procurement and aircraft accident investigations.
2.4.3. Existing training programs in Defence include:

- **Australian Defence Force Investigative Service / Service Police.** After initial training with their Service, personnel undertake either the Service Police Basic Course, Service Police Officers Basic Course or Service Police Investigators Course, followed by the Australian Defence Force Investigations Course and may complete additional specialist courses.

- **Defence Security Authority.** It is expected that members of the security investigation unit will come to the unit with extensive investigative experience, and other mandatory courses will be completed after appointment. Training providers at Defence Security Authority also offer additional non-mandatory training.

- **Inspector General – Defence: Directorate of Investigations and Recoveries.** Investigators normally hold a Certificate in Government Investigations, Diploma in Government Investigation, Diploma in Investigative Practice, civilian police investigative qualification or have the relevant experience and skills (of the standard of a formal training course) on appointment. Continuation training such as the Australian Government Solicitor Administrative Law course, the Inspector General ADF Inquiry Officers Course (see further below) and the CAMPUS Conflict Management course is encouraged but not mandatory.

- **Values, Behaviour and Resolution.** Personnel must either have relevant complaint handling experience, or the ability to acquire such knowledge and skills. It is standard practice that personnel complete the Inspector General ADF Conducting Administrative Inquiries course on entry and the Australian Government Solicitor General Administrative Law course although neither is mandatory.

- **ADF Legal Officers.** ADF legal officers are required to complete Legal Training Modules in a variety of different military legal topics and at initial, intermediate and advanced levels. These modules are taught through the Military Law Centre and the Australian National University. Training relating to inquiry, investigation and review occurs predominantly in discipline law and administrative law modules, focusing on the role of Legal Officers.

- **Army, Navy and Air Force commanders.** Each Service has a system of progressive education and training that helps develop the capacity of members to manage and conduct inquiries, investigations and reviews as they progress through their careers. Each program commences with initial recruit/officer training and introduces more advanced courses at key promotion points for non-commissioned officers and officers to the Major rank (equivalent). The extent to

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17 All military policing training is conducted at the Defence Police Training Centre. ADFIS training therefore includes Service specific training.

18 For example, incident scene examination, sudden death investigation, fraud, sexual offence examination, surveillance practitioner, drug offences, disaster victim identification examination, service police intelligence, digital forensic examination.

19 These mandatory courses include Cert IV in Investigations (APS 6 & below), Diploma Investigations (EL1), AFP Interviewing Techniques Training or similar course, DPSMS training, PMKeyS User Access, Defence Security Authority Internal US/AUS Trade Treaty Training, Defence Security Authority mandated essential training – DRMS/EDMS – security officers course, AGS – FOI and Introduction to Privacy.
which inquiry, investigation and review are currently taught on any or all of these command courses is limited.

- **APS supervisors and line managers.** Supervisors within the APS can undertake supervisor training, although none is explicitly directed to managing and conducting inquiries, investigations and reviews. There is no mandatory system of training beyond CAMPUS.

- **ADF members generally.** The Governance of Military Justice Manual Training Manual (GVMJTMAN) introduced a framework for military justice training, intended to establish a competency standard across the ADF. However, the framework retains the plethora of courses by permitting Services to decide who should receive training and from whom (albeit to the competency standard prescribed in the Manual).²⁰

### 2.4.4. The Office of the Inspector General ADF also provides three targeted courses to Defence personnel:

- **IGADF Conducting Administrative Inquiries (IGADF Inquiry Officer course),** provides Defence personnel with an overview of how to conduct an Inquiry Officer inquiry, from the Quick Assessment to submission of an inquiry report. It is mandatory for Inquiry Officers carrying out a serious and/or complex inquiry.

- **IGADF Complaint Handling** is designed to provide commanders, line managers, supervisors and complaint handlers with procedural and personal skills to deal with workplace complaints promptly, seriously and sensitively.

- **IGADF Administrative Sanctions** trains individuals who may initiate and impose administrative sanctions in the administrative and legal requirements to do so.

### 2.4.5. This training appears to have been developed by the Inspector General ADF to resolve urgent shortcomings across Defence. However, providing internal training seems inconsistent with the oversight role of the Inspector General ADF in so far as the training itself may warrant review and scrutiny. Another internal entity should provide this training, such as the Defence Police Training Centre, the Military Law Centre or the Defence Learning Branch.

### 2.4.6. In addition to these specific training programs, Defence also offers general training courses for participants in summary discipline proceedings,²¹ development courses focusing on managerial skills and personal values,²² and communication skills.²³ Six hundred courses are currently available on CAMPUS (Defence’s online training tool), of which approximately 150 provide training relevant to initial assessment, fact finding and review. Currently this training is voluntary and is negotiated between an individual and their supervisor.

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²⁰ See paragraph 1.5. The GOVMTJMAN policy owner is Director General ADF Legal Services.

²¹ Such as courses which outline Unit Level Discipline Appointments for the Clerk, Defending Officer, Discipline Officer, Investigating Officer, Prosecuting Officer, Recorder, Relevant Officer and Summary Authority course

²² Such as Leadership Essentials: Building Your Influence as a Leader, Understanding Homosexuality, Cultural Diversity

²³ Such as Effective Team Communication, Negotiation Skills, Difficult Conversations
2.5. Cost of inquiry, investigation and review in Defence

2.5.1. Identifying the complete cost of the current arrangements proved impossible as much of the current work is performed on top of the normal duties of Defence personnel. *Annex J: Costs* contains an analysis of the known costs of current arrangements, and the resource implications if the recommended model were implemented.
3. Status Quo Plus Model

3.1. Introduction

3.1.1. At the suggestion of the Inspector General ADF, the Re-Thinking Systems Review is presenting a model based on current arrangements, as they would be changed by the implementation of some recommendations from a number of recent reviews. These reviews include:

- CDF Working Group, Review of the System of ADF Administrative Inquiries, 2010 (CDF working group review 2010);
- Geoff Earley, Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction: a report by the Inspector General Australian Defence Force, 6 September 2011 (IGADF complaint review 2011);
- Geoff Earley, Report of a review of the notifiable incidents system in Defence, 9 November 2012 (IGADF notifiable incident review 2012); and

3.1.2. The reports of these reviews contain recommendations relating to Quick Assessments, notifiable incidents, administrative inquiries and the redress of grievance process. These are all relevant to inquiry, investigation and review arrangements in Defence.

3.1.3. The Re-Thinking Systems Review goes beyond the military justice aspects of inquiry, investigation and review. Other requirements for incident reporting and fact finding have also been considered, including in relation to safety incidents, security incidents, property damage and loss, APS misconduct and procurement complaints. The Status Quo Plus model reflects all of these subject matters, as well as requirements typically associated with military justice.

3.1.4. The presentation of the Status Quo Plus model is intended to provide a 'like with like' comparison with the Re-Thinking Systems Review's recommended model as they operate across the four phases of the decision making framework. With this in mind, not all of the detail contained in current policy documents is reproduced. Similarly, not all of the recommendations of the above reviews have been incorporated, as they contain too great a level of detail than required by the conceptual comparison. Other recommendations, which relate to the clarity of policy and training for commanders and line managers, do not change the process or system itself. However, clear guidance and training for users of these systems is essential, and these recommendations have been considered and addressed in Chapters 8.5. (Training and Education) and 10 (Implementation Concept).
3.2. Phase 1: Recording, Reporting and Initial Assessment

3.2.1. **Status Quo.** The following key policy documents represent the ‘status quo’ for recording, reporting and initial assessment in Defence:

- DI(G) ADMIN 67-2 Quick Assessments
- CDF Directive 4/2010 Quick Assessments and Administrative Inquiries
- DI(G) ADMIN 45-2 Reporting and Management of Notifiable Incidents
- DI(G) PERS 35-3 Management and Reporting of Unacceptable Behaviour
- DI(G) ADMIN 10-8 Conduct Reporting and Tracking System
- DI(G) ADMIN 65-1 Administrative Inquiry Tracking
- DI(G) PERS 11-2 Notification of ADF and Non-ADF Casualties
- DI(G) PERS 16-26 Management of a Suicidal Episode
- DI(G) PERS 15-5 Management of the Use or Involvement with Prohibited Substances in the ADF
- DI(G) PERS 55-4 Reporting, Recording and Dealing with Civil Offences, Service and Civil Convictions and Diversionary Programs
- DI(G) OPS 13-15 Incident Scene Initial Action and Preservation
- Defence Aviation Safety Manual (AAP 6734.001)
- Defence Security Manual (eDSM)
- Defence Safety Manual (SAFETYMAN)
- Financial Management Manual (FINMAN5)
- Defence Workplace Relations Manual (DWRM)

3.2.2. These policies represent key whole-of-Defence recording, reporting and initial assessment requirements, but do not constitute a complete list of all reporting obligations in Defence. Importantly, single-Service reporting requirements, which in some cases provide for additional reporting within the Service, have been excluded. Some other reporting obligations are outlined in Annex H: Current Defence reporting requirements.

3.2.3. **Status Quo Plus.** In the Status Quo Plus model for recording, reporting and initial assessment, the above policy documents would be amended as follows:

- The Director-General ADF Legal Services’ proposed amendments of Quick Assessment processes should be expedited. The proposed amendments were to clarify the circumstances in which a Quick Assessment is required, clarify that a Quick Assessment is not required where there are other specific instructions mandating other immediate actions that replace the requirement for a Quick Assessment, and provide more detailed guidance as to the substance and form of Quick Assessments (recommendation 1, Inspector General ADF’s Review of the Management of Incidents and Complaints in Defence including Civilian and Military Jurisdiction 2011).
- A standard template or form for Quick Assessment should be introduced to provide guidance and define requirements for Quick Assessment officers of the form and detail required (recommendation 2, CDF Working Group’s *Review of the System of Australian Defence Force Administrative Inquiries* 2010).

- Guidance as to the meaning of ‘serious and complex’ should emphasise that the decision whether a decision is ‘serious and complex’ is a matter for the relevant commander or manager’s discretion. Numerical prerequisites in the [CDF Directive] should be removed, and guidance re-characterised as a list of factors for a commander or manager to consider when deciding whether or not an incidence is ‘serious or complex’ (recommendation 22(b), CDF Working Group’s *Review of the System of Australian Defence Force Administrative Inquiries* 2010).

- The intended purpose of the referral by a unit to its higher headquarters of Quick Assessment and proposed action – namely, that these documents be available for higher headquarters to consider while concurrent action continues at the referring unit – should be clarified (recommendation 22(c), CDF Working Group’s *Review of the System of Australian Defence Force Administrative Inquiries* 2010).

- DI(G) ADMIN 45-2 mandate the referral to ADFIS of only those matters which are beyond a summary authority’s jurisdiction to try, subject to appropriateness of summary disposal, and garrison or organic capability to investigate (recommendation 1a, Inspector General ADF’s *Review of the Notifiable Incidents System in Defence* 2012).

- DI(G) ADMIN 45-2 mandate that units and work areas inform ADFIS of incidents above the current jurisdictional threshold, and of action taken or intended in respect of such incidents (recommendation 1b, Inspector General ADF’s *Review of the Notifiable Incidents System in Defence* 2012).

- DI(G) ADMIN 45-2 mandate that Defence Investigative Authorities provide update reports to Service headquarters and Group heads (recommendation 1e, Inspector General ADF’s *Review of the Notifiable Incidents System in Defence* 2012).

3.2.4. **Operation of Status Quo Plus model.** The Status Quo Plus model is presented by reference to two key elements of recording, reporting and initial assessment. First, obligations on commanders and line managers to report various types of trigger event to various areas within Defence (as well as obligations to report some trigger events outside of Defence). Secondly, the requirement to complete a Quick Assessment.

3.2.5. **Reporting of trigger events:** Commanders and line managers are required to report trigger events in four broad categories: safety incidents, security incidents, suspected or alleged misconduct by ADF members and APS employees, and matters relating to the loss or damage of Commonwealth property. There may be a requirement to report a single trigger event under multiple policies to multiple locations within or outside Defence.
Chain of command reporting:
- Trigger events that are serious, sensitive, urgent, or would bring Defence into disrepute must be reported to the chain of command.\textsuperscript{24}

Safety incident reporting:
- Where there is a need to secure the scene of an incident, the trigger event should be reported to ADFIS / Service Police immediately.\textsuperscript{25}
- Where the trigger event occurred on operations, and it involves an ADF or civilian casualty, the trigger event must be reported to the chain of command, HQJOC, and others in Defence.\textsuperscript{26}
- Where the trigger event relates to aviation safety, a DAHRTS hazard report (in the case of a hazard, as opposed to a safety occurrence) or immediate safety report (in the case of an aviation safety occurrence) must be completed and sent to DDAAFS.\textsuperscript{27}
- Where the trigger event involves a fatality, it must be reported to Comcare by phone within two hours, and to Comcare and the Defence Work Health and Safety Branch in writing within 24 hours.\textsuperscript{28}
- Where the trigger event involves serious injury or incapacity, it must be reported Comcare and WHS Branch within 24 hours.\textsuperscript{29}
- Where the trigger event involves a ‘dangerous occurrence’ (where there is a near miss that could have resulted in a fatality or serious injury), it must be reported to WHS Branch and Comcare within 24 hours.\textsuperscript{30}
- Where the trigger event involves exposure (for example, to noise or radiation), it must be reported to WHS Branch within 24 hours.\textsuperscript{31}
- Where the trigger event involves radiation, it must be reported to ARPANSA within 24 hours.\textsuperscript{32}
- Where the trigger event involves a minor injury, it must be reported to WHS Branch within 28 days.\textsuperscript{33}
- Where the trigger event involves an incident of suicidal ideation, or non-fatal suicidal behaviour, the relevant individual must be referred immediately to a medical practitioner.\textsuperscript{34}

\textsuperscript{24} DI(G) ADMIN 45-2 \textit{Reporting and Management of Notifiable Incidents}, para 14
\textsuperscript{25} DI(G) ADMIN 45-2 \textit{Reporting and Management of Notifiable Incidents}, para 14
\textsuperscript{26} DI(G) PERS 11-2 \textit{Notification of ADF and Non-ADF Casualties}, para 9. Casualties are reported through a FATALCAS / NOTICAS message.
\textsuperscript{27} AAP 6734.001 \textit{Defence Aviation Safety Manual}, section 3, 8.25-8.53. Aviation safety matters are reported through the DAHRTS database.
\textsuperscript{28} Defence Safety Manual (SAFETYMAN), Part 5, para 1.3.9. Safety incidents are reported on Form AC 563.
\textsuperscript{29} SAFETYMAN Part 5, para 1.3.9
\textsuperscript{30} SAFETYMAN Part 5, para 1.3.9
\textsuperscript{31} SAFETYMAN Part 5, para 1.3.9
\textsuperscript{32} SAFETYMAN Part 5, para 1.3.9
\textsuperscript{33} SAFETYMAN Part 5, para 1.3.9
\textsuperscript{34} DI(G) PERS 16-26 \textit{Management of a Suicidal Episode}
– If the trigger event involves injury to a third party (that is, to a person who is not an ADF member or APS employee, such as a contractor or member of the public), it must be reported to the Comcover through the Defence Insurance Office.  

• Security incident reporting:
  – Positive prohibited substance tests must be reported to the Defence Security Authority as a security incident.  
  – Commanders and line managers must report all security incidents to the relevant security officer.  
  – Security officers must report ‘reportable major security incidents’ to the Security Incident Centre (part of the Defence Security Authority) immediately.  
  – Security officers must report ‘major security incidents’ to the Security Incident Centre within 24 hours.  
  – Security officers must report minor security incidents to the regional DSA representative within 30 days.  
  – There are also some additional special reporting requirements relating to particular types of security incident (such as security incidents involving radioactive sources).  
  – The Defence Security Authority (or regional representative, as applicable) is required to consider security incident reports and determine if any further action is required. The Defence Security Authority must notify security officers, commanders and line managers as appropriate of its decisions.  

• Misconduct reporting:
  – Where a trigger event raises a suspicion that a DFDA offence has been committed, it must be reported to the ADF Investigative Service or the Service Police, unless it is a minor disciplinary matter. If the recommendations were implemented, reporting could be for information purposes only (in the case of DFDA offences within a summary authority’s jurisdiction, where the reporting unit has garrison or organic investigative capability available), or to refer the matter for investigation (for DFDA offences outside a summary authority’s jurisdiction).  

35 Financial Management Manual (FINMAN 5), Chapter 8. Claims to Comcover are reported on Form AD 088.  
36 DI(G) PERS 15-5 Management of the Use or Involvement with Prohibited Substances, para 103  
37 Defence Security Manual, para 2.12.32(a)  
38 Defence Security Manual, para 2.12.32(b)  
39 Defence Security Manual, para 2.12.32(b)  
40 Defence Security Manual, para 2.12.32(b)  
43 DI(G) ADMIN 45-2 Reporting and Management of Notifiable Incidents, paras 6(a) and 14  
44 Recommendation 1a of IGADF notifiable incident review 2012  
45 Recommendation 1b of IGADF notifiable incident review 2012
Investigative Service / Service Police must inform the commander or line manager of whether they intend to investigate the offence, and provide regular updates.  

- If a unit-level DFDA investigation is to be conducted, the matter must be recorded on the Conduct Reporting and Tracking System. DFDA investigations by a Defence Investigative Authority must also be recorded if the Defence Investigative Authority concurs.

- Where a trigger event raises a suspicion that an offence against civilian law has been committed, it must be reported to the ADF Investigative Service to liaise with the civilian police.

- Where a trigger event raises a suspicion that there has been a breach of the APS Code of Conduct, and the matter is serious enough for investigation, it should be reported to the APS Code delegate.

- Where there is an allegation of a sexual offence, and the victim consents, the commander or line manager must report the matter to the Sexual Misconduct Prevention and Response Office (SeMPRO), to provide victim support.

- Where a trigger event involves an allegation of fraud, corrupt practices, collusive tendering or conflict of interest, it must be reported to Defence Investigations and Recovery (part of Inspector General – Defence) for investigation.

- Where a trigger event involves a complaint of unacceptable behaviour, it must be reported to Values, Behaviours and Resolution Branch through Comtrack. This report does not change responsibility for investigating the trigger event.

- Where a trigger event involves possible professional indemnity or medical malpractice, it must be reported to Comcover (through the Defence Insurance Office).

- Property loss / damage reporting:

  - Where a trigger event involves the loss or damage of public property, it must be reported to the chain of command within 24 hours.

  - Where a trigger event includes a motor vehicle accident involving a Defence vehicle, it must be reported to Comcover (through the Defence Insurance Office).

46 Recommendation 1e of IGADF notifiable incident review 2012
47 DI(G) ADMIN 10-8 Conduct Reporting and Tracking System
48 DI(G) ADMIN 45-2 Reporting and Management of Notifiable Incidents, para 14
49 Defence Workplace Relations Manual, Chapter 11
50 This requirement will be added to DI(G) PERS 35-4 in the near future.
51 DI(G) ADMIN 45-2 Reporting and Management of Notifiable Incidents, para 14
52 DI(G) PERS 35-3 Management and Reporting of Unacceptable Behaviour. This DI(G) is currently under review, and it is likely that the reporting requirement will be moved into the forthcoming Complaint and Alternative Resolution Manual.
53 FINMAN 5, Chapter 8. Claims to Comcover are reported on Form AD 088.
54 FINMAN 5, Chapter 6.3
Where a trigger event involves property damage in excess of $500,000, it must be reported to Comcover (through the Defence Insurance Office).⁵⁶

Where a trigger event involves property damage that occurred in transit, it must be reported to Comcover (through the Defence Insurance Office).⁵⁷

Where the trigger event involves damage to property belonging to a third party, it must be reported to Comcover (through the Defence Insurance Office).⁵⁸

3.2.6. Quick Assessment in relation to trigger events: A Quick Assessment involves making a record of a trigger event, actions that have been taken in relation to the event, and proposed future action. If information of this nature has been reported in accordance with one of the reporting requirements outlined above, a Quick Assessment would no longer be required.⁵⁹ In all other cases, a Quick Assessment must be undertaken if the trigger event will result in further inquiry or investigation. A Quick Assessment may otherwise be conducted following a trigger event if, in the view of the commander or line manager, it is appropriate.⁶⁰

3.2.7. If a Quick Assessment is required, the commander or line manager must direct a Quick Assessment Officer to conduct it.⁶¹ The Quick Assessment Officer conducts the assessment, and completes the proposed standard template or form.⁶² The commander or line manager considers the Quick Assessment form and makes decisions on further actions in relation to the trigger event.

3.2.8. Where a trigger event occurred in an ADF unit, the Quick Assessment must be entered on a unit register, which must be provided to higher headquarters once a month.⁶³ If the commander or line manager considers the trigger event to be complex or serious, the Quick Assessment (including decisions made on further action), must be reported to higher headquarters for consideration.⁶⁴ Under the proposed amendment, the policy would clarify that the proposed action will proceed in the ADF unit pending any consideration of the Quick Assessment by higher headquarters, but the higher headquarters may liaise with the unit to rectify any identified deficiencies.⁶⁵

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⁵⁵ FINMAN 5, Chapter 8
⁵⁶ FINMAN 5, Chapter 8
⁵⁷ FINMAN 5, Chapter 8
⁵⁸ FINMAN 5, Chapter 8
⁵⁹ Inspector General ADF Inquiry into Complaint by an APS DMO Employee: Part 3: Military Justice Arrangements in DMO, 2012 (IGADF review of DMO military justice arrangements 2012), recommendation 1
⁶⁰ DI(G) ADMIN 67-2 Quick Assessment, para 8
⁶¹ DI(G) ADMIN 67-2 Quick Assessment, para 9-10
⁶² CDF Working Group, Review of the System of ADF Administrative Inquiries, 2010 (CDF working group review 2010), recommendation 2
⁶⁴ CDF Directive 4/2010, para 20; recommendation 22(b) of CDF working group review 2010
⁶⁵ Recommendation 22(c) of CDF working group review 2010
3.2.9. **Process map.** Annex K: Process maps contains a process map of the Status Quo Plus model: Recording, Reporting and Initial Assessment (map 5.1).

3.3. **Phase 2: Fact finding**

3.3.1. **Status Quo.** The following key policy documents represent the ‘status quo’ for fact finding in Defence:

- Defence Force Discipline Act 1982
- Public Service Act 1999, sections 13-15
- Defence (Inquiry) Regulations 1985
- DI(G) ADMIN 45-4 Defence Investigations Standards
- DI(G) ADMIN 45-2 Reporting and Management of Notifiable Incidents
- DI(G) PERS 35-3 Management and Reporting of Unacceptable Behaviour
- CDF Directive 4/2010 Quick Assessments and Administrative Inquiries
- ADFP 06.1.1 Discipline Law Manual
- ADFP 06.1.4 Administrative Inquiries Manual
- ADF Service Police Manual, volume 2
- Defence Security Manual
- Defence Procurement Policy Manual
- Financial Management Manual (FINMAN5), Chapter 6.3
- Defence Safety Manual (SAFETYMAN)
- Defence Workplace Relations Manual, Chapter 11

3.3.2. These documents represent key whole-of-Defence fact finding requirements.

3.3.3. **Status Quo Plus.** In the Status Quo Plus model for fact finding, the above policy documents would be amended as follows:

- It is recommended that the Defence (Inquiry) Regulations and the Administrative Inquiries Manual be amended to introduce a new species of assessment mechanism, the Operational Incident Review (OIR) for initial review of combat-related incidents (recommendation 5, CDF Working Group’s Review of the System of Australian Defence Force Administrative Inquiries 2010).
- The Defence (Inquiry) Regulations should be amended to provide for an additional format of COI which would include a civilian Commissioner, who has judicial experience, but would conduct its inquiries in private (recommendation 6, CDF Working Group’s Review of the System of Australian Defence Force Administrative Inquiries 2010).
- The Defence (Inquiry) Regulations should be amended to expand the categories of person who may appoint an inquiry to include not only commanding officers and their superiors but also senior ADF staff officers and
senior APS managers nominated by the CDF and Secretary (recommendation 7, CDF Working Group’s *Review of the System of Australian Defence Force Administrative Inquiries* 2010).

- The Defence (Inquiry) Regulations should be amended to require off-duty Reservists to answer questions in Inspector General ADF and IO inquiries (recommendation 9, CDF Working Group’s *Review of the System of Australian Defence Force Administrative Inquiries* 2010).

- The subject of cooperation of Defence-employed APS witnesses in IO inquiries should be re-visited and, subject to appropriate safeguards, a mechanism introduced to require such witnesses to attend and to answer questions, particularly in Inspector General ADF inquiries and in IO inquiries into serious or complex incidents (recommendation 10, CDF Working Group’s *Review of the System of Australian Defence Force Administrative Inquiries* 2010).

- The Defence (Inquiry) Regulations should be amended to clarify that the President of a Commission, Court or Board of Inquiry has discretion to approve appearance and legal representation of an affected person for only those parts of the proceedings which significantly adversely affect that person’s interest (recommendation 12, CDF Working Group’s *Review of the System of Australian Defence Force Administrative Inquiries* 2010).

- The interim policy in CDF Directive 04/2010 should be confirmed in the Administrative Inquiries Manual and applied to all inquiries so that any legal issues are, as much as possible, determined before the inquiry report is settled and delivered to the relevant Appointing Officer or Appointing Authority for decision and implementation (recommendation 13, CDF Working Group’s *Review of the System of Australian Defence Force Administrative Inquiries* 2010).

- While retaining existing protections from prosecution / litigation for witnesses in administrative inquiries conducted in accordance with the Defence (Inquiry) Regulations and the Administrative Inquiries Manual should be amended to permit the use of administrative inquiry witness statements and evidence, including personal information, in DFDA investigations and prosecutions (recommendation 16, CDF Working Group’s *Review of the System of Australian Defence Force Administrative Inquiries* 2010).

- The Administrative Inquiries Manual should be amended to include the issue of Subject Matter Expert involvement – either during the inquiry or as part of a review – in the factors which should be considered by an Appointing Authority or Appointing Officer for possible inclusion in Terms of Reference (recommendation 19, CDF Working Group’s *Review of the System of Australian Defence Force Administrative Inquiries* 2010).

- Defence policy should be amended to provide for ADF and APS managers to initiate inquiries into allegations against ADF and APS personnel. Additionally, guidance for the undertaking of inquiries (ADFP 06.1.4) should be co-signed by the Secretary in a similar manner to Defence Instructions (recommendation 10, Inspector General ADF’s *Review of Military Justice Arrangements in DMO* 2012).
• A commander’s and supervisor’s options for handling allegations of unacceptable behaviour on the part of an APS employee should be aligned with the options available under DI(G) PERS 35-3 applicable to an ADF member. This should include inquiry action to more thoroughly investigate allegations, before the matter is referred to an APS delegate with recommendations (recommendation 12, Inspector General ADF’s Review of Military Justice Arrangements in DMO 2012).

3.3.4. Operation of Status quo plus model. The Status Quo Plus model for fact finding is presented in terms of safety, security, misconduct and finance-related (including procurement and property loss) investigations. It also addresses the specific fact finding mechanisms available to commanders and line managers for Group or Service-based investigations.

3.3.5. Once a trigger event has been reported in accordance with the recording, reporting and initial assessment model and, if required, a Quick Assessment has been conducted, there are three key questions that need to be answered:

• Is further investigation required?
• Who should conduct the investigation?
• What form should the investigation take?

3.3.6. These questions will either be answered by a commander or line manager (with support from their chain of command or line management if required) or by specialist areas in Defence separate from the ordinary chain of command. In practice, most fact finding is conducted at the direction of commanders and line managers (or their superiors).

3.3.7. Safety investigations. Decisions on safety investigations are typically made by commanders and line managers, with support from the Group Safety Coordinator if required. Commanders and line managers are responsible for ensuring that safety incidents are investigated in a timely and professional manner.

3.3.8. The Defence Safety Manual (SAFETYMAN) is the primary policy document outlining safety investigation requirements. Part 8 of the Defence (Inquiry) Regulations 1985 and CDF Directive 04/2010, which both include

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66 These topics have been selected as the most frequently cited subjects of fact finding with a whole-of-Defence operation. In some cases, there will be a requirement to investigate a matter but the form of the investigation will be determined in accordance with other Defence policies. For example, there is a requirement to investigate all whistleblower complaints regulation 2.4(2) of the Public Service Regulations 1999, but a complaint may relate to safety, security, misconduct or another matter, and decisions about the form of an investigation will be made in accordance with the subject-specific policy.

67 SAFETYMAN, Volume 2, Part 5, para 2.1.6

68 This description is based on the SAFETYMAN in its current form, however it is noted that the manual is currently under review in light of changes to legislative requirements. It is unclear the extent to which the investigation requirements in SAFETYMAN will change. One additional element that may be incorporated is referral of safety incidents for investigation by the recently established specialist investigation capability in WHS Branch.
requirements to conduct statutory inquiries into particular cases, may also have a bearing on the way a safety incident is investigated.

3.3.9. The purpose of a safety investigation is to identify the cause of an incident, and to recommend actions to avoid recurrence. SAFETYMAN provides guidance to commanders and line managers to assist in determining the appropriate level of safety investigation.\(^69\) There are three levels:

- **A level 1 safety investigation is required for all matters reported as a safety incident.**\(^70\) A level 1 investigation is similar to the Quick Assessment process. It is completed on the safety reporting form. Commanders and line managers are responsible for ensuring that a level 1 investigation is conducted and reported.\(^71\) A level 1 investigation requires only the experience and knowledge of the local commander, manager or supervisor. Following a level 1 investigation, a commander or line manager is responsible for deciding if a level 2 or 3 investigation is required, and otherwise implementing any action to prevent recurrence of the incident.\(^72\)

- **A level 2 safety investigation is conducted where there is a requirement for more detailed analysis of the root cause of a safety incident.**\(^73\) This may be where the consequences of the incident could seriously impact health, safety, or welfare of personnel, or damage equipment to the extent that business operations are adversely affected.\(^74\) If a commander or line manager is of the view that a level 2 investigation is required, they will appoint a lead investigator and, depending on the nature of the incident, an investigation team. The investigation team will conduct an investigation and prepare an investigation report for the consideration of the commander or line manager, who will sign off on the report and distribute it to appropriate areas in Defence.\(^75\) The lead investigator must be recognised as being competent as per PSPSOHS508A – *Participate in the investigation of incidents* or equivalent training as determined by a Group Head or Service Chief.\(^76\) Skills and experience of other members of the investigation team is at the discretion of the person who appoints them.

- **A level 3 safety investigation is conducted for the most serious safety incidents, including those where the incident caused, or could have caused, a fatality.**\(^77\) Level 3 investigations include safety investigation conducted by external investigators (such as Comcare), as well as more formal internal investigations conducted by trained investigators (including through a CDF Commission of Inquiry or similar).\(^78\) If a commander or line manager is of the view that a level

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69 SAFETYMAN, Volume 2, Part 5, para 2.5.1  
70 SAFETYMAN, Volume 2, Part 5, para 2.4.6  
71 SAFETYMAN, Volume 2, Part 5, para 2.2.3  
72 SAFETYMAN, Volume 2, Part 5, para 2.4.7  
73 SAFETYMAN, Volume 2, Part 5, para 2.4.6  
74 SAFETYMAN, Volume 2, Part 5, para 2.4.8  
75 SAFETYMAN, Volume 2, Part 5, para 2.4.5  
76 SAFETYMAN, Volume 2, Part 5, para 2.1.11  
77 SAFETYMAN, Volume 2, Part 5, para 2.4.9  
78 SAFETYMAN, Volume 2, Part 5, para 2.4.6
3.3.10. The SAFETYMAN does not require that any particular mechanism be used for a safety investigation. In the Status Quo Plus model, level 1 safety investigations for incidents occurring in an area of operations could be conducted through the new statutory mechanism of an Operational Incident Review. Further, some of the more serious safety incidents would be considered ‘serious and complex’ under CDF Directive 04/2010. In the Status Quo Plus model, the requirements of this Directive, including that ‘serious and complex’ incidents be investigated through a statutory inquiry (as opposed to a non-statutory mechanism), would be incorporated into Defence inquiry policy. Statutory inquiries could be appointed by both ADF and APS personnel, and the requirements in the Administrative Inquiries Manual would apply to ADF and APS. Both ADF and APS personnel, including off-duty Reservists, could be compelled to give evidence in all statutory inquiries.

