DIRECTOR OF MILITARY PROSECUTIONS

Report for the period
1 January to 31 December 2017

Department of Defence

Director of Military Prosecutions

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Office of the Director of Military Prosecutions
Department of Defence
13 London Circuit, PO Box 7937
Canberra BC ACT 2610

Senator the Hon Marise Payne
Minister for Defence
Parliament House
CANBERRA ACT 2600

Dear Minister,

As Acting Director of Military Prosecutions I submit the report herewith as required by section 196B of the *Defence Force Discipline Act 1982,* covering the period from 1 January to 31 December 2017.

Yours sincerely,

RM Cawte
Colonel
Acting Director of Military Prosecutions
Australian Defence Force

30 April 2018

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DIRECTOR OF MILITARY PROSECUTIONS

AUSTRALIAN DEFENCE FORCE

REPORT FOR THE PERIOD

1 JANUARY TO 31 DECEMBER 2017

DIRECTOR'S OVERVIEW

1. I am pleased to present the Director of Military Prosecutions (DMP) Annual Report for the period 1 January to 31 December 2017, my third since being appointed as the DMP by the Minister for Defence on 1 July 2015.

2. As provided for in the *Defence Force Discipline Act 1982* (DFDA) the DMP is responsible for carrying on prosecutions for Service offences in proceedings before a court martial or Defence Force magistrate; to represent the Service Chiefs in proceedings before the Defence Force Discipline Appeal Tribunal (DFDAT); to seek the consent of the Director of Public Prosecutions as required by s 63 of the DFDA; to make statements or give information to particular persons or to the public relating to the exercise of powers under the DFDA; to do anything incidental or conducive to the performance of any of these functions; and to perform such other functions as are prescribed by the regulations. The DMP must also fulfil his or her legal mandate in a fair, impartial and independent manner.

3. The Australian public expect that members of the Australian Defence Force will comply with Australian law, military law and international law. The maintenance of discipline is the responsibility of the chain of command and is crucial for operational effectiveness. The military justice system is designed to support the maintenance of discipline and respect for the rule of law.

4. Military prosecutors fulfil a vital role in the military justice system by determining when charges should be preferred against defence members and then prosecuting cases according to law.

5. The Office of the DMP (ODMP) is unique in comparison to other State, Territory and Commonwealth prosecution agencies in that prosecutors are directed to post into the Office, generally without any prior advocacy experience. The expectation is that once admitted to practice, any lawyer can become an advocate,

but that is far from the truth. The mere thought of appearing in a courtroom for the first time can be daunting for any lawyer, particularly when many are not there by choice. This is compounded by the fact that many officers are posted out of my Office just at the time that they are becoming competent in appearing as advocates. In Canada, prosecutors are selected on merit and posted to the ODMP for a period of five years. This justifies the time spent to train personnel to be competent advocates and helps to create a career path in the military justice system. I advocate for a similar structure to occur in Australia.

6. I have tried to influence the individual Services to create a career path for permanent ADF legal officers through the military justice sphere, so those lawyers who want to be advocates can be posted in and out of the Office and then ultimately be trained as judge advocates and Defence Force magistrates. Currently there appears to be little recognition of officers, by the Service career management agencies, who wish to focus their careers in the military justice arena. At the end of 2017, and moving into 2018, my Office only had two experienced prosecutors apart from my Deputy Director and me. Those two experienced prosecutors are on their second posting in the Office and their prior experience has been invaluable in helping to train “first timers”.

7. However, it has become apparent to permanent legal officers that the careers available in the military justice arena are significant and a greater interest has been shown in being posted to the Office. Career managers need to recognise that the only means by which permanent officers can become competent advocates is to allow for some degree of specialisation in the legal career structure model.

8. Unless and until this is recognised, permanent legal officers will continue to be placed at a significant disadvantage when they appear in trials by court martial or before a Defence Force magistrate, particularly where the accused has almost unlimited legal assistance at Commonwealth expense, enabling him or her to brief very experienced counsel from the Reserve.

9. As recorded in this report, there have been a number of appeals before the Defence Force Discipline Appeals Tribunal (DFDAT), with seven appeals heard during the course of the year.

10. The most significant features of 2017 are as follows:

a. The DFDAT decision in *Komljenovic v Chief of Navy* which settled the ongoing challenge to my appointment as the DMP;
b. the Federal Court decision in the matter of the *DMP v Henderson*;
c. the progress made in achieving the timelines mandated by the Chief of the Defence Force for the completion of trials before the higher disciplinary tribunals;
d. a continuing representation of accused persons asserting mental health issues either as a factor that influenced the offending, their capacity to participate in a trial, or post-conviction in mitigation; and
e. prosecution of offences under the recently passed *Crimes (Intimate Image Abuse) Amendment Act 2017* in relation to the distribution of intimate images of a person without their consent.

11. As prosecutors, we never lose sight of the fact that it is the Defence community and the chain of command that we serve. The chain of command wants more than a fair and efficient ODMP; it wants an ODMP in which it can have confidence, and an ODMP which it knows has strong commitment to maintenance of service discipline. The ODMP has served the Australian Defence Force well for 11 years and I am sure we will continue to do so.

INTRODUCTION

12. Section 196B of the *Defence Force Discipline Act 1982* (Cth) obliges the Director of Military Prosecutions of the Australian Defence Force, as soon as practicable after 31 December each year, to prepare and give to the Minister for Defence, for presentation to the Parliament, a report relating to the operations of the DMP for that year. The report must:

a. set out such statistical information as the DMP considers appropriate; and
b. include a copy of each direction given or guideline provided under subsection 188GE(1) during the year to which the report relates, and a copy of each such direction or guideline as in force at the end of the year.

13. This report is for the 12-month period to 31 December 2017.

14. The position of DMP was established by s 188G of the DFDA, and commenced on 12 June 2006. The officeholder must be a legal practitioner of not less than five years' experience, and be a member of the Permanent Navy, Regular Army or Air Force, or a member of the Reserves rendering full-time service, holding a rank not lower than Commodore, Brigadier or Air Commodore.[1]

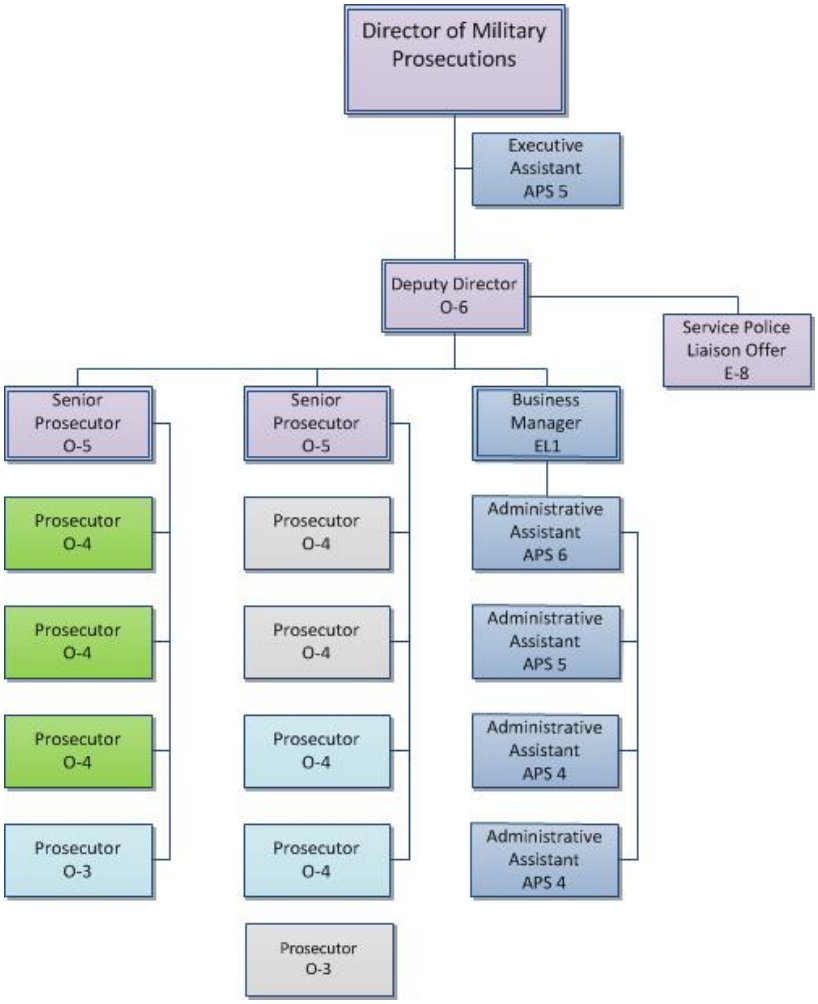
15. Former appointments to the position of DMP have been:

a. Brigadier Lynette McDade (July 2006 – July 2013)
b. Brigadier Michael Griffin AM (August 2013 – January 2015)
c. Group Captain John Harris SC – Acting DMP - (January 2015 – June 2015)

[1] DFDA s 188GG

ORGANISATIONAL STRUCTURE

16. The Office structure during the reporting period was as follows:



17. During the reporting period, I had a Deputy Director at the 06 level who was appointed by the Minister for Defence to act as the DMP in my absence. The Deputy Director had the responsibility of assisting me with the management of the Office, with particular emphasis on providing a high degree of leadership

of the Office's staff and ensuring the effective deployment of resources.

18. There are two senior prosecutor positions that have the responsibility for the administrative management of those prosecutors who work directly to them. From October 2016, both senior prosecutor positions were vacant, with Navy being unable to fill one position and the other senior prosecutor being deployed until June 2018 without any provision by Army for backfilling the position. The roles of senior prosecutor are being performed by two experienced 04 officers, one of whom has acting rank.

19. I met weekly with all staff to receive an update on all ongoing matters and to provide direction for their future management. This meant that the strict timelines that I impose on prosecutors are monitored. The weekly meetings provided a forum to discuss matters of current concern, including legal and procedural issues, and administrative matters. Continuing legal education sessions were often conducted during these weekly meetings.

20. One Navy billet at the rank of Lieutenant Commander remained vacant during the reporting period. Further, staffing levels fluctuated markedly as prosecutors were either deployed on operations or on courses at the request of their parent Service, attending professional prosecutorial on-the-job training or on approved leave.

21. Although the loss of personnel for deployment and professional training represents a considerable deficit of manpower in a comparatively small organisation, I am mindful that such opportunities broaden both the operational and professional experience of permanent legal officers.

Reserve Force

22. The Reserve has been utilised in a number of cases where the complexity of the trial or competing commitments precluded the permanent prosecutors from carrying out the prosecution, or when staff resources were such that the Reserve was required to maintain the level of trial commitment.

23. The Reserve has provided an invaluable source of mentoring for more junior prosecutors and I commenced utilising Reservists who regularly appear as defence counsel. By doing so I believe they will have a better understanding of the way that the ODMP operates; a move that I believe also promotes transparency within the jurisdiction.

Civilian staff

24. When I commenced my tenure, of the six civilian APS positions in my Office, three staff were temporarily acting in higher duties positions and two other positions were vacant. As stated in my 2016 Report, after assessing prosecution operations, particularly in the context of the First Principles Review, I commenced an overhaul of internal processes with a view to achieving reduced timelines in bringing matters to trial and generating resource efficiencies in the conduct of trials. As part of this overhaul, a review was undertaken to assess the work being undertaken by APS staff compared against the applicable Defence APS Standard Classification of Occupation profiles.

25. The review assisted the restructure of my Office operations to enable greater focus on reducing case timelines, and recruitment was conducted in 2017 to fill all vacant roles and recruit permanently to positions currently being filled temporarily. All positions are now permanently filled.

Office relocation

26. As stated in my previous reports, I have reached the conclusion that the location of the Office at 13 London Circuit, Canberra City presents considerable inefficiencies. While independent from the chain of command, my Office performs a function on behalf of command, namely, the prosecution of Service offences for command in order to maintain discipline in the ADF.

27. Each prosecution requires extensive engagement with Service headquarters, ADF units, Service career management agencies, the ADF Investigative Service (ADFIS), other military justice functions, and Defence enabling support. Relocation of the Office to a Defence precinct will provide considerable efficiency.

28. For these reasons, I continue to pursue relocation with a preference for Brindabella Park. Brindabella Park is attractive because of the proximity to ADFIS, who provide the majority of the briefs of evidence for ultimate prosecution before Service Tribunals, and proximity to the Service career management agencies that provide material and information relevant to the conduct of trials.

29. Currently Defence Infrastructure Division is considering options to utilise the current office space as a staging centre with an aim to move my Office before the end of the lease in 2019.

POLICY, TRAINING AND OUTREACH

PROSECUTION POLICY

30. In prosecuting matters, I act on behalf of the Service Chiefs. Prosecutors in civilian case law have been called ‘ministers of justice’, a phrase which sums up the unique position of the prosecutor in the criminal justice system. Prosecutors must

always act with fairness and detachment, with the objectives of establishing the whole truth and ensuring a fair trial.

31. In making decisions in the prosecution process, prosecutors are guided by the procedures and standards which the law requires to be observed and, in particular, by the Prosecution Policy promulgated by me. The policy is available on the website of the Office and is appended to this report.

32. To promote transparency and to raise awareness of these factors and the related topics included in the policy, the policy is published via the Defence Restricted Network (DRN), is being distributed as a hard copy booklet and is available on the internet.

33. During the reporting period, no undertakings have been given to any person pursuant to s 188GD of the DFDA (relating to the power to grant immunity from prosecution); nor have any directions or guidelines been given in relation to the prosecution of Service offences to investigating officers or prosecutors pursuant to s 188GE of the DFDA.

TRAINING

34. Military prosecutors are posted by the Services to their prosecution positions for a limited period of time; usually two to three years. As such, the training they receive must support both their current posting as military prosecutors as well as their professional development as military lawyers and officers.

35. The brevity of an officer's posting with the ODMP requires a significant and ongoing organisational commitment to provide him or her with the formal training, supervision and practical experience necessary to develop the skills, knowledge, confidence and judgement that are vital for their role as military prosecutors.

36. During the reporting period, all new prosecutors were provided with one-on-one instruction and in-house training. New prosecutors will always 'second chair' a more experienced

prosecutor in a trial to learn some of the idiosyncrasies of the military justice system before they appear for the first time on their own. A more experienced prosecutor will always assist a less experienced one during their first trials.

37. As I stated in my Overview, and I have raised in my previous reports, the posting system means that often prosecutors are at the point of becoming confident in their courtroom appearances at the precise time when they are posted out of the ODMP.

38. Courses completed by prosecutors during the reporting period included mandatory ADF Legal Training Modules as well as general Service courses, including the prerequisite promotion courses.

39. In conjunction with continuing legal education subjects provided by the ACT Law Society, a range of training was also provided in-house by prosecutors and other subject matter experts. This training assisted prosecutors to meet their mandatory continuing legal education requirements.

40. The benefit to the wider ADF of having permanent ADF legal officers post through ODMP cannot be overstated. Without a posting to ODMP, permanent legal officers have very limited exposure to the discipline system beyond the summary level. The difference in the practical knowledge and understanding of the jurisdiction between permanent officers who have been posted to ODMP (or have had similar criminal law experience), and those who have not, is pronounced.