3.3.11. If a safety incident involves the death of an ADF member, decisions about investigation requirements are made outside the Group or Service where the death occurred. Service-related deaths must be investigated by a CDF Commission of Inquiry, unless the Minister otherwise directs. The conduct of a CDF Commission of Inquiry is supported by the CDF Commission of Inquiry Directorate. Typically, an inquiry officer under Part 6 of the Defence (Inquiry) Regulations 1985 will be appointed prior to the commencement of a CDF Commission of Inquiry, in order to make recommendations about the scope of a CDF Commission of Inquiry. In the Status Quo Plus model, a CDF Commission of Inquiry could be conducted in private and the legal representation available to affected persons would be more limited than at present.

3.3.12. Security investigations. All security incidents must be reported to the Security Incident Centre (SIC) in the Defence Security Authority or, in the case of minor security incidents, to the regional Defence Security Authority representative. Decisions on whether further investigation is required and who will conduct those investigations are made by the SIC.

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79 SAFETYMAN, Volume 2, Part 5, para 2.4.10
80 Recommendation 5 of CDF working group review 2010
81 CDF Directive 04/2010, para 17
82 Recommendation 13 of CDF working group review 2010
83 Recommendation 7 of CDF working group review 2010
84 Recommendation 10 of IGADF review of DMO military justice arrangements 2012
85 Recommendations 9 and 10 of CDF working group review 2010
86 Defence (Inquiry) Regulations 1985, regulation 109
87 Recommendation 6 of CDF working group review 2010
88 Recommendation 12 of CDF working group review 2010
89 Defence Security Manual, para 12.44. The Defence Security Manual does not describe if, and how, the SIC becomes involved in investigating incidents identified as a ‘minor security incident’ by a commander, manager or security officer. For the purposes of this model, it is assumed that a commander or line manager would conduct whatever fact finding was required at a unit-level in order
3.3.13. In the case of reportable major security incidents, the Chief Security Officer (through the SIC) will consult with ASIO and law enforcement agencies to determine the most appropriate agency lead for a security investigation. In all other cases, the SIC will determine which incidents will be subject to further investigation and which Defence Investigative Authority in Defence is appropriate to conduct the investigation (for example, whether the matter should be investigated as a discipline issue by the ADF Investigative Service / Service Police or from a security perspective by the Defence Security Authority).

3.3.14. The Australian Government Investigation Standards apply to security investigations. All security investigations are to be recorded in DPSMS. On completion, all security investigation reports are to be provided to the Chief Security Officer, who will assign recommendations for implementation.

3.3.15. Security investigation policy in Defence does not describe investigation mechanisms. However, some of the more serious security incidents would be considered 'serious and complex' under CDF Directive 04/2010. In the Status Quo Plus model, the requirements of this Directive, including that 'serious and complex' incidents be investigated through a statutory inquiry, would be incorporated in the Administrative Inquiries Manual. Statutory inquiries could be appointed by both ADF and APS personnel, and the requirements in the Administrative Inquiries Manual would apply to ADF and APS. In the Status Quo Plus model, both ADF and APS personnel, including off-duty Reservists, could be compelled to give evidence in all statutory inquiries. Accordingly, unless a security incident is being investigated as a criminal or DFDA offence, it may be necessary in the Status Quo Plus model to conduct some security investigations through a statutory inquiry. The new statutory mechanism of an Operational Incident Review could also be used if a security incident occurs on operations.

3.3.16. Misconduct investigations. The nature of an investigation into misconduct will depend on the nature of the misconduct, whether it has been reported outside the Group or Service, and the identity of the alleged perpetrator. As noted above, a vast majority of fact finding into misconduct occurs at the unit or team level, at the direction of commanders and line managers.

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90 Defence Security Manual, para 12.22
91 Defence Security Manual, para 12.44
92 Defence Security Manual, para 12.45
93 Defence Security Manual, para 12.49
94 Defence Security Manual, para 12.51
95 CDF Directive 04/2010, para 17
96 Recommendation 22 of CDF working group review 2010
97 Recommendation 7 of CDF working group review 2010
98 Recommendation 10 of IGADAF review of DMO military justice arrangements 2012
99 Recommendations 9 and 10 of CDF working group review 2010
100 Recommendation 5 of CDF working group review 2010
3.3.17. **Civilian police:** In cases where a possible civilian offence has been referred to State or Territory police, the police will determine whether or not to conduct a criminal investigation into the alleged misconduct. Defence will also need to decide whether to undertake fact finding internally, for example for purposes related to managing welfare and systemic problems, or taking concurrent administrative action against individuals.

3.3.18. **ADFIS / Service Police:** In cases where a possible DFDA offence has been referred to the ADF Investigative Service or the Service Police for investigation, it is a matter for the ADF Investigative Service and the Service Police whether or not they conduct a DFDA investigation. The ADF Investigative Service / Service Police may also decide to refer the matter for external investigation, or for investigation by another area in Defence. The ADF Investigative Service / Service Police must notify the referring commander or line manager of whether they intend to conduct an investigation, and, if so, provide regular updates on the status of the investigation.

3.3.19. The ADF Investigative Service / Service Police investigations must be conducted in accordance with the Defence Investigation Standards (derived from the Australian Government Investigation Standards), and recorded on DPSMS.

3.3.20. **Inspector General – Defence:** In cases where fraud allegations (and similar) have been referred to the Inspector General – Defence, the Inspector General – Defence will determine whether or not to conduct an investigation, or to refer the matter for external investigation or investigation by another area in Defence. The Inspector General – Defence must notify the referring commander or line manager of whether they intend to conduct an investigator, and, if so, provide regular updates on the status of the investigation.

3.3.21. Inspector General – Defence investigations are typically criminal-standard investigations. They must be conducted in accordance with the Defence Investigation Standards (derived from the Australian Government Investigation Standards), and recorded on DPSMS.

3.3.22. **APS Code of Conduct delegate:** In cases where a possible breach of the APS Code of Conduct is referred to an APS Code delegate, the delegate will decide if an investigation is warranted in all the circumstances. If so, the delegate will direct that an investigation be conducted.

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101 As opposed to reporting to ADFIS / Service Police for information (see above para 3.2.5 and recommendation 1a of IGADF notifiable incident review 2012)
102 DI(G) ADMIN 45-2 Reporting and Management of Notifiable Incidents, para 17
103 DI(G) ADMIN 45-2 Reporting and Management of Notifiable Incidents, para 31
104 DI(G) ADMIN 45-4 Defence Investigations Standards
105 DI(G) ADMIN 45-4 Defence Investigations Standards
106 DI(G) ADMIN 45-2 Reporting and Management of Notifiable Incidents, para 36
107 DI(G) ADMIN 45-2 Reporting and Management of Notifiable Incidents, para 17
108 DI(G) ADMIN 45-4 Defence Investigations Standards
109 DI(G) ADMIN 45-2 Reporting and Management of Notifiable Incidents, para 36
3.3.23. A Code investigation is conducted to an administrative standard, for the purpose of informing decisions as to whether or not the APS Code of Conduct has been breached. Under current practice, a Code investigation does not have any statutory powers.  

3.3.24. **Fact finding directed by commanders or line managers:** Notwithstanding the above, misconduct investigations are most frequently conducted within a Group or Service, without involvement from decision makers outside the ordinary chain of command. In some cases, the matter will not have been referred for investigation outside the chain of command (for example, where a possible DFDA offence falls below the threshold for referral to the ADF Investigative Service for investigation). In other cases, a specialist area will decide not to investigate the matter (for example, because they do not consider it serious enough), and refer the matter back to the original commander or line manager.

3.3.25. If possible misconduct amounts to a DFDA offence, a DFDA investigation can be conducted at unit-level. Any ADF officer, warrant officer or non-commissioned officer can be an investigating officer for the purposes of the DFDA.  

3.3.26. Commanders and line managers can conduct or direct fact finding into any misconduct through administrative inquiry processes. Current Defence policy on administrative inquiries limits the appointment of routine inquiries and inquiry officer inquiries to ADF members, and is limited to matters involving ADF members. Under the Status Quo Plus model, however, these inquiries could also be appointed by APS managers, and could be used to investigate APS misconduct. For matters categorised as ‘serious and complex’, appointment of an inquiry officer inquiry would be necessary. If a trigger event occurs on operations, an Operational Incident Review would also be available. Both ADF and APS personnel, including off-duty Reservists, could be compelled to give evidence in all statutory inquiries.

3.3.27. At present, an administrative inquiry cannot be appointed until a Quick Assessment has been completed. As outlined above, the Status Quo Plus model would not require a Quick Assessment if any reporting obligation associated with a trigger event produced a report containing similar information to what would be produced in a Quick Assessment.

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110 An APS employee or ADF member can be given a lawful and reasonable direction to cooperate with an APS Code of Conduct investigation (which does not include directing a person to incriminate him or herself). However, consultation throughout the Re-Thinking Systems Review indicates that this power is rarely used in this context.

111 *Defence Force Discipline Act 1982*, s 101

112 Recommendation 7 of CDF working group review 2010; recommendations 10 and 12 of IGADF review of DMO military justice arrangements 2012

113 Recommendation 22 of CDF working group review 2010

114 Recommendation 5 of CDF working group review 2010

115 Recommendations 9 and 10 of CDF working group review 2010

116 DI(G) ADMIN 67-2 Quick Assessment, para 8

3.3.28. **Procurement complaint investigations.** The Defence Procurement Policy Manual includes requirements for investigating complaints made about a procurement process.\(^{118}\) Decisions about investigations are typically made by the procurement officer, in consultation with their line management or, in some cases, with independent probity advisers or subject matter experts.

3.3.29. Where Defence receives a written procurement complaint, an investigating officer must be assigned. They should be senior to the procurement officer managing the procurement process in question. The investigating officer must investigate the complaint and notify the complainant in writing of the outcome.\(^ {119}\)

3.3.30. In cases where an external probity expert has been engaged to provide independent oversight of the procurement process (that is, for strategic or complex procurement), procurement officers should consult with the advisor as to how a procurement complaint should be addressed.\(^ {120}\) It may be necessary for the procurement complaint to be handled by an independent legal process or probity advisor, rather than internally within Defence.\(^ {121}\) Procurement officers must obtain advice from a relevant legal adviser in relation to all procurement complaints, and should involve subject matter experts as necessary (such as the Inspector General – Defence if the complaint involves elements of conflict of interest).\(^ {122}\)

3.3.31. **Property loss / damage investigations.** If a trigger event involves the loss of or damage to public property, there is an obligation to conduct an investigation to inform decisions about liability for the loss or damage.\(^ {123}\) Commanders and line managers are required to conduct or direct an initial investigation to verify the circumstances of the loss for all cases where there is a suspicion of fraud or theft, where the item involved is attractive or sensitive, or the item is valued over $1000.\(^ {124}\)

3.3.32. The initial investigation report is to be provided to the relevant FINMAN delegate (where that is not the commander or line manager),\(^ {125}\) who will make decisions on whether further investigation is required in order to make decisions regarding liability for loss.\(^ {126}\) If the delegate decides that further investigation is required, they will appoint an investigating officer who will conduct an investigation and report to the delegate. The investigation procedure is at the discretion of the investigating officer,\(^ {127}\) however they must notify the person under investigation,

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118 *Defence Procurement Policy Manual*, Chapter 5.7B  
119 *Defence Procurement Policy Manual*, Chapter 5.7B, para 9  
120 *Defence Procurement Policy Manual*, Chapter 5.7B, para 11  
121 *Defence Procurement Policy Manual*, Chapter 5.7B, para 12  
122 *Defence Procurement Policy Manual*, Chapter 5.7B, para 13  
123 FINMAN 5, Chapter 6.3  
124 FINMAN 5, paras 6.3.5.6 and 6.3.5.7  
125 FINMAN 5, para 6.3.5.17. FINMAN delegates for the purposes of determining liability for loss are identified in the Financial Delegations Manual (FINMAN 2). Delegations are limited by the value of the loss (for example, a unit commanding officer’s delegation is limited to losses of $100,000 and less).  
126 FINMAN 5, para 6.3.6.1  
127 FINMAN 5, Chapter 6.3, Annex D, para D1
provide them with a reasonable opportunity to make submissions, and accommodate any reasonable request from them to question a witness.128

3.3.33. FINMAN 5 does not describe investigation mechanisms, leaving this at the discretion of the investigating officer. However, some of the more serious property losses would be considered ‘serious and complex’ under CDF Directive 04/2010.129 In the Status Quo Plus model, the requirements of this Directive, including that ‘serious and complex’ incidents be investigated through a statutory inquiry would be incorporated in the Administrative Inquiries Manual.130 Statutory inquiries could be appointed by both ADF and APS personnel,131 and the requirements in the Administrative Inquiries Manual would apply to ADF and APS.132 Accordingly, it may be necessary in the Status Quo Plus model to conduct some property loss investigations through a statutory inquiry. Both ADF and APS personnel, including off-duty Reservists, could be compelled to give evidence in all statutory inquiries.133

3.3.34. Administrative inquiry mechanisms. The three administrative inquiry mechanisms that would be available to commanders and line managers in the Status Quo Plus model are routine inquiries, Inquiry Officer inquiries and a new statute-based Operational Incident Review (for incidents occurring on operations).

3.3.35. At present, routine inquiries are conducted under the inherent power of command.134 If Defence inquiry policy is expanded to encompass appointment of inquiries by APS employees, it would need to be clarified that fact finding of this nature is available as part of ordinary management functions. A routine inquiry is intended to be conducted with as little formality as possible.135 However, Defence policy includes mandatory requirements associated with the impartiality of routine inquiry officers, interviewing witnesses and witness statements, procedural fairness and other requirements.136 Under the Status Quo Plus model, additional guidance relating to subject matter expert involvement in an inquiry would be added.137

3.3.36. Inquiry Officer inquiries are conducted under Part 6 of the Defence (Inquiry) Regulations 1985. This part would require amendment in relation to who could appoint an inquiry and the powers available to an inquiry officer.138 In the Status Quo Plus model, both ADF and APS personnel, including off-duty Reservists, could be compelled to give evidence in all statutory inquiries.139 Defence policy

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128 FINMAN 5, Chapter 6.3, Annex D, para D2
129 CDF Directive 04/2010, para 17
130 Recommendation 22 of CDF working group review 2010
131 Recommendation 7 of CDF working group review 2010
132 Recommendation 10 of IGADF review of DMO military justice arrangements 2012
133 Recommendations 9 and 10 of CDF working group review 2010
134 ADFP 06.1.4 Administrative Inquiries Manual, para 1.10
135 ADFP 06.1.4 Administrative Inquiries Manual, para 4.1
136 ADFP 06.1.4 Administrative Inquiries Manual, Chapter 4
137 Recommendation 19 of CDF working group review 2010
138 For example, the ability of APS managers to appoint inquiry officer inquiries, and the ability to compel APS employees to give evidence (recommendations 7 and 10 of CDF working group review 2010). It is noted that the Australian Public Service Commission has previously indicated that they do not support the proposed compellability of APS employees in inquiry officer inquiries.
139 Recommendations 9 and 10 of CDF working group review 2010
includes mandatory requirements associated with planning and scoping, appointing a qualified inquiry officer, monitoring an inquiry, procedural fairness, and legal review of inquiry terms of reference and draft inquiry reports. Additional guidance relating to subject matter expert involvement in an inquiry would be added.

3.3.37. An operational incident review (OIR) would be for use in a combat environment, providing a truncated form of inquiry for review of combat-related incidents. It would be established under legislation, but would only be available if the combat-related matter was specified in a CJOPS Operations Order. An OIR officer would be appointed to gather evidence in circumstances where evidence is transient. The OIR would be completed within 96 hours. The OIR officer could recommend immediate amendment to tactics and procedures, and whether there should be further inquiry or investigation on the matter. The OIR officer could not make adverse findings about individuals. The OIR officer would have the protections associated with inquiries under Defence (Inquiry) Regulations 1985.

3.3.38. Higher level statutory inquiries, such as a CDF Commission of Inquiry, can be appointed at higher levels in the ADF chain of command. High level inquiries are most frequently used in relation to Service-related deaths of ADF members. In the Status Quo Plus model, a CDF Commission of Inquiry could be conducted in private and the legal representation available to affected persons would be more limited than at present.


3.4. Phase 3: Internal review

3.4.1. Status Quo. Under the ‘status quo’, there are three key internal review processes, including APS Review of Action, ADF redress of grievance, and Inspector General ADF review of submissions by individuals. The following key legislation and policy documents represent the ‘status quo’ for internal review.

- Defence Force Regulations 1952, Part 15
- DI(G) PERS 34-1 Redress of Grievance – Tri-Service Procedures
- Defence Act 1903, Part VIII B
- Defence (Inquiry) Regulations 1985, Part 7
- DI(G) ADMIN 61-1 Inspector-General of the Australian Defence Force – role, functions and responsibilities
- Public Service Act 1999, section 33

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140 ADFP 06.1.4 Administrative Inquiries Manual, Chapters 5 and 6; CDF Directive 04/2010, paras 22-30
141 Recommendation 19 of CDF working group review 2010
142 This description of the proposed Operational Incident Review is based on the CDF working group review 2010, para 70.
143 Recommendation 6 of CDF working group review 2010
144 Recommendation 12 of CDF working group review 2010
3.4.2. This legislation and policy represent key formal internal review requirements.

3.4.3. **Status Quo Plus.** In the Status Quo Plus model, only the ADF redress of grievance policy outlined in the above legislation and policy would be amended. APS Review of Action and Inspector General ADF review of submissions by individuals would not change.\(^{145}\)

3.4.4. The proposed amendments to the Status Quo are as follows:

- The entitlement of officers and warrant officer to access a further level of review of their grievances by the CDF should be discontinued (recommendation 8, Inspector General ADF’s *Review of the Management of Incidents and Complaints in Defence including Civilian and Military Jurisdiction* 2011).

- The redress of grievance regulations and Defence Instruction (General) DI(G) PERS 34-1 should be amended to mandate that where it is clear that a Commanding Officer does not have authority to resolve a grievance or where the circumstances of paragraph 17 of the Defence Instruction apply, the Commanding Officer must refer the grievance without further inquiry to the relevant Service Chief (recommendation 9, Inspector General ADF’s *Review of the Management of Incidents and Complaints in Defence including Civilian and Military Jurisdiction* 2011).

- The circumstances in which a commanding officer may refer a grievance to an authority who has power to resolve the grievance, where that authority is not the Service Chief, should be clarified (recommendation 10, Inspector General ADF’s *Review of the Management of Incidents and Complaints in Defence including Civilian and Military Jurisdiction* 2011).

- Defence undertake a case management risk analysis of each ROG to match the resources allocated to the ROG to the risk posed to the organisation (recommendation 17b, Inspector General ADF’s *Review of the Management of Incidents and Complaints in Defence including Civilian and Military Jurisdiction* 2011).

- Defence cease the practice of putting cases in an unallocated queue and allocate to case officers upon receipt (recommendation 17f, Inspector General ADF’s *Review of the Management of Incidents and Complaints in Defence including Civilian and Military Jurisdiction* 2011).

- The appointment of case officers to support complainants and respondents should be required in all cases, consistent with the intention of Chief of Army

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145 Informal internal review, such as the ability of any commander or line manager to review any matter they are concerned about at any time, are not addressed in the model. Internal review mechanisms of this type would remain unchanged. Further, the model does not address internal review of DFDA action. Changes to the ADF summary discipline system could lead to an administrative discipline model (see Annex G: Specialist Roles and Processes). If that occurred, then internal review of discipline decisions would be conducted through the processes outlined in the internal review model. Otherwise, internal review of DFDA action would continue, as at present, through the DFDA appeal mechanisms.
3.4.5. **Operation of Status Quo Plus model:**

3.4.6. **APS review of action.** In the Status Quo Plus model for internal review, the APS Review of Action process would remain as currently exists – a single formal layer of internal review, managed through the Directorate of Complaints Resolution with a power to re-make virtually all decisions affecting APS employees. In limited cases, the initial review of an action affecting APS employees will be referred directly to the Merit Protection Commissioner (an external review agency), in accordance with section 33 of the *Public Service Act 1999*.

3.4.7. **ADF redress of grievance.** Under Part 15 of the *Defence Force Regulations 1952*, ADF members can make a written complaint (a redress of grievance) to their commanding officer if they consider that a decision, act or omission in relation to their service is detrimental to them.\(^\text{146}\)

- The redress application may be submitted through Comtrack.\(^\text{147}\)
- For the redress process to apply, it must be possible for an ADF member or Defence or DMO employee to provide the redress sought in the redress of grievance.\(^\text{148}\)
- There are a number of exceptions about matters that can be complained about in a redress of grievance. These include decisions made in discipline tribunals, action to initiate an administrative process (including a notice to show cause in relation to a proposed termination decision), decisions in relation to processing the grievance itself, and performance assessment decisions.\(^\text{149}\)
- A redress of grievance must be submitted to a member’s commanding officer within 6 months, or within 14 days if it relates to a termination decision.\(^\text{150}\)
- If the redress of grievance is submitted outside the 6 month time limit, the ADF member’s commanding officer may still consider it if he or she considers that there are exceptional circumstances. Otherwise, it must be referred to the member’s Service Chief to determine whether there are exceptional circumstances to warrant an extension of time. The time limit for a redress of grievance in relation to a termination decision cannot be extended.\(^\text{151}\)

3.4.8. **Upon receipt of a redress of grievance, a commanding officer must:**\(^\text{152}\)

- Provide the ADF member with a written receipt for the redress of grievance.

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\(^\text{146}^\) *Defence Force Regulations 1952*, reg 75(1)(a)
\(^\text{147}^\) DI(G) PERS 34-1 *Redress of Grievance – Tri-Service Procedures*
\(^\text{148}^\) *Defence Force Regulations 1952*, reg 75(1)(b)
\(^\text{149}^\) *Defence Force Regulations 1952*, reg 75(2)
\(^\text{150}^\) *Defence Force Regulations 1952*, reg 75(3) and (4)
\(^\text{151}^\) *Defence Force Regulations 1952*, reg 76
\(^\text{152}^\) DI(G) PERS 34-1 *Redress of Grievance – Tri-Service Procedures*, Annex C, para 15
• Appoint a case officer for the ADF member and, if there is a respondent, appoint a case officer for the respondent.\textsuperscript{153}
• Register the redress of grievance with Complaint Resolution (either on Form AD 842 or through Comtrack).
• Determine if the action which is the subject of the redress of grievance should be suspended, and if so, request that this occur.
• Direct that a Quick Assessment be conducted in relation to the redress of grievance.
• Within 5 working days, advise Complaint Resolution of the proposed course of action to be taken in relation to the redress of grievance.
• Inquire into the redress of grievance, taking into account any advice from Complaint Resolution.\textsuperscript{154}
• Fulfil any other reporting requirements.

3.4.9. On the basis of the inquiry, the commanding officer must determine the appropriate action in response to the redress of grievance, inform the member (and Complaint Resolution) of that response, and implement it.\textsuperscript{155}

3.4.10. If the ADF member is not satisfied with the outcome of the redress of grievance, he or she may refer it to their Service Chief for further review.\textsuperscript{156} The Service Chief (or his delegate) is required to inquire into the redress of grievance, and make a decision.\textsuperscript{157} Typically, Complaint Resolution will administer the redress of grievance, conduct inquiries on behalf of the Service Chief, and prepare a brief for the Service Chief (or delegate) to assist in the decision.

3.4.11. In some circumstances, the commanding officer will not inquire into the redress of grievance:
• If the commanding officer does not have authority to make the decisions that would provide the redress requested, he or she would refer the matter to the ADF member’s Service Chief.\textsuperscript{158} If the Service Chief does not have authority, the commanding officer would instead refer the matter to an alternative redress authority.\textsuperscript{159} Complaint Resolution could potentially provide the commanding officer with advice about the most appropriate alternative redress authority.
• If the commanding officer made the original decision, and there is no information in the redress of grievance that was not available to the

\textsuperscript{153} This requirement would be added in accordance with recommendation 19 of the IGADF complaint review 2011.
\textsuperscript{154} See also \textit{Defence Force Regulations 1952}, reg 77
\textsuperscript{155} \textit{Defence Force Regulations 1952}, reg 81
\textsuperscript{156} \textit{Defence Force Regulations 1952}, reg 82
\textsuperscript{157} \textit{Defence Force Regulations 1952}, reg 86
\textsuperscript{158} Recommendation 9 of the IGADF complaint review 2011
\textsuperscript{159} Recommendation 10 of the IGADF complaint review 2011
commanding officer at the time of the original decision, the commanding officer must refer the redress of grievance to the ADF member’s Service Chief.\(^{160}\)

- If the commanding officer has not made a decision on the redress of grievance within 90 days, the ADF member’s Service Chief may decide to refer the redress of grievance to himself immediately. If that occurs, the commanding officer would no longer be required to inquire into or make a decision.\(^{161}\)

- If the subject of the redress of grievance is also the subject of an external investigation, a DFDA investigation or an Alternative Dispute Resolution process, the commanding officer (or Service Chief in the case of a referral) may decide to suspend the redress of grievance until that process is completed.\(^{162}\)

3.4.12. At present, officers and non-commissioned officers may apply to the CDF for further consideration of their redress of grievance. In the Status Quo Plus model, this layer of formal review would no longer exist, although the CDF could, of course, choose to intervene in a matter if he chooses.\(^{163}\)

3.4.13. **Submissions to Inspector General ADF.**\(^{164}\) If the ADF member is not satisfied with the outcome of a redress of grievance after it has been considered by their Service Chief (or an alternative redress authority), he or she may choose to make a submission to the Inspector General ADF about the matter. There is no requirement to complain through the redress of grievance process before making a submission to Inspector General ADF about a matter, but this is a fairly typical approach.\(^{165}\) The Inspector General ADF has power to inquire into any matter concerning military justice, which includes the redress of grievance process.

3.4.14. The Inspector General ADF is not required to investigate submissions made by individual ADF members, and will do so in his discretion. He may also decide to refer the matter to another area in Defence, or to an external agency. If the Inspector General ADF decides to investigate, it will usually take the form of an inquiry under Part 7 of the *Defence (Inquiry) Regulations 1985*.\(^{166}\) The Inspector General ADF will make recommendations to relevant decision makers regarding appropriate action in response to the ADF member’s submission.

3.4.15. **Process map.** *Annex K: Process maps* contains a process map of the Status Quo Plus model: Internal Review (ADF review only) (map 7.1).

\(^{160}\) *Defence Force Regulations 1952*, reg 77(2)

\(^{161}\) *Defence Force Regulations 1952*, reg 78(2)

\(^{162}\) *Defence Force Regulations 1952*, reg 79 and reg 84

\(^{163}\) Recommendation 8 of the IGADF complaint review 2011

\(^{164}\) Consideration of a submission by an ADF member is only one of many Inspector General ADF functions in performing military justice oversight. Other Inspector General ADF functions and features are outlined in Part 2.3 of *Annex G – Specialist roles and processes*.

\(^{165}\) *Defence Act 1903*, section 110D(4); DI(G) ADMIN 61-1 *Inspector-General of the Australian Defence Force – role, functions and responsibilities*, para 16-18

\(^{166}\) A current proposal under consideration in Defence is to move the Inspector General ADF’s inquiry powers into stand-alone regulation, emphasising that the Inspector General ADF’s inquiry role is different from the other inquiry powers in the *Defence (Inquiry) Regulations 1985*. The proposal also includes increased powers for Inspector General ADF inquiries. While these changes could alter the Inspector General ADF inquiry process, they are too detailed for the purposes of the Status Quo Plus model.
3.5. Phase 4: External review

3.5.1. **Status Quo.** There are two key pieces of legislation which represent the ‘status quo’ for external review.

- *Ombudsman Act 1976*, Part IIA
- *Public Service Act 1999*, section 33

3.5.2. This legislation represents key mechanisms for ADF members and APS employees to seek external review. Other external review processes (such as the review by the Australian Human Rights Commission), are not addressed.

3.5.3. **Status Quo Plus.** There are no recommendations that would amend this legislation.

3.5.4. **Operation of Status Quo Plus model.** ADF members and APS employees can obtain external review of decisions or actions affecting their service in Defence through the Defence Force Ombudsman and Merit Protection Commissioner respectively.

3.5.5. **Merit Protection Commissioner.** The Merit Protection Commissioner provides external review through the APS Review of Action process in section 33 of the *Public Service Act 1999*. In most cases, external review will be subsequent to internal review. Some matters must be referred to the Merit Protection Commissioner by Defence immediately. The Merit Protection Commissioner will make recommendations to the Secretary of Defence, who will decide whether or not to implement the recommendations.

3.5.6. **Defence Force Ombudsman.** The Defence Force Ombudsman (DFO) provides a similar role with respect to ADF members. The DFO, which is a role filled by the Commonwealth Ombudsman, will investigate complaints made to him or her that relate to any ADF member’s service. The DFO will not investigate matters of military discipline (that is, DFDA action taken against an ADF member), or matters relating to honours and awards.

3.5.7. If the subject of a complaint to the DFO could be the subject of a redress of grievance, the DFO may refuse to investigate the complaint if the ADF member has not submitted a redress of grievance. If a redress of grievance has been submitted, but less than 29 days have passed, the DFO may also refuse to investigate. In these circumstances, the DFO will only investigate if there are special circumstances to warrant the ADF member bypassing the internal redress of grievance process.

3.5.8. The DFO will make recommendations to Defence, which will decide whether or not to implement the recommendations. If Defence decides not to
implement DFO recommendations, the DFO may decide to make a report, and may decide to have the report tabled before Parliament.\textsuperscript{170}


\textsuperscript{170} *Ombudsman Act 1976*, sections 16 and 17
4. Proposed models – Phase 1: Recording, Reporting and Initial Assessment

Making a record of relevant information, determining what is known, what needs to be discovered and what immediate actions are required, and advising the chain of command and relevant areas within and outside of Defence.

4.1. General comments

4.1.1. The Phase 1: Recording, Reporting and Initial Assessment model and its variations have been developed to allow commanders, line managers and other Defence decision makers to understand when a trigger event must be recorded and reported. The model aims to provide a simple system to enable a commander or line manager to assess, record and report a trigger event, and to ensure that Defence, including the chain of command and key internal stakeholders, have access to information about trigger events and the way they are managed.

4.1.2. If implemented, the model would consolidate the multiple internal reporting requirements and policies that currently exist, including the ‘notifiable incident’ and Quick Assessment requirements. The model aims to introduce a single recording and reporting system that supports commanders and line managers through being easy to understand and simple to use, create efficiencies through avoiding duplicate recording and reporting of a single incident, and increase transparency and information management capability through enabling tracking and monitoring of the management and resolution of an incident (including tracking by commanders and line managers where decisions are being made outside of their unit or work area).

4.2. Key characteristics of the recommended model

4.2.1. Single recording, reporting and initial assessment mechanism. The Re-Thinking Systems Review proposes a single recording and reporting mechanism applicable across the whole-of-Defence in relation to a diverse range of subject matters, such as security, safety, unacceptable behaviour, sexual and other offences, fraud, procurement complaints, medical complaints and property damage. The 2012 Inspector General ADF Report of a review of the notifiable incidents system in Defence noted the desirability of a single reporting form and simplified supporting guidance.

4.2.2. A single recording mechanism would state when commanders and line managers must record information regarding trigger events. The record would comprise the completion of a form (and updates). Completion of the required fields in the form would require the commander and line manager to provide details of the event and their proposed course of action as applicable. It would therefore constitute an initial assessment without the administrative burden of completing additional paperwork such as currently required through the Quick Assessment process. Subsequent forms can be completed to update details as a matter progresses.

171 See Annex H: Current Defence Reporting Requirements for a table of current reporting requirements; and Annex C to the IGADF notifiable incident review.
4.2.3. A single reporting mechanism would replace the existing multitude of reporting requirements (including the ‘notifiable incidents’ concept) and simplify the process for commanders and line managers. Removing the requirement for commanders and line managers to make a qualitative assessment of ‘seriousness’ would also assist in mitigating the risk that a commander or line manager does not recognise that a trigger event raises other more serious issues (for example, what appears to be a minor security breach may raise broader security issues). As discussed further in Annex G: Specialist roles and processes, a single reporting mechanism could also support the three Cadet organisations.

4.2.4. During the war-games (refer to Annex C: Outcomes of war-games) this single recording and reporting concept was illustrated through a universal assessment and reporting form. Such a form would be generic enough to ensure that all types of trigger events could be both recorded on and reported through it. This avoids duplication of effort. Supplementary forms could be completed as the management of a trigger event progresses and / or further information comes to light. Recording and reporting at significant intervals and key milestones through to resolution would ensure that the history of the management of the trigger event is recorded, including implementation of decisions.