41. Additionally, prosecutors learn the art of persuasion and advocacy in a way that legal officers who primarily undertake advisory work within staff environments are never exposed to. The demands placed on prosecutors to plan, react and respond in the execution of the prosecution case during the trial are significant. The trial work of prosecutors is also closely scrutinised, including through the trial review processes under the

DFDA. This means that, unlike the staff advisory environment many ADF legal officers face within units and headquarters, almost every legal argument or proposition advanced by a prosecutor is tested, either within the trial or after the trial upon review.

OUTREACH

ACT Law Society

42. During the reporting period and in accordance with s 188GQ of the DFDA, all legal officers at ODMP either held or obtained an ACT Practising Certificate, and completed the mandatory legal ethics training provided to all Defence legal officers. Most prosecutors attended training conducted by the ACT Law Society in order to complete their 10 required Compulsory Professional Development points. Members of my staff are also on the ACT Law Society Military Justice and Young Lawyers committees.

Australian Association of Crown Prosecutors

43. Since 2007, ODMP prosecutors have been admitted as members of the Australian Association of Crown Prosecutors (AACP). The AACP is comprised of Crown or State prosecutors from every Australian jurisdiction and some jurisdictions in the Pacific region.

44. The AACP Conference was held in Hobart during the reporting period and two members of my staff attended the conference. The conference provides a good opportunity to hear of the challenges facing prosecutors in the civilian jurisdictions and to learn how problems have been dealt with.

International Association of Prosecutors

45. The Office is an organisational member of the International Association of Prosecutors (IAP). The IAP is a

non-governmental and non-political organisation. It promotes the effective, fair, impartial and efficient prosecution of criminal offences through the application of high standards and principles, including procedures to prevent or address miscarriages of justice.

46. The IAP also promotes good relations between prosecution agencies and facilitates the exchange and dissemination of information, expertise and experience.

47. In September 2017 my Deputy Director attended the scheduled IAP conference in Beijing, China. It was also the second meeting of the International Association of Military Prosecutors. The theme of the conference was "*Prosecution in the Public Interest - The Challenges and Opportunities in the Changing Societies*", with particular emphasis on the role of technology in prosecutions and the challenges of prosecuting crime in the digital age. The meeting of the International Association of Military Prosecutors allowed for a series of discussions and presentations covering the challenges and concerns unique to prosecuting matters within a military jurisdiction.

Secondment to the Office of the Director of Public Prosecutions for the Australian Capital Territory

48. During the reporting period, two of my prosecutors were seconded to the Office of the Director of Public Prosecutions for the Australian Capital Territory (ACT DPP) at different times. Another prosecutor has just commenced a secondment until May 2018. Although this depletes my staff for the period of the secondment, it enables prosecutors, who see that they have a future career as prosecutors, to develop advocacy skills above what they can gain while working in such a small jurisdiction of military justice. This will continue to be an ongoing arrangement with the ACT DPP. I remain greatly indebted to Mr Jon White SC (DPP) for providing this opportunity.

Internal (Department of Defence) Liaison

49. During the reporting period, I reported to the Minister, the Chief of the Defence Force and the Service Chiefs on a quarterly basis. The reports contained information for the reporting period on new briefs of evidence referred to ODMP, the outcomes of briefs closed, the number of trials before Defence Force magistrates (DFMs), restricted courts martial (RCM) and general courts martial (GCM), referrals to the Registrar of Military Justice (RMJ) and included statistics giving a general overview of matters referred to the DMP.

ADF Investigative Service

50. During the reporting period, ODMP liaised on a frequent basis with the Provost Marshall ADF, COL Surtees and his staff at ADFIS, concerning the relationship between the two offices, means to reduce the timelines in relation to briefs of evidence and the requests for further information in relation to briefs of evidence. The relationship between the two offices continues to be effective and productive.

51. Furthermore, our offices are working closely together to identify matters where charges can be laid at an early stage to provide the accused the opportunity and benefits of an early plea of guilty. During the reporting period, three co-accused were identified and charged concerning offending that occurred in October 2017. They have all indicated pleas of guilty and were sentenced in February 2018.

52. The staff of the ODMP supported the continuation of training provided by ADFIS to its investigators. These sessions are an important professional development tool for ADFIS investigators. This support is seen as an invaluable tool to maintain the professional relationship that currently exists and builds a strong professional relationship with new investigators. I regard the relationship between ADFIS, service police and ODMP

as crucial in ensuring the efficient and effective disposal of service discipline matters.

53. The ODMP has a duty prosecutor roster and the prosecutor allocated to the roster at any particular time regularly provides advice to investigators about the legal aspects of their investigations.

Command

54. As I have said in previous reports, I am cognisant that, while my Office and the execution of my duties under the DFDA are statutorily independent, the prosecution function is exercised on behalf of command and for the vital purpose of maintaining service discipline. My continued goal is to ensure that the operations of ODMP support command and the efficient maintenance of service discipline, and I will continue to engage with commanders at unit and formation level in order to deepen my understanding of relevant issues affecting command.

55. I have engaged with command on an ongoing basis during the reporting period. The legal officers and RSM (E) in each Service Headquarters, the legal officers at the subordinate Force level command (FORCOMD, Fleet and Air Command) together with the relevant RSM (E) receive a fortnightly update on all matters relevant to their particular service that are currently within the Office.

56. Prior to assuming command, each Service requires officers to complete pre-command courses. Each pre-command course has a military justice component delivered by staff from the Military Law Centre. Staff from my Office provided considerable support to these courses during the reporting period. I consider this training support a vital link in engaging with commanders and providing them with greater understanding about my Office.

SIGNIFICANT ISSUES

Mental Health Issues

57. As I have previously reported and continue to note in this reporting period, certain ADF members are reporting mental health issues, either at the time of investigation by military investigators, at the time of being charged with offences under the DFDA, and/or during sentencing post-conviction.

58. The most common representations made by or on behalf of the ADF member are:

- That the mental health problem was a causal factor in the alleged offending and therefore an excuse for the conduct;

- That, because of a mental health condition, the prosecution should not proceed; or

- That the mental health condition warrants leniency in imposing punishment.

59. It has also been of note that at least seven officers, including one senior officer, who have been charged with offences during the reporting period have presented with a previously undiagnosed mental health problem at the time they are charged and leading up to their trial. It is difficult to determine whether the mental health problem was hidden by them and may have contributed to their offending or whether being charged has precipitated the problem.

60. When an ADF member who is charged with disciplinary offences reports mental health issues, either at the time of investigation, when charged, or when appearing before a Service Tribunal, the only means of dealing with the issue is under the now very dated provisions of DFDA s 145, or by me taking into account the mental health issue in the course of determining whether to proceed with charges.

61. All cases referred to me where the ADF member presents a mental health problem are complex and require detailed and very careful consideration. This is an area that needs legislative reform, particularly to establish treatment plans and diversionary conferencing.

MILITARY JUSTICE PROCEEDINGS

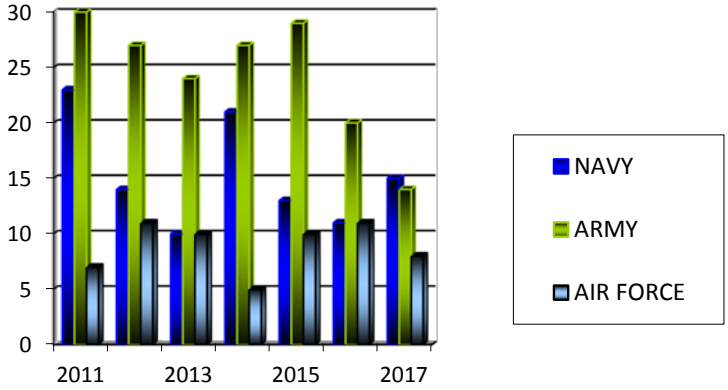
62. During the reporting period, military prosecutors appeared in several different types of judicial proceedings related to the military justice system. These included trials by DFM, RCM, GCM and appeals from DFM trials and courts martial to the DFDAT. While I have appeared in the majority of the matters before the DFDAT, some matters have been briefed out to counsel in the Reserve because they involved matters that traversed material that I dealt with in my previous role as a judge advocate and Defence Force magistrate.

63. Military trials, in contrast to civilian justice processes, are mobile. This allows trials to take place in or close to the military community that was most affected by the alleged offences. Courts are predominantly open to the public, resulting in increased transparency. Those most affected by an alleged offence can see for themselves that justice is being done.

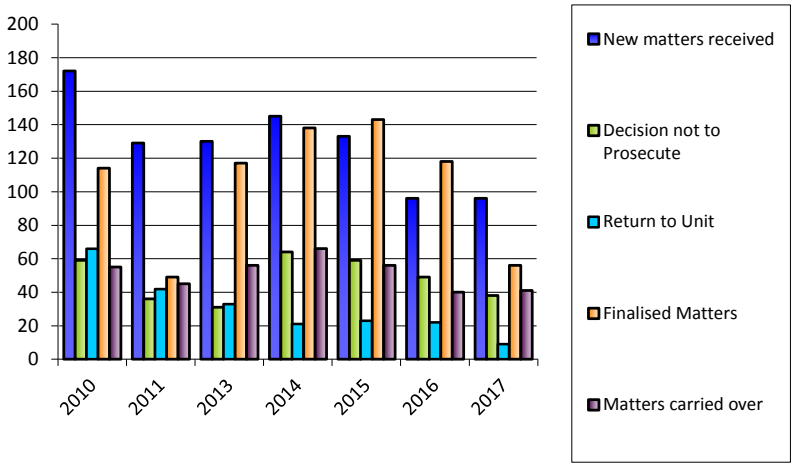
64. During the reporting period, 96 new matters were referred to the ODMP. In 14 of those matters, members elected to have their matters heard by court martial or DFM. Thirty-two DFM hearings and one GCM hearing were conducted. Thirty-eight matters were not proceeded with due to the determination that there was no reasonable prospect of conviction, or that to prosecute would not have served the purpose of maintaining or enforcing service discipline. Nine matters were referred back to units for summary disposal.

65. As at 31 December 2017, ODMP had 41 open matters. The below graphs show trending matters over the last six years.

Court martial trial trends by service



Outcome trends by year



66. When a brief of evidence is received from ADFIS, the service police or unit investigation, when a matter comes to the ODMP as a direct referral from a Commanding Officer or by the election of the accused, a military prosecutor is assigned to conduct a review of the case. Following that review, the prosecutor prepares a brief to me, with recommendations, in order for me to determine how the matter should proceed.

67. It is a matter for me, as the DMP, to choose the mode of trial for each accused. Courts martial are expensive to convene but are necessary in cases where the offending has a particular Service connection, or in serious cases that may, if the trial results in a conviction, require the exercise of the greater powers of punishment available to a GCM. A DFM and an RCM have the power to impose a maximum sentence of imprisonment of up to six months, whereas a GCM can, subject to the maximum sentence for a particular offence, pass a sentence anywhere up to imprisonment for life. There was one GCM convened in the reporting period for a trial of an accused on a charge of sexual intercourse without consent.

68. The cases discussed below are a sample of matters dealt with during the reporting period.

Officers who were Absent Without Leave

69. During the reporting period, three officers were charged with Absence Without Leave.

70. M was tried on one count of absence without leave, contrary to s 24(1) of the DFDA, for the period from 1200 hours on 06 March 2017 to 0515 hours on 19 June 2017, a period of 105 days. M is a pilot who had 18 months of his Initial Mandatory Period of Service to complete. At the time he was arrested, M was working as a pilot for a civilian airline.

71. M pleaded not guilty to the charge and raised the statutory defence of '*absent due to circumstances not reasonably within the member's control*' pursuant to s 24(3) of the DFDA and the defence of self-defence pursuant to s 10.4 of *the Criminal Code Act 1995* (Cth). The basis of the submission was that he could not work with his chain of command so, firstly, he had no other recourse than to absent himself and, secondly, he was acting in self-defence when he did so.

72. The DFM convicted M of the charge, finding that he was not acting in self-defence as he faced no threat that warranted him taking the course of action he did.

73. The DFM considered that the most important sentencing features in this case were general deterrence and maintenance of service discipline. The DFM held that it would be impossible for the ADF to operate if members could unilaterally decide not to come to work on a given day, simply because they were not satisfied with their posting. M received the following punishments:

- Dismissal from the Defence Force; and
- Imprisonment for a total concurrent period of four months with a fixed non-parole period of two months.

74. The DFM distinguished M's matter from the matter of R, who was sentenced on 1 September 2017 for one offence of being absent without leave, on the grounds that R had significant mental health issues, the period of his offending was three days and he responded when he became aware that a summons had been issued. The DFM noted that the sanction imposed on R was forfeiture of seniority and a $5000 fine.

75. The DFM also distinguished M's matter from the matter of S, who was sentenced on 17 March 2017 for eight offences of being absent without leave and two offences of prejudicial conduct, on the grounds that S had significant mental health issues and the factual circumstances of his offending differed to M. S's offending traversed sporadic periods of absence over different days, resulting in generally unreliable workplace attendance that went undetected for some time, he made attempts to conceal his wrongdoing and lied about where he had been. The sanction imposed on S was dismissal from the Defence Force after a lengthy career in the ADF.

Other matters of Interest

O

76. The matter of O concerned the importation of expensive musical equipment by a RAAF member whose responsibilities included overseeing the administrative arrangements (including compliance with customs and quarantine obligations) for returning personnel on service aircraft.

77. The member was charged with offences relating to a false statement made on an inbound passenger declaration rather than any aspect involving the misuse of service aircraft. This was largely due to the combination of vague directives and guidelines concerning such conduct; and more particularly, not creating any prohibition in the form of a lawful command or direction capable of enforcement under the DFDA.

Distribution of pornographic material

78. In the reporting period, 10 members were either charged or dealt with for such offending. This included three members who were charged under the recently passed *Crimes (Intimate Image Abuse) Amendment Act 2017*, which added new provisions to the *Crimes Act 1900* and the *Criminal Code 2002* in relation to the distribution of intimate images of a person without their consent. These amendments were prompted by community concern about the sharing of intimate images of a person using online communication. The issue appears to be widespread in the general community with an RMIT study citing that as many as 1 in 5 Australians will become victim to this abuse.[2]

[2] Not Just 'Revenge Pornography: Australians' Experience of Image-Based Abuse, accessed at: https://www.rmit.edu.au/content/dam/rmit/documents/college-of-design-and-social-context/schools/global- urban-and-social-studies/revenge_porn_report_2017.pdf on 28 February 2018

D

79. It was alleged that in August 2016, whilst alongside in a foreign port returning from deployment in the Middle East, a junior sailor had sexual intercourse with another junior sailor without consent. Both were part of the ship's company. The alleged offence occurred in the hotel room of the accused.

80. For jurisdictional reasons the matter was not tried before a civilian authority. A GCM was convened to hear the matter. After a contested trial spanning approximately nine days, the GCM acquitted the accused.

REFORMS TO ENHANCE EFFICIENCY

81. During the reporting period it has been evident to me, from discussions with command and anecdotal evidence, that there is a level of dissatisfaction with the current state of the military discipline system by command across the ADF. The concern was that the system had become overly complex and difficult to use, unresponsive and characterised by delay, and was costly to operate.

82. As a consequence, there have been a number of initiatives to reform the discipline system in order to ensure it would become responsive and enable command to take timely and effective action in response to allegations of misconduct.

83. As part of the military discipline reform process, the RMJ, DMP and Directorate of Defence Counsel Services (DDCS) agreed to reduce perceived delay in higher Tribunal disciplinary proceedings by completing 70 per cent of matters within 12 months.