4.2.5. The biggest challenge with the concept of a single form for all trigger events is ensuring that sufficient data for particular types of trigger events is captured so that it represents an accurate record of what is known at that time, and assists decision makers to determine appropriate next steps. The form would therefore need to be flexible enough to prompt commanders and line managers to provide certain information for specific subject matters (for example, details of injuries in the event of a safety incident). An online interactive form would be ideal (see Chapter 8.6).

4.2.6. It is expected that a form could be completed and submitted within hours of the trigger event occurring. If the matter was not resolved at the time, further updates (including clarification / correction of initial reports) could be made as required. Importantly, matters requiring urgent reporting would continue to be reported through the most appropriate means (for example, by telephone) before any form is completed. It should be noted, however, that the majority of matters do not require this immediacy of reporting.

4.2.7. Thresholds for recording and reporting trigger events. The Re-Thinking Systems Review has deliberately avoided specifically defining thresholds for recording trigger events or reporting them to the chain of command and / or the Defence assessment and reporting area proposed below. Defining these thresholds will require careful consideration and consultation with the Secretary and CDF, and Defence stakeholders more generally.

4.2.8. That being said, the Re-Thinking Systems Review has recognised that there is a spectrum of possible trigger events, ranging from minor events that can be resolved on the spot to more complex matters with serious repercussions for Defence. A ‘low’ threshold could see all trigger events recorded and reported, while a ‘high’ threshold could see all trigger events recorded but only some reported.

4.2.9. If a ‘high’ reporting threshold were selected, it may be that minor trigger events which are managed wholly within a work unit would be recordable but not...
Trigger events could be both recordable and reportable where commanders or line managers require support to manage a trigger event, or where decisions in relation to the trigger event are not able to be made within the unit or work area. Similarly, certain categories of trigger events could be reportable regardless of these factors, such as all security incidents or all work health and safety incidents. It may also be that the threshold differs according to the environment in which the trigger event occurs, for example, a training establishment, the operational environment or a Cadet unit. This is because some trigger events could have greater or lesser significance depending on the context.172

4.2.10. The Re-Thinking Systems Review recommends a low recording threshold and a low reporting threshold. Here, the reporting mechanism would provide a list of trigger event types, and all trigger events of that type would be recorded on a form and reported. This would be regardless of the seriousness of the trigger event, whether it will be managed entirely within the unit or work area, or whether additional support is required. The threshold would therefore simply be based on the occurrence of a trigger event as defined in the policy.

4.2.11. This approach is considered to be the most likely to engender a reporting culture, the most likely to improve Defence’s record keeping practices, and the most likely to produce a useful data set for whole-of-Defence statistical analysis, trend tracking, policy development, monitoring and audit purposes. Critically, it is also the simplest and easiest approach for commanders and line managers, as it is not necessary to engage in any fact finding or significant analysis of a trigger event in order to determine whether it meets some seriousness threshold before reporting it. That is, if there is a requirement to record the trigger event on the form, the form must also be provided to the chain of command and the Defence assessment and reporting area proposed below.

4.2.12. The types of trigger events that would meet this low threshold, and therefore be recordable and reportable under this model, would be the subject of significant consultation and development during any implementation of this model. It could include, for example, all of the following: complaints, actions taken against individuals (including Discipline Officer action if relevant), safety incidents, security incidents, reported civil charges or convictions, incidents of suicidal ideation, suspected fraud or misuse of Commonwealth resources, property damage or loss, disappearances, and drug and alcohol-related incidents.

4.2.13. Defence assessment and reporting area. As foreshadowed above, where a trigger event meets the relevant reporting threshold, the record of the trigger event would be submitted to the chain of command and a Defence assessment and reporting area simultaneously. The Defence assessment and reporting area would provide an oversight and coordination function, undertake whole-of-Defence trend analysis and be responsible for the single whole-of-Defence recording and reporting policy. Reporting to a single area should assist in channelling complaints and enable

172 Although, many of the thresholds could be incidentally set by other policies and directions which set out certain rules that must be complied with in different contexts. Conduct in one context may not breach those rules, but may in another context (for example, fraternisation). In such instances, the recording and reporting requirement is triggered by the breach of the policy or direction rather than the nature of the trigger event itself.
Defence to provide a holistic resolution to individuals’ complaints. It would also support a reporting culture.

4.2.14. Importantly, the existence of this area would not shift responsibility for making decisions from commanders and line managers. Its role would be to support decision makers (noting that not all decisions are presently made by commanders or line managers or even by Defence). Reporting would therefore not dis-empower commanders or line managers or absolve them of their responsibilities to manage and resolve a trigger event.

4.2.15. Once the report has been received by the Defence assessment and reporting area, the following actions could be undertaken:

- Where the report indicates that there is no immediate requirement for support from outside the unit or work area or where the outcome is ‘no further action’, the Defence assessment and reporting area may review the commander or line manager’s decision or action. In the event that the Defence assessment and reporting area has concerns regarding the management and resolution of the trigger event, or requires further information, it would seek this through the relevant point in the Group or Service (noting that protocols for consultation and coordination would need to be developed with the Groups and Services). Importantly, the Defence assessment and reporting area will not have the authority to ‘reach-in’ down to the unit level. The role of the Defence assessment and reporting area with respect to these reports would be to provide a whole-of-Defence ‘quality assurance’ function.

- Where the commander or line manager indicates that they require assistance or advice from outside their Group or Service (either prior to or following the submission of the report), the Defence assessment and reporting area would liaise with them to determine what level and type of support is required and coordinate that support. For example, the provision of oral advice on steps that the commander or line manager could take to manage the trigger event, or facilitation of the appointment of a professional investigator from the Defence investigation area (proposed below for Phase 2: Fact Finding). Any advice provided by the Defence assessment and reporting area would supplement, rather than supplant, the role of senior commanders in providing advice and support to subordinates (noting that non-Service Groups do not always have the advantages of the Services in this respect – it may be that more requests for guidance come from the non-Service Groups). The Defence assessment and reporting area would be accountable for the quality and timeliness of its advice.

- Where the nature of the trigger event requires that decisions on its management be made outside the unit or work area, the Defence assessment and reporting area would coordinate the response. For example, where a trigger event gives rise to a significant security issue, or a criminal-level fraud investigation is required. In such instances the Defence assessment and reporting area would

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173 For example, personnel decisions in relation to deployed ADF members, the decision to initiate an APS Code of Conduct investigation, or the decision to charge and prosecute Defence personnel with civilian criminal charges.

174 The description ‘Defence assessment and reporting area’ is intended to describe a group of functions, rather than a team or other workforce structure.
act as a conduit between stakeholders and ensure that all remain informed of the progress, as well as ensure that there is appropriate prioritisation between different stakeholders who may have an interest in the trigger event.

- Where Defence has external reporting or referral requirements associated with the trigger event, the Defence assessment and reporting area would confirm that those requirements are met. For example, a Comcare notifiable incident under the Work Health and Safety Act 2011.

Illustration 1.
WGCDR Brown receives a complaint of unacceptable behaviour from an APS employee he supervises against LAC Jones. WGCDR Brown records the trigger event through completing the form and submits it to the chain of command and the Defence assessment and reporting area simultaneously. On the form, WGCDR Brown indicates that he has counselled LAC Jones about the matter and that no further action is required. A staff member in the Defence assessment and reporting area reviews the report, and is concerned that the unacceptable behaviour complaint was not treated seriously enough, given the conduct apparently complained of. After conferring with a senior colleague, the staff member contacts the nominated point of contact in the chain of command with this concern. The nominated point of contact reviews the material, and consults with WGCDR Brown. As a result, WGCDR Brown adds further information clarifying the details of the complaint, satisfying both the chain of command and the Defence assessment and reporting area that his decisions were appropriate in the circumstances.

4.2.16. The Defence assessment and reporting area would maintain a database containing all reports of trigger events. This data could be used to undertake trend analysis to identify possible serial offenders, serial complainants and trends within particular units or work areas that require further investigation. This data could also facilitate policy development, internal and external communication, and audit functions. The Defence assessment and reporting area would not be directly responsible for communication to government, the Parliament, public and the media regarding trigger events and their management, but could provide support to the Services and Groups in preparing such communications.

4.2.17. The Defence assessment and reporting area could also be the portal for certain types of complaints. This could include Whistleblower reports (bearing in mind confidentiality requirements) or public complaints (for example, noise complaints from members of the public). Significantly, while multiple complaint portals are essential to provide individuals with a choice of how they complain, including providing opportunity for confidential or anonymous complaints, it can lead to multiple investigations of the same matter. Channelling complaints to the Defence assessment and reporting area would facilitate the provision of a coordinated response, and reduce the advantages to vexatious complainants of forum shopping.

4.2.18. It is not envisaged that the Defence assessment and reporting area would undertake a comprehensive review of every report received. The focus would be on providing the necessary support to units or work areas where commanders and line managers have requested support, as well as trigger events that have been identified as a whole-of-Defence priority. In relation to the latter, it is anticipated that reports of
certain categories of trigger events would be ‘flagged’ for urgent consideration, such as sexual misconduct or threats of self-harm. This approach already occurs in existing reporting systems in Defence, including in the Services and in subject matter-specific systems like security incident reporting. There will need to be a mechanism to determine these whole-of-Defence priorities, and Service and specialised Group interests will clearly be an important consideration but cannot be the only consideration. These priorities will shape the business rules put in place.

4.2.19. **Chain of command reporting.** Reporting to the Defence assessment and reporting area would occur simultaneously with reporting to the chain of command. Reporting to this area would therefore not supplant or interfere with reporting to the chain of command.

4.2.20. It is essential that the chain of command retain the ability to be informed of certain trigger events. Commanders and managers may review reports submitted to them in their discretion, subject to any Group or Service-specific direction.

4.2.21. In addition, the chain of command (or management) may wish to be kept informed of matters that do not fall within the policy. The chain of command may issue additional reporting requirements based on unit or formation level requirements. If the chain of command interest is at a higher level (for example if the additional reporting requirement is to report to Service headquarters), then this type of trigger event should usually be included on the single whole-of-Defence reporting policy to avoid situations where multiple reporting policies develop. It will be important to establish a mechanism so that the single whole-of-Defence reporting policy can be responsive to changing requirements.

4.2.22. **Responsibility for reporting.** During the war-games there was extensive discussion about who, within the relevant unit or work area, should be responsible for recording and reporting trigger events, and the level of involvement of the commander or line manager and the chain of command in that reporting process. In the military environment, for example, discussion canvassed whether commanding officer endorsement would be required before a report was sent to the Defence assessment and reporting area. Similarly, participants discussed whether all supervisors could submit reports, or only those at certain levels. This issue is complicated further in an integrated environment where ADF members may not have relevant interaction with a commanding officer, or APS employees are being managed by ADF members and vice versa.

4.2.23. In light of this, and subject to agreed requirements in the whole-of-Defence single recording and reporting policy, it is suggested that each Group and Service could determine its own standard operating procedures and business rules for completion of records and reports, based on the peculiarities of workforce and organisational arrangements. For example, as part of implementation, it may be determined that security officers are individuals who can record and report trigger

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175 The functions of the Defence assessment and reporting area are very similar to those currently carried out independently in the Security Incident Centre in Defence Security Authority and the Receipt and Assessment Unit in Inspector General – Defence. Indeed, the latter runs the hotline for the Defence Whistleblower Scheme in addition to assessing fraud allegations reported in accordance with DI(G) ADMIN 45-2 Reporting and Management of Notifiable Incidents.
events within each Group and Service. Similarly, protocols would need to be
developed in relation to seeking assistance from the Defence assessment and
reporting area and, as outline above, in relation to the Defence assessment and
reporting area requesting additional information from the unit or work area. This will
avoid unapproved requests for assistance and ‘reach in’ down to the unit or work
area.

4.2.24. Illustrations of how the process for simultaneous reporting to the chain of
command and the Defence assessment and reporting area would operate follow.

Illustration 2.
SGT Smith receives a complaint of unacceptable behaviour from LACW Green
against PTE Jones. After speaking with LACW Green, he completes the
recording and reporting form and, with his commanding officer’s endorsement,
submits it simultaneously to the Brigade Commander and the Defence
assessment and reporting area, indicating what further action he intends to
take. After undertaking some further fact finding activities, including
interviewing PTE Jones and other witnesses, SGT Smith resolves the matter
using alternative dispute resolution processes. Again with his commanding
officer’s endorsement, he submits a supplementary form outlining the action
he has taken, the reasons for it, and stating that no further action is required.
The form is later reviewed in the Defence assessment and reporting area,
which determines that the matter was handled appropriately.

Illustration 3.
COL Brown, a commanding officer, receives a complaint of unacceptable
behaviour from an APS employee he supervises against PTE Jones. COL
Brown records the trigger event through completing the form and submits it to
the Brigade Commander and the Defence assessment and reporting area
simultaneously. On the form, COL Brown requests advice from the Defence
assessment and reporting area on how to manage the complaint in light of the
involvement of an APS employee, and the fact that this is the second incident
involving PTE Jones. He is contacted by an unacceptable behaviour specialist
in the Defence assessment and reporting area, who provides guidance on
appropriate steps, and includes that advice in the trigger event record (which is
also available to the Brigade Commander). COL Brown resolves the complaint
and submits a supplementary form accordingly.

4.2.25. Resourcing of the Defence assessment and reporting area. During
the war-games and consultation, the issue of resourcing of the Defence assessment
and reporting area was raised as a significant concern. Participants queried the
capacity of the area to assess and triage the high volume of reports that are
expected to be received, particularly if a low reporting threshold is adopted. This is a
significant risk implementation risk, as previous centralisation and shared services
concepts have not always served Service and Group needs well.

4.2.26. It is fundamental that the Defence assessment and reporting area be
appropriately resourced. Specifically, it would need to be staffed by individuals who
have subject matter expertise in particular areas, as well as generalists, in order to
appropriately assess reports and provide useful advice. Reports would contain sufficient information to allow quick distribution to appropriate staff which encourages a holistic overview of trigger events, rather than a single-issue perspective. This is particularly important where a single trigger event raises multiple issues. Significantly, under current arrangements there are several subject matter-specific assessment and triage areas to which particular trigger events must be reported. Consolidating these functions into a single work area could achieve efficiencies and enhance the quality and reliability of advice.

4.2.27. Staff in the Defence assessment and reporting area would require security clearances commensurate with their requirement to access certain information. While most matters would be unclassified, careful selection and training of staff will be required to ensure a clear understanding of, and compliance with, privacy and other legal principles relating to the access and management of information.

4.2.28. **Issues in operational environments.** While the most practical approach to universal reporting would be to use an online interactive format, this may have limitations in deployed or operational environments. Contingencies for these environments will need to be considered, such as the ability to delay submission of a report until access to the relevant technology is available (via broadcasts), or submitting reports orally or in hardcopy formats, to be later entered in the single reporting mechanism, including by the chain of command.

4.2.29. The following provides an illustration of how the process would operate in an operational environment.

**Illustration 4.**

CMDR Brown, who is commanding officer of the patrol boat HMAS Speculation, receives a complaint of unacceptable behaviour from SMN Jones against AB Blue. At the time, there is a communication shutdown. CMDR Brown keeps a written record of the complaint and the actions he undertook to manage the issue. This information is broadcast in the next routine signal to Fleet Headquarters, where the form is completed and submitted to the Defence assessment and reporting area, including actions taken in response to the complaint and his conclusion that no further action is required.

4.2.30. Procedural fairness issues associated with the collection and use of records are discussed in Annex G: Specialist roles and processes.

4.3. **Process map**

Map 1.1 in Annex K: Process maps provides an indication of the process that would be followed if the recommended model were implemented. In practice, the process would rarely be this linear, as it would be conducted simultaneously with fact finding and decision making associated with the trigger event.

4.4. **Possible variations to the recommended model**

The Re-Thinking Systems Review has identified two variations to the recommended model, which relate to the thresholds for recording and reporting.
4.4.1. **Variation 1 (low recording threshold and high reporting threshold).** In this variation, which is not recommended, the reporting mechanism would provide a list of trigger event types and there would be a requirement for all trigger events of that type to be recorded and filed at the unit or work area.

4.4.2. Reporting would only be required if external support is required to manage the trigger event or decisions in relation to the trigger event are made outside the unit or work area, subject to some exceptions in order to meet whole-of-government requirements. External support or decision making might be required based on the seriousness of a trigger event or the particular subject it relates to.

4.4.3. It would be the responsibility of the unit or work area (presumably driven by the requirements of the Services and Groups) to maintain its own recording mechanism where a trigger event does not meet the high reporting threshold. Comprehensive statistical analysis, trend tracking and audit would require mining of the data recorded at unit or work area level, as well as the data received and maintained by the Defence assessment and reporting area.

4.4.4. **Variation 2 (high recording threshold and high reporting threshold).** In this variation, which is not recommended, the reporting mechanism would require that where a unit or work area requires external support to manage a trigger event or where decisions in relation to the trigger event need to be made outside the unit or work area, the trigger event must be recorded on a form and submitted to the chain of command and Defence assessment and reporting area simultaneously. External support or decision making might be required based on the seriousness of a trigger event or the particular subject it relates to. The Defence assessment and reporting area would use the reports to assess and coordinate support to the unit or work area in managing the trigger event.

4.4.5. Reliable statistical analysis and trend tracking would only be possible for trigger events that are reported to the Defence assessment and reporting area, as unit or work area level records not meeting the high recording and reporting threshold would be kept based on the unit or work area’s own records management requirements, rather than on the basis of a whole-of-Defence policy. This variation would not comprehensively address Defence record keeping deficiencies.

4.4.6. In determining whether a unit or work area requires external support to manage a trigger event or whether decisions in relation to the trigger event need to be made outside the unit or work area, it may be necessary for the commander, line manager or other decision maker to engage in more focused fact finding. To that extent, Phase 1 would involve the conduct of a scalable non-statutory inquiry in order to obtain sufficient information to meet the requirements of the reporting mechanism.

4.4.7. Figure 3 illustrates the spectrum of the recording and reporting thresholds for the recommended model compared to the two variations.

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176 For example, all safety and security incidents would need to be reported regardless of whether the matter is being managed within the unit or work area.

177 In the event that the models are supported by an ICT platform, there could be one database, but access would be compartmentalised as required (including along Service and Group lines).
Figure 3. Incident spectrum

- Low level incidents: Incident spectrum dealt with entirely within unit/Service/Group
- Medium level incidents: Incident spectrum dealt with by unit/Service/Group with assistance from outside the unit/Service/Group
- High level incidents: Incident spectrum dealt with outside the unit/Service/Group

Recommended model

Variation 1

Variation 2
5. Proposed models – Phase 2: Fact Finding

Obtaining information to inform and support decisions.

5.1. General comments

5.1.1. The recommended model for Phase 2: Fact Finding and its variations have been developed in order to support decision makers in Defence, including commanders and line managers, in obtaining only the amount of information that is necessary to make decisions in response to trigger events. Fact finding will serve the decision maker’s information requirements proportionate to the issues and not by pre-determined rules requiring particular levels of formality. The intention is to enable commanders, line managers and other decision makers to take action as quickly as practicable, minimising the delay and complexity that often accompanies more legalistic processes. The model avoids compartmentalisation of fact finding to minimise the risk where the individual components of a trigger event are dealt with in isolation rather than together.

5.1.2. The recommended model treats fact finding as incidental to decision making, not as a separate and distinct process. Responsibility for fact finding, including weighing and evaluating relevant information would lie with decision makers. This would improve accountability. The decision maker could make inquiries personally, rely on an agent to gather information, or some combination of the two. In order to avoid duplication of effort, information gathered for the purposes of one decision should usually be capable of being used for other decisions.

5.1.3. Annex G: Specialist roles and processes addresses the issue of ADF summary discipline. It contains conceptual-level summary discipline models for further consideration that would dramatically simplify the complexities associated with investigating disciplinary misconduct. These are proposed to provoke discussion about opportunities to simplify unit-level ADF discipline and decrease demand on quasi-criminal investigative capability. The detail of these models and the interrelationship with existing discipline arrangements would need further consideration. The Re-Thinking Systems Review recommends that it be referred to the Military Justice Coordination Committee.

5.2. Key characteristics of the recommended model

5.2.1. Non-statutory fact finding. The Re-Thinking Systems Review recommends that the vast majority of fact finding in Defence be conducted without a specific legislative basis. Legislative powers are not required to ask questions or to obtain information held within Defence. Where necessary, ADF members can be ordered to answer questions or produce documents, and APS employees can be given lawful and reasonable directions to answer questions or produce documents.\textsuperscript{178} Contractual terms can require contractors and their employees to co-operate. The

\textsuperscript{178} It is likely that ADF members can be ordered to incriminate themselves or expose themselves to penalty. However, the use to which self-incriminating responses can be put is limited. It is unlikely that APS employees can be directed to incriminate themselves or expose themselves to penalty.
legal basis to require members of the Cadet organisation to answer questions or produce documents is less certain (see Annex G: Specialist roles and processes).

5.2.2. Policy documents would provide guidance for commanders, line managers and other decision makers about ways information could be collected. The guidance would include templates for use at a decision maker’s discretion – for example, templates for notifications to witnesses, records of conversation, decision briefs and directions to investigators about the scope of fact finding tasks. It would also explain techniques to mitigate risks associated with particular fact finding methods, and contain information regarding compliance with extant whole-of-government policy and legislation. Commanders and line managers would need to make conscious decisions about the types of decisions they are seeking to inform, the scope, nature and extent of fact finding, and remain accountable for outcomes.

5.2.3. Under current arrangements, such accountabilities are arguably undermined because processes are imposed on decision makers by other parts of Defence through rigid policy. A complex system constrains the exercise of judgment by decision makers and provides unreasonable opportunity for delay which, in turn, drives inefficiency and mistrust. A system must both support decision makers and hold them accountable for the decisions that they make.

5.2.4. The following provides an illustration of how non-statutory fact finding would be undertaken under the recommended model.

**Illustration 5.**
LACW Green has made a complaint of unacceptable behaviour to COL Brown, the commanding officer of Speculation Barracks. She claims that SMN Jones, a fellow trainee, made insulting comments about her due to her gender and threw a glass of water on her. COL Brown completes the relevant form and submits it simultaneously to the chain of command and the Defence assessment and reporting area. He indicates that he intends to speak to SMN Jones and other witnesses before he makes any decisions or takes action. In accordance with general fact finding guidance, he interviews SMN Jones and other witnesses. On the basis of these statements, COL Brown determines that the incidents occurred and counsels SMN Jones about his behaviour. He submits a supplementary report and informs LACW Green of the outcome.

5.2.5. **Defence investigation area.** While most fact finding would be undertaken at the unit or team level, some matters need to be investigated by professional investigators. The Re-Thinking Systems Review proposes the establishment of a Defence investigation area which would ‘own’ and manage most professional investigative capability in Defence through a pool of professional investigators.

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179 This includes those set out in the Stage A Report, for example, the requirements of the Commonwealth Fraud Control Guidelines.

180 The description ‘Defence investigation area’ describes a group of functions, rather than a team or other workforce structure. It is expected that workforce arrangements for the Defence assessment and reporting area and the Defence investigation area would overlap to a degree (for example, advice and coordination functions described in relation to each area would likely be performed by the same staff).
investigators.\textsuperscript{181} Only low level investigative capability that resides with the Service Police elements organic to the three Services would be excluded. The Defence investigation area would be tied to the Defence assessment and reporting area discussed at paragraph 4.2.13, and would be responsible for whole-of-Defence fact finding policy and guidance.

5.2.6. The Defence investigation area would manage both ‘human’ investigations, and ‘system’ investigations,\textsuperscript{182} and would therefore coordinate professional investigators capable of identifying, selecting and conducting both types of investigation. A professional investigator, or team of investigators, would be appointed based on the identified purpose(s) of the investigation. For example, where the primary concern is individual liability, investigators with training and experience in relation to criminal or discipline investigations would be appointed. Similarly, in the event that a trigger event occurs in a particular Service, professional investigators from that Service could be appointed. The pool of investigators would include investigators with specialist expertise in particular types of fact finding and could be made up of ADF members and APS employees. Reservists and contractors could be called on when needed. Potentially, teams of investigators could also be embedded in certain areas within the Groups or Services for use only by those areas, or resources otherwise quarantined to deal with particular matters. All investigators would need to have appropriate training, noting that not all investigators would have the same skills or training, and that there would be some investigators who specialise in certain types of investigation.

5.2.7. The Defence investigation area would not be responsible for undertaking all fact finding. Professional investigators would only be appointed, for example, when the fact finding requires particular skill sets or subject matter expertise, a unit or work area does not have sufficient resources, or when the decision maker lies outside the unit or work area. Professional investigators would provide fact finding services to decision makers in accordance with whole-of-Defence priorities but commanders, line managers and other decision makers would remain responsible for the management of the trigger event and making the required decisions.

5.2.8. In the event that a professional investigator is not appointed (which would be the case in the majority of trigger events), units and work areas would remain responsible for undertaking their own fact finding activities in order to support decisions that need to be made in managing the trigger event as is the case with the current system. This allows trigger events to continue to be managed at the lowest possible level. Command decision making power would be unaltered. Significantly,

\begin{footnotesize}
181 This should not be thought of as merely taking the existing ADFIS (or any other current investigation area in Defence) and adding other functions. Establishing a new area would require the amalgamation of some existing investigative functions as well as the creation of new functions which would operate under a new fact finding paradigm.

182 The primary purpose of ‘human’ investigations would be to determine the extent of an individual’s responsibility in relation to a particular trigger event. ‘System investigations’ would have the primary purpose of understanding systemic issues, such as whole-of-Defence issues or more serious issues unique to a particular unit or work area. A single trigger event may raise ‘people’ and ‘system’ issues, or an investigation that begins as one may develop into the other. Identifying the investigation focus could take place early on to enable an appropriate team of investigators to be appointed, and so that legal processes associated with particular types of investigation can be satisfied (for example, requirements to caution suspects in the case of criminal investigations).
\end{footnotesize}
a simplified fact finding policy, with appropriate training, would allow units and work areas to undertake fact finding activities more easily without the need for expert assistance. The Defence investigation area would also provide advice to the unit or work area where assistance is required.

5.2.9. As in the case of the Defence assessment and reporting area, there would need to be a mechanism to determine whole-of-Defence priorities for the Defence investigation area in relation to fact finding that is required at the unit or work area level as well as intelligence-driven investigations. The purpose of prioritisation is to ensure that investigative resources and priorities are allocated at a whole-of-Defence level. Service and specialised Group interests will clearly be an important consideration when setting those priorities but cannot be the only consideration. These priorities will shape the business rules put in place in the Defence areas.

5.2.10. The involvement of the Defence investigation area in fact finding activities can be summarised as follows:

- In all cases, commanders and line managers would remain responsible for their decisions in accordance with current decision making arrangements.
- Where a decision is to be made by the unit or work area, associated fact finding may be conducted entirely within that unit or work area. Commanders and line managers can use whatever resources are at their disposal to undertake fact finding activities. The Defence investigation area’s involvement would be limited to providing advice to the commander, line manager or decision maker, as requested. It is expected that a majority of fact finding within Defence would fall into this category.
- Where a decision is to be made by the unit or work area, the decision maker may request material support from the Defence investigation area. Subject to the availability of resources in accordance with whole-of-Defence priorities, a professional investigator may be provided for a period of time. The investigator would report on the investigation to the decision maker(s), who remain responsible for determining what information they require for making the decisions. In the event that the decision maker wants more information after the professional investigator has completed their report, the decision maker could undertake further fact finding activities before making a decision.
- Where decisions are to be made outside the unit or work area, responsibility for fact finding would lie with the relevant decision makers. The Defence investigation area could provide support as required.
- Where decisions are to be made both within and outside the chain of command, the Defence investigation area would coordinate the approach to ensure that, so far as possible, duplicate investigations are avoided and information gathered is shared between the various decision makers.
- The Defence investigation area would have the capability to initiate investigations, for example where they have identified trends in information collected through the Defence assessment and reporting area.

183 Decisions typically made outside of the chain of command include APS Code of Conduct decisions and decisions to refer an individual to the Director of Public Prosecutions.
5.2.11. The *Pathway to Change* strategy acknowledged that:

> [P]eople in shared services roles require particular technical skills and just as importantly, must approach their role with a whole of Defence attitude to achieve the lift in productivity that Defence requires. It is imperative we keep in our minds that we are all part of Defence working towards the same goals for Australia, rather than part of a particular Service or Group alone. Appointments to key shared services roles will be chosen carefully, going to those who best model the attitudes and behaviours required to make this reform a success.

5.2.12. Examples of prioritisation models exist in other investigation contexts receiving reports (such as the AFP Case Categorisation and Prioritisation Model).

5.2.13. Illustrations of the recommended model are as follows.

**Illustration 6.**

A trigger event has come to the attention of LTCOL Brown, commanding officer at Speculation Barracks. The trigger event involves a complaint of unacceptable behaviour, fraud allegations against several individuals, and a security incident. LTCOL Brown has submitted the relevant form simultaneously to the chain of command and the Defence assessment and reporting area, and requested that a professional investigator be appointed to investigate the entire matter. The Defence investigation area, following liaison with LTCOL Brown, provides a professional investigator to investigate the entire matter. The professional investigator reports to LTCOL Brown, security decision makers and an APS Code of Conduct delegate on the outcome of the investigation. However, LTCOL Brown is not satisfied with one aspect of the report and would like further information before making a decision. He contacts the professional investigator, who provides LTCOL Brown with guidance as to how he might go about seeking the further information. LTCOL Brown follows the guidance and makes decisions accordingly.

**Illustration 7.**

Four separate incidents of unacceptable behaviour have been brought to the attention of CMDR Brown, commanding officer of HMAS *Conjecture*. He is concerned about cultural issues within the crew, and does not feel that any of his command team have sufficient experience to investigate these matters. With the support of Fleet Headquarters, he requests a professional investigation team be appointed to investigate the four incidents as well as address his broader concerns. CMDR Brown coordinates with the Defence investigation area to frame the scope of the investigation, which includes investigation of some possible disciplinary offences. A team of two professional investigators meet the ship in a foreign port where it is docked for three days. The Ship's Coxswain shadows the investigation team during the investigation. The investigation team conducts interviews with all relevant crew members and collects witness statements consistent with DFDA requirements. A report is prepared for CMDR Brown and Fleet Headquarters, which includes evidence of misconduct by a number of sailors. It also makes recommendations about the broader cultural issues. On the basis of the
5.2.14. As discussed in Annex G: Specialist roles and processes, the Defence investigation area could investigate trigger events involving Cadets and Cadet staff (or provide oversight in relation to lower level trigger events). These arrangements would help Defence to meet its duty of care and alleviate pressure on Cadet staff who are often under resourced, time poor and may not have the same management skills that commanders or line managers are expected to have. An illustration of the involvement of the Defence investigation area in the Cadet environment is as follows.

Illustration 8.
CDTL CPL Child makes a complaint to CAPT (AAC) Brown that one of her Cadet instructors, LCPL (AAC) Jones, made disparaging remarks to her during a cadet camp. CAPT (AAC) Brown reports the incident. Given the nature of the incident, and the fact that the Cadet unit is very small, a professional investigator from the Defence investigation area is appointed. The professional investigator travels to the Cadet unit and prepares a report for CAPT (AAC) Brown which includes his findings and a recommendation that the appointment of LCPL (AAC) Jones be terminated. After reviewing the report, CAPT (AAC) Brown accepts the findings of the report but decides not to accept the recommendation to terminate. CAPT (AAC) Brown submits a supplementary report simultaneously to the chain of command and the Defence assessment and reporting area, which has some concerns regarding CAPT (AAC) Brown’s decision. The Defence assessment and reporting area raises the issue with the relevant Army point of contact who, after discussing the matter with CAPT (AAC) Brown, refers it to a delegate of the Chief of Army under the Cadet Forces Regulations 2013. The delegate decides to terminate the appointment of LCPL (AAC) Jones.

5.2.15. Service police carve-out. Separate to the Defence investigation area, the Services would retain their current Service Police capability, which would comprise professional investigators specialising in low-level DFDA offences. The Defence investigation area would provide a coordinating and training role for professional investigators in the Service Police.