84. Previously, the benchmark for completing higher tribunal disciplinary proceedings—from the ADF becoming aware of an incident until the finalisation of the trial review process—was

70 per cent of matters within 24 months. A trial of the new procedures was commenced on 1 October 2016 and improvements were achieved although, in such a small jurisdiction, even one complex matter can have an effect on statistics.

85. From statistics provided by the RMJ, I can indicate that:

a. Prior to 1 October 2016, it was taking 23 months to complete 70 per cent of matters. At the end of the reporting period this was reduced to 16 months.
b. Prior to 1 October 2016, only 30 per cent of matters were being completed within 12 months. This has increased to 57 per cent when the statistics relate to accused persons.

86. This improvement is continuing into 2018.

87. During the reporting period, my Office closely monitored the progress of matters to identify where delay is occurring. It is accepted that in most cases a significant part of the delay occurs during the investigation phase, when the matter is a prescribed offence and is referred to ADFIS for investigation.

88. This appears to be the case as our system of superior service tribunals necessitates that a full brief of evidence is produced prior to the matter being referred to my office. The system of *ad hoc* tribunals, unlike a standing court, affords limited opportunity for an early plea or proper case management. Investigators therefore need to ensure that every potential aspect of an investigation is completed prior to referral.

89. I also conducted a close examination of all the matters that form part of the trial of the new timelines, as from 1 October 2016. I was able to identify seven matters that ultimately involved a plea of guilty in circumstances where there were multiple eyewitnesses and admissions of guilt at an early stage. These matters invariably involved offences that would not preclude the

member's continued service. One matter took 17 months to come to my Office, and others ranged in investigation times of up to 18 months.

90. I had discussions with PM-ADF and DDCS about the identification of matters such as these at an early stage to facilitate early pleas of guilty. In such cases the investigator can contact my Office to indicate a matter that may end up in a plea of guilty. If it appears to the prosecutor to be such a case, witnesses can be identified, a Statement of Facts can be produced and the matter can be immediately referred to my Office. The member could be charged and a defending officer appointed so that, if the member wishes to plead guilty, the matter can be listed expeditiously without the requirement to produce a full brief of evidence.

91. This has successfully occurred in three matters.

APPEALS TO THE DEFENCE FORCE DISCIPLINE APPEAL TRIBUNAL

92. There were seven appeals to the DFDAT lodged or heard in 2017.

Baker v Chief of Army

93. Following his conviction on two charges of assaulting a subordinate, MAJ Baker petitioned his convictions: twice through his chain of command and, when both of these petitions were dismissed and the convictions upheld, MAJ Baker appealed to the DFDAT.

94. On 28 April 2017, the DFDAT delivered their reasons for dismissing the appeal. In so doing, the DFDAT observed in relation to the grounds:

a. the weight of the evidence clearly supported the conclusions reached by the DFM;
b. the fresh or new evidence (being the subsequent alleged recantation of a prosecution witness's evidence)—even if accepted—was not sufficient to require the conviction be set aside on the basis that there was an abundance of evidence from other witnesses to the effect that the appellant kicked the complainant; and
c. that the appellant's conduct was not justified or excused by law whether by:
    (i) the military context in which it occurred;
    (ii) the appellant's workplace health and safety responsibilities;
    (iii) sudden or extraordinary emergency; or
    (iv) self-defence.

McKenna v Chief of Navy

95. Following a trial by DFM, CPO McKenna was convicted of three offences. His grounds of appeal included that the DFM erred in law in a number of respects, including that he effectively reversed the onus of proof and that this amounted to a miscarriage of justice.

96. The appeal was listed for 10 February 2017. I was obliged to concede the appeal in relation to the first offence on the basis that the DFM did reverse the onus of proof. After that concession was made, the appellant withdrew his appeal in relation to the second and third charges.

97. The appeal was subsequently allowed in relation to the first charge.

Douglas v Chief of Army

98. CPL Douglas was found guilty following a trial by DFM of an act of indecency without consent and prejudicial conduct.

99. CPL Douglas appealed on the grounds that the DFM failed to consider all the evidence and the convictions were unsafe or unsatisfactory. Due to the error by the DFM, regarding the improper application of the *Liberato* principle, the appeal was conceded but a retrial was sought. The application for a retrial was opposed by CPL Douglas.

100. On 28 April 2017, I appeared on behalf of Chief of Army before the DFDAT. At the conclusion of oral submissions, the DFDAT allowed the appeal, quashed the convictions and ordered a new trial.

101. Immediately after that DFDA pronounced its decision, CPL Douglas informed his counsel, who then informed me, that he was being medically discharged on 11 July 2017.

102. Due to his imminent discharge, he was not retried.

O'Neill v Chief of Army

103. Following a trial on one act of assault occasioning actual bodily harm and one act of assaulting another person in a public place by DFM in May 2016, PTE O'Neill was convicted on one count and acquitted on one count.

104. PTE O'Neill appealed on the following grounds:

a. the DFM erred in the application of the relevant test for self-defence;
b. the DFM erred in finding that the prosecution had negated the defence of self-defence;

c. the conviction is unreasonable and/or cannot be supported having regard to the evidence and the factual findings on the evidence; and
d. in all the circumstances of the case, the conviction was unsafe or unsatisfactory and should be quashed.

105. The appeal was heard on 1 June 2017. The appeal was dismissed on 3 November 2017, with the court finding that the DFM applied the correct test in the correct manner.

Komljenovic v Chief of Navy

106. Following an eight-day hearing before a DFM, LS Komljenovic was convicted of one count of prejudicial conduct and sentenced to be severely reprimanded.

107. The particulars of the charge were that LS Komljenovic behaved in a manner likely to prejudice the discipline of the Defence Force, by engaging in intimate relations, namely, kissing and touching, with a superior officer while in the presence of members of HMAS *Anzac's* ship's company.

108. LS Komljenovic appealed on the following grounds:

a. the DFM ought to have excused himself on the basis of his previous professional relationship with me when I was appointed a DFM and JA, which LS Komljenovic contends amounts to an apprehension of bias;
b. the DFM relied on an extraneous opinion to determine the ultimate issue that had to be tried;
c. that the DFM erred in law failing to find that the evidentiary onus had been discharged by the defence with respect to involuntary intoxication;
d. the DFM erred in law in finding that the conduct of the appellant constituted an offence contrary to s 60 DFDA; and

e. insufficiency of evidence.

109. The most significant of these grounds is the first ground relating to the contention that my previous position as a DFM and judge advocate gives rise to an apprehension of bias.

110. Noting that this ground appeared to be, in effect, a challenge to the Minister's appointment of me as the DMP, I decided to delegate my powers in relation to this matter and had independent counsel to appear on Chief of Navy's behalf.

111. During the hearing of the appeal on 27 April 2017, LS Komljenovic abandoned all but two grounds, being (a) the apprehension of bias, and (b) whether the conduct could constitute 'prejudicial conduct'.

112. In dismissing the appeal, the DFDAT relevantly only addressed the two grounds of appeal pressed during the hearing. Firstly, after considering the hydra-like approach to the bias ground, the DFDAT concluded, '*however one approaches this ground, it has no merit'.* The relevance of this finding is that ADF legal officers will often be called upon to fulfil different roles during the course of their careers. The Tribunal stated:

> *The DFDA does not expressly mandate that prohibition in prescribing the appointment criteria for the DMP (s 188GG, DFDA) but instead envisages that it is not possible simultaneously to hold office as DMP and retain membership of the judge advocates' panel and an appointment as a DFM. The experience required for that appointment might desirably include experience as a legal officer not only in prosecuting and defending service offences but also in acting as a judge advocate or DFM. Given this, it would be odd to find such a necessary implication.*

113. Secondly, the reasons provide helpful guidance on what conduct may amount to 'prejudicial conduct' and specifically observed that:

> *… acts of physical intimacy and even socialising between persons of different rank in any disciplined force can be fraught with a potential likelihood of prejudice to the discipline of that force.*

Betts v Chief of Army

114. Following a trial on four counts of obtaining a financial advantage and three counts of obtaining a financial advantage by deception by DFM in March 2017, LTCOL Betts was convicted on the four counts of obtaining a financial advantage and acquitted on the other three counts.