5.2.16. Low-level DFDA decisions are largely Service-based command decisions so, as outlined above (see para 5.2.10), fact finding in relation to these matters would be conducted largely within the resources of the relevant Group or Service. A professional investigator from the Defence investigation area would only be appointed in rare cases (for example, where the same trigger event has security or fraud implications, and decisions are also required outside the ordinary chain of command). The investigative capability retained by the Service Police would allow Service Chiefs to retain the ability to prioritise/conduct disciplinary investigations specific to their Service needs, as Service Police investigative capability would be part of the inherent fact finding capacity of each Service.

5.2.17. The Defence investigation area could also play a role in coordinating low-level DFDA investigative support from the Service police for non-Service groups. For example, the Defence investigation area could consult with the Provost Marshal ADF...
and Services to determine if there was any Service Police capacity available (and geographically close) to support a non-Service group investigation. If there was no capacity, the Defence investigation area could determine whether to dispatch a professional investigator.

Illustration 9.
A matter has come to the attention of LTCOL Brown, commanding officer at Speculation Barracks. The matter involves a complaint of unacceptable behaviour, fraud allegations and has possible security implications. LTCOL Brown reports the matter and requests that a professional investigator be appointed. The Defence investigation area, following liaison with LTCOL Brown, provides a professional investigator to investigate all aspects of the matter. Reports are provided to LTCOL Brown, security decision makers and an APS Code of Conduct delegate about outcomes of the investigation relevant to decisions they may need to make. The professional investigator also suspected that there had been unauthorised access to an inappropriate website, but due to time constraints was not able to investigate this issue further. LTCOL Brown contacts the local Service Police to request investigative support. The Defence investigation area grants the Service Police limited access to their database to view pertinent files. Following its investigation, the Service Police provide a report to LTCOL Brown about outcomes of its investigation, indicating that the identity of the person who accessed the inappropriate website cannot be ascertained.

5.2.18. Resourcing of the Defence investigation area. The issue of resourcing of the Defence investigation area is a significant implementation risk. The Defence investigation area (like the Defence assessment and reporting area) would need to be appropriately resourced to support commanders and line managers as required. It would include pools of investigators who are both specialist investigators and generalist investigators. Specialist investigators would continue to undertake investigations in their specialist area and provide advice and guidance to other investigators. This arrangement would recognise that while there is some commonality in broader investigative skills sets, there is a need for specialist expertise on certain topics. Civilian policing practice also uses both generalist and specialist investigators (noting that professional investigators are not equivalent to the police investigators, but instead undertake a broad range of investigative activities). The pool(s) would include permanent ADF and APS staff, contractors and Reservists as appropriate. A small forward-deployed investigative unit out posted from the Defence investigation area may be necessary to conduct investigations in deployed environments. This would be responsive to the local ADF force commander.

5.2.19. Some staff would require security clearances commensurate with their requirement to access certain information. Careful selection and training of staff will be required to ensure a clear understanding and compliance with whole-of-

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184 It is proposed to seek legislative amendment to remove the current prohibition on civilian investigators gathering evidence under the Defence Force Discipline Act 1982 for use in proceedings before service tribunals.
government processes relating to special investigation process, as well as privacy and other legal principles regarding the management of official information.

5.2.20. While the intent of the current arrangements to develop and build ADF investigative capacity from the ranks of the Service Police is appreciated, in our experience the skill set and experience level required to undertake professional investigations is highly specialised. For this reason, it is simply not viable to rely on the Service Police capability as the sole feeder group.

5.2.21. **External investigation.** The Defence investigation area would be the default liaison portal for external investigation and review agencies, such as State and Territory coroners, civilian police, Comcare and national security agencies (and, if applicable, the external integrity agency proposed in Phase 4: External Review). This liaison role would include capacity to ensure secure transmission of information with external agencies where, for example, the information is classified. In some cases other areas in Defence would more properly perform the liaison function (for example, local liaison with civilian police or, in some cases, SeMPRO liaison with civilian police in relation to sexual misconduct).

5.2.22. **Subject-specific fact finding requirement.** The *Re-Thinking Systems Review* recognises that some specialist fact finding capabilities may not be suitable for inclusion in a single Defence investigation area. These include air crash investigations, investigations into the professional conduct of investigators, Service-related deaths and some intelligence-led security investigations. *Annex G: Specialist roles and processes* discusses these subject-specific activities and capabilities.

5.2.23. **Statutory inquiries.** The *Re-Thinking Systems Review* proposes that the range of statutory inquiries in the *Defence (Inquiry) Regulations 1985* would be reduced to two types that would only be used to undertake large-scale inquiries.

- A Defence-appointed inquiry would be appointed by the CDF, the Secretary, a Service Chief or a Group Head (or some combination of these roles). The person(s) appointing the inquiry would be able to direct the procedures to be followed by the inquiry. It could be conducted in public or in private, by a Board or an individual inquiry officer, and there would be no limits as to who could be appointed to conduct the inquiry (including appointment of foreign military personnel to a Board). A Defence-appointed inquiry would have all of the powers and protections currently associated with Boards of Inquiry.\(^\text{185}\)

- A Government-appointed inquiry would have similar powers and flexibility as a Defence-appointed inquiry, except, as in the current Court of Inquiry provisions under the *Defence Inquiry Regulations 1985*, would be governed by procedures determined by the President. A Government-appointed inquiry would be appointed from outside of Defence by a Minister in the Defence portfolio.

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\(^{185}\) Recommendations from recent reviews about CDF Commissions of Inquiry, such as in The Hon Roger Gyles AO QC, *HMAS Success Commission of Inquiry: Allegations of Unacceptable Behaviour and Management Thereof, Part Three Report: Further recommendations*, December 2011 (HMAS Success Part Three report) and CDF Working Group Review 2010 should be taken into account when establishing the proposed Defence-appointed inquiry process.
5.2.24. The Defence investigation area would act as Secretariat for these inquiries. These inquiries would be infrequent and reserved only for the most serious matters warranting attention at the high level required to appoint them, such as major accidents, serious systemic concerns, or widespread allegations of misconduct over a period of time.

5.2.25. **Chain of command interactions.** The chain of command would remain involved throughout the management of trigger events, which may include making decisions or intervening in unit / team based fact finding as appropriate. The chain of command could also provide input into the decision to appoint a professional investigator, for example by informing the Defence investigation area of Service-specific priorities. In cases where the Defence investigation area decides not to appoint a professional investigator, the chain of command would be involved in resolving the matter within the Service or Group.

5.3. **Process map**

5.3.1. Map 2.1 in *Annex K: Process maps* provides an indication of the process that would be followed if the recommended model were implemented.

5.4. **Possible variations to the recommended model**

5.4.1. Two variations to the recommended model have been identified.

5.4.2. **Variation 1 (inclusion of Service Police).** In this variation, which is not recommended, the Defence investigation area would ‘own’ and manage all of the Defence professional investigative capability, as described in the recommended model. In addition, it would also ‘own’ and manage the low level investigative capability that currently resides with the Service Police elements within each Service. The Service Police would remain responsible for other policing functions.

5.4.3. **Variation 2 (multiple investigator pools).** In this variation, which is not recommended, the Defence investigation area’s role would be to coordinate Defence’s professional investigative capability only. The professional investigative capability would continue to be ‘owned’ and managed by specialist areas throughout Defence, such as the Chief Security Officer, Chief Audit Executive, Defence People Group, and the Provost Marshal ADF. The coordination role would include making authoritative assessment of the purpose in relation to any investigation (for example, whether the primary focus of an investigation should be collecting evidence for criminal prosecution or managing systemic issues revealed by a trigger event), coordinating investigations so that multiple investigations into a single trigger event are avoided, and ensuring that information is shared appropriately between specialist investigators. The Defence investigation area would also coordinate training and education in relation to professional investigators.

5.4.4. The coordination of investigative capability through the Defence investigation area would improve holistic oversight of trigger events that require advice from multiple subject matter areas. However, a significant risk to the viability of this variation is that each investigator pool would retain its own priorities. Without control of investigative capability, the Defence investigation area may have limited capacity to influence the allocation of resources or the focus of an investigation.
5.4.5. To ensure that there is capability to undertake fact finding in relation to whole-of-Defence systemic issues, the Defence investigation area may also its own investigative capability, comprising a small pool of professional investigators which could be appointed to investigate particular matters.

5.4.6. An illustration of the operation of this variation is as follows.

Illustration 10.
A matter has come to the attention of LTCOL Brown, commanding officer at Speculation Barracks. The matter involves a complaint of unacceptable behaviour, fraud allegations against several individuals, and a security incident. LTCOL Brown has provided a report to the chain of command and the Defence assessment and reporting area, and requested that a professional investigator be appointed to investigate the entire matter. The Defence investigation area, following liaison with LTCOL Brown and input from the chain of command, coordinates professional investigators from the Service Police, Defence Security Authority and Inspector General – Defence to work together to investigate all aspects of the matter. Reports are provided to LTCOL Brown, security decision makers and an APS Code of Conduct delegate about outcomes of the investigation relevant to decisions they may need to make.
6. Proposed models – Phase 3: Internal Review

Re-consideration within Defence of a Defence decision or action.

6.1. General comments

6.1.1. The Re-Thinking Systems Review recommends a single layer of internal review of decisions and actions that adversely affect individuals in Defence. Providing only a single layer of internal review will help to make the internal review process quicker. This is important as delays in internal review can act as a barrier to external review due to the time required to exhaust all internal review options.

6.1.2. Additionally, the primary focus of the internal review function under the recommended model is on the substance of the original decision or action, rather than on the processes followed in reaching that decision or taking that action. Procedural errors in the original decision can often be ‘cured’ through the process of re-considering the decision.\(^{186}\) An illustration of this is as follows.

Illustration 11.
SGT Smith has applied for recognition of his interdependent partnership for the purposes of receiving allowances and benefits. LTCOL Brown refuses the application on the basis of information that SGT Smith is not aware of. Before applying for internal review, SGT Smith requests reasons for the decision from LTCOL Brown, which reveals the information LTCOL Brown relied on in reaching his decision. As part of his application for internal review, SGT Smith refutes this information. The procedural flaw in the original decision is no longer material. The Defence internal review area grants the application for interdependent partnership status.

6.1.3. In all models, the Secretary and CDF (and senior leadership generally) would retain their discretion to review a matter, even where it has been subject to internal review or is being reviewed externally. This is entirely discretionary, so there would not be an entitlement to seek review, and this would not prevent individuals from accessing external review processes.

6.1.4. Fact finding associated with this discretionary review could be undertaken by staff quarantined in the Defence investigation area with specialist expertise and experience. One alternative could be to include the Inspector General ADF organisation within the Defence investigation area to provide this specialist fact finding function. This may be helpful on particularly difficult or sensitive cases. This area could also undertake fact finding regarding systemic issues at the request of senior leadership. In this alternative, the Inspector General ADF would not continue the formal oversight role as it would be part of the very system it was overseeing.

\(^{186}\) Annex B – Model Development includes a discussion about the relationship between internal review and complaint handling requirements.
6.2. Key characteristics of the recommended model

6.2.1.  **APS review of action.** The APS Review of Action process would remain as it currently exists – a single formal layer of internal review, managed through a central review area with power to re-make virtually all decisions affecting APS employees.

6.2.2.  **Single layer of internal review for ADF members.** The ADF redress of grievance system would be replaced with a single layer of review. This is consistent with the APS Review of Action single layer of review process, which represents government best practice for internal review.

6.2.3.  ADF members would have the right to apply for review of any Defence action or decision that relates to his or her ADF service. This is consistent with the scope of the existing redress of grievance mechanism which allows an ADF member to submit a redress of grievance where the member considers that a decision, act or omission in relation to the member’s service is adverse or detrimental to him or her (including decisions made in exercise of the command prerogative). There would therefore be no diminution in the ability of ADF members to complain or seek review about matters affecting their service.

6.2.4.  There would be exceptions to the general right of review, including that decisions made in the review process would not themselves be reviewable. There would also be discretion to refuse to consider an application for review for reasons including:

- Where the decision or action has already been reviewed internally.
- There is a specialist review process available for the decision (such as the security vetting agency review process).
- There has not yet been an adverse decision or action (for example, findings and recommendations in an investigation and decisions to issue a notice to show cause are not themselves adverse actions).
- There is no utility in reviewing the substance of the original decision, because it has already been implemented and cannot be reversed (such as a Compulsory Return to Australia decision in an operational environment after the ADF member has returned).
- The review application was not submitted within time and there are no circumstances warranting an extension of time.
- Decisions made by CDF or a Service Chief.\(^\text{187}\)
- The review application is in some other way frivolous or vexatious.

6.2.5.  The discretion to refuse to consider these applications for review would resolve some of the current issues inherent in the redress of grievance process,

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\(^{187}\) While Service Chiefs and CDF would retain the discretion to reconsider an earlier decision, there is little utility in subjecting these to formal internal review, as the decision is rarely, if ever, changed on review and the process merely causes delay before an individual can access external review options.
where all decisions affecting ADF members, are reviewable. This includes matters where the redress process is not appropriate.

6.2.6. **Right to reasons.** On request, an ADF member would be entitled to reasons for any decision or action that is reviewable. To minimise the administrative burden on decision makers, decision making guidance material could include forms or templates to assist decision makers in framing their reasons (noting that these would need to be carefully constructed to avoid influencing decision makers).

6.2.7. **Application for review by ADF members.** The review process would commence when an ADF member submits a review application form to his or her commanding officer. It would be a requirement that the reasons for the decision be attached to the form. The ADF member would also be required to attach any other documentation that he or she wants considered in the review process.

6.2.8. The review application would have to be submitted within a particular time of the original decision having been made known to the ADF member (for example, a 90 day period), although there would be allowance to extend this period in exceptional circumstances such as the poor physical or mental health of the ADF member or lack of access to resources due to deployment.

6.2.9. There would not be an automatic entitlement to legal support to assist with an application for review, and an ADF member would need to satisfy the delegate that legal advice, as opposed to general advice, was actually needed. Support and advice mechanisms for ADF members seeking to apply for review of a decision are discussed below under ‘Support for individuals’.

6.2.10. **Involvement of commanding officer.** The commanding officer would have a limited period, no more than 14 days, to decide whether or not to support the application for review is supported. If the commanding officer (or his or her subordinate) was the original decision maker, and the commanding officer supports the application, the commanding officer could simply re-make the decision at that time and the review is completed. If the commanding officer was not the original decision maker, or the commanding officer is not minded to change the original decision, the obligation would simply be to complete a section on the form indicating whether or not the commanding officer supports the review application.

6.2.11. The commanding officer’s decision to support, or not support, a review application would not itself be reviewable. The commanding officer would not have to undertake any inquiries – he or she could simply make a decision to support the application on the basis of the material attached to the application form.

6.2.12. There would need to be exceptions to the general process for extenuating circumstances. For example, if the commanding officer refused to complete the relevant section on the form within the relevant period, the ADF member could still progress the application. Similarly, in instances where it would not be appropriate for

188 A 90 day time limit corresponds to the upper limit of the range of time limits for internal review specified in other Commonwealth legislation. For example: Veterans’ Entitlements Act 1986 (3 months for income support decisions; 3 months for disability pension decisions); Military Rehabilitation and Compensation Act 2004 (30 days); Defence Home Ownership Assistance Scheme Act 2008 (28 days); Freedom of Information Act 1982 (30 days).
the commanding officer to be involved or where a high-ranking officer has an administrative commanding officer of lower rank, there would need to be scope for the application to be progressed without this step.

6.2.13. **Defence internal review area.** Once the commanding officer has indicated support or otherwise on the review application, the application would be forwarded to the Defence internal review area.

6.2.14. There would be no obligation for the internal review delegate to undertake an additional inquiry beyond considering the material provided with the review application. The review decision could be made entirely on the basis of those materials (although further enquiries could be made if the review delegate considered them appropriate). This is unlike the current redress of grievance system, which mandates that an inquiry must be undertaken and therefore potentially imposes an unnecessary administrative burden. The degree and nature of any further inquiry undertaken by the Defence internal review area would be based on the information that has been provided, and would be conducted in proportion to the significance of the matter under review. It would be expected that, if the ADF review applicant has provided the decision maker’s reasons for the original decision, further inquiry may not be required in all cases.

6.2.15. There would be a time limit for the internal review to be completed (7 days to determine if the decision should be reviewed and identify the most appropriate delegate, followed by 28 days to make a new decision – 35 days in total). A short timeframe for internal review allows commanders and line managers to receive feedback on their decisions, at a time when they are still available and it is useful to them. A short timeframe also ensures that individuals are not, in effect, prevented from accessing external review options by lengthy internal review processes.

6.2.16. The *Re-Thinking Systems Review* recommends that a single Defence internal review area be responsible for both APS and ADF review applications.

6.2.17. The Defence internal review area would undertake internal review of APS Review of Actions affecting APS employees under the *Public Service Act 1999*. There would be individuals within the Defence internal review area with appropriate delegations to re-make most, if not all, decisions affecting APS employees.\(^{189}\)

6.2.18. For ADF members, review applications would be submitted to the Defence internal review area after the application has been considered by the commanding officer. The Defence internal review area would determine whether an application for review of action should be accepted or rejected for the discretionary reasons discussed above at paragraph 6.2.4. If accepted, the Defence internal review area would determine the most appropriate delegate to consider the application:\(^{190}\)

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\(^{189}\) An example where the internal review area may not have a delegation to re-make a decision is for security clearance decisions. While reviews are sought through the APS Review of Action process, the internal review area would refer the matter to the Australian Government Security Vetting Agency to review in accordance with their specific appeals process.

\(^{190}\) For ADF members, this is similar to the current redress of grievance arrangements whereby the Directorate of Complaints Resolution prepares decision briefs at the Service Chief and CDF levels.
• For some decisions or actions affecting ADF members, individuals within the Defence internal review area would have the delegation to re-make the decision. Examples include decisions about allowances or other benefits (apart from leave), which are based on objective criteria.

• For ADF posting, promotion and other decisions that are fundamental to generating capability, the Defence internal review area would refer the application to a review delegate within the member’s Service. As these decisions are based on more subjective criteria and are fundamental to the command functions of the Service Chiefs, it is not appropriate for an internal review area outside of the Services to hold delegations in relation to those decisions, although there may be benefit in separate comment and recommendations in some cases. In some cases, the Defence internal review area could provide recommendations to the Service review delegate when it is referred (for example, where the Defence internal review area considers that the Service needs to pay particular attention to certain matters as part of the review). The review delegate would be at least one rank higher than the original decision maker, and would have the power to re-make the decision.

6.2.19. Developing a delegation framework in accordance with these principles will be the most difficult aspect of implementing this model. As well as identifying appropriate review delegates, it may be necessary to alter some delegation arrangements for the original decision so that review delegates have power to re-make the decision.191

6.2.20. The Re-Thinking Systems Review is of the view that the Defence internal review area could also receive and review applications for review from members of the Cadet organisation. This issue is discussed further in Annex G: Specialist roles and processes.

6.2.21. Internal review applications would be recorded and reported in accordance with the Phase 1 model, including by updating previous records in relation to a trigger event, if relevant.

6.2.22. Illustrations of the recommended model is as follows:

Illustration 12.
SGT Smith is sent home from the Middle East Area of Operation (MEAO) before the end of his deployment because his commanding officer in the MEAO has lost confidence in his ability to perform his duties. The commanding officer records (and reports) this event, indicating that no further action is required. On his return, SGT Smith submits an application for review form to LTCOL Brown (his commanding officer in Australia) seeking review firstly of the decision to send him home, and secondly of the decision not to pay him deployment-related allowances after his return. LTCOL Brown indicates on the form that he does not support either request, and forwards the application to the Defence internal review area. A delegate in the Defence internal review

191 For example, where an application for review is made in relation to a termination decision under regulation 85 of the Defence (Personnel) Regulations 2002, the review delegate would need to be a regulation 85 delegate.
area determines that the decision to send SGT Smith back to Australia should not be reviewed because the decision has already been implemented and no remedy is available. A delegate in the Defence internal review area conducts a review of the allowances decision and determines that the original decision was correct. The Defence internal review area informs SGT Smith of the decision and provides reasons, with simultaneous notification to SGT Smith’s chain of command. The application for review (and results) are recorded and attached to the original report from the MEAO commanding officer.

Illustration 13.
SGT Smith subsequently receives a posting order. He is not happy with the decision, as he would have preferred a different posting location. He requests, and is provided with, reasons for the posting decision from the Directorate of Soldier Career Management. He is still not satisfied with the decision and submits an application for review form to LTCOL Brown (his current commanding officer). LTCOL Brown indicates his support on the review application form and forwards the application to the Defence internal review area. The Defence internal review area refers the application to an Army review delegate within the Directorate of Soldier Career Management, noting that SGT Smith’s family circumstances appear to have deteriorated since the original decision was made, and recommending that he be given a compassionate posting. The Army review delegate considers the application and the Defence internal review area’s recommendation, but declines to change the posting decision because of Service requirements. The delegate informs SGT Smith of the outcome of his review application and provides reasons.

6.2.23. **Primary decisions made by the CDF or a Service Chief.** In certain cases, the primary decision may need to be made by the CDF or a Service Chief personally. Where that occurs, the internal review process proposed would not provide a meaningful review for affected individuals, as review delegates would be delegates of the Service Chiefs. In such instances, it may be most appropriate to refer any request for review straight to the external agency discussed below. That is, there would be no formal internal review of the decision, and it would go straight to Phase 4: External Review. This does not prevent the CDF or a Service Chief from reviewing their own decision if they choose to do so. The APS Review of Action process similarly provides for direct access to external review by the Merit Protection Commissioner in relation to APS Code of Conduct decisions (that is, no internal review).

6.3. **Process map**

6.3.1. Map 3.1 in Annex K: Process maps provides an outline of the review process that would be followed if one of the internal review models was implemented.

6.4. **Possible variations to the recommended model**

6.4.1. The Re-Thinking Systems Review has identified two variations to the recommended model, which differ in the way the Defence internal review area and delegation arrangements are structured.
6.4.2. **Variation 1 (multiple internal review areas).** In this variation, which is not recommended, there would be four separate internal review areas. Each of the Services would have an internal review area, and there would be an additional internal review area to manage APS Review of Action.

6.4.3. The APS internal review area would undertake internal review of ‘APS actions’ affecting APS employees under section 33 of the Public Service Act 1999. There would be individuals within the APS internal review area with appropriate delegations to re-make most, if not all, decisions affecting APS employees.

6.4.4. For ADF members, review applications would be submitted to the Service review area after the application has been considered by the commanding officer. The Service internal review area would determine whether the application should be accepted or rejected for the discretionary reasons discussed above at paragraph 6.2.4. The Service review area would include individuals with all necessary delegations to re-make decisions.

6.4.5. The Service internal review areas would co-operate with each other, including through regular meetings and correspondence, in order to improve consistency between review decisions on matters that have the same effect on members of all Services, such as decisions about allowances and other benefits. From a practical perspective, it may be best for the three Service review areas to be co-located to ensure consistency of decision making.

6.4.6. The Service internal review areas could receive applications for review from members of the respective Cadet organisation, if such processes are included in applicable policy. This is discussed in Annex G: Specialist roles and processes.

6.4.7. An illustration of the operation of this variation is as follows.

**Illustration 14.**
SGT Smith receives his posting order. He is not happy with the decision, as he would have preferred a different posting location. He requests, and is provided with, reasons for the posting decision from the Directorate of Soldier Career Management. He is still not satisfied and submits an application for review form to LTCOL Brown (his current commanding officer). LTCOL Brown indicates his support on the form and forwards it to the Army review area. An Army review delegate considers the application, but declines to change the posting decision because of Service requirements. The delegate informs SGT Smith of the outcome of his review application and provides reasons.

6.4.8. **Variation 2 (Inspector General ADF internal review area).** In this variation, which is not recommended, there would be two internal review areas. The first would be an internal review area for APS Review of Action (with power to re-make most decisions affecting APS employees).

6.4.9. The second would require the Inspector General ADF to conduct internal review in relation to all applications for review by ADF members (and members of the Cadet organisation, if applicable). Here, review applications would be submitted to the Inspector General ADF after the application has been considered by the commanding officer. The Inspector General ADF would have the discretion to reject
a review application for the discretionary reasons discussed above at paragraph 6.2.4. The Inspector General ADF would not have power to re-make decisions, but would have power to make recommendations to the Service Chiefs that a decision should be re-made.

Illustration 15.
SGT Smith receives his posting order. He is not happy with the decision, as he would have preferred a different posting location. He requests, and is provided with, reasons for the posting decision from the Directorate of Soldier Career Management. He is still not satisfied with the decision and submits an application for review form to LTCOL Brown (his current commanding officer). LTCOL Brown indicates his support on the review application form and forwards the application to the Office of the Inspector General ADF. The Inspector General ADF considers the application, and notes that SGT Smith's family circumstances have deteriorated since the original decision was made. He writes to the Chief of Army and recommends that he direct the Directorate of Soldier Career Management to amend SGT Smith's posting order. The Inspector General ADF informs SGT Smith of the outcome of his review application, including the recommendation made to Chief of Army and the Inspector General ADF's reasons. The Chief of Army does not accept the recommendation and refuses to change the original decision, based on Service requirements. The Chief of Army informs SGT Smith and the Inspector General ADF of this decision, providing reasons.
7. Proposed models – Phase 4: External Review

Re-consideration by an agency outside of Defence of a Defence decision or action

7.1. General comments

7.1.1. The Re-Thinking Systems Review considered external review and oversight mechanisms that are specific to Defence and in addition to whole-of-government review mechanisms. The recommended model would see a consolidation of the Defence-specific oversight mechanisms which overlap, while the variation would see these mechanisms remain but clarify their roles.

7.1.2. Defence currently invests a large amount of financial and human resources in ad hoc reviews undertaken by external consultants and individuals. In some instances, the appointed individuals need to quickly develop an understanding and expertise in Defence’s policies and practices, as well as the special nature of the command relationship and ADF activities and functions. A dedicated Defence-specific external review and oversight mechanism, appropriately resourced to undertake the types of large-scale reviews that have been appointed in the past decade, would not only achieve efficiencies but would also increase public accountability and confidence.

7.2. Key characteristics of the recommended model

The Re-Thinking Systems Review recommends that there be three separate avenues for external review of Defence decisions and actions.192

7.2.1. The Merit Protection Commissioner would conduct external review of decisions affecting APS employees in accordance with the Public Service Act 1999. The Merit Protection Commissioner has the power to make recommendations to the Secretary in relation to the decision or action under review.

7.2.2. The Administrative Appeals Tribunal would conduct external review of decisions relating to ADF allowances and other benefits. As a merits review tribunal, the Administrative Appeals Tribunal would have power to re-make decisions which, in the absence of judicial review, would be binding on Defence. The Administrative Appeals Tribunal would focus on the substance of the decision and whether Defence’s decision was the ‘correct and preferable’ one, rather than the process that was followed within Defence in making the decision.

7.2.3. An external integrity agency with Defence-specific functions (such as the Defence Force Ombudsman) would conduct review of all other decisions and actions affecting ADF members (including discipline or other military justice-related decisions) and members of the Cadet organisation.193 It would have the discretion to

192 Defence would still be subject to oversight by other whole-of-Defence integrity agencies, such as the Australian Human Rights Commission or the Office of the Information Commissioner.
193 A number of names have been suggested for this agency, including: Integrity Commissioner for Defence; Inspector General of Defence; and Defence Ombudsman. The war-games highlighted the
refuse an application for review where the matter has already been externally reviewed, and/or where internal review processes are not exhausted. The Defence external integrity agency would have the power to make recommendations to the CDF and Service Chiefs in relation to the decisions or action under review. In the event Defence decided not to implement a recommendation, Defence’s reasons would need to be tabled in Parliament.  

7.2.4. Illustrations of the operation of the recommended model are as follows.

**Illustration 16.**
SGT Smith has obtained internal review of a decision to refuse deployment-related allowances. He is not satisfied with the outcome and so applies to the Administrative Appeals Tribunal for review of the decision. The Tribunal decides that the determination has not been properly applied to SGT Smith’s circumstances, and makes a new decision granting him the allowances.

**Illustration 17.**
SMN Jones has received a censure. He considers that this sanction is too severe, and applies for internal review. He is unsuccessful and applies to the Defence external integrity agency for review. The agency has some concerns about the process that was followed in making the decision and recommends some systemic changes. However, it considers that in light of SMN Jones’s conduct, the censure was appropriate. Defence implements the recommendations relating to the administrative sanction process.

7.2.5. **Defence external review agency.** A Defence external integrity agency could be achieved through re-invigoration of the Defence Force Ombudsman or through the creation of a new agency. Neither approach would involve the creation of any additional functions, but rather would consolidate a number of functions that already exist into a single agency.

7.2.6. The role of the Defence external integrity agency would be to consider applications for external review from an ADF member, where the ADF member has already sought internal review but is not satisfied with the outcome. The powers of the Defence external integrity agency would be broadly modelled on those currently held by the Commonwealth Ombudsman and other Commonwealth integrity agencies (indeed, the ADF already has authority to appoint a statutory inquiry with such powers, such as a Commission of Inquiry). These include the power to compel both ADF members and APS employees to provide information or give evidence, the power to override the secrecy provisions in other legislation, as well as restrictions against disclosure regarding the privilege against self-incrimination and the official importance of the agency’s name in creating perceptions and impressions of its functions within Defence. For example, concerns were expressed over the name ‘Integrity Commissioner’, due to links of this name with, for example, the New South Wales Independent Commission Against Corruption.

194 Currently, the Defence Force Ombudsman is able to report to Parliament if Defence does not take appropriate action in relation to a DFO report: *Ombudsman Act 1976*, sections 16, 17, 19F.

195 The Acting Deputy Ombudsman has indicated that the DFO is open to a ‘re-fresh’ of its approach and activities, consistent with the new directions set out in the *Re-Thinking Systems Review*, in complaint handling and other appropriate oversight roles.
use of legal professional privilege.\textsuperscript{196} Exceptions to the power to compel production of evidence would include where production would risk a person’s safety or compromise national security (bearing in mind that staff in the proposed external integrity agency would have appropriate security clearances).\textsuperscript{197}

7.2.7. In addition to the power to review specific decisions and actions following an application by an ADF member, the Defence external integrity agency would have a number of other functions.\textsuperscript{198}

7.2.8. **Service-related deaths.** Defence would report all Service-related deaths (including the death of a member of the Cadet organisation in relation to their membership) to the Defence external integrity agency. The agency would determine whether or not it should conduct an independent inquiry into the death in the circumstances. In making this decision, the agency would have regard to any internal Defence fact finding and the conduct of any Comcare or Coronial investigation. This investigation could be conducted in a public inquiry format, if appropriate.\textsuperscript{199} Importantly, this function would not prevent Defence conducting its own immediate fact finding into Service-related deaths to satisfy its own information requirements, in whatever form Defence considers necessary. The Minister could also direct the agency to inquire into a death.

7.2.9. This function would replace the existing CDF Commission of Inquiry function by providing a truly independent examination of ADF deaths in a more efficient and timely manner.\textsuperscript{200} Notwithstanding that Defence has undertaken fact finding for its own purposes, there will be cases where there is a clear public interest in having the circumstances surrounding a Service member’s death independently examined.

7.2.10. **Complaints about professional investigators.** All complaints about the conduct of professional investigators (discussed in Annex G: Specialist roles and processes) in Defence in relation to an investigation would be referred to the Defence external integrity agency for investigation.

7.2.11. **Own-motion investigations.** The Defence external integrity agency would maintain pro-active, ongoing scrutiny of Defence actions. For example, it would conduct own-motion investigations into any matter concerning Defence. It would also

\textsuperscript{196} See for example Ombudsman Act 1976, section 9

\textsuperscript{197} This is comparable to the limitations on the Ombudsman’s power to obtain information in section 9(3) of the Ombudsman Act 1976, which requires certification by the Attorney-General that production of the information would damage national security etc.

\textsuperscript{198} The proposed external integrity agency is not the same as the ADF Administrative Review Board (ADFARB) proposed in the Senate Foreign Affairs, Defence and Trade References Committee, Report on the Effectiveness of Australia’s Military Justice System, 2005 (Senate Committee report 2005), which was rejected by the Government at the time. Importantly, the proposed external integrity agency would not have any role in the internal review process, which was the key feature of the proposed ADFARB. The external integrity agency would provide a mechanism for external review for ADF members who are not satisfied with the outcome of the internal review process.

\textsuperscript{199} The powers of the Defence external integrity agency would need to make allowance for the conduct of public inquiries.

\textsuperscript{200} The existing CDF Commission of Inquiry was established because the Commonwealth does not have an ability to determine the priority that State and Territory Coroners give to ADF deaths.
maintain an inspection program in relation to high-risk activities in Defence, especially military discipline-type functions that are at risk of abuse. To support this function, ADF members could make first-instance complaints to the external integrity agency, which would be considered in the agency’s discretion.201

7.2.12. Directed investigations. The Defence external integrity agency would be required to conduct an inquiry into any matter concerning Defence at the request of a Minister in the Defence portfolio. It would have discretion to conduct an investigation at the request of the Secretary or CDF, or a Senate Committee. For example, instead of appointing a CDF Commission of Inquiry into the HMAS Success matter, the CDF could have requested that the Defence external integrity agency conduct a review. A truly external review would provide greater public confidence in outcomes and finality to matters than is currently the case with the statutory inquiry process.202

7.2.13. An illustration of the Minister for Defence requesting the Defence external integrity agency to conduct an investigation is as follows.

Illustration 18.
The Minister receives a letter from Ms Green, the mother of SCDT Green who is undertaking training at the Speculation Training Centre. Ms Green states that her daughter and her female peers have been subject to bastardisation by their Divisional Officers, some of which was broadcast on social media. Ms Green states that her daughter reported this to COL Brown, her commanding officer, but that he replied ‘you’ll stop complaining if you know what’s good for you’. The Minister obtains advice from the Department, but is not satisfied with the outcome. The Minister requests the Defence external integrity agency to conduct an investigation into the behaviour of Divisional Officers, the culture of the treatment of females at the Speculation Training Centre and whether Ms Green’ allegations are true (and, if so, whether there has been a ‘cover up’). The agency undertakes an investigation, which includes a call for similar complaints from current and former staff cadets, interviews with staff cadets and Centre staff, a review of the Centre’s policies and procedures regarding behaviour. The agency provides a report to the Minister. It includes recommendations regarding the Centre and recommending that SCDT Green and her peers be paid compensation. The government accepts most of the recommendations, and for those recommendations that it does not accept, tables its reasons in Parliament.

7.2.14. The Defence external integrity agency would remain completely independent from Defence. For example, like other integrity agencies, its legislation would likely be administered by the Department of the Prime Minister and Cabinet. Staff would not include ADF members, although they may be former ADF members in order to provide relevant experience and context for Defence matters. Defence could also provide ADF members to act as liaison officers. The agency could have

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201 The external integrity agency would generally refuse to consider a first-instance complaint if internal complaint and review processes were suitable in the circumstances.
202 Despite the comprehensive and resource-intensive CDF Commission of Inquiry conducted by Mr Gyles into the HMAS Success matter, complaints to the Inspector General ADF have triggered a further internal inquiry into the matter.
access to any database containing the records of trigger events, as envisaged in Phase 1: Recording, Reporting and Initial Assessment.\textsuperscript{203} Further, the agency’s powers would include rights of entry into Defence facilities, and authority to directly liaise with Defence staff at all levels.\textsuperscript{204}

7.2.15. Significantly, all the functions identified for the external integrity agency already exist, but are currently spread across a number of agencies. In the event that the recommended were implemented through the creation of a new Defence external integrity agency, the functions that would be transferred to the Defence integrity agency would include the Defence Force Ombudsman’s functions and the oversight and external review type functions currently performed by the Inspector General ADF in relation to military justice and the Service Police Code of Conduct. There would no longer be a requirement to conduct a CDF Commission of Inquiry in relation to Service-related deaths. Arguably, there would also be no need for Defence to maintain the position of the Judge Advocate General (even if the Military Court of Australia is established) as the Defence external integrity agency could scrutinise ADF summary discipline processes. The purpose of consolidating these functions is to improve perceptions of independence (especially in relation to the Inspector General ADF), to increase efficiency (especially in relation to CDF Commission of Inquiry functions) and to ensure that the external agency has appropriate resources to direct at Defence-related matters (unlike the Defence Force Ombudsman, which is currently operating with 1.5 full time equivalent staff).

7.2.16. However, if a new Defence integrity agency were established, it would only be viable if these current offices were abolished and the resources currently associated with those functions transferred to the newly formed Defence external integrity agency. If the recommended model were implemented through the re-invigoration of the Defence Force Ombudsman, these other offices would similarly need to be abolished and the associated resources transferred accordingly. Resources would need to be quarantined to prevent redirection to other Commonwealth activities over time.

7.2.17. To ensure integrity and accountability of Defence decision making, decisions and actions should be subject to external scrutiny, and so the agency’s mandate would be intentionally broad. Provided any external integrity agency is appropriately resourced, has sufficient legislative powers, and is staffed with appropriately experienced and skilled personnel, there is no reason why it would not be able to perform an effective oversight function, including on ‘military justice’ matters. It would be expected that there would be a certain degree of deference to military commanders in the exercise of command, particularly in relation to decisions made in operational contexts or where the decision is peculiar to military service. Such deference is appropriate, given that some decisions in Defence have significant

\textsuperscript{203} This arrangement exists in the Commonwealth Ombudsman in respect of the Australian Federal Police performance standards computer systems.

\textsuperscript{204} Other integrity agencies, including the IGIS and the Law Enforcement Integrity Commissioner, have oversight roles in respect of highly specialised agencies (intelligence, security and law enforcement agencies). Their staff, resources and access to these agencies allows them to perform an effective oversight role. IGIS, for example, does not simply respond to complaints about intelligence and security agencies, but conducts an active inspection program, targeting high risk activities. It has also conducted reviews of specific matters at the request of the Prime Minister.
consequences beyond the affected individual (particularly in operational contexts) and that decision makers in Defence are usually best-placed to determine what the broader Service need actually is in any given context. The unique aspects of the command and control relationship do not, however, mean that commanders’ decisions should be exempt from external scrutiny.

7.2.18. By virtue of the integrated environment, the Defence external integrity agency would have a role in relation to a decision by an APS employee that affects an ADF member or where an APS employee is a professional investigator. Generally, APS employees would continue to obtain external review about employment-related decisions through the Merit Protection Commissioner (or Fair Work Commission).

7.2.19. **Role of Administrative Appeals Tribunal.** The Administrative Appeals Tribunal is a merits review tribunal which has power to re-make the decisions of government agencies. The Administrative Appeals Tribunal’s jurisdiction is conferred by the legislation under which the primary decision is made. The *Re-Thinking Systems Review* proposes a greater role for the Administrative Appeals Tribunal in reviewing decisions made within Defence. In particular, decisions about allowances and other benefits for ADF members, including those made under section 58B determinations, would be reviewable. Defence is bound by the decisions made by the Administrative Appeals Tribunal and, over time, exposure to external review in this way may encourage better drafting of section 58B determinations and better decision making. In the absence of any kind of industrial relations mechanism for ADF members, it is fair for them to be able to access a low-cost adjudicator.

7.2.20. Generally speaking, the Administrative Appeals Tribunal reviews decisions made by government agencies about private individuals external to the agency. For example, reviewing a decision made by the Department of Immigration and Citizenship regarding a visa application by a private individual, or a decision made by Centrelink in relation to a private individual’s eligibility for social security payment. However, the Administrative Appeals Tribunal also has jurisdiction to review decisions made by government agencies in relation to their own employees as envisaged in the proposed models. For example, reviewing a decision made by Defence regarding an ADF member’s entitlements under the Defence Home Ownership Assistance Scheme.

7.2.21. Decisions affecting ADF members regarding entitlements and other benefits are made under legislation and legislative instruments. That is, a legislative

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205 For example, a decision not to post an ADF member to a desired position would be reviewable by the external integrity agency. However, in the absence of extenuating circumstances, it would unlikely that the agency would interfere in a posting decision beyond commenting on the process followed, as Service decision-makers are best-placed to determine who is suitable for a position at any given time.

206 Determinations made under section 58B of the *Defence Act 1903*

207 Note that applications for review of decisions made under section 58B determinations are currently exempt from filing fees: *Administrative Appeals Tribunal Regulations 1976*, Schedule 3.

208 Some section 58B determinations provide for discretionary decisions to be made in ‘exceptional circumstances’, and so it may not be appropriate for such decisions to be reviewed by the Administrative Appeals Tribunal. Each allowance and entitlement under section 58B determinations will need to be carefully reviewed to ensure that it is appropriate for them to be reviewed in such circumstances. However, it is anticipated that such decisions would be in the minority.
instrument sets out objective criteria for entitlement to a particular allowance or other benefit, and a decision is made by a Defence decision maker on an ADF member’s eligibility in accordance with those criteria. Given that such decisions are not an inherent part of the ‘raise, train and sustain’ functions of the Services, it is appropriate for them to be subject to external review through the Administrative Appeals Tribunal (although, this proposal is not essential to the implementation of the models).

7.2.22. Expanding the options for merits review of decisions related to ADF members’ entitlements by the Administrative Appeals Tribunal would provide an alternative to court proceedings. To this end, it would be a more cost effective and less legalistic path. In any case, it is likely that the number of cases like to proceed to the Administrative Appeals Tribunal would be limited. If the single layer of review and Defence internal review area concepts recommended in Phase 3: Internal Review are implemented it would improve internal review processes which would, in turn, minimise the requirement for external review.

7.2.23. Relationship between external integrity agencies. The proposed expansion of the Administrative Appeals Tribunal’s jurisdiction and the jurisdiction of the Defence-specific integrity agency / agencies would create some overlap in terms of overall external review coverage. There would also be overlaps between the Defence-specific integrity agency / agencies and the Merit Protection Commissioner. This is a very typical result in the external integrity system, and is not considered to be a weakness of the proposed models. For example, almost all decisions reviewed by the Administrative Appeals Tribunal are also reviewable by the Commonwealth Ombudsman. These agencies address overlapping functions in a number of ways, including through enabling legislation allowing referral of matters between agencies.

7.2.24. It is also important to note that in the case of the Administrative Appeals Tribunal, its functions and powers differ from other integrity agencies. The Administrative Appeals Tribunal is concerned with the merits or substance of a decision, and it is empowered to re-make a decision. By contrast, other integrity agencies focus more on procedural or systemic flaws in the way decisions have been made, and do not have the power to re-make the decisions.

7.2.25. The Administrative Review Council has suggested that a major benefit of overlapping jurisdictions between the Administrative Appeals Tribunal and other integrity agencies is ‘to offer aggrieved individuals a range of distinct review venues in which they can pursue administrative justice according to the particular circumstances of their case’. Confusion about the methods of external review available can be mitigated by informing individuals of their review rights when decisions are made within Defence.

209 For example, the functions of the Commonwealth Ombudsman and the Inspector General Intelligence and Security overlap.

210 For example, section 6 of the Ombudsman Act 1976 provides for the Ombudsman to transfer complaints to other integrity agencies where they would be more appropriately dealt with.

7.3. Process map

7.3.1. Map 4.1 in Annex K: Process maps provides an outline of the review process that would be followed if one of the external review model was implemented.

7.4. Possible variation to the recommended model

7.4.1. The Re-Thinking Systems Review has identified a variation to the recommended model where there would be four separate avenues for external review of Defence decisions and actions.

7.4.2. The Merit Protection Commissioner would conduct external review of decisions affecting APS employees in accordance with the Public Service Act 1999. The Merit Protection Commissioner has the power to make recommendations to the Secretary in relation to the decision or action under review.

7.4.3. The Administrative Appeals Tribunal would conduct external review of decisions relating to ADF allowances and other benefits. As a merits review tribunal, it would have power to re-make decisions which, in the absence of judicial review, would be binding on Defence. The Tribunal would focus on the substance of the decision and whether Defence’s decision was the ‘correct and preferable’ one, rather than the process that was followed within Defence in making the decision.

7.4.4. The Defence Force Ombudsman would conduct external review of ‘action that relates to a matter of administration with respect to a matter that is related to the service of a member of the Defence Force or that arises in consequence of a person serving or having served in the Defence Force’. The Defence Force Ombudsman would not be able to review decisions or actions in connection with proceedings for a disciplinary offence. The Defence Force Ombudsman would have the power to make recommendations to Defence in relation to the decision or action under review.

7.4.5. The Inspector General ADF would maintain its specialist role in relation to military justice but, in order to promote confidence in the independence of the office, would perform that role externally to Defence and the ADF. In order to emphasise the ‘external’ nature of these functions, the Inspector General ADF would report to Parliament in the same way as the Defence Force Ombudsman, rather than to the CDF. The Inspector General ADF’s powers to compel the production of evidence would also be the same as the Ombudsman. In order to preserve independence, it would no longer perform ‘internal’ functions, including first instance investigations into complaints and training of Defence investigators and ADF members could not be posted to the Office. The Inspector General ADF would have power to make recommendations to Defence in relation to the decision or action under review.

7.4.6. An illustration of the operation of this variation is as follows.

Illustration 19.
SMN Jones has received a fine of 7 days pay under the DFDA Act. He considers that this sanction is too severe and applies for internal review. He is

212 This is the Defence Force Ombudsman’s current jurisdiction, defined in Ombudsman Act 1976, section 19C.
unsuccessful and applies to the Defence Force Ombudsman for review. The Defence Force Ombudsman refers the matter to the Inspector General ADF, as it involves military discipline which is not within the Ombudsman’s jurisdiction. The Inspector General ADF has some concerns about the process of charging and sentencing in this case, and recommends some systemic changes. However, it considers that in light of SMN Jones’s conduct, the fine imposed was appropriate. Defence implements the recommendations relating to the disciplinary process.
8. Coordinating structures and supporting mechanisms

8.1. Introduction

8.1.1. The Re-Thinking Systems Review has identified a number of coordinating structures and supporting mechanisms that would be required or desirable for the successful implementation of the proposed models.

8.2. Centralised workforce functions, skills and status

8.2.1. The Re-Thinking Systems Review was required to make recommendations for whole-of-Defence outcomes from a first principles perspective. One of the essential components of an optimal system that was agreed by the CDF and then Secretary was the incorporation of coordinating and monitoring mechanisms to ensure consistency. The Re-Thinking Systems Review considers that, at the very least, coordination of resources against whole-of-Defence priorities would be necessary to meet whole-of-Defence requirements.

8.2.2. Relationship between Defence areas. The recommended model outlined above assigns functions to a ‘Defence assessment and reporting area’, a ‘Defence investigation area’ and a ‘Defence internal review area’. In addition, there would be a requirement for central coordination of liaison between Defence and the external integrity agencies.

8.2.3. It is suggested that the Defence assessment and reporting area, Defence investigation area and external liaison functions be within the same workgroup, given the overlap between areas of expertise. The functions of this workgroup would be directed at providing support to commanders, line managers and other decision makers in Defence in accordance with whole-of-Defence priorities. Support functions for Defence personnel are discussed in the following section.

8.2.4. The Defence internal review area, which would receive applications for review from APS and ADF personnel, would be separate from the Defence assessment and reporting area and the Defence investigation area in order to support the impartiality of review delegates. The Defence internal review area would, however, record review applications and their outcomes to the same Enterprise Recording, Reporting and Case Management System, ensuring that the system contains information about decisions in Defence from the time of the incident through to final resolution.

8.2.5. The proposed models would not interfere with the SeMPRO’s functions in relation to sexual misconduct, including restricted reporting. In fact, the proposed Defence assessment and reporting area could refer matters directly to SeMPRO as appropriate. Like other support mechanisms for individuals, SeMPRO would be separate from the Defence area, but coordination and referral arrangements would be in place.

8.2.6. Figure 4 illustrates the relationship between these different functions.
Figure 4. Relationship between Defence areas

Defence assessment and investigation area

Defence assessment and reporting area
(Assessment / triage of trigger event reports)
+ Whistleblower hotline
+ Public complaint portal

Defence investigation area
(co-ordination of investigations and management of investigator pool/s)
CDF / Secretary can direct expert fact finding into sensitive, difficult and complex matters (typically referred to IGADF in current arrangements)

Policy development
(reporting and investigation policies)

Training / education
(investigators and Defence personnel)

Liaison with external investigative and review agencies
(eg AHRC, Police)

Advice line for commanders / managers

ICT system
Data tracking
Reporting
Intelligence
Research
Analysis
Monitoring

Defence internal review area

ADF internal review

APS review of action

Phase 1: Recording, reporting and assessment
Phase 2: Fact finding
Phase 3: Internal review
Phase 4: External review

SEMPRO – unrestricted reports
SEMPRO – restricted reports

Re-Thinking Systems of Inquiry, Investigation, Review and Audit in Defence
Stage B Report for Secretary and CDF
8.2.7. **Skills and status of personnel in the Defence areas.** In addition to resource savings, key benefits of centralising certain functions in Defence is that it allows for the professionalisation of these elements of the Defence workforce.

8.2.8. Centralising reporting and assessment functions would enable the professional development of individuals with significant experience in identifying issues and risks of particular trigger events. Commanders and line managers, who may experience such events only infrequently, would be able to draw on this expertise when required.

8.2.9. Similarly, centralising investigative capability would enable the professional development of individuals with specialist investigative skills. Career progression for investigators would be enhanced by such a structure and professionalisation of this capability would make investigative career paths in Defence more attractive. This would not, of course, prevent investigators from specialising in particular types of investigation, such as fraud, security or misconduct.

8.2.10. ADF personnel would develop skills and experience in postings to the Defence areas which may be transferable in subsequent postings. Over time, the *Re-Thinking Systems Review* expects that this would build unit-level capability. Conversely, unit or work-level capability could also increase through exposure to the professionalised workforce. For example, where a professional investigator is sent to a unit or work area, a staff member within that unit or work area could shadow the investigator, giving them the opportunity to develop fact finding skills.

8.2.11. Generally speaking during consultation and in the war-games there was very little concern about using civilian investigators in ADF contexts and vice versa. The focus was on ensuring that professional investigators assigned to a particular matter have appropriate context and experience to conduct that investigation. In some cases, ADF members are more likely to have that context and experience. However, APS / civilian investigators should not be precluded merely because they are civilians. Similarly, so long as an ADF member is familiar with and appreciates the APS context in terms of APS values and cultural expectations, there is no reason why an ADF member could not investigate the conduct of an APS employee.

8.2.12. This matter is more vexed in operational contexts (for example, in areas of armed conflict or on a Navy ship deployed on operations). There would be a need to ensure that Defence’s professional investigative capability includes sufficient numbers of deployable professional investigators, such as permanent ADF members or APS employees who are also Reservists. Many civilians currently work in operational environments, for example, as ‘Defence civilians’ under the DFDA. Arrangements for civilian investigators in operational contexts, including force protection, legal liability issues and deployability including medical, mental and physical fitness, would be the same as for any other Defence APS employee going into that environment.

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213 During war-gaming, the potential for a hybrid APS / ADF Reserve employment model was discussed in this context. While novel, the potential for such an approach could be investigated further in other work underway to examine the Reserve employment status in the ADF.
8.3. Support for commanders, line managers and other decision makers

8.3.1. The purpose of inquiry, investigation and review is to support decision making. Commanders and line managers would require initial training about these processes. As many commanders and line managers will deal with these matters only infrequently, however, they also need to be able to access ‘just in time’ training and support.

8.3.2. The advice function performed by the Defence areas would assist decision makers to manage and prioritise trigger events. This may improve consistency throughout Defence. This is not intended to replace the specialist advice functions of other areas in Defence, such as human resources in relation to longer term performance management or Service personnel agencies. Similarly, commanders and line managers could also obtain advice or support from their own chain of command. If contacted for support, the Defence assessment and reporting area may determine that another area in Defence is better suited to providing advice required and refer the commander or line manager through established linkages.

8.3.3. The policy and guidance developed by the Defence areas would be user friendly and updated as required. Policy guidance could include templates, frequently asked questions, process maps, checklists and other material directed at supporting the user. Ideally, access to these documents would be through a single portal on the DRN – preferably direct from the Defence intranet homepage. These documents could also be available on the internet and in hard copy so that decision makers could access them where the DRN is not available.

8.4. Support for individuals

8.4.1. While the focus of the Re-Thinking Review is on decision making, that process necessarily affects individuals and it is essential that existing support arrangements for individuals are coordinated and coherent. Indeed, the functioning of the recommended model would be strengthened by enhancing individuals’ understanding of how to lodge and respond to trigger events and by then providing effective support to individuals involved in the trigger event, or who wish to make a report or seek review of decisions.

8.4.2. Promoting individual awareness. Defence personnel need to be aware of avenues through which they can make complaints, access reasons for decisions, and apply for review of decisions. Given the infrequency with which most Defence personnel will need to access these avenues, it is important that mandatory awareness training and other means of promulgating information (such as pamphlets and posters) is easily accessible. Indeed, the Pathway to Change strategy commits Defence to enhancing our people’s understanding of how to lodge and respond to complaints.

8.4.3. Coordinated and coherent support to individuals. Some Defence personnel will require personal advice and support, for example, to assist in understanding complaint avenues or drafting applications for review. There are many support mechanisms currently available, such as the Equity Adviser Network, the Defence Equity Advice Line (DEAL), the Employee Assistance Program (for APS employees), human resources support, Chaplains, psychological and other medical
support, SeMPRO, and various hotlines (such as the Army Fair Go Hotline). ADF members also obtain significant support through their chain of command.

8.4.4. In recent years, there has been a growing tendency for ADF members to obtain support through legal officers. For the most part, legal advice on making complaints and seeking review is unnecessary and, on occasion, is counter-productive in resolving the member’s core issue. Defence policy which enables Defence personnel to obtain legal support is extensive (a table listing the various Defence Instructions which refer to legal support is at Annex I). If the models proposed are implemented, these processes will be less legalistic, and any requirement for legal support would be reduced.

8.4.5. While practical support is required in many instances, such as in drafting applications, this rarely requires legal skills. Support mechanisms such as the Airman’s friend concept, the Navy divisional system and the functions previously performed in Army Orderly Rooms may be better suited to providing individuals with support than legal officers. During consultation, these mechanisms were cited as being suitable alternatives in many instances. If the proposed models are implemented, it would provide an ideal opportunity to re-invigorate Service support mechanisms to ensure that the focus remains on resolving the member’s issues. In any case, the various support arrangements would benefit from a coordinated, coherent approach in order to ensure appropriate understanding and access by Defence individuals.

8.5. Training and education

8.5.1. Following consideration of the Stage A Report, the CDF and then Secretary requested that a training and education concept be included as a ninth essential component of an optimal system of inquiry, investigation and review for model development in Stage B. The Pathway to Change strategy advocates for Defence to become an environment where Defence personnel are held accountable for their actions and demonstrate good decision making. The survey conducted in Stage A indicated that 76% of respondents were involved in overseeing or managing an inquiry, investigation or review. This underscores the need for reform to be supported by an education and training concept that provides general information and practical guidance to assist individuals to understand, manage and conduct initial assessment, fact finding and review activities.

8.5.2. As discussed above, Defence currently has a significant body of programs which train Defence personnel in aspects of managing trigger events and conducting fact finding processes according to particular subject matters or roles. However, overall the current product does not provide a common, consistent, well-published and mandatory system of training.

8.5.3. An education and training concept should publicise and teach all Defence personnel about how the system operates generally, as well as in relation to their

214 The Canadian grievance system currently adopts a process of support whereby the aggrieved is assigned an assisting member. The aggrieved does not have direct access to legal support, however their assisting member does.
own specific participation (for example, in conducting fact finding or being a witness or complainant.

8.5.4. The myriad of current subject and role-specific training should be streamlined. A single Defence training concept should be delivered which outlines the initial assessment, fact finding and review processes within Defence. Training comprising the following three components is recommended:

- **Component 1:** Mandatory introductory training to build awareness and knowledge of all Defence personnel. Training formats would need to accommodate all personnel, including permanent ADF, Reserves, APS employees and cadets in the integrated workforce. External contractors also require some knowledge of Defence expectations. Content should address Defence values and behaviours; personnel management procedures under the APS Code of Conduct and military discipline system; initial assessment, fact finding and review processes; and reporting procedures for trigger events. Mandatory training should also include availability of support mechanisms, including those discussed in section 8.4.

- **Component 2:** Commanders and managers, cadet staff and junior officers require role-specific training. Training should address how to conduct initial assessment and fact finding, and understanding each role in such processes (for example, witnesses, managers, suspects and complainants). Similarly, Defence personnel working in the Defence areas, such as professional investigators, would require training specific to their role to establish and maintain professional standards. This would need to be consistent with whole-of-government requirements such as the Commonwealth Fraud Control Guidelines, the Australian Investigative Standards and developed by, or in consultation with the AFP.

- **Component 3:** Specialised preventative training which focuses on the values and behaviours of individuals to promote consistency with Defence standards. This should include specialised preventive training for high risk groups, such as those who are or manage an individual under 21 years of age or those who work at a training establishment. Learning outcomes may include how to avoid becoming involved in problematic situations.

8.5.5. The development of these components will need to be informed by the Defence values and behaviours as identified in the *Pathway to Change* strategy. It is also essential that the training takes into account the integrated environment (ADF member, APS employees, cadets and contractors) and address the complexities of an integrated system.

8.5.6. The *Re-Thinking Systems Review* understands that Defence Learning Branch is currently conducting a review of the education and training model in Defence. It must be involved in the development of any training and education concept during the implementation phase. A strong communication plan would also

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215 Noting that compliance with Defence processes and procedures is generally a contractual requirement.

216 Junior officers would be expected to begin managing and participating in fact finding processes.
be required to support training and education, such as fact sheets, a DRN toolbox, and ‘just in time’ training and advice.

8.6. Information technology

8.6.1. Paragraph 2.2.10 lists some of the electronic case management and reporting systems that are already in use or under development in Defence. These are costly to develop and maintain, and most do not have the capability to communicate information to each other. This means that data relating to a single trigger event is expected (but may not) be entered into multiple databases, and makes data tracking and trend analysis difficult.

8.6.2. Proposed Enterprise Recording, Reporting and Case Management System. The recommended model requires reporting of trigger events to a Defence assessment and reporting area. Ideally, the model would be supported by an interactive Enterprise Recording, Reporting and Case Management System, which would operate through the whole incident management cycle from the initial report of the trigger event through to its ultimate resolution (that is, throughout recording, reporting and initial assessment, fact finding, internal review and external review phases). A technology platform such as this would foster transparency in decision making and actions, and provide visibility for commanders and line managers of outcomes, both in relation to events that occur within their unit or work area, and in relation to individuals they are supervising.

8.6.3. Key features of an Enterprise Recording, Reporting and Case Management System could include:

- Reporting of trigger events simultaneously to the Defence assessment and reporting area and the chain of command, as required.
- Ongoing reporting of the management and resolution of trigger events, including ability to attach documents.
- Workflow management capability, such as the ability to task people/positions (both automatically and manually), reminder features for follow-up action, workflow between units/work areas and specialist functions, and monitoring of workflow.
- Investigation, scoping and planning and reporting for both unit/work area-level and professional investigations.
- Security protocols, such as variable access based on role, relationship to trigger event, and any limits or restrictions on the use of the information. Business rules would need to contain access arrangements allowing Defence personnel to perform management, command and leadership functions as is currently the case for other existing ICT platforms (for example, AIMS and PMKeyS).
- Versatile search functions.
- Ability to link to Objective to access and search for related and relevant documents to improve efficiency in processing FOI applications and responding to other requests for documents (for example, Comcare investigations or subpoenas).
• Availability on the DRN, DSN and CadetNet, but ability to report trigger events without accessing the DRN, DSN or CadetNet, including through smart-phone applications and similar.

• Ability to audit access and use of the information on the database to help protect personal and security information.

• Tracking for risk management, such as identification of problem areas so that action can be taken to mitigate risk, including repeat offenders, complainants, and safety concerns.

• Tracking to aid Defence reporting (for example, statistical information to external organisations, inclusion in the Defence Annual Report, or information for Parliamentary committees) in relation to particular subject matters, such as the incidence of sexual harassment, alcohol-related incidents, and security incidents.

• Ability to link to management of Department of Veterans’ Affairs matters.

• Ability to monitor and ensure compliance with National Archives of Australia archiving and disposal policies.

• Tracking to capture costs (for example, of investigations and provision of legal support).

• Ability to quickly and easily amend reporting form(s), templates and workflow processes within the system.

8.6.4. There would also be scope for any Enterprise Recording, Reporting and Case Management System to support the SeMPRO. In such instances, reporting is for the purposes of obtaining support, and so identifying information contained in reports would need to be rigorously quarantined so that only SeMPRO would have access. De-identified information could still be used for statistical and trend-tracking purposes. Similar access arrangements may be required for the Defence Whistleblower scheme, under which complaints may be made confidentially.

8.6.5. In the recent Inspector General ADF notifiable incident review, the Inspector General ADF indicated support for a universal reporting portal and the concept of a Defence-wide case management system, as suggested here. Other reports also recommended the need to improve ‘systemic integrity’ through technology platforms – the need for ‘something that is whole and healthy, that is functioning well, as intended’. These recommendations include a review of all databases that record performance, conduct issues and complaints relevant to alcohol; a review of databases that record abuse and unacceptable behaviour; and that consideration be given to creating an enterprise-wide, centralised, integrated Information Communication and Technology incident reporting and case management system (including tracking conduct and responding to media).

217 Robin Creyke, ‘An “Integrity” Branch’ (2012) 70 AIAL Forum 33
218 Hamilton review 2011, recommendation 6
219 DLA Piper report, issues 7, 8 and 10 and supplementary 6; IGADF notifiable incident review 2012, recommendation 2; Elizabeth Broderick, Report on the Review into the Treatment of Women at the Australian Defence Force Academy (Phase 1 of the Review of the Treatment of Women in the Australian Defence Force), 21 October 2011 (Broderick Phase 1 report), recommendation 27
8.6.6. **ICT Feasibility study.** The *Re-Thinking Systems Review* is aware that there have been a number of requests from various areas throughout Defence for a case / incident management system to facilitate the management and resolution of particular issues. On the basis of these requests, as well as the findings of the *Re-Thinking Systems Review* and recommendations of the Inspector General ADF, the *Re-Thinking Systems Review* has commenced work with Chief Information Officer Group to undertake a feasibility study into a whole-of-Defence case management system. The feasibility study will assess whether a whole-of-Defence Enterprise Recording, Reporting and Case Management System that has the capabilities listed at paragraph 8.6.3 is feasible and provide indicative cost and time frame. The feasibility study includes consideration of whether this could occur through building on one or more of the existing systems already used in Defence (paragraph 2.2.10 refers) or whether a new system (or systems) would better meet Defence’s long-term needs.

8.6.7. It is anticipated that development of a system of this nature would take considerable time. A single portal on the DRN (and the DSN and CadetNet) containing a copy of the single reporting policy and links to all relevant reporting forms and programs may be a useful interim measure.

8.6.8. **Privacy and information management.** During Stage B consultation, there were a number of views about the nature of information that should be collected about trigger events and how that information should be used. Clearly, the use of an Enterprise Recording, Reporting and Case Management System in the manner described would result in the collection of a significant amount of personal information. It is proposed that this information could then be used and disclosed for a variety of purposes, including data analysis, trend tracking and the identification of serial offenders and complainants. Significantly, the *Re-Thinking Systems Review* considers that this can be achieved within the *Privacy Act 1988*.221

8.6.9. Many current Defence documents include advice or instructions pertaining to privacy. They typically take a very conservative approach to the protection of personal and health information. There are many instances where key Defence documents either misconstrue the effect of the Information Privacy Principles (IPPs) or do so in a way which is not fully contextualised. The Information Privacy Principles (and future Australian Privacy Principles) provide a significant degree of latitude in relation to agencies collecting and using personal information. One of the key requirements is to inform people of the likely uses of their personal information when it is collected.

8.6.10. Determining who has access to information and how it can be used is important for protecting the privacy of individuals in Defence. While safeguards need to be put in place regarding the access and use of personal information, this does not

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220 Chief Information Officer Group advises that this includes requests from the Defence Materiel Organisation and Defence Honours and Awards.

221 The Information Privacy Principles (IPPs) contained in the *Privacy Act 1988* regulate the way that Defence must collect, use, disclose and store personal information about Defence personnel. Amendments to the *Privacy Act 1988*, including the new Australian Privacy Principles (APPs), will take effect in March 2014.