115. LTCOL Betts appealed on a number of grounds, primarily that the DFM erred in finding that sub-clause 1.5.2(4) of *Defence Determination* 15/2005 imposed a 'legal duty' on the appellant, and that failure to perform the duty was capable of being understood as 'conduct' by omission for the purpose of s 4.3 and s 135.2(1) of the *Criminal Code* (Cth), and that such conduct was capable of giving rise to criminal sanction.

116. The decision will have substantial implication on my ability to prosecute offences for rental allowance fraud. The matter was heard before the DFDAT in Melbourne on 8 September 2017. The Tribunal reserved its decision.

Herbert v Chief of Air Force

117. FLTLT Herbert appealed against his conviction before a DFM for one charge of obtaining a financial advantage contrary to s 135.2 *Criminal Code Act 1995* (Cth).

118. The offending related to FLTLT Herbert receiving rental allowance at a rate he was not entitled to. He failed to notify the

relevant authority that he was sharing his rental property with another person.

119. The grounds of appeal follow in most part those raised in the matter of *Betts v Chief of Army* and concern whether the relevant *Defence Determination* is a law of the Commonwealth that creates a positive duty to notify of a change in circumstances.

120. The appeal was heard in Adelaide on 15 December 2017. The Tribunal dismissed the appeal in a decision handed down on 27 April 2018. Given the number of Defence personnel in receipt of benefits, subject to the obligation under sub-clause 1.5.2(4) of *Defence Determination* 15/2005, this is a significant decision.

OTHER MATTERS

Director of Military Prosecutions v Henderson

121. This was a Federal Court proceeding where I challenged a preliminary decision made by a DFM, GPCAPT Henderson, in proceedings instituted against SGT Uren.

122. SGT Uren was one of a group of military and civilian personnel who were working on a Defence project in Canberra in May 2016. Members of the group were accommodated in the Burbury Hotel in Barton, a 'private place' for the purposes of the majority of the alleged offending. Following complaints about SGT Uren's conduct, I preferred six charges against him. Alternatives were laid in respect of some of the charges, including *common assault*, contrary to s 61(3) of the *Defence Force Discipline Act 1982* and s 26 of the *Crimes Act 1900* (ACT).

123. When he was arraigned, SGT Uren's defending officers advised the DFM that he was prepared to plead guilty to a number of charges which had been laid against him, including the common assault charges which were preferred as alternatives to

the first and third charges. I advised that I would accept SGT Uren's pleas.

124. At the outset of the trial, the DFM sought submissions from the ODMP and SGT Uren as to his jurisdiction to try the common assault charges. He did so because of what he said was a '*concern about the alternative charges pursuant to s 61 of the DFDA and Crimes Act s 26 (common assault) and whether they are available in the circumstances of this case and particularly in light of the ruling by the Full Court of the Federal Court in Hoffman's*[3] *case*.' Both the prosecutor and the defending officer submitted that the DFM had jurisdiction to hear and determine the charges preferred by me and to accept SGT Uren's proposed pleas to common assault charges.

125. The DFM ruled that '*preferring of a charge under s 61 of the DFDA and Crimes Act 26* [sic] *is wrong at law and is not available*', and that he did not have jurisdiction to try charges of assault contrary to these provisions. The DFM ordered, purportedly pursuant to s 141(8) of the DFDA, that the charges of common assault be referred back to the DMP.

126. Following the ruling and the making of the order, the prosecutor sought an order adjourning the trial in order to obtain advice and, if necessary, commence a proceeding in the Federal Court of Australia (FCA) to challenge the ruling. The adjournment was granted.

127. Because of the great negative ramifications of this decision, I applied to the FCA for orders under s 39B of the *Judiciary Act 1903*. The application was supported by SGT Uren as second respondent. The DFM, as first respondent, submitted to the jurisdiction of the Court and indicated that he proposed to play no part in the hearing of the application. As a result, and in the absence of a proper contradictor, Ms Rowena Orr QC was briefed by the FCA to appear as amicus curiae.

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[3] *Hoffman v Chief of Army* (2004) 137 FCR 520; [2004] FCAFC 148 ('*Hoffman*').

128. The central question of the application to the FCA was whether, if an assault occurs on private premises, I am precluded from preferring a charge of common assault under Territory law. A subsidiary question was whether the decision of the Full Court of the FCA in *Hoffman* would compel a negative answer to the primary question.

129. The application was heard on 5 December 2017. The Honourable Justice Tracey granted my application, declaring that the DFM had jurisdiction to hear the common assault charges. In his reasons, His Honour held that:

> *… the inconsistency which gave rise to the Full Court's decision in Hoffman did not exist in the circumstances which confronted the DFM. The relevant alleged assaults occurred in a private room in a hotel. The room was not located on service land or in a public place. As a result the alternative charges could not have been laid under s 33(a) of the DFDA. There was, therefore, no legal impediment to the DMP preferring alternative charges of common assault against SGT Uren. The DFM had jurisdiction to try those charges and to accept and act on pleas by SGT Uren in relation to them.*

130. The Court agreed with the amicus curiae's contention that:

> *… the fact that the operation of s 33 is confined to service property or public places is simply a reflection of its purpose - the maintenance of order and discipline rather than narrowly as the elimination of violence. It is not indicative of any legislative intention that s 33 should comprehensively cover all common assaults committed by service men and women.*

131. The Court also quashed the DFM's decision to refer the charges back to me pursuant to s 141(8) of the DFDA, stating that the DFM did not have power to refer the common assault charges

back to me. The exercise of power under that subsection is conditioned on the granting of an application or the allowing of an objection under the section. No such application or objection was made. When given the opportunity to make an application under the section, SGT Uren had declined to do so. Accordingly, the referral order was quashed.

132. SGT Uren was sentenced in late January 2018.

FINANCE

133. ODMP was adequately financed during the reporting period. Funding was allocated towards prosecutorial training and travel to maintain professional engagements with domestic and international prosecutorial associations. ODMP has complied with the *Public Governance, Performance and Accountability Act 2013 (Cth)*, and all relevant financial management policies of the ADF.

CONCLUSION

134. It is important that the discipline system does not become isolated from command. I will continue working with commanders of all levels across the three Services to improve understanding of the DFDA and pursue the maintenance of discipline by increasing communication and seeking new ways to enhance engagement with matters coming before superior Service Tribunals.

COMPLIANCE INDEX OF REQUIRED INFORMATION FOR STATUTORY AUTHORITIES

(Senate Hansard, 11 November 1982, pp. 2261- 2262)

Enabling Legislation	*Defence Force Discipline Act 1982*
Responsible Minister	Minister for Defence
Powers, Functions & Objectives	Paragraphs: 2-5, 12, 14
Membership and Staff	Paragraphs: 15-18, 24-25
Financial Statement	Paragraph: 133
Activities and Reports	Paragraphs: 30-132
Operational Problems	26-28
Information Officer	Miss Kerryn Dawson Executive Assistant to DMP Office of the Director of Military Prosecutions Department of Defence Level 3, 13 London Circuit CANBERRA ACT 2600 Telephone: 02 6127 4403
Subsidiaries	Not applicable

Online version of the report is available at:
http://www.defence.gov.au/mjs/docs/2017-DMP-Annual-Report.pdf

ANNEX A to
DMP REPORT 01 JAN 17 TO 31 DEC 17

OFFICE OF THE DIRECTOR OF MILITARY PROSECUTIONS

Department of Defence
13 London Circuit
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Canberra BC ACT 2610

DIRECTOR OF MILITARY PROSECUTIONS PROSECUTION POLICY

Contents

INTRODUCTION

This policy replaces the Director of Military Prosecution's (DMP) previous policy of 5 September 2013.