222 DLA Piper report, Appendix 29
mean that it should not be collected and used appropriately. An Enterprise Recording, Reporting and Case Management System would include significant security protocols controlling access to information at various levels. The amount of information available to an individual’s commander or line manager, for example, would need to be considered carefully. Similarly, the degree of information available to career management agencies would need to be considered to ensure that personnel decisions are not made on the basis of irrelevant information, or that decision makers are not at risk of claims of apprehended bias. Business rules would need to address who has access to information and in what circumstances.

8.6.11. The Privacy Act 1988 also provides a right for individuals to access and correct records held by Defence that contain their personal information. An Enterprise Recording, Reporting and Case Management System would provide greater safeguards to individuals through making it easier for Defence to search for relevant and complete records and provide them to individuals when requested. Similarly, such a system would facilitate freedom of information requests.
9. Model Testing

9.1. Hypothetical illustration of the recommended model

9.1.1. As part of the model testing, a hypothetical illustration has been developed to provide a narrative of how the recommended model would operate in practice across the four phases of the decision making framework. In practice, there would be many factors which influence the management of a trigger event including decisions on policy and whole-of-Defence priorities for the Defence assessment and reporting area and Defence investigation area. The scenario has been provided to assist understanding of the recommended model.

9.1.2. Background to the scenario. The hypothetical scenarios take place at Speculation Barracks, which is home to a procurement cell servicing the region as well as a specialised training facility for ADF members who will be deployed to the MEAO to fulfil a particular function. Individuals currently based at Speculation Barracks include ADF members who are trainees (and therefore temporarily assigned to Speculation Barracks), and permanent staff including permanent ADF members, Reservists, APS employees and contractors. An appropriate declaration under regulation 4 of the Defence Force Regulations 1952 is in place.

9.1.3. Phase 1: Recording, Reporting and Initial Assessment:

It is three weeks until the trainees are due to complete their course at Speculation Barracks and deploy to the MEAO. SGT Smith (an instructor) is busy filling out paperwork for the farewell function when LACW Jones (a trainee) knocks on his door and asks to speak to him. SGT Smith notices that she is shaken up so invites her in. ‘Sir, I’m sorry to bother you with this because I know how busy you are’ LACW Jones says as she chokes back tears. ‘But I just cannot take it any more’.

SGT Smith asks LACW Jones why she is upset and she reveals that SMN Brown, a fellow trainee, has been sexually harassing her for several weeks. ‘At first it was just the odd joke about me not being able to do things because I’m a girl, but it soon got nasty. He says sexually explicit things, he makes fun of my physical appearance, and in the mess this morning he threw water all over me. I just can’t take his bullying anymore!’

In the meantime, unbeknown to SGT Smith, LACW Jones’ mother sends an email to the Minister for Defence, which contains the following:

‘I am disgusted with the way my daughter Sally has been treated. I demand that the sexual harassment be immediately investigated and SMN Brown brought to account. This type of thing is typical of Speculation Barracks. Sally was just telling me the other day that the female medical officer she works with told her that SMN Brown had groped her on more than one occasion, but that she is too afraid to come forward. Something has to be done! If I don’t receive an adequate response by the end of the month, I’m taking this one to the media and the opposition spokesperson for Defence.’

The email is passed to Army HQ for action and draft response.
Actions by decision makers under recommended model:

SGT Smith consults the relevant policy and is satisfied that the behaviour LACW Jones is complaining of constitutes Unacceptable Behaviour. He is therefore required to complete the Initial Assessment and Reporting Form.

SGT Smith completes the form and, in accordance with the Speculation Barracks business protocols (which change from unit to unit), seeks clearance from the commanding officer. He then submits it simultaneously to his chain of command and the Defence assessment and reporting area. SGT Smith indicates on the form that his immediate action was to give LACW Jones short leave for the rest of the afternoon while he looks into the matter further. He indicates that his 'for action’ items include:

- Ensure LACW Jones is provided with adequate counselling and support.
- Undertake further fact finding to determine the circumstances surrounding the complaint of Unacceptable Behaviour made by LACW Jones.

Upon receipt of LACW Jones’ mother’s email, Army HQ also completes an Initial Assessment and Reporting Form (noting that the email would constitute a trigger event). Prior to preparing a response, Army HQ undertakes a search of reports it has been copied into and identifies that allegations have been reported separately by SGT Smith. Army HQ contacts the commanding officer to connect the two reports and to provide guidance as necessary.

9.1.4. Phase 2: Fact Finding:

In accordance with his first action item, SGT Smith arranges for LACW Jones to speak to the padre. To address the second action item, SGT Smith reviews the general non-statutory fact finding policy to re-fresh himself on how to best undertake fact finding activities and ensure that those involved are provided with procedural fairness.

SGT Smith approaches SMN Brown and asks him some general questions about his relationship with LACW Jones. Immediately, SMN Brown appears agitated: ‘This is a little left field Sir, what has prompted this?’ SGT Smith informs him that LACW Jones indicated that SMN Brown may have been bullying her. SMN Brown responded, ‘The thing is Sir, we were at the boozer the other night and after a few drinks Sally propositioned me. I said no of course – the Mrs wouldn’t have been too happy! Anyway, I think she was a bit embarrassed afterwards and she’s probably trying to put it all back on me.’

SGT Smith sends SMN Brown back to the course and decides that he needs to undertake further fact finding. He speaks to other trainees and finds out that Mr Blue (an APS Procurement Manager) and Mr Red (an APS Project Manager) were also with SMN Brown and LACW Jones that night. SGT Smith decides to speak to each of them. He starts with Mr Blue, and their conversation is as follows:

SGT Smith: Con, I’m trying to find out the facts in relation to a personnel matter involving SMN Brown and LACW Jones and I’d like to ask you a couple of questions. You understand that, in accordance with the Defence Fact Finding Policy, any information obtained through this fact finding process can be used for personnel, command or other internal management purposes?
Mr Blue: Yes, I understand. I’m happy to answer your questions.

SGT Smith: Great. Well, let me start with last Friday night at the pub. Did you see SMN Brown and LACW Jones talking to each other?

Mr Blue: I certainly did, and it wasn’t pretty. Sally was all over Barry. I always thought she had a thing for him, and boy did she show it that night. I could see it was making Barry uncomfortable but she didn’t seem to care and just kept going for it. Eventually Barry just left.

SGT Smith: And what has their relationship been like since then?

Mr Blue: Well, I haven’t seen them together all that much since, but from what I can tell it’s pretty icy. I even saw Sally throw a glass of water at Barry this morning.

SGT Smith thanks Mr Blue for his time and makes a record of their conversation.

SGT Smith then speaks to Mr Red. As with Mr Blue above, SGT Smith provides the background to the matter and informs Mr Red of the privacy aspects, to which Mr Red acknowledges. Following this, their conversation is as follows:

SGT Smith: Mr Red, I understand that you were also at the pub that night. Did you see SMN Brown and LACW Jones talking to each other?

Mr Red: Well, let me start off by saying that if you have already spoken to SMN Brown and Mr Blue do not believe a word they have told you. I’ve actually been meaning to come and speak to you about a couple of things and I suspect that this is all part of a big web of lies. I was chatting to Carey Cautious, the contracted Security Coordinator, the other day and she said something about her unusually high contract payments that made me wonder about how exactly she and her employer Midsomer Confidential was engaged by Mr Blue. So I asked Mr Blue and he refused to talk to me about it. I called another mate in the Procurement Cell and he said that he thought Mr Blue may be taking kickbacks from Carey or Midsomer Confidential. I really think you need to look into this. Something very dodgy is going on.

SGT Smith: And why do you say that SMN Brown is involved? And what does this have to do with LACW Jones?

Mr Red: I’m not exactly sure… I think SMN Brown might have been helping him in his scheme, so probably has his fingers in the till too. I think he has a master key, so maybe he has been accessing documents which he shouldn’t have, and passing them to Mr Blue. As for LACW Jones, maybe she found out about it and that’s why they’re picking on her?

SGT Smith thanks Mr Red for his time and makes a record of their conversation.

**Actions by decision makers under recommended model:**

Following these latest allegations, SGT Smith briefs the commanding officer who determines that a request should be made for a Professional Investigator to be appointed from the Defence investigation area to undertake a detailed investigation to inform decisions he may need to make.
SGT Smith completes a supplementary Initial Assessment and Reporting Form, containing the records of conversation, and a request that a Professional Investigator be appointed. SGT Smith also seeks advice on whether the commanding officer should remove SMN Brown’s access to the master key pending an investigation, or whether this might compromise the investigation through alerting SMN Brown. The Defence assessment and reporting area, together with the Defence investigation area, review the matter and determine that it is consistent with whole-of-Defence priorities for a Professional Investigator to be appointed in this instance. It provides advice to SGT Smith on the master key issue. The Defence assessment and reporting area provides an update to the commanding officer and the chain of command, which is preparing an interim response to LACW Jones’ mother.

A Professional Investigator (who is an APS employee) arrives at Speculation Barracks two days later and undertakes an investigation into all of the allegations that have been made. The Professional Investigator obtains assistance from subject matter experts at the Defence investigations area where required. Two weeks later, the Professional Investigator makes the following observations in his report for the commanding officer’s consideration:

Observations:

In relation to individual culpability:

1. There is evidence that SMN Brown and Mr Blue have committed fraud in accordance for processing the payment of higher invoices to Ms Cautious and then sharing the surplus with her.
2. There is evidence that SMN Brown has committed a security breach for obtaining a master key without permission and accessing documents he should not have accessed.
3. There is evidence that SMN Brown has engaged in Unacceptable Behaviour for his conduct towards LACW Jones.
4. There is no evidence that Midsomer Confidential was aware of the activities of Ms Cautious.

In relation to systemic issues:

1. Security surrounding access to master keys is problematic.
2. There is insufficient scrutiny of invoices / timesheets of contracted personnel, such that Ms Cautious was able to be overpaid.

The commanding officer reviews the observations of the Professional Investigator. He is unsure of the process regarding APS Code of Conduct breaches and so telephones the Defence assessment and reporting area for further information. Following this, the commanding officer reaches the following conclusions:

Conclusions:

1. SMN Brown should be charged under the DFDA for his involvement in the fraud and security breach, and his Unacceptable Behaviour towards LACW Jones.
2. Mr Blue should be found to have breached the APS Code of Conduct for his involvement in the fraud.
3. Midsomer Confidential should be directed (under the terms of the contract) to remove Ms Cautious as key personnel and provide a suitable replacement.
4. An audit should be undertaken of master key control.
5. All payment of invoices for contracted personnel should be cleared through Headquarters until further notice.
Based on the above conclusions, the commanding officer takes the following actions:

**SMN Brown:** The fraud, security matters and Unacceptable Behaviour matters are referred to the Director of Military Prosecutions for multiple offences under the DFDA in relation to the fraud and security matters.

**Mr Blue:** The commanding officer provides a copy of the Professional Investigator’s report to the APS Code of Conduct delegate for her determination as to whether Mr Blue has breached the APS Code of Conduct. Based on the report, and some minor additional fact finding inquiries she made, the delegate finds that Mr Blue has breached the APS Code of Conduct.

**Ms Cautious:** The commanding officer directs that Midsomer Confidential replace Ms Cautious as key personnel.

**Other:** The commanding officer initiates an audit into master key access and implements the conclusions regarding Speculation Barracks’ invoicing process.

Based on the above outcomes, Army HQ prepares a response to LACW Jones’ mother to inform her that an investigation has been undertaken. The response states that Army HQ is unable to provide details due to privacy restrictions, but advises that LACW Jones has been fully informed and has received support throughout the matter.

9.1.5. **Phase 2: Fact Finding (in the deployed environment):**

Following the events at Speculation Barracks, Monitor Unit deploys to the MEAO. During a routine patrol, the vehicle that LACW Jones and her platoon are travelling in triggers an improvised explosive device. LACW Jones is killed.

Two weeks later, SGT Smith returns home on recreation leave. While home, he is involved in a domestic dispute while under the influence of alcohol. He is charged by the civilian police with assault and convicted (based on a plea of guilty) in the local magistrates court. He manages return to the MEAO without Monitor Unit being informed of the conviction.

**Actions by decision makers under recommended model:**

In relation to the death, the commanding officer immediately reports the matter in accordance with extant Defence policy. An Initial Assessment and Reporting Form is then completed. The Defence assessment and reporting area ensures that the death is reported to the Defence external integrity agency, and continues to provide updates to the agency as further facts come to light.

The commanding officer requests that the Defence investigation area appoint a Professional Investigator (who is a Defence Civilian based at the Al Minhad Air Base) to undertake an investigation regarding the circumstances surrounding the incident, as part of immediate operational decision making in response to the incident. In accordance with whole-of-Defence priorities a Professional Investigator is appointed, who is then flown to the MEAO. She talks to the other ADF members who were in the vehicle and the treating medical staff, but was unable to attend the site of the incident due to poor weather conditions. The Professional Investigator prepares a report stating that it appears as if the death was the result of a blast injury due to deficiency in body armour.
In relation to SGT Smith, following his return to the MEAO the commanding officer receives a tip from another soldier that SGT Smith may have been involved in an incident during his leave. After making some phone calls, the commanding officer confirms this and confronts SGT Smith who admits everything. The commanding officer tells SGT Smith that he considers his failure to report the arrest and subsequent conviction as breaches of Defence policy, and that due to his loss of trust he no longer has confidence in SGT Smith’s ability to perform the role of Monitor in the MEAO. SGT Smith responds to the commanding officer, and following this conversation the commanding officer tells SGT Smith that he is sending him back to Speculation Barracks.

9.1.6. Phase 3: Internal Review:

Following SGT Smith’s return to Australia, he speaks to the Chief of Staff about his entitlement to certain deployment allowances for the remainder of his original deployment duration. The Chief of Staff says that he is not entitled to the deployment allowances and provides reasons.

The stress of his return to Australia causes SGT Smith’s behaviour to further decline. He is frequently seen by his colleagues drinking heavily after work, and he has appeared to still be intoxicated some mornings when he goes to work. The Chief of Staff becomes aware of this and orders SGT Smith to undertake a psychological assessment.

Actions by decision makers under recommended model:

SGT Smith completes an ADF application for review, seeking review of his entitlement. The reasons for review are as follows:

- As I was sent home early, I lost the opportunity to earn the deployment allowances and so I should be given the same amount of allowances I would have otherwise received.
- I was not provided with enough support.

The application form is sent through the Chief of Staff, who indicates that he has reviewed the form but that he does not support it. The form is forwarded to the Defence internal review area which has a delegation to re-make the entitlement decision. It reviews the matter on the papers and decides that the original decision was correct, based on the objective requirements in the relevant section 58B Determination.

Separately, SGT Smith’s undergoes a psychological assessment and is diagnosed with post traumatic stress disorder. He eventually ends up before the MECRB which issues a termination notice (and he is assigned MEC 5 for administrative purposes). A decision is subsequently made to terminate his service because he is medically unfit. SGT Smith submits an ADF application for review, through his new commanding officer, to the Defence internal review area. The Defence internal review area refers it to Joint Health Command for expert consideration. Joint Health Command decides that the original decision was correct, based on the evidence and policy.
9.1.7. **Phase 4: External Review:**

SGT Smith is not satisfied with the outcome of his two requests for review and seeks external review.

LACW Jones’ mother writes to the Minister for Defence, the opposition spokesperson and the media about her daughter’s death. She expresses her concern that her daughter’s treatment at Speculation Barracks may have contributed to the incident. There is a lot of media interest.

**Actions by decision makers under recommended model:**

SGT Smith seeks review from the Administrative Appeals Tribunal in relation to the entitlements decision, and from the Defence external review agency in relation to the termination decision. SGT Smith also makes a complaint to the Australian Human Rights Commission that he has been discriminated against on the basis of his mental illness. On the basis that the matter is already being reviewed by the Australian Human Rights Commission, the Defence external review agency declines to review the termination decision at this stage.

Following SGT Smith’s unsuccessful complaint to the Australian Human Rights Commission, he requests external review from the Defence external review agency of his termination decision. The Defence external review agency liaises with Defence and the Department of Veterans’ Affairs to collect and review the relevant documents. After considering all of the information available to it, the Defence external review agency determines that the termination decision and the decision-making process was appropriate in the circumstances.

In relation to the death of LACW Jones, the Defence external review agency had initially declined to undertake an investigation as it was satisfied with Defence’s investigation into the matter. However, in light of the media interest and the concerns raised by LACW Jones’ mother, the Minister directs the agency to inquire into her death. The agency completes its inquiry and a copy, with appropriate redactions for security reasons, is provided to LACW Jones’ mother.

9.2. **Strengths and weaknesses**

9.2.1. The following analysis outlines identified strengths and weaknesses of the Status Quo Plus model and the recommended model (and variations) for each phase. The analysis is based on the Re-Thinking Systems Review’s own assessment, issues raised by stakeholders during consultation, brainstorming sessions and the two war-games and comments by the Inspector General ADF on the Status Quo Plus model. It is also based on PricewaterhouseCoopers’s analysis of the recommended model, which is contained in Annex L: PricewaterhouseCoopers analysis.

9.2.2. **Key observation on strengths and weaknesses.** Many of the strengths of the recommended model go directly to the matter of whether the model meets the essential components for an optimal system identified in the Stage A Report. For example, a significant strength of the recommended model in Phase 1: Recording, Reporting and Initial Assessment is that it is simple and easy for commanders and line managers to use. Strengths of Phase 2: Fact Finding include the flexibility to focus on information needs of decision-makers (rather than legalistic processes) and
a reduction in repetitive and inefficient effort by consolidating specialist fact finders into a single area. Weighing against these strengths, however, is the acknowledged weakness that implementation of the recommended model will be more difficult, will take more time and potentially more resources than if less radical reform were pursued instead. Poor implementation could mean that the key advantages of the recommended model are not realised.

9.2.3. In contrast, one of the key strengths of the Status Quo Plus model is that, because it builds on existing structures, implementation will be relatively simple and there will be fewer risks associated with poor implementation. However, the weaknesses of the model lead to an assessment that it does not meet the essential components of an optimal system. For example, it retains current complex reporting requirements that are difficult for commanders and line managers to understand and comply with, and it also retains the current focus on formal, legalistic and inflexible inquiry processes.

9.2.4. **Phase 1: Recording, Reporting and Initial Assessment.** The greatest strength of the recommended model for recording, reporting and initial assessment is the simplicity that would arise from a single recording and reporting mechanism, including use of a single form to shape the content of records and reports submitted to a Defence assessment and reporting area. Establishing a Defence assessment and reporting area would also provide a means to consistently support commanders and line managers across Defence in managing trigger events. As well as the benefits to commanders and line managers, Groups, Services and Defence as a whole would benefit from the comprehensive data set that would be created, for example by generating greater opportunities for accurate trend analysis to support policy development.

9.2.5. The variations on the recommended model, which relate to different thresholds for recording and reporting requirements, have different strengths and weaknesses. When reporting trigger events for information purposes, as well as when assistance is required (as in the recommended model) there is greater capacity for trend analysis. However, the volume of reports may affect the capacity of the Defence assessment and reporting area to review reports as they are provided. The model variations address this weakness because of the higher threshold for reporting, but do not have the same capacity for trend analysis and are more complicated for commanders and line managers to apply.

9.2.6. The Status Quo Plus model for recording, reporting and initial assessment would be easy to implement (requiring amendment of only two DI(G)s), and would be an improvement on current arrangements. For example, Quick Assessments would be less labour-intensive, as they would be completed on a form. In addition, Quick Assessments would not be required if the relevant information was captured on some other reporting form. However, the model retains many of the weaknesses of current arrangements for recording, reporting and initial assessment, including that commanders and line managers must be familiar with multiple policy documents, and must report trigger events to multiple areas in Defence.

9.2.7. Figure 5 provides a summary of the strengths and weaknesses of the recommended model, its variations, and the Status Quo Plus model in Phase 1: Recording, Reporting and Initial Assessment.
### Figure 5. Strengths and weaknesses of Phase 1 models

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<tr>
<th>Model</th>
<th>Strengths</th>
<th>Weaknesses</th>
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| **Recommended model and variations** | • A single recording and reporting mechanism rationalises the current multitude of reporting requirements. This is particularly beneficial in relation to multi-faceted trigger events.  
• Commanders and line managers would only need to be familiar with one whole-of-Defence reporting policy.  
• Commanders and line managers would be able to record and report multi-faceted trigger events through completing a single form, provided to a single area, rather than needing to find and comply with a multitude of different subject matter-specific policies and formalities. This would save time, avoid duplication of process and ensure that the focus remains on managing the issue and making decisions, and not on complying with procedural requirements.  
• Commanders and line managers would be able to instruct their staff to complete the form, allowing them to focus on the management of the trigger event itself, but could also complete the form themselves, providing flexibility for different types of work environment in Defence.  
• Reporting to a single area gives rise to greater transparency of decision making, which is particularly important in relation to personnel issues. It dispels the myth of reporting being kept 'in house', and creates a greater perception and reality of transparency.  
• The provision of consistent advice from a Defence assessment and reporting area in relation to all types of trigger events would give rise to greater consistency in the management of trigger events. Advice can be sought or provided upon the occurrence of a trigger event, which minimises the risk of inappropriate management. Commanders and line managers may have differing opinions over the priority or seriousness of a trigger event and whether resources should be allocated to manage it. The Defence area can provide advice and resources based on whole of Defence priorities, as determined by the Secretary and CDF. Control over the allocation of | • If the Defence assessment and reporting area does not meet its promise (for example, due to under-resourcing) it will not add value.  
• One size may not fit all – commanders and line managers may become frustrated through trying to complete generic fields which are not appropriate in all circumstances.  
• Divorcing triage from subject matter expertise may result in some issues not being identified early and managed appropriately. The Defence assessment and reporting area must be staffed by subject matter experts who have regular interactions with the relevant policy areas.  
• It may be difficult to identify who is responsible for the management of an issue if trigger events are dealt with as single issues.  
• Strong relationships that currently exist between specialist areas in Defence will be lost through their disbandment.  
• Recording trigger events, such as unsubstantiated complaints, may result in unfairness to individuals if it is inappropriate used.  
• There is no commonality of language across Defence which makes determining the wording of a single form difficult.  
• Accessibility may be limited in deployed or operational environments.  
• Significant investment has already been made in the multiple ICT systems being used by various areas within Defence.  
• There are risks associated with reliance on a single data source, such as where there is a data loss or there is a security breach. |
### Figure 5. Strengths and weaknesses of Phase 1 models

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<td>professional investigation capability would result in better targeted use of a scarce asset.</td>
<td>• Establishing a Defence assessment and reporting area may be more resource-intensive and time-consuming, at the outset, than maintaining current arrangements.</td>
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<td>• A standardised approach to all trigger events would break down the current silos and cultural barriers that exist between the different areas of Defence, enhancing a single Defence culture.</td>
<td>• Creating a single reporting policy, and revoking numerous existing reporting policies, will be labour intensive and require support from current policy owners.</td>
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<td></td>
<td>• The Defence assessment and reporting area would be able to connect stakeholders and resolve jurisdictional issues. Conversely, acting as a conduit between Defence and other external agencies would be beneficial, particularly given that ADF members post in and out of roles frequently, reducing the opportunity to develop relationships with external agencies.</td>
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<td>• The reporting form serves a useful purpose as a record keeping mechanism, creating consistency across Defence as to what information commanders and line managers record.</td>
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<td>• The Defence assessment and reporting area could audit the data collected for trend analysis purposes to identify serial offenders and systemic issues, where those matters which would otherwise fall through the cracks.</td>
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<td>• The standardisation of documentation makes it simpler to address freedom of information requests.</td>
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<td>• A single database will enhance Defence’s ability to undertake research in the future if, for example, another Defence-wide review (such as DLA Piper) is initiated.</td>
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<td>• Using a form provides a useful guide or checklist for commanders and line managers who may be required to manage trigger events infrequently.</td>
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<td></td>
<td>• Users can be trained in how to use a single form rather than multiple reporting requirements and formalities.</td>
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<td>• A single reporting mechanism would support the three Cadet</td>
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<td>organisations, where Cadet staff are often time poor and unaware of Defence’s complex internal reporting policies.</td>
<td>A low reporting threshold may discourage commanders and line managers to report trigger events at all. Commanders and line managers may feel undermined if they are required to report all of their decisions to a single Defence area for scrutiny.</td>
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<td>• If the model is supported by an ICT system, it could be used as a case management system, whereby trigger events are updated and documents are attached as the matter progresses.</td>
<td>• The low threshold for reporting would result in a high volume of trigger events being reported which may be unmanageable for the Defence area.</td>
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<td>• A single database of trigger events would be easily searchable for freedom of information and audit purposes. It would also assist in the management of data collected and used, which will assist compliance with privacy and archives requirements.</td>
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<tr>
<td>Recommended model only</td>
<td>• A requirement to report all trigger events is simple for commanders and line managers, and reduces the risk that a trigger event will not be reported because a commander or line manager has mis-characterised it.</td>
<td>• A higher reporting threshold would not provide the Defence area the opportunity to determine whether the trigger event is being managed appropriately.</td>
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<td>• The low reporting threshold is consistent with current reporting requirements, which require all safety incidents, all security incidents and all unacceptable behaviour incidents to be reported, regardless of their seriousness or whether assistance is required.</td>
<td>• As judgment is required as to whether a trigger event meets the requisite threshold, reporting requirements are more complex for commanders and line managers, and there is a risk of under-reporting.</td>
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<td>• The low reporting threshold creates the most complete data set for use in trend and statistical analysis.</td>
<td>• Transparency is reduced if commanders and line managers are not required to report lower-level trigger events outside</td>
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<tr>
<td>Variations on recommended model</td>
<td>• If a higher reporting threshold is adopted, the lower volume of reports would mean that the Defence area may not require as high resourcing and data may be more manageable. It may also be easier for the Defence area to identify incidents which require specialist investigation.</td>
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<td>• The higher threshold may allow the Defence area to audit a more specific range of data for trend analysis purposes.</td>
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<td>• With only more serious incidents being reported and/or recorded, there is less risk to individuals of information being used unfairly or</td>
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<td></td>
<td>inappropriately.</td>
<td>the chain of command.</td>
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<td>• Different reporting thresholds for different types of incidents could cause confusion.</td>
<td>• Different reporting thresholds for different types of incidents could cause confusion.</td>
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<td>• There would be limited capability for trend analysis.</td>
<td>• There would be limited capability for trend analysis.</td>
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<td>• The higher reporting threshold will actually decrease the number of matters that must be reported outside the chain of command, as compared to current requirements.</td>
<td>• The higher reporting threshold will actually decrease the number of matters that must be reported outside the chain of command, as compared to current requirements.</td>
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<td></td>
<td>• As commanders and line managers will only use the form for trigger events meeting a higher threshold, there may be a lack of consistency throughout Defence in how lower-level trigger events are managed.</td>
<td>• As commanders and line managers will only use the form for trigger events meeting a higher threshold, there may be a lack of consistency throughout Defence in how lower-level trigger events are managed.</td>
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<td>• There would be limited capability to identify systemic issues and serial complainants/respondents given that not all trigger events will be recorded.</td>
<td>• There would be limited capability to identify systemic issues and serial complainants/respondents given that not all trigger events will be recorded.</td>
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<tr>
<td><strong>Status Quo Plus model</strong></td>
<td>• Providing a form to complete Quick Assessments will create consistency across Defence as to what information commanders and line managers record following a trigger event.</td>
<td>• Commanders and line managers must be familiar with up to 16 different policy documents outlining whole-of-Defence reporting and initial assessment requirements.</td>
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<td>• The standardisation of Quick Assessment documentation makes it simpler to address freedom of information requests.</td>
<td>• Commanders and line managers must identify which of 12 specialist areas in Defence a trigger event must be reported to, as well as providing reports to their chain of command.</td>
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<td>• Using a form for Quick Assessments provides a useful guide or checklist for commanders and line managers who may be required to manage trigger events infrequently.</td>
<td>• Commanders and line managers must identify which of nine different forms must be completed to report a trigger event, if a form is available at all.</td>
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<td>• There would be less duplication as Quick Assessments would not be required if similar information were collected in another reporting form.</td>
<td>• The complexity of reporting requirements leads to a risk that commanders and line managers will under-report.</td>
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<td>• The high threshold for referral of matters to ADFIS for investigation, while retaining a requirement to report further matters to ADFIS for information, would enable ADFIS to prioritise its consideration of</td>
<td>• There is a high risk that a commander or line manager may fail to report a multi-faceted trigger event to all relevant specialist areas in Defence, so there is a heavy reliance on</td>
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<td>the chain of command.</td>
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### Figure 5. Strengths and weaknesses of Phase 1 models

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<th>Model</th>
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<td></td>
<td>reports to those matters requiring its expertise.</td>
<td>ad hoc referrals of these trigger events between specialist areas.</td>
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<td>• The model is based on well-established and understood structures, including the Quick Assessment process, notifiable incident reporting requirements, ADFIS, Inspector General – Defence and Defence Security Authority.</td>
<td>• Multiple specialist areas in Defence must maintain capacity to receive and assess reports, and to develop reporting policy and reporting forms. They must also maintain multiple ICT systems.</td>
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<td>• There is no requirement for time and resources to establish a new Defence assessment and reporting area.</td>
<td>• There is no single data set of all reported trigger events, making reliable trend and statistical analysis difficult.</td>
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<td></td>
<td>• Recording, reporting and initial assessment obligations are the same regardless of whether a trigger event involves ADF members, APS employees, contractors or some combination of these.</td>
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</table>
9.2.8. **Phase 2: Fact Finding.** The recommended model for fact finding and its variations place an emphasis on non-statutory fact finding and co-ordination of professional investigation capability by a Defence investigation area. The major strength of non-statutory fact finding is that it is a very flexible and scalable means to gather information, but that flexibility may itself be a weakness if commanders and line managers are not confident in applying it. Similarly, coordination of professional investigation capability can lead to a more holistic approach to assigning scarce investigation resources, but if the Defence investigation area is not resourced properly this approach could lead to delays, confusion and unfairness.

9.2.9. The recommended model proposes that the Defence investigation area ‘own’ and manage all professional investigation capability within Defence, with the exception of Service Police. Consolidating investigation capability in this way means that a flexible approach can be taken to targeting investigation resources to areas of greatest organisational priority. However, this approach may create disconnect between professional investigators and intelligence, analysis and policy functions currently associated with specialist areas.

9.2.10. The Status Quo Plus model would change administrative inquiry processes to make them available across the whole of Defence, and not just available to ADF commanders. The strength of this model is that it would expand the approach to fact finding in ADF environments to operate more broadly across Defence. However, the disadvantage is that some of the fundamental weaknesses of the current inquiry framework would also be expanded across the whole of Defence. In particular, the inflexibility of formal and legalistic inquiry processes, and the tendency to treat an inquiry as an end in itself rather than as a means to inform decision making.

9.2.11. Figure 6 provides a summary of the strengths and weaknesses of the recommended model, its variations and the Status Quo Plus model in Phase 2: Fact Finding.
Figure 6. Strengths and weaknesses of Phase 2 models

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<th>Model</th>
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| **Recommended model and both variations** | • A simple non-statutory fact finding model allows commanders and line managers to gather information proportionate to the decisions that they have to make. Its flexibility and scalability means that commanders and line managers can adapt their approach to the circumstances.  
• Undertaking one fact finding process in relation a single (albeit multi-faceted) trigger event would reduce resources and give rise to greater consistency and timeliness of decision making. This is particularly relevant if ADF members and APS employees were involved in the same trigger event (noting that the same process would not necessarily lead to the same outcome, given the inherent differences between ADF and APS service).  
• Perceived procedural fairness burdens would be reduced, thus minimising delay and providing a fairer balance between accountability, fairness and timeliness.  
• Commanders and line managers would be able to direct / order APS and ADF staff to co-operate with fact finding activities (even in the absence of legislative authority), subject to the privilege against self-incrimination.  
• Units and work areas would have access to professional investigators and experts. A higher level of expertise, with quality control from a single Defence area, would allow trigger events and investigations to be managed better which would support better decision making. A ‘one stop shop’ for commanders and line managers would result in a coherent approach to dealing with matters in the integrated environment.  
• The coordination function by the Defence investigation area would help to avoid duplication of effort (such as through multiple fact finding processes), allow the allocation of resources in accordance with whole-of-Defence priorities, and facilitate | • With potentially less reliance on statutory inquiries, the range of material exempt under freedom of information will decrease.  
• Removing the powers of inquiry officers may result in individuals not answering questions that may incriminate themselves which may inhibit investigations.  
• Commanders and line managers may not have the skills and experience to apply flexibility to fact finding activities.  
• The whole-of-Defence priorities determined by the Secretary and CDF and utilised by the Defence investigation area in the allocation of investigative resources is not necessarily reflective of the core issues affecting a unit or work area.  
• There may be a conflict of roles and responsibilities between the Defence areas and the chain of command / Service headquarters in relation to issues such as reputation management, the speed of information and accountability.  
• Commanders and line managers may be more inclined to try to refer matters to the Defence investigation area for management, rather than manage trigger events themselves.  
• If the Defence investigation area takes too long to respond to matters referred to it, there may be a loss of trust and commanders and line managers may become less inclined to report trigger events over time.  
• When a trigger event is referred to the Defence investigation area, there may be a perception that a trigger event is being unnecessarily escalated. |

Re-Thinking Systems of Inquiry, Investigation, Review and Audit in Defence  
Stage B Report for Secretary and CDF
Figure 6. Strengths and weaknesses of Phase 2 models

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<td>information sharing between specialist areas where required.</td>
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<td>• A single, coordinated investigation would mean that a victim or witness would only be interviewed once, rather than multiple times by the different areas with a relevant interest.</td>
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<td>• Central coordination gives rise to an ability to track the progress of the implementation of recommendations from reports. It would also facilitate the identification of systemic issues uncovered over multiple investigations.</td>
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<td>• The Defence investigation area could maintain a central database containing all investigation reports, which would make it easier to respond to freedom of information requests.</td>
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<td>• Cost savings may be achieved through one specialist area undertaking professional investigations, without the need for units and work areas to take their staff from their normal role to undertake investigations. It will minimise pressure on commanders and line managers to re-distribute resources from core functions.</td>
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<td>Recommended model and variation 1 only</td>
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<td>• A single area ‘owning’ and managing all investigative capability would allow more efficient allocation of resources. It would also give rise to one central point of accountability for the conduct of an investigation.</td>
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<td>• Professional investigators would be seen as providing a service to all decision-makers throughout Defence, rather than as a resource that can be used by only one specialist area.</td>
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<td>• There would be no need to train all Defence personnel on how to undertake more complex investigations, as there would be a pool of specially trained investigators.</td>
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<td>• A flexible approach to the use of professional investigators creates opportunities to up-skill basic investigation functions for</td>
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<td>• There may be disconnect between specialist investigative capability and related intelligence, analysis and policy functions.</td>
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<td>• If the Defence investigation area takes too long to complete investigations, it may result in a loss of trust and commanders and line managers may become less inclined to refer trigger events over time.</td>
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<td>• There may be conflict over who is responsible for instructing the professional investigator in relation to the direction and conduct of the investigation.</td>
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<td>• The appointment of a professional investigator may have the effect of commanders and line managers ‘wiping their hands’ of the management of issues. It may result in a greater level of risk</td>
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<td>Model</td>
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<td>non-professional investigators throughout Defence, for example through shadowing / mentoring arrangements with unit and work area personnel in the course of an investigation.</td>
<td>aversion and unwillingness of commanders and line managers to make decisions.</td>
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<td></td>
<td>Professional investigators are able to identify and deal with more complex issues than non-professionals conducting ad hoc investigations.</td>
<td>If too many matters are referred to professional investigators, the opportunity to train future leaders in policy and investigative skills may be lost.</td>
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<td>Professional investigators would not have a vested interest in the outcome of investigations and will be independent of the immediate chain of command. This may result in perceptions of greater independence and individuals may feel confident that matters are being dealt with appropriately.</td>
<td>There is a limit to the extent to which there can be commonality and coherence – there are necessary specialisations which should not be lost.</td>
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<td>Professionalisation of central investigation capability would give rise to developmental opportunities for staff. There is greater potential for interesting career pathways for professional investigators in Defence, due to the considerable scope to move between specialist streams. There would also be greater potential for consistency of training and education for professional investigators.</td>
<td>There may be difficulties in applying the same policy to all types of trigger events.</td>
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<td>There will be capacity to cost the system more fully.</td>
<td>If APS employees can be appointed as professional investigators, there may be an inability of the chain of command to follow through.</td>
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<td>A single investigation by a professional investigator will result in one report on a single matter being drafted, and drafted well.</td>
<td>The geographic distribution and deployability of professional investigators may not be as efficient as appointing internal inquiry officers.</td>
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<td>Resource savings can be achieved through a large number of investigators all being managed by a single area.</td>
<td>There may be difficulty in relation to low-level DFDA investigations in non-Service groups, as Service Police belong to the Services and have limited engagement in non-Service groups (applies to recommended model only).</td>
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<td>The appointment of professional investigators may help to alleviate pressure on Cadet staff who are often under resourced, time poor and may not have the same investigative skills that commanders or line managers are expected to have.</td>
<td>There may be potential for duplication between Service Police functions and the capability in the Defence investigation area. Intrusion of other non-policing functions currently performed by Service Police may impede the ability of Service Police to maintain sufficiently professional investigative capability (applies to recommended model only).</td>
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<td>The Services would retain greater control over low-level DFDA investigations and, accordingly, greater control over disciplinary</td>
<td>Cultural differences between Services in terms of who conducts low-level DFDA investigations and how they are conducted would remain (applies to recommended model only).</td>
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### Figure 6. Strengths and weaknesses of Phase 2 models

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<td>• There would be a lack of flexibility to target investigation resources at areas of greatest organisational priority.</td>
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<td>• There would be inconsistency in the way investigative capability is distributed between ADF and APS focused investigations.</td>
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<td>• There would be greater risk of duplication of investigative effort.</td>
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<td>• Multiple stakeholder silos may serve their own purposes rather than meeting the needs of commanders and line managers.</td>
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<td>• Lines of accountability between the Defence investigation area and the specialist investigation areas may become blurred due to the lack of control vested in the Defence investigation area.</td>
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<td>• There would be more limited capacity to build a generalist professional investigative capability.</td>
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<td>• There may be inconsistency of the level and nature of professional investigative capability between the Services.</td>
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<td>• There may be inconsistency in the way investigative capability operates in single-Service and integrated environments.</td>
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<td>Variation 2 only</td>
<td>• Through the current silos retaining ownership of their investigative resources, there would be greater capacity for the ongoing connection between specialist investigative capability and associated intelligence, analysis and policy functions.</td>
<td>• The continued focus on formal inquiry processes reduces the flexibility available to commanders and line managers.</td>
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<td>• There would be no risk of diluting the subject-specific skills of professional investigators.</td>
<td>• The continued focus on formal inquiry processes means that inquiry processes can be perceived as an end in itself rather than a means to support decision making.</td>
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<td>• The model builds on processes tested in real cases, using well-established and understood structures.</td>
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<td>• There is no requirement for significant additional resources to implement the model. There is no requirement for significant retraining or legislative change.</td>
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<td>• Inquiry officers could be appointed by both ADF and APS commanders / line managers.</td>
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<td>• Inquiry officers would have legislative authority to gather evidence from all Defence staff (including APS, ADF and off-duty</td>
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<tr>
<td>Status Quo Plus model</td>
<td>• The model builds on processes tested in real cases, using well-established and understood structures.</td>
<td>• Coordination of different investigations into a single trigger event.</td>
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<tr>
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<td>• There is no requirement for significant additional resources to implement the model. There is no requirement for significant retraining or legislative change.</td>
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<td>• Inquiry officers could be appointed by both ADF and APS commanders / line managers.</td>
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Figure 6. Strengths and weaknesses of Phase 2 models

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<td>Reservists), re-inforcing the ability to commanders and line managers to obtain facts to inform decisions.</td>
<td>remains ad hoc, and there is a greater risk of duplication of investigation effort and victims / witnesses being required to give interviews to multiple investigators.</td>
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<td>• There is a risk that training and education for professional investigators would be inconsistent across Defence, and that professional development opportunities within Defence would be limited.</td>
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<td>• Appointment of an inquiry officer depends on the relevant Group or Service being able to locate someone with relevant experience, and time, to conduct the inquiry. This may involve taking someone from their core duties to conduct the inquiry. This is of particular concern in smaller Groups and in the ADF Cadets.</td>
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</table>
9.2.12. **Phase 3: Internal Review.** The recommended model for internal review, and its variations, provides for a single layer of internal review for ADF members following an indication of support or otherwise by the ADF member’s commanding officer, with review delegates having power to re-make the original decision. Providing a single layer of effective review reduces delays associated with current internal review processes, provides greater finality in the review process, and reduces barriers that prevent ADF members from accessing independent external review options. However, changing internal review processes in this way may lead to a perception that Defence is reducing the rights of ADF members.

9.2.13. There are also strengths and weaknesses associated with the particular arrangements for the Defence internal review area(s) proposed in the recommended model and variations. For example, the single Defence internal review area in the recommended model has the advantage of being a single portal for APS and ADF review applications. Further, this model provides an opportunity for internal review to be conducted outside the Service chain of command in appropriate cases. However, where matters are referred back to a Service delegate to decide, there may be a perception that the internal review provided is not sufficiently independent.

9.2.14. The Status Quo Plus model for internal review also reduces the number of layers of internal review available to ADF members, and incorporates mechanisms to refer redress applications to decision-makers with power to re-make the original decision. However, the significant statutory role envisaged for commanding officers, including making inquiries into redress applications and identifying an appropriate redress decision-maker if they do not have power to re-make the decision, could continue to be a source of delay in the ADF internal review process.

9.2.15. Figure 7 provides a summary of the strengths and weaknesses of the recommended model, its variations and the Status Quo Plus model in Phase 3: Internal Review.
## Figure 7. Strengths and weaknesses of Phase 3 models

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| **Recommended model and variations** | • Reducing the number of review options to one single layer, where commanding officers can choose to advocate for ADF members will give rise to greater finality of decisions. It also reduces the time and resources taken to complete internal review and so removes barriers to external review.  
• Commanding officers retain an important role in the internal review process, but are not required to expend significant effort unnecessarily to resolve review applications.  
• One opportunity for internal review will focus the mind of the ADF member in order to ensure the quality of their submission.  
• The proposed single layer of review process is essentially a streamlined version of the existing redress system, which may assist from a change management perspective. However, it still provides the opportunity to re-align expectations of review.  
• More timely internal review processes enable provision of feedback to decision-makers relevant to their current role.  
• Incorporating discretion not to review a decision may result in fewer ‘serial complainants’.  
• The ability to access reasons for decisions as of right improves the transparency of Defence decision making. Greater understanding of the reasons for a decision may reduce the likelihood that an ADF member will seek review. | • Removing layers of review may result in mistakes not being identified until the external review phase, when it may be more difficult to correct those mistakes.  
• There may be a perception that Defence is oppressing the rights of ADF members through reducing the layers of review available. |
| **Recommended model only (single Defence internal review area)** | • There would be a single portal for all review applications for all Defence personnel. For ADF members, this would give rise to greater consistency across the Services.  
• There would be a simple, quick turn around of requests for review, which is beneficial for applicants and their commanders or line managers. | • Some decisions are an exercise of command prerogative, such as sending someone home from deployment, and should not be scrutinised outside the chain of command.  
• Services may lose the ability to exercise discretion regarding allowances and other benefits, which may limit the ability of the Services to use them as an incentive to retain ADF members. |
### Figure 7. Strengths and weaknesses of Phase 3 models

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|       | • ADF members would have the right to have an independent person outside their chain of command look at their matter, as opposed to only their commanding officer and Service chief. Scrutiny of decision making in this way may encourage better decision making at the unit or work area level.  
• In relation to decisions that are based on objective criteria (such as decisions in relation to allowances and other benefits), ADF members would receive a substantive outcome as the Defence internal review area would have the delegation to re-make decisions. In relation to other decisions that are most closely linked to the exercise of command, the Defence internal review area may make recommendations, but decisions continue to be made within the Service. This maintains a balance between review outside the ordinary chain of command and Service needs.  
• The Defence internal review area would have visibility of process across the broader spectrum of complaints, and be able to identify any systemic issues.  
• A single Defence internal review area is closest to the current structure of the Directorate of Complaint Resolution, which deals with both APS review of action and ADF redress of grievance. |   |
| Variation 1 only (4 internal review areas) | • The Services would have control of all review decisions, ensuring that the needs of the Service as a whole are not lost in providing ADF members a right to internal review. | • There may be a perception that Service delegates do not have the necessary degree of independence to conduct review of the Service’s own decisions.  
• There may be inconsistency between decision outcomes by different Service review areas, even though they are applying the same objective criteria (such as decisions in relation to allowances and other benefits).  
• Resource savings that can be achieved through a single Defence internal review area will not be realised.  
• Service delegates may not be appropriate to review some |
### Figure 7. Strengths and weaknesses of Phase 3 models

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<td>- This variation splits the administration of APS review of action and ADF internal review into separate areas (unlike current arrangements where the Directorate of Complaint Resolutions manages both APS and ADF internal review).</td>
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<td>- Some decisions are an exercise of command prerogative and should not be scrutinised outside the chain of command.</td>
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<td>- The Inspector General ADF would not have the power to re-make decisions, and the decision on whether the decision stands would remain with the Services. This may undermine the advantages of the Inspector General ADF’s independence.</td>
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<td>- The Inspector General ADF’s statutory role is in relation to the ‘military justice’ system, and not all reviewable decisions are decisions made in that context.</td>
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<td>- The internal review function would be inconsistent with other functions of the Inspector General ADF, which are based on that office’s oversight role – this model would make the Inspector General ADF part of the system it is overseeing.</td>
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<tr>
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<td>- This variation splits the administration of APS review of action and ADF internal review into separate areas (unlike current arrangements where the Directorate of Complaint Resolutions manages both APS and ADF internal review).</td>
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| Variation 2 only
(APS internal review and Inspector General ADF) | • ADF members would have the right to have an independent person outside their chain of command look at their matter. This reduces perceptions of bias in the review decision.  
• Scrutiny of decision making by a central area outside the chain of command may encourage better decision making at the unit or work area level. | |
| Status Quo Plus model | • This model would require only minor amendments to the Defence Force Regulations.  
• Redress applications would be referred to a person with authority to provide the redress sought.  
• Redress rights would be consistent for all ADF members. | • The model retains significant responsibility for commanding officers, even if they do not have authority to provide the redress sought, which could cause delay and introduces risks.  
• The model would not be accompanied by a statutory right to reasons for reviewable decisions, and ADF members will need to rely on administrative processes to understand why a
### Figure 7. Strengths and weaknesses of Phase 3 models

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<td>decision has been made. This could lead to a higher number of review applications.</td>
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<td>● There would be very limited discretion to refuse to consider a redress application. This could lead to a legal requirement to conduct a review even in cases where the substance has been reviewed in other contexts.</td>
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</table>
9.2.16. **Phase 4: External Review.** The recommended model for external review, and its variation, provides comprehensive jurisdiction to Defence-specific external agencies. This could improve perceptions that all Defence decisions are subject to external scrutiny. However, there may also be a perception of interference with command in the ADF. The Defence external integrity agency proposed in the recommended model has the advantage of covering all aspects of Defence decision making, so that ADF members can determine relatively easily where to apply to access external review. However, this model would require an initial outlay of resources to set up a new office or alternatively reinvigorate the role of the Defence Force Ombudsman. The variation to the model has the advantage of the offices in question already being established, but the disadvantage of duplication of the functions of the newly-external Inspector General ADF and the Defence Force Ombudsman.

9.2.17. In relation to the proposed enhancement of the Administrative Appeals Tribunal’s jurisdiction, ADF members would be able to obtain a new decision from an independent tribunal in relation to allowances and other benefits, rather than simply a recommendation back to Defence. However, the public hearing process and published decisions of the Administrative Appeals Tribunal may adversely affect Defence’s reputation if decisions made within Defence have been poor.

9.2.18. The Status Quo Plus model for external review would not make any change to current external review arrangements. Obviously, one advantage of this approach is that no effort would be required to implement it. However, the disadvantages of current external review arrangements would remain. In particular, in the absence of a properly resourced, Defence-specific external review agency, it is difficult to provide government, the general public and ADF members with assurance that Defence decisions and actions are subject to external scrutiny, without reacting to concerns by engaging in expensive ad hoc reviews by ‘independent’ experts.

9.2.19. Figure 8 provides a summary of the strengths and weaknesses of recommended model, its variation, and the Status Quo Plus model in Phase 4: External Review.
### Figure 8. Strengths and weaknesses of Phase 4 models

<table>
<thead>
<tr>
<th>Issue</th>
<th>Strengths</th>
<th>Weaknesses</th>
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<tbody>
<tr>
<td><strong>Recommended model and variation</strong></td>
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<tr>
<td></td>
<td>• ADF members would be able to seek external review from an independent, Defence-dedicated agency.</td>
<td>• The Defence external integrity agency/agencies may step into the command space.</td>
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<td></td>
<td>• As the external review bodies would be resourced externally, there may eventually be cost savings for Defence.</td>
<td>• Having multiple bodies (that is, the Administrative Appeals Tribunal and the Defence external integrity agency/agencies) may cause confusion for members regarding from which body they should be seeking review.</td>
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<td></td>
<td>• External review is a great driver for change and improvement.</td>
<td>• The Administrative Appeals Tribunal may not always be able to review matters in a timely manner.</td>
</tr>
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<td></td>
<td>• Assuming adequate resourcing, there is the potential for greater speed and efficiencies in external review of matters.</td>
<td>• Hearing of matters in the Administrative Appeals Tribunal may expose Defence to unfavourable publicity.</td>
</tr>
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<td></td>
<td>• Individuals could seek external merits review at the Administrative Appeals Tribunal of decisions relating to allowances and other benefits which are based on objective criteria.</td>
<td>• There is potential for Defence to incur increased litigation costs.</td>
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<td></td>
<td>• Exposure to review by the Administrative Appeals Tribunal could encourage better drafting of determinations under section 58B, better decision making at first instance by commanders and line managers, and better decision making on internal review by review delegates.</td>
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<tr>
<td><strong>Recommended model only</strong></td>
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<td></td>
<td>• The Defence external integrity agency would provide an external oversight role in relation to all facets of Defence, improving perceptions about Defence decision making processes.</td>
<td>• The broad mandate of the agency could result in duplication of the functions of other organisations, such as State and Territory Coroners or the Australian Human Rights Commission.</td>
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<td></td>
<td>• If the Defence external integrity agency were to undertake death investigations, it would represent a less complicated method of dealing with deaths (particularly combat deaths that are uncontroverisial). Defence’s investigation into a Service-related death could focus on issues Defence wants to know about, and not those issues driven by the public and family of the deceased. It avoids concerns regarding</td>
<td>• Establishing a new statutory office with broad powers would require significant financial investment (which would involve a resource transfer from Defence). Additionally, Defence may not have influence over resourcing of the external review bodies in the longer term, which may compromise the capacity of the bodies to undertake review of actions in a timely manner.</td>
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<tr>
<td></td>
<td></td>
<td>• There may be a perception that the Defence external integrity agency</td>
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### Figure 8. Strengths and weaknesses of Phase 4 models

<table>
<thead>
<tr>
<th>Issue</th>
<th>Strengths</th>
<th>Weaknesses</th>
</tr>
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</table>
|       | the independence of decisions as to whether and how a public inquiry should be conducted.  
- The external integrity agency would be able to provide review and oversight in a holistic fashion rather than being limited to ‘military justice’ (like the Inspector General ADF) or being unable to review disciplinary matters (like the Defence Force Ombudsman). | is serving the same function as the Independent Commission Against Corruption (ICAC). The use of the word ‘integrity’ may give the impression that it only investigates where someone has done something wrong, and so anyone who is referred to them is tainted.  
- Staffing of the office by ADF members would result in questions regarding the independence of the office, while staffing by civilians could lead to a perception that the office does not understand the military environment.  
- Defence would not have any control over the decision as to what deaths are investigated externally or the publication of reports into Service-related deaths. |
| Defence Force Ombudsman and Inspector General ADF (variation) | There is no need to set up a new office. | There is overlap between the Inspector General ADF and Defence Force Ombudsman jurisdictions, resulting in duplication of effort and shifting of responsibility between the two offices. It may also be unclear how to distribute resources between the two offices.  
- The difference between the Inspector General ADF and Defence Force Ombudsman jurisdictions may not be readily apparent to ADF members who want to apply for external review. |
| Status Quo Plus model | There would be no implementation costs, and no need for re-training or other matters associated with implementation. | Defence-specific external review for ADF members is limited to applications to the Defence Force Ombudsman, which has extremely limited resources and does not have jurisdiction to investigate matters relating to discipline. The absence of a well-resourced Defence-specific external review agency means that there will be ongoing perceptions that Defence decisions and actions are not subject to external scrutiny.  
- Defence’s attempts to address ongoing perceptions that Defence decisions are not subject to external scrutiny leads to expensive internal review processes and commissioning of ad hoc reviews by independent experts to address concerns. |
9.3. Assessment of models against essential components

9.3.1. Following consideration of the Stage A Report, the then Secretary and CDF endorsed nine essential components of an optimal system. These components were required the models developed in the Re-Thinking Systems Review. The recommended model has been specifically designed to meet these components so far as possible. The variations on the recommended model affect the extent to which this is achieved.

9.3.2. The Status Quo Plus model has also been assessed against the essential components. While, with respect to a number of the essential components, the model is an improvement on current arrangements, generally speaking it does not meet the all of the essential components to a satisfactory level.

9.3.3. Functions effectively in the integrated environment:

To function effectively in the integrated environment, common inquiry, investigation and review arrangements should be developed to cover ADF and APS personnel, to the maximum extent possible. Where not possible, every effort should be made to ensure arrangements align so that processes can be coordinated. Coverage of contractors, cadets and others potentially involved in inquiry, investigation and review processes needs to be explicitly accommodated.

9.3.4. Recommended model: For Phase 1: Recording, Reporting and Initial Assessment and Phase 2: Fact Finding, the recommended model would operate the same in relation to ADF members and APS employees. Decisions for these two groups will often be different and made by different decision makers on the basis of different criteria, however there is no need for processes associated with recording and reporting trigger events, and fact finding to inform decisions, to be different. This is particularly given that the recommended model provides flexibility to accommodate the needs of many different work environments. The only exception to common processes in relation to ADF members and APS employees relates to the retention of low-level DFDA investigation capability in the three Service Police organisations, which may not always be available to commanders and line managers in integrated environments.

9.3.5. For Phase 3: Internal Review and Phase 4: External Review, the differences in decision making responsibilities with respect to ADF members and APS employees mean that decisions on review must also be treated differently. That said, the proposed single layer of review for ADF members in Phase 3: Internal Review is deliberately similar to the single layer APS Review of Actions process, which represents government best-practice. An additional role is provided for commanding officers in relation to applications from ADF members, in recognition of the special responsibilities of commanding officers. Further, both mechanisms would be administered through a single Defence internal review area. This uniformity assists in the processes operating effectively in the integrated environment.

9.3.6. The recommended model can also apply in relation to contractors, particularly with respect to Phases 1 and 2. This may require some additional terms to be incorporated into standard contracts. Similarly, the recommended model can
be used in relation to the Cadets organisations, although some of the details may need to be adapted to take into account the unique requirements of those organisations.

9.3.7. **Status Quo Plus model:** The Status Quo Plus model would be more effective in the integrated environment than current arrangements due to the expanded scope of inquiry officer inquiries to be appointed by APS supervisors as well as ADF commanders. Unit and team based fact finding, outside of DFDA investigations, would therefore be conducted through the same processes in Service, non-Service and integrated environments. However, professional investigations into misconduct by ADF and APS staff would continue to be conducted separately, even if they related to the same trigger event. Similarly, reporting obligations on commanders and line managers are different in relation to ADF and APS misconduct.

9.3.8. As in the recommended model, the mechanisms for internal and external review are different for ADF members and APS employees. However, there are fewer parallels between the mechanisms in the Status Quo Plus model. For example, the ADF redress of grievance process is far more complex and layered than the APS review of action process. In addition, ADF members have fewer external review rights than APS employees.

9.3.9. **Facilitates sound and timely decision making:**

To facilitate sound and timely decision making, inquiry, investigation and review arrangements must be recognised as part of a broader decision making framework, and must support integrity-driven decision making in Defence. The system should include processes for fact finding to inform decision making, a single layer of formal internal review, and external oversight mechanisms.

9.3.10. **Recommended model:** The recommended model is designed to reduce inflexible, legalistic and burdensome processes as far as possible, and re-focus attention on decision making requirements and accountability. The simplicity of the single recording and reporting form in the Phase 1 recommended model acts as a check-list and would be quick to complete, allowing commanders and line managers to make robust decisions in the immediate aftermath of a trigger event without delays. Consistent advice about the processes would be available from the Defence assessment and reporting area. The Phase 2 recommended model includes flexible and proportionate fact finding guidance for commanders and line managers, so that there is no need to engage in lengthy inquiry processes which often serve only to delay decisions and reduce accountability. Outside unit and team based fact finding, the coordinated approach to professional investigations would focus on the information needs of all decision-makers, consistent with Defence-wide priorities.

9.3.11. **Internal review for ADF members** would comprise a single layer, focused on the substance of decisions and actions, rather than procedural errors that can be corrected on review. This would significantly reduce the delays associated with current internal review processes, and again re-focus attention on making sound decisions.

9.3.12. The proposed external integrity agency, whether established as a new statutory office or through re-invigoration of the Defence Force Ombudsman, would
have power and resources sufficient to act as an effective oversight mechanism for the integrity of Defence decision making, as well as providing a review avenue for ADF members. Effective external oversight helps to drive sound decision making internally. The expanded role of the Administrative Appeals Tribunal would also expose Defence decisions relating to allowances and other benefits to greater scrutiny than is currently the case.

9.3.13. **Status Quo Plus model:** While the changes proposed for the Status Quo Plus model would make the administrative inquiry system more effective, the focus remains on the legal process of inquiry, rather than on meeting the needs of decision makers. Similarly, improvements to the Quick Assessment process and notifiable incident policy do not significantly reduce the administrative burden on commanders and line managers to meet cumbersome reporting obligations, and these process-driven requirements could continue to overshadow the immediate needs of decision makers following a trigger event. The Status Quo Plus model does not include any Defence-wide coordinating structure that can provide consistent professional oversight of these processes, which may foster or obscure poor decision making. The continued attention to legalistic process, rather than the substantive needs of decision makers, would perpetuate delays and in some cases increase them through the expanded scope of statutory inquiry processes.

9.3.14. The Status Quo Plus model would reduce some of the delays associated with the ADF redress of grievance system by providing for referrals of redress applications when a commanding officer or Service Chief does not have the power to provide the redress sought, and by removing the CDF layer of redress. However, there remain multiple levels of formal review, including two layers of review in the redress process as well as review by the Inspector General ADF. It is questionable whether these multiple layers, which can cause significant delay in finalising decisions, serve to improve the soundness of Defence decision making by any significant degree.

9.3.15. The Status Quo Plus model does not propose any changes to external review processes, so that external oversight of Defence decision making will continue to be under-resourced and burdened by jurisdictional constraints.

9.3.16. **Promotes flexibility in response options including in deployed environments:**

| To promote flexibility in response options, inquiry, investigation and review processes should be flexible, providing leaders in Defence with the opportunity to tailor solutions to the circumstances that confront them. A flexible system is of particular importance in deployed environments. |

9.3.17. **Recommended model:** The size and nature of Defence means that these processes occur in a wide range of environments, from office-based work environments, to barracks-based training establishments, to operational and deployed environments. The recommended model in Phase 1 and 2, in particular, is flexible enough to function effectively in all these environments.

9.3.18. For the most part, the recording and reporting form proposed in Phase 1 would be completed through an ICT system. Commanders and line managers would
have the option to complete forms personally, or direct staff to do so, depending on the needs of a particular workplace. In some deployed or operational contexts (and indeed some training situations even in Australia), access to ICT systems will be extremely limited. Contingencies for those situations can be developed, such as submitting reports orally or in hardcopy, via broadcasts when available, to be entered into the ICT system elsewhere.

9.3.19. The focus on non-statutory fact finding in Phase 2 would allow commanders and line managers to take a flexible approach to fact finding without unnecessary formality. This would allow them to tailor their approach to the circumstances and use their discretion to determine the most appropriate way forward. This is particularly valuable in the deployed environment, where commanders can scale their fact finding approach according to the exigencies of their situation. There is scope for a contingent of professional investigators from the Defence investigation area to be located in the area of operations or flown to the relevant locations as required.

9.3.20. Similarly, the recommended model for Phases 3 and 4 has the potential to operate effectively in the deployed and operational environment.

9.3.21. Status Quo Plus model: The Status Quo Plus model is more flexible than current arrangements. For example, commanders and line managers would have the discretion to only complete a Quick Assessment where information is not otherwise recorded through a reporting form. Changes to statutory inquiry processes would make them more flexible. The addition of a statutory ‘operational incident review’ would create a further option for commanders in operational and deployed environments. However, the continued focus on conducting a Quick Assessment and conducting a statutory inquiry is inherently inflexible. Statutory inquiries, in particular, require the completion of certain legal steps in every case, regardless of whether the trigger event actually warrants those steps. Commanders and line managers would continue to be unable to conduct fact finding in proportion to the circumstances of a particular case. This is of particular concern in operational and deployed environments, including at sea.

9.3.22. Governed by lawful procedures that are simple and easy to use:

Inquiry, investigation and review processes should be simple and easy to use, including through reduction of duplication of mechanisms, easy-to-use processes, the development of easy-to-understand policy guidance, and the provision of training and support for users.

9.3.23. Recommended model: Phases 1 to 3 all propose a reduction in the legal constraints currently imposed by Defence-administered legislation and policy, as well as a renewed focus on supporting commanders and line managers who may deal with these matters infrequently, rather than imposing unnecessary requirements on them for the benefit of specialist areas throughout Defence. For example, the proposed single recording and reporting form in Phase 2 is a much simpler process for commanders and line managers than the current raft of reporting policies they must comply with. The threshold for recording and reporting in the recommended model is extremely simple – record and report all trigger events falling within the listed categories.
9.3.24. The ADF internal review process in Phase 3 reduces the demands on commanding officers inherent in the current redress process. Commanders would not be obliged to make inquiries or become involved in matters that they do not have authority to deal with, but importantly they would continue to play a role in advocating for members. In cases where a commanding officer has the authority to amend the original decision or action, he or she may choose to become more involved as a matter of discretion.

9.3.25. **Status Quo Plus model:** The Status Quo Plus model seeks to simplify current arrangements by providing clearer guidance, without substantially changing them. This has the advantage that significant re-training will not be necessary. However, it does not address the underlying complexity of current arrangements. For example, commanders and line managers must continue to be familiar with up to 16 documents dealing with recording and reporting obligations. Commanders and line managers must also understand and follow far more rules and mandatory procedures through all phases, making the system difficult to use without assistance. The complexity of the current system, which is not remedied by the Status Quo Plus model, will continue to place heavy reliance on legal officers.

9.3.26. **Provides transparency in processes and outcomes:**

The inquiry, investigation and review system should provide transparency in processes and outcomes. Affected individuals and the public should be kept informed, as far as practicable, about the processes to be followed and outcomes of those processes.

9.3.27. **Recommended model:** The availability of clear, easy to follow guidance about these processes ensures that individuals involved in a trigger event, or subsequent fact finding or review processes, understand what is occurring and possible outcomes. Transparency of the processes will give individuals greater confidence in the system and more likely to accept the outcomes.

9.3.28. The recording and reporting requirements in Phase 1 would result in all trigger events being reported in the same format to the same area, making it easier for individuals to access information and for oversight agencies to track and report trends. A single Defence investigation area would also lead to greater transparency about what has occurred in relation to a trigger event.

9.3.29. Providing ADF member with an entitlement to reasons for decisions and actions that can be reviewed would improve transparency in decision making in Defence.

9.3.30. An external integrity agency (whether newly-established or a re-invigoration of the Defence Force Ombudsman), with sufficient authority and resources, would provide assurance in the integrity of Defence decision making, and lead to greater perceptions of transparency by affected individuals as well as the public.

9.3.31. **Status Quo Plus model:** The changes proposed in the Status Quo Plus model would not lead to any improvements in the transparency of Defence decision making. For example, reporting obligations would continue to be opaque and it would
be continue to be difficult to track processes and outcomes. The continued focus on statutory inquiries limits freedom of information and access to documents in relation to fact finding activities, which reduces the transparency of these activities.