The policy applies to all prosecutors posted to the Office of the Director of Military Prosecutions (ODMP), any legal officer to whom DMP has delegated function(s) under *Defence Force Discipline Act 1982* (DFDA) s 188GR and any ADF legal officer who has been briefed to advise DMP or to represent DMP in a prosecution before a Defence Force magistrate (DFM), a restricted court martial (RCM) or a general court martial (GCM), or to represent DMP in the Defence Force Discipline Appeal Tribunal (DFDAT) or another court.

In order to promote consistency between Commonwealth prosecution authorities, some aspects of this policy are modelled on relevant Commonwealth policies.

This publication of policy and guidelines will be periodically updated to ensure that it continues to incorporate changes to the law and Defence policy. The aims of this policy are to:

a. provide guidance for prosecutors to assist in ensuring the quality and consistency of their recommendations and decisions; and

b. to inform other ADF members and the public of the principles which guide decisions made by the DMP.

Members of the ADF are subject to the DFDA in addition to the ordinary criminal law of the Commonwealth, States and Territories. Decisions in respect of the prosecution of offences can arise at various stages and encompass the initial decision whether or not to prosecute, the decision as to what charges should be laid and whether a prosecution should be continued.

The initial decision of whether or not to prosecute is the most significant step in the prosecution process. It is therefore important that the decision to prosecute (or not) be made fairly and for appropriate reasons. It is also important that care is taken in the selection of the charges that are to be laid. In short, decisions made in respect of the prosecution of service offences under the DFDA must be capable of withstanding scrutiny. Finally, it is in the interests of all that decisions in respect of DFDA prosecutions are made expeditiously.

The purpose of a prosecution under the DFDA is not to obtain a conviction; it is to lay before a service tribunal what the prosecution considers to be credible evidence relevant to what is alleged to be a service offence. A prosecutor represents the service community: as Deane J has observed, he or she must *"act with fairness and detachment and always with the objectives of establishing the whole truth in accordance with the procedures and standards which the law requires to be observed and of helping to ensure that the accused's trial is a fair one"*.

Although the role of the prosecutor excludes any notion of winning or losing, the prosecutor is entitled to present the prosecution's case firmly, fearlessly and vigorously, with, it has been said *"an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings".*

This policy is not intended to cover every conceivable situation which may be encountered during the prosecution process. Prosecutors must seek to resolve a wide range of issues with judgment, sensitivity and common sense. It is neither practicable nor desirable too closely to fetter the prosecutor's discretion as to the manner in which the dictates of justice and fairness may best be served in every case.

1. THE DECISION TO PROSECUTE

1.1 Factors governing the decision to prosecute

The prosecution process normally commences with a suspicion, an allegation or a confession. However, not every suspicion, allegation or confession will automatically result in a prosecution. The fundamental question is whether or not the public interest requires that a particular matter be prosecuted. In respect of prosecutions under the DFDA, the public interest is defined primarily in terms of the requirement to maintain a high standard of discipline in the ADF.

The criteria for exercising the discretion to prosecute cannot be reduced to a mathematical formula. Indeed, the breadth of factors to be considered in exercising the discretion reinforces the importance of judgement and the need to tailor general principles to individual cases.

The decision to prosecute can be understood as a two-stage process. First, does the evidence offer reasonable prospects of conviction? If so, is it in the service interest to proceed with a prosecution taking into account the effect of any decision to prosecute on the maintenance of discipline in the ADF.

1.2 Admissible evidence and reasonable prospect of conviction

The initial consideration will be the adequacy of the evidence and whether or not the admissible evidence available is capable of establishing each element of the offence. A prosecution should not be instituted or continued unless there is reliable evidence, duly admissible before a service tribunal, that a service offence has been committed by the person accused. This consideration is not confined to a technical appraisal of whether the evidence is sufficient to constitute a prima facie case. The evidence must provide reasonable prospects of a conviction.

The decision as to whether there is a reasonable prospect of a conviction requires an evaluation of how strong the case is likely to be when presented in Court. It must take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact. The prosecutor should also have regard to any lines of defence which are plainly open to or have been indicated by the accused, and any other factors which are properly to be taken into account and could affect the likelihood of a conviction.

The factors which need to be considered will depend upon the circumstances of each individual case. Without purporting to be exhaustive they may include the following:

a. Are the witnesses available and competent to give evidence?

b. Do the witnesses appear to be honest and reliable?

c. Do any of the witnesses appear to be exaggerating, defective in memory, unfavourable or friendly towards the accused, or otherwise unreliable?

d. Do any of the witnesses have a motive for being less than candid or to lie?

e. Are there any matters which may properly form the basis for an attack upon the credibility of a witness?

f. What impressions are the witnesses likely to make in court, and how is each likely to cope with cross-examination?

g. If there is any conflict between witnesses, does it go beyond what might be expected; does it give rise to any suspicion that one or both versions may have been concocted; or conversely are the versions so identical that collusion should be suspected?

h. Are there any grounds for believing that relevant evidence is likely to be excluded as legally inadmissible or as a result of some recognised judicial discretion?

i. Where the case is largely dependent upon admissions made by the accused, are there grounds for suspecting that they may be unreliable given the surrounding circumstances?

i. If identity is likely to be an issue, is the evidence that it was the accused who committed the offence sufficiently cogent and reliable?

j. Where more than one accused are to be tried together, is there sufficient evidence to prove the case against each of them?

If the assessment leads to the conclusion that there are reasonable prospects of a conviction, consideration must then be given as to whether it is in the service interest that the prosecution should proceed.

1.3 Maintenance of discipline/Service Interest

It is critical that the ADF establish and maintain the high standard of discipline that is necessary for it to conduct successful operations. As the ADF may be required to operate at short notice in a conflict situation, a common and high standard of discipline must be maintained at all times. Discipline is achieved and maintained by many means, including leadership, training and the use of administrative sanctions. Prosecution of charges under the DFDA is a particularly important means of maintaining discipline in the ADF. Indeed, the primary purpose of the disciplinary provisions of the DFDA is to assist in the establishment and maintenance of a high level of service discipline.

The High Court of Australia, through a number of decisions, has explained the limits of the ADF discipline jurisdiction. Specifically, the High Court has decided that service offences should only be prosecuted where such proceedings can be reasonably regarded as substantially serving the purpose of maintaining or enforcing service discipline.

In many cases the requirement to maintain service discipline will be reason enough to justify a decision to lay charges under the DFDA. However, occasionally wider public interest considerations, beyond those relating to the maintenance of discipline in the ADF, will warrant civil criminal charges being laid.

Although it is a matter for the DMP to determine when the prosecution of a matter will substantially serve the purpose of maintaining service discipline, the DFDA provides at s 5A for the appointment of superior authorities to represent the interests of the service in relation to matters referred to the DMP. Where charges are being considered by the DMP, the DMP will usually canvass the views of the relevant superior authority in writing. Such a request will outline the alleged offending and detail the proposed charges. For the purpose of DFDA section 5A, relevant ADF interests may include:

a. unit operational or exercise commitments which may affect the timing of any trial of the charges;

b. issues concerning the availability of the accused person and/or witnesses due to operational, exercise or other commitments;

c. any severe time constraints or resource implications;

d. wider morale implications within a command and the wider ADF;

e. potential operational security disclosure issues;

f. the anticipation of media interest;

g. the prior conduct of the accused person, including findings of any administrative inquiries concerning the accused person's conduct; and

h. whether or not there is a need to send a message of deterrence, both to the accused person (specific deterrence) and to other members of the ADF (general deterrence).

It would not be appropriate for a Superior Authority to express views on whether particular charges should be laid or the legal merits of the case. Issues of maintaining discipline and Service interests will vary in each particular case but may include the following.

a. **Operational requirements.** Only in the most exceptional cases will operational requirements justify a decision not to lay or proceed with a charge under the DFDA. In particular, the existence of a situation of active service will not, by itself, justify a decision not to charge or proceed with a charge under the DFDA. In most cases, operational considerations will only result in delay in dealing with charges. Operational requirements may, however, be relevant in deciding to which level of service tribunal charges should be referred.

b. **Prior conduct.** The existence of prior convictions, or the general prior conduct of an offender, may be a relevant consideration. For example, several recent infringement notices for related conduct may justify a decision to charge a member with a Service offence under the DFDA notwithstanding that the latest offence, when viewed in isolation, would not normally warrant such action.

c. **Effect upon morale.** The positive and negative effects upon ADF morale, both generally and in respect of a part of the ADF, may be a relevant consideration.

1.4 Alternatives to charging

Laying charges under the DFDA is only one tool that is available to establish and maintain discipline. In some circumstances, maintenance of discipline will best be achieved by taking administrative action against members in accordance with Defence Instructions, as an alternative to or in conjunction with disciplinary proceedings. Similarly, in respect of minor breaches of discipline, proceedings before a Discipline Officer may be appropriate. The DMP may be asked to advise on matters that can be appropriately dealt with through administrative or Discipline Officer action.

While the DMP may make such recommendations, ultimate decisions in respect of how these breaches are dealt with still rests with commanders, who in turn apply judgement to the unique facts and circumstances of the case before them. Nevertheless, administrative or Discipline Officer action alone is inappropriate to deal with situations in which a serious breach of discipline has occurred or where the conduct involved is otherwise deemed to be serious enough to warrant the laying of charges under the DFDA. Further, in some cases the interests of justice may require that a matter be resolved publicly by proceedings under the DFDA before a Defence Force magistrate, restricted court martial or general court martial.

Alternatives to charging should never be used as a means of avoiding charges in situations in which formal disciplinary action is appropriate.

1.5 Discretionary factors

Having determined there is sufficient reliable and admissible evidence for a reasonable prospect of conviction there are

numerous discretionary factors which are relevant in deciding whether to commence (or continue with) a prosecution under the DFDA. In particular, the following is a non-exhaustive list of factors that DMP may consider in deciding, in a given case, whether charges under the DFDA should be preferred or proceeded with:

a. **Consistency and fairness.** The decision to prosecute should be exercised consistently and fairly with similar cases being dealt with in a similar way. However, it must always be recognised that no two cases are identical and there is always a requirement to consider the unique circumstances and facts of each case before deciding whether to prosecute.

b. **Deterrence.** In appropriate cases, such as where a specific offence has become prevalent or where there is a requirement to reinforce standards, regard may be paid to the need to send a message of deterrence, both to the alleged offender and the ADF generally.

c. **Seriousness of the offence.** It will always be relevant to consider the seriousness of the alleged offence. A decision not to charge under the DFDA may be justified in circumstances in which a technical and/or trivial breach of the DFDA has been committed (provided of course that no significant impact upon discipline will result from a decision not to proceed). In these circumstances, administrative action or Discipline Officer proceedings may be a more appropriate mechanism for dealing with the matter. In contrast and as a general rule, the more serious and wilful the alleged conduct giving rise to a service offence, the more appropriate it will be to prefer charges under the DFDA.

d. **Interests of the complainant.** In respect of offences against the person of another, the effect upon that other person of proceeding or not proceeding with a charge will always be a relevant consideration. Similarly, in appropriate cases regard may need to be paid to the wishes of the other person in deciding whether charges should be laid, although such considerations are not determinative.

e. **Nature of the offender.** The age, intelligence, physical or mental health, cooperativeness and level of service experience of the alleged offender may be relevant considerations. For example, in situations where an accused is about to be discharged from the ADF for mental health reasons, the issues of deterrence and maintenance of discipline would carry less weight in the decision to prosecute

f. **Degree of culpability.** Occasionally an incident, such as some accidents, will be caused by the combined actions of many people and cannot be directly attributed to the conduct of one or more persons. In these circumstances, careful regard must be paid to the degree of culpability of the individuals involved when deciding whether charges should be laid and against whom.

g. **Delay in dealing with matters.** Occasionally, conduct giving rise to possible service offences will not be detected for some time. Where service offences are not statute barred under the DFDA, it may nevertheless be relevant to consider whether the length of time since the alleged offence was committed militates against charges being laid. In considering this aspect, the sufficiency of the evidence, the discipline purposes to be served in proceeding with charges and any potential

deterioration in the ability to accord an accused person a fair trial are likely to be particularly relevant.

h. **The member's discharge from the ADF.** Once a member has discharged from the ADF, charges must be preferred within 6 months, and only if the offence carries a maximum penalty of more than 2 years civil imprisonment. In relation to serious matters, consideration will be given to referring the matter to civil authorities for prosecution.

Defending Officers may make written representations to the DMP about discretionary factors to be considered and also the extent to which proceedings can reasonably be regarded as substantially serving the purpose of maintaining or enforcing service discipline although if circumstances have not changed markedly since the original prosecution decision was made, or they refer only to matters that have already been considered, it is unlikely to result in a change of decision.

1.6 Discontinuing a prosecution

Generally the considerations relevant to the decision to prosecute set out above will also be relevant to the decision to discontinue a prosecution. The final decision as to whether a prosecution proceeds rests with the DMP. However, wherever practicable, the views of the service police (or other referring agency) and the views of the complainant will be sought and taken into account in making that decision.

Of course, the extent of that consultation will depend on the circumstances of the case in question, and in particular on the reasons why the DMP is contemplating discontinuing the prosecution. It will be for the DMP to decide on the sufficiency of evidence. On the other hand, if discontinuance on service interest grounds is contemplated, the views of the service police or other referring agency, and the views of the complainant will have greater relevance.

2. FACTORS THAT ARE NOT TO INFLENCE THE DECISION TO PROSECUTE

Although not exhaustive, the following factors are **never** considered when exercising the discretion to prosecute or proceed with charges under the DFDA:

a. The race, religion, sex, sexual preference, marital status, national origin, political associations, activities or beliefs, or Service of the alleged offender or any other person involved.

b. Personal feelings concerning the offender or any other person involved.

c. Possible personal advantage or disadvantage that may result from the prosecution of a person.

d. The possible effect of any decision upon the Service career of the person exercising the discretion to prosecute.

e. Any purported direction from higher authority in respect of a specific case, whether implicit, explicit or by way of inducement or threat.

f. Possible embarrassment or adverse publicity to a command, a unit or formation, the wider ADF or Government.

g. In relation to members of the Permanent Navy, Australian Regular Army or Permanent Air Force, or members of the Reserve rendering continuous full time service, the availability (or otherwise) of victims of crime compensation in the State or Territory where the alleged offending occurred.

Finally, no person has a ‘right’ to be tried under the DFDA. Accordingly, a request by a member that he or she be tried in order to ‘clear his or her name’, is not a relevant consideration in deciding whether charges under the DFDA should be laid or proceeded with.

3. CHOICE OF CHARGES

In many cases the evidence will disclose conduct which constitutes an offence against several different laws. Care must be taken to choose charges which adequately reflect the nature and extent of the offending conduct disclosed by the evidence and which will enable the court to impose a sentence commensurate with the gravity of the conduct. It will not normally be appropriate to charge a person with a number of offences in respect of the one act but in some circumstances it may be necessary to lay charges in the alternative.
The charges laid will usually be the most serious available on the evidence. However, it is necessary to make an overall appraisal of such factors as the strength of the evidence, the probable lines of defence to a particular charge and whether or not trial on indictment is the only means of disposal. Such an appraisal may sometimes lead to the conclusion that it would be appropriate to proceed with some other charge or charges.

The provisions of the DFDA must be relied upon in preference to the use of territory offences