9.3.32. **Incorporates safeguards for individuals:**

The inquiry, investigation and review system should incorporate safeguards for individuals. A fair process balances the competing considerations of independence and procedural fairness with timeliness, all of which affect how fairly a matter is handled.

9.3.33. **Recommended model:** The recommended model focuses on safeguards more broadly, compared to the focus of the current system which is on providing the subject of adverse decisions with multiple opportunities to comment. The recommended model recognises that delays associated with multiple opportunities can themselves be a source of unfairness, and that the subject of adverse decisions are not the only individuals whose interests should be protected. The model strikes a balance between all of these competing interests, while continuing to meet legal requirements associated with making adverse decisions.

9.3.34. Greater efficiency and transparency are themselves a means to provide safeguards to individuals. For example, the more complete recording and reporting process in Phase 1 would make it easier for Defence to search for relevant and complete records and provide them to individuals when requested. Similarly, investigations by the proposed Defence investigation area will improve consistency in outcomes across Defence in relation to different types of matters. Effective internal and external review processes operate as further safeguards for individuals. The reduced layers for ADF internal review mean that individuals can obtain a final decision from Defence more quickly, and also reduces the barriers to external review. Above all, the simplicity of the proposed models will promote fair outcomes, safeguarding individuals against the significant delays which are a source of unfairness. Reducing the legalistic nature of all processes makes the system more accessible and user-friendly to Defence personnel, which is a significant safeguard.

9.3.35. **Status Quo Plus model:** The Status Quo Plus models improve safeguards for some individuals by introducing additional statutory immunities in relation to administrative inquiries. However, these benefits are more than offset by the delays associated with statutory inquiries, and the associated unfairness to all individuals involved. The Status Quo Plus model would not make any changes to external review opportunities, which are currently incomplete and under-resourced. The opportunity to obtain an effective external review of decisions adversely affecting an ADF member is one of the most important means of safeguarding individuals’ rights and interests, but is not considered in the Status Quo Plus model.
9.3.36. **Delivers cost-effective outcomes in an adequately resourced system:**

The inquiry, investigation and review system should deliver cost-effective outcomes and be adequately resourced, including appropriate levels of training and skilled personnel. Resources in relation to inquiry, investigation and review should be considered at the unit and team level, not just in centralised structures.

9.3.37. **Recommended model:** One of the primary benefits of the recommended model is the reduced complexity at the unit and work area level, which would reduce the resources that must be found organically at that level to conduct fact finding and review processes. The model would lead to significantly fewer staff hours spent on these processes, often with sub-optimal outcomes. In addition, the model ‘front-loads’ resources to the lowest levels of managing trigger events, so commanders and line managers are able to access assistance at the early stages. In the longer term, this is a far more cost-effective approach to managing trigger events.

9.3.38. Consolidation of professional investigative capability into a single area would lead to greater efficiencies in training and education for investigators, and would also reduce the risks of duplicate investigations into the same matter, providing more cost-effective outcomes for Defence.

9.3.39. Truly effective internal and external review processes would reduce the current tendency to appoint expensive ad hoc reviews into matters, which are not cost-effective. Increased efficiency, transparency and confidence in the inquiry, investigation and review structure is likely to improve the quality of decision making and reduce review case loads, since individuals are more likely to accept outcomes if they have confidence in the system.

9.3.40. If the model is supported by an enterprise-wide ICT system, there would likely be longer-term cost savings in terms of the ease with which the database can be interrogated.

9.3.41. **Status Quo Plus model:** The Status Quo Plus model, which relies on adjusting aspects of the current structure rather than revising it, poses continuing challenges for adequate resourcing. For example, the model will continue to require significant unit and work level resources to be dedicated to managing and resolving trigger events due to the complexity of processes. The model does not propose any additional support at this level. The model also does not provide any of the efficiency benefits of consolidating professional investigative capability, in particular the reduced risks of duplicate investigations. Further, the lack of attention to a credible external review process means that expensive ad hoc reviews will continue to be the norm in order to improve public perceptions of Defence decision making.
9.3.42. **Incorporates co-ordinating and monitoring mechanisms to ensure consistency:**

The inquiry, investigation and review system should include co-ordinating structures to ensure the consistent application of the system across Defence. These structures could fulfil a number of important goals, such as providing support to line managers and commanders, engaging in centralised processes, managing the flow of information in relation to inquiry, investigation and review, and tracking the costs and subject matters of inquiry, investigation and review.

9.3.43. **Recommended model:** A key feature of the recommended model is coordinating structures to provide support, engage in centralised processes, manage the flow of information and track the costs and subject matters of inquiry, investigation and review. The proposed Defence assessment and reporting area, Defence investigation area and Defence internal review area are all coordinating structures of this nature. These areas are not intended to supplant the role of commanders and line managers, or other decision makers, but rather to support them in these functions.

9.3.44. The recommended model would enable a coherent quality assurance program, improving consistency across Defence. For example, the single data set created by reporting all trigger events to a single area in Phase 1 would lead to significantly enhanced ability to undertake trend analysis, providing intelligence about problem areas that is not possible under the more dispersed specialist areas in current arrangements. A single Defence internal review area will improve consistency of decision making across the Services.

9.3.45. **Status Quo Plus model:** The Status Quo Plus model retains the coordinating structures of the current system. These include, for example, ADFIS, the Inspector General – Defence, the Security Incident Centre, and the Directorate of Conduct, Performance and Probation. Each of these areas provides a service to the whole-of-Defence. However, in each case, the area is limited by reference to a particular subject matter (for example, DFDA investigations, fraud, security incident reporting or APS Code of Conduct investigations). These subject-based barriers between coordinating structures means that the functions of coordinating structures are similarly based on subject lines. ADFIS can provide support to a commander in relation to ADF misconduct, but if the same trigger event also involves APS misconduct, support must be obtained from the Inspector General – Defence (in the case of fraud) or the Directorate of Conduct, Performance and Probation (in all other cases). These subject-specific structures lead to silos of information, and make it very difficult to provide comprehensive tracking and monitoring of how trigger events are managed.
9.3.46. **Includes a training and education concept:**

An effective inquiry, investigation and review system must be understood and applied across the whole of Defence. Comprehensive training and education in inquiry, investigation and review processes must be adapted to three groups: Defence staff generally (awareness campaigns and education on rights); commanders and line managers (to understand processes associated with managing a trigger event); and professional investigators and other specialist staff (to obtain and maintain generalist and/or specialist investigation skills).

9.3.47. **Recommended model:** A new system of recording and reporting, fact finding and review gives rise to the opportunity to consolidate all incident management training across Defence. The proposed training and education concept would include mandatory training for all Defence personnel, tailored training for individuals (such as commanders and line managers or professional investigators), and preventative training targeted at high-risk groups. This will ensure that a broad spectrum of useful training and education products are available to all Defence personnel.

9.3.48. Training and education in the recommended model could be much simpler than in current arrangements, because the model provides simpler processes for commanders and line managers. Template documents such as the reporting form and the ADF internal review form would support a coherent, common platform for the training and development of commanders and line managers. A simple and scalable non-statutory fact finding model would allow most Defence personnel to be trained in only one process.

9.3.49. Importantly, the support offered by the Defence assessment and reporting area and the Defence investigation area would ensure that where Defence personnel have difficulties with the practical application of the processes that they have been trained in, they can easily obtain assistance.

9.3.50. **Status Quo Plus model:** The reviews considered for the Status Quo Plus model also include recommendations about improving training and education processes, including for commanders and line managers and Defence staff more generally. While the increased and improved training proposed in those reviews would improve the Defence-wide understanding of these processes, the complexity of the processes means that it will always be difficult to provide comprehensive training that is remembered by users who deal with the system infrequently.

9.4. **Rating of models against essential components**

9.4.1. Figure 9 provides a rating of current arrangements, the Status Quo Plus model and the recommended model against each of the nine essential components, as well as comments about how the variations would affect the recommended model's rating. The rating scale is from 1 (does not meet essential component) to 10 (meets essential component).
### Figure 9. Assessment of models against essential components

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<thead>
<tr>
<th></th>
<th>Current arrangements</th>
<th>Status Quo Plus model</th>
<th>Recommended model</th>
<th>Effect of variations to recommended model on assessment</th>
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</table>
| **Functions effectively in the integrated environment** | 3 6 9 | Phase 1: Selection of either variation would reduce the effectiveness of the recommended model in the integrated environment. The higher and more subjective recording and reporting thresholds could lead to the development of different reporting cultures in different Groups and Services, and there is greater risk that the Services would build parallel systems for the reporting of trigger events which do not meet these higher recording and reporting thresholds.

Phase 2: Variation 1 (Defence investigation area with coordination function only) would be less effective in an integrated environment, as separate specialist areas would be responsible for fact finding in relation to APS and ADF staff respectively. In variation 2 (Service Police investigative capability incorporated in Defence investigation area) low-level DFDA investigations would be consistent in Service and integrated environments.

Phase 3: Both variations contemplate that ADF and APS review would be administered by different areas, even where they relate to the same trigger event. This could lead to less effective outcomes in integrated environments. |

| **Facilitates sound and timely decision making** | 4 5 10 | N/A |
| **Promotes flexibility in response options including in deployed environments** | 4 6 10 | N/A |
| **Governed by lawful procedures that are simple and easy to use** | 4 4 9 | Phase 1: The variations would require commanders and line managers to determine whether a trigger event meets the higher thresholds for recording and reporting, and so would not be as easy to use. |
Figure 9. Assessment of models against essential components

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<thead>
<tr>
<th></th>
<th>Phase 1</th>
<th>Phase 2</th>
<th>Phase 3</th>
<th>Phase 4</th>
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<tbody>
<tr>
<td>Provides transparency in processes and outcomes</td>
<td>5</td>
<td>5</td>
<td>10</td>
<td></td>
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<tr>
<td>Phase 1: Either variation would reduce the number of trigger events reported to the Defence assessment and reporting area, reducing accessibility to process and outcome data.</td>
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<td>Phase 2: The variation 1 (Defence investigation area with coordination function only) would result in a greater risk of multiple, uncoordinated investigations occurring into the same trigger event, making it more difficult to maintain transparency in both processes and outcomes.</td>
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<td>Phase 3: Multiple internal review areas, as envisaged by the variations, may result in inconsistent approaches between the Services and the APS, and less transparency in the internal review process.</td>
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<tr>
<td>Incorporates safeguards for individuals</td>
<td>7</td>
<td>7</td>
<td>9</td>
<td></td>
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<tr>
<td>The variations may reduce transparency and efficiency, which in turn could result in greater unfairness to individuals.</td>
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<tr>
<td>Delivers cost-effective outcomes in an adequately resourced system</td>
<td>3</td>
<td>3</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>Phase 2: In variation 1 (Defence investigation area with coordination function only), there would be a greater risk of multiple, uncoordinated investigations occurring into the same trigger event, which would not be cost-effective.</td>
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<tr>
<td>Phase 4: The overlapping jurisdictions of the external integrity agencies in the variation to this model would reduce cost-effectiveness.</td>
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<tr>
<td>Incorporates co-ordinating and monitoring mechanisms to ensure consistency</td>
<td>5</td>
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<td>10</td>
<td></td>
</tr>
<tr>
<td>Phase 1: In both variations, the Defence assessment and reporting area would have a more limited capacity to provide coordinating and monitoring mechanisms, as the higher reporting threshold would mean fewer matters were reported there.</td>
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<tr>
<td>Phase 2: In variation 1 (Defence investigation area with coordination function only), the possibility of communication breakdowns between the Defence investigation area and specialist investigation areas throughout Defence means that its coordinating and monitoring functions may be less effective.</td>
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<tr>
<td>Phase 3: The multiple internal review areas proposed in the variations would be less effective than the single Defence internal review area proposed in the recommended model in terms of whole-of-Defence coordination and monitoring.</td>
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<tr>
<td>Is supported by a training and education concept</td>
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</table>
10. Implementation of model

10.1. Introduction

10.1.1. This implementation concept outlines a method for implementing the recommended model. The implementation process will include activities to change the inquiry, investigation and review framework, to support the changed framework, and to adapt the changed framework to particular contexts. The implementation concept outlines ‘quick wins’, which relate to some legislation and policy changes that could be made immediately. It also provides a framework for full implementation of the recommended model.

10.1.2. In order to achieve full implementation, efforts cannot be half-hearted. Importantly, ongoing strong support from the Secretary and CDF will be essential. We recommend that a dedicated implementation team be appointed who, in partnership with Defence Legal, will undertake the implementation activities. For effective implementation, the team must have relevant skills and experience, a strong commitment to the proposed changes, access to the Secretary and CDF for key decisions, and adequate resources.

10.1.3. The magnitude of this reform will take time to implement. Full implementation of some parts of the recommended model is likely to take several years, and will depend on a number of factors. For example, some aspects of the recommended model will require support from outside Defence, and the degree of support from each Service and Group within Defence will also have an impact. A formal review cycle should be embedded in the implementation strategy and discipline must be applied to consideration of any isolated proposals for reform that arise outside of that cycle. Given that timeframe, it is likely that other reviews, recommendations or proposals in relation to inquiry, investigation and review will arise.

10.1.4. A disciplined approach to commissioning or considering the recommendations of further reviews will ensure that organisational resources and energy is targeted towards this system-wide reform and not dispersed among isolated (and potentially inconsistent) reforms. The history of past reviews on Defence into these matters shows a tendency for the organisation to shift focus to new reviews and lose interest and commitment to ‘older’ reform projects.

10.1.5. We suggest that, before new reform proposals (outside of the scope of Re-Thinking Systems Review) are considered, the implementation team be asked to assess the consistency of proposals with the principles agreed by the Secretary and CDF through the Stage B Report and the urgency to consider the proposals outside of the formal review cycle. In addition, where proposals about inquiry, investigation and review processes are accepted, we recommend that they be incorporated into this implementation process.

10.1.6. Implementation is just the beginning – the Re-Thinking Systems Review would expect there to be ongoing development and improvement, including in light of user feedback, quality assurance processes, and changing requirements from senior leadership and government.
10.2. Implementation activities

10.2.1. Changing inquiry, investigation and review in Defence

- Adjust workforce arrangements in Defence to build cohesive, coordinated and professional capability in a Defence assessment and reporting area, Defence investigation area and Defence internal review area.

- Amend Defence-administered legislation and policy to provide commanders and line managers with simple and flexible mechanisms for inquiry, investigation and review of trigger events, including through less frequent use of statutory inquiries and an effective single layer of internal review.

- Coordinate with the Government and relevant Commonwealth agencies to establish a comprehensive and adequately resourced Defence-specific external review agency.

10.2.2. Supporting inquiry, investigation and review in Defence

- Develop and carry out training and awareness campaigns throughout Defence in relation to the newly-established framework for inquiry, investigation and review.

- Implement an Enterprise Recording, Reporting and Case Management system consistent with the newly-established framework for inquiry, investigation and review.

10.2.3. Adapting inquiry, investigation and review in Defence

- Adapt the newly-established framework of inquiry, investigation and review for optimal use by ADF Cadets.

10.3. Implementation leads

10.3.1. Dedicated implementation team. Primary responsibility for implementing the recommended model will lie with a dedicated implementation team, appointed by the Secretary and CDF. A Directive should be issued that establishes the principles that must be applied in further developing the recommended model, to ensure consistent and coherent reform.

10.3.2. The head of the implementation team should have experience in change management, be of sufficient rank to engage at the required levels within and outside Defence (we suggest at least a two-star equivalent), and have a strong commitment to the changes inherent in the recommended model. The nature of the organisational changes proposed is significant and therefore the implementation head and team need to be dedicated solely to undertaking this work. The implementation team head should also remain in this role for at least two years.

10.3.3. Organisational change of this nature will require clear oversight and accountability by a senior officer with the ability to drive prioritisation, resource allocation and cooperation. In particular, consultation and negotiation with Service Chiefs and Group Heads will be challenging and intensive if the extent of change contemplated in the recommendations is to be achieved. We have proposed that the incoming Chief Operating Officer (COO) would be well placed to lead this reform for
reasons including that the COO Organisation contains (and therefore could coordinate) many of the specialist policy areas that would be necessary to drive the reform on an even footing with the Service Chiefs and Group Heads to achieve outcomes. We note that this does not mean that the COO would be the responsible for the newly-established areas proposed in the recommended model.

10.3.4. The size of the implementation team will depend on the skills and experience of appointed staff. We estimate that it will likely consist of five to ten individuals, including staff with experience in policy development, APS industrial relations, ADF workforce management, and training. Staff with relevant experience could be drawn from, for example, Navy Capability Training and Sustainment, Directorate of Workforce Management – Army, Directorate of Business and Workforce Management (Air Force), the Directorate of Workforce Strategy and Planning (Defence People Group), and Defence Learning Branch.

10.3.5. Defence Legal. While the dedicated implementation team will lead most of the implementation activities, Defence Legal would provide support amending Defence-administered legislation and policy. Defence Legal already has policy responsibility for several of the key documents that will require amendment, and has the technical expertise to implement the proposed amendments.

10.3.6. In order to ensure that legislation and policy amendments are coordinated with the other changes required, Defence Legal will need to maintain a close partnership with the dedicated implementation team. To that end, it may be prudent to include a Defence Legal staff member on the implementation team.

10.3.7. Newly-established Defence areas. The dedicated implementation team will be required establish a Defence assessment and reporting area, a Defence investigation area, and a Defence internal review area, consistent with the recommended model. Most of the legislation and policy changes will have been completed by that time. However, several implementation activities will not be completed when those three areas are established, including the establishment of a Defence-specific external review agency, carrying out training and awareness campaigns, and development of an Enterprise Recording, Reporting and Case Management System. At a certain point, with the agreement of the Secretary and CDF, the implementation team will hand over the remaining implementation activities to the newly-established Defence areas as relevant. Defence Legal will hand over policy responsibility for relevant legislation and policy, as the Defence areas will be responsible for ongoing policy development in these matters. The Defence assessment and reporting area, Defence investigation area and Defence internal review area will be accountable for ongoing implementation requirements through their ordinary governance arrangements, as agreed by the Secretary and CDF.

10.4. Quick wins: Interim and stand-alone legislation / policy changes

10.4.1. Some of the less controversial legislation and policy changes contemplated in the recommended model can be implemented in isolation from the proposed workforce changes, which have generated much greater levels of controversy. In addition, a number of relatively simple changes to Defence policy, as recommended in other reviews, could be pursued as interim measures (pending full implementation of the recommended model). Defence Legal would be responsible
for implementing these ‘quick wins’, which could be achieved within existing Defence Legal staffing and resources.

10.4.2. The ‘quick wins’ relate to:

- An interim reporting policy in relation to ‘notifiable incidents’ (6 months)
- Non-statutory fact finding (9 months)
- Statutory inquiry framework (12 months)
- ADF internal review (12 months)
- Civilian DFDA investigators (12 months)

10.4.3. **Amending notifiable incident policy.** In 2012, the Inspector General ADF conducted a review of the effectiveness of Di(G) ADMIN 45-2 *The reporting and management of notifiable incidents*. The report recommended a number of changes to Di(G) ADMIN 45-2 to make it simpler and more user-friendly. The changes include that only DFDA offences beyond a summary authority’s jurisdiction be referred to ADFIS, but that ADFIS be informed of offences below this threshold, and that Defence Investigative Authorities provide update reports to Service headquarters and Group heads.

10.4.4. If the recommended model is implemented in full, Di(G) ADMIN 45-2 will be revoked. All reporting obligations in relation to DFDA offences and the other matters outlined in the Di(G) will be consolidated in a single reporting policy. The Defence Investigative Authorities referred to in the Di(G) will be consolidated into the proposed Defence Investigation Area. However, implementation of these aspects of the recommended model will not occur as part of the ‘quick wins’, and may take two years or more to finalise. On that basis, the changes to Di(G) ADMIN 45-2 recommended by the Inspector General ADF should be implemented as an interim measure. The sponsor for Di(G) ADMIN 45-2 should also change, to avoid the past history of divisiveness and discord associated with the sponsorship of and change to this instruction. A suggestion is to appoint the Chief Operating Officer and Vice Chief of the Defence Force as co-sponsors of the instruction.

10.4.5. **Non-statutory fact finding.** One of the key characteristics of the recommended model is a focus on flexibility and proportionality in fact finding. To achieve this, better guidance is required for commanders and line managers about the various ways they can gather information, outside a statutory inquiry context. The relevant policy guidance can be re-drafted relatively quickly, and is not dependent on the recommended model’s workforce changes. For these reasons, developing this guidance has been included in the ‘quick wins’.

10.4.6. Non-statutory fact finding guidance is currently contained in Di(G) ADMIN 67-2 *Quick Assessments* and Chapter 4 of ADFP 06.1.4 *Administrative Inquiries Manual*. As has been emphasised throughout the Re-Thinking Systems Review, fact finding is a tool to support decision making. For this reason, the intention is to move non-statutory fact finding guidance into a whole-of-Defence decision making manual, which will also combine the content of ADFP 06.1.3 *Guide to Administrative Decision making* and the Pay and Conditions focused *Decision maker’s Handbook*. The manual will provide practical guidance for decision makers, rather than focussing on legal process. CDF Directive 4/2010 should be also revoked as part of this process.
10.4.7. If the recommended model is implemented in full, DI(G) ADMIN 67-2 will be revoked. All requirements associated with recording and reporting a trigger event will be consolidated in a single reporting policy. However, changes to the DI(G) in the interim will have an immediate effect in terms of simplifying fact finding guidance, and also simplifying the process for recording and reporting trigger events. DI(G) ADMIN 67-2 will be amended to emphasise that a Quick Assessment is not a fact finding exercise, but instead serves as a record of actions taken in relation to a trigger event. Amendments will mean that Quick Assessments will be completed on a form, that a Quick Assessment Officer does not need to be separated from the decision maker, and that there is no need to duplicate information if it is recorded on some other form. The principles of recording and reporting will be reflected in the revised instruction.

10.4.8. Statutory inquiry framework. The recommended model envisages that the various types of statutory inquiry available under the Defence (Inquiry) Regulations 1985 will be consolidated into two flexible types of inquiry: inquiries appointed by a Minister, and inquiries appointed within Defence. The Defence (Inquiry) Regulations 1985 will need to be re-drafted to achieve this. It may also be necessary to make some minor amendments to the regulation-making power in the Defence Act 1903, as well as amending ADFP 06.1.4 Administrative Inquiries Manual.

10.4.9. As part of the process of re-drafting the Defence (Inquiry) Regulations 1985, many of the recommendations from other reviews associated with current statutory inquiry processes will be incorporated into the new framework. For example, recommendations by the CDF Working Group in 2010 in relation to legal representation before CDF Commissions of Inquiry can be implemented in relation to the new statutory inquiry framework.

10.4.10. ADF internal review. The recommended model envisages replacing the ADF redress of grievance process with a single layer of internal review. This will involve re-drafting Part 15 of the Defence Force Regulations 1952. It will also involve preparing delegations for the review powers under Part 15 that enable substantive review by delegates in all cases, rather than only having the power to make recommendations.

10.4.11. Civilian DFDA investigators. The recommended model envisages a Defence Investigation Area, which will provide a cohesive, coordinated and professional investigative capability in Defence. In order to achieve this, the DFDA should be amended to remove the requirement that investigators only be ADF members in order for evidence to be admissible. Indeed, even if the recommendation to establish the Defence Investigation Area does not proceed, there would be significant immediate benefits to allowing evidence collected by civilian investigators to be used in DFDA prosecutions (for example, evidence collected by the Inspector General – Defence in a fraud investigation). This change will involve an amendment to the Defence Force Discipline Act 1982.

10.4.12. Timeframe for achieving quick wins. As outlined above, we estimate timeframes of between 6 and 12 months to make these changes. These timeframes are indicative only, and assume a firm endorsement of these changes from the Secretary and CDF. There are a number of risks to meeting these timeframes, including unexpected diversion of Defence Legal staff to other priorities, inability to
access drafting resources in the Office of Parliamentary Counsel, and unexpected levels of opposition from stakeholders. Figure 10 outlines the relevant decision makers for these changes, as well as key facilitators and stakeholders.
### Figure 10. Quick wins: Decision makers and stakeholders

<table>
<thead>
<tr>
<th>Notifiable Incidents</th>
<th>Document/s</th>
<th>Policy sponsor</th>
<th>Decision maker</th>
<th>Key facilitators and stakeholders</th>
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<tr>
<td></td>
<td>DI(G) ADMIN 45-2</td>
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<td>ADFP 06.1.3 Guide to Administrative Decision Making</td>
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<td>CDF</td>
<td>CDF</td>
<td>Groups / Services; Inspector General ADF; PPEC; SODI</td>
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<td>PPEC Branch</td>
<td>DGPPEC</td>
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<td>DI(G) ADMIN 67-2</td>
<td>Defence Legal</td>
<td>Sec / CDF</td>
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<td>CDF Directive 4/2010</td>
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<th>Non-statutory fact finding</th>
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<td>DI(G) PERS 34-1</td>
<td>DG VBR</td>
<td>Sec / CDF</td>
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<td>Complaint and Alternative Resolution Manual</td>
<td>DG VBR</td>
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<tr>
<td></td>
<td>Defence Force Discipline Act 1982 (section 101)</td>
<td>-</td>
<td>Parliament</td>
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</table>

### 10.5. Making longer term changes: Phases 1 to 3

10.5.1. The remaining changes proposed in the recommended model will require more detailed planning and a longer timeframe. The dedicated implementation team will be responsible for developing a detailed implementation plan for endorsement by the Secretary and CDF, and, assuming that detailed plan is endorsed, establishing the proposed Defence assessment and reporting area, Defence investigation area.
and Defence internal review area. The implementation concept outlined here will need to be fleshed out by the dedicated implementation team.

10.5.2. **Detailed implementation plan.** The contents of this plan will be determined by the dedicated implementation team. However, at the minimum, it will include the following:

- A proposal for governance arrangements for the proposed Defence assessment and reporting area, Defence investigation area, and Defence internal review area. The *Re-Thinking Systems Review* has not made any recommendation about what group/s these areas should be in, or what the leadership structure in these areas would look like. We suggest that the Defence assessment and reporting area and the Defence investigation area should sit side by side, while the Defence internal area should maintain a degree of separation from these other areas.

- A reliable estimation of workforce requirements, and likely sources in Defence for the workforce. It would need to include approximations of the number of staff, their composition (that is, ADF / APS / Reservists / contractors), team structures, skill requirements, and geographic distribution.

- A reliable estimation of the resources required to make the workforce changes contemplated.

- A timeframe for implementation.

- A communication plan to ensure ongoing engagement from Defence and other stakeholders with the implementation process.

- A proposal for an interim ICT solution pending implementation of an Enterprise Recording, Reporting and Case Management System (for example re-direction of current reporting portals to the Defence assessment and reporting area and location of all portals on a single DRN site).

10.5.3. We estimate that development of a detailed implementation plan will take approximately six to nine months.

10.5.4. **Implementation phase.** Once the detailed implementation plan has been endorsed, the dedicated implementation team will implement the recommended model. Required tasks will include:

- Establish the proposed Defence assessment and reporting area, Defence investigation area and Defence internal review area including both permanent ADF and APS investigators and panels of ADF Reservists / contractors with specialist investigation capability.

- Develop the proposed single reporting policy.

- Develop business rules for the newly-established Defence assessment and reporting area, Defence investigation area and Defence internal review area. Business rules will include: protocols for communication between these Defence areas and Groups and Services; Defence assessment and reporting area priorities for reviewing incoming reports; Defence investigation area priorities for assigning investigative resources; and trend analysis requirements.
• Make consequential amendments to policy documents as a result of workforce changes.
• Develop and carry out start-up training for Defence assessment and reporting area, Defence investigation area and Defence internal review area personnel.
• Develop and carry out start-up training for commanders and line managers.
• Develop and carry out an awareness campaign for all Defence personnel.
• Work with CIOG to develop an Enterprise Recording, Reporting and Case Management System (informed by the feasibility study).
• Work with ADF Cadets to adapt the new framework to the unique features of ADF Cadets.

10.5.5. **Key stakeholders.** Some of the key Defence stakeholders for this process include Defence People Group (in particular Directorate of Complaint Resolution, Directorate of Conduct, Performance and Probation, and Work Health and Safety Branch), Defence Security Authority, Inspector General Defence, ADF Investigative Service, Directorate of CDF Commissions of Inquiry, Inspector General ADF, as well as both the APS and ADF personnel agencies. These areas will need to be consulted throughout both the planning and implementation phase.

10.6. **Making longer term changes: Phase 4**

10.6.1. Making changes to external review arrangements will require agreement from outside Defence. The dedicated implementation team will be responsible for engaging with other Commonwealth agencies to drive the required changes. Implementation of the recommended model for external review will require the following:

• Ministerial approval to engage with other Commonwealth agencies from a confirmed Defence position about the proposed changes.
• A period of consultation (likely to be at least 12 months) with relevant Commonwealth agencies, including the Attorney-General’s Department, Department of Prime Minister and Cabinet, the Defence Force Ombudsman and the Department of Finance and Deregulation. The outcome of this consultation would be an agreed recommendation to the Government about the most feasible option for implementing the recommended model for external review.
• Government approval of the recommended option.
• Implementation of the Government-approved option, including through legislative amendment and re-allocation of resources (including potentially from Defence to an external integrity agency).

10.7. **Related reform activity**

10.7.1. The *Re-Thinking Systems Review* has conducted an analysis of existing recommendations from recent reviews, and provided advice as to which should and should not proceed (see Annex K: Process maps). In a number of cases, the *Re-Thinking Systems Review* considered that a recommendation should proceed as an interim measure pending full implementation of the recommended model. These
recommendations are reflected in the interim measures proposed above as ‘quick wins’ (in relation to Quick Assessments and notifiable incidents).

10.7.2. In some cases, the *Re-Thinking Systems Review* considered that a recommendation should not proceed, as the underlying intent was addressed in other ways in the recommended model. These recommendations should not be forgotten in the implementation process, as it is important that the model, as implemented, addresses these issues.

**10.8. Addressing risks in recommended model as part of implementation**

10.8.1. Control gaps and risks associated with recommended model, including those identified by PricewaterhouseCoopers, can, to a large extent, be addressed as part of implementation. Policy development, training, adequate resourcing, and quality assurance built into the trend tracking / monitoring functions of the Defence assessment and reporting area, Defence investigation area and Defence internal review area will address these control gaps and risks. The PricewaterhouseCoopers work should be referred to and considered by the implementation team and others responsible for implementing the recommended model.

10.9. Alternative approaches to implementation

10.9.1. **Status Quo Plus implementation.** If the Status Quo Plus model is preferred, implementation can occur through the *Pathway to Change* process. Recommendations are already assigned to relevant leads, who will report to the Organisational Development Unit as is the case for other recommendations contained in the *Pathway to Change* strategy.

10.9.2. **‘Quick Wins’ only implementation.** It would be possible to implement only the less controversial and interim measures outlined as ‘Quick Wins’ (see 10.4. A dedicated implementation team would not be required for this approach. A number of the benefits of the recommended model would be realised, including a reduced reliance on statutory inquiries, more proportionate fact finding at unit level, and a single formal layer of ADF internal review. This option may be suitable if the Secretary and CDF do not have an appetite for wholesale change at this time. However, some of the most significant benefits of the recommended model would be lost.

10.9.3. Without a single reporting policy, whereby commanders and line managers report trigger events to one area on one form, the complexity of current reporting arrangements will persist, and sharing of information between policy silos will remain ad hoc at best. Without a coordinated approach to professional investigative capability, there will be no capacity to assign investigative resources on the basis of whole-of-Defence priorities. Without a properly resourced external review agency, Defence will not be able to provide ADF members, the Government, or the public, with confidence in the integrity of Defence decision making, without continuing to expend considerable resources on ad hoc reviews by external providers.

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223 See Annex L – PricewaterhouseCoopers Analysis
Annexes

A. Summary of observations from brainstorming and consultation
B. Model development
C. Outcomes of war-games
D. Stakeholder comments on the draft Stage B Report
E. Assessment of compatibility of recommendations from reviews prior to the 2011 ADF Cultural Reviews, DLA Piper and HMAS Success Pt III inquiries
F. Assessment of compatibility of Pathway to Change recommendations
G. Specialist roles and processes
H. Current Defence reporting requirements
I. Current mandated legal support available to Defence under Defence policy and instructions
J. Costings
K. Process maps
L. PricewaterhouseCoopers analysis
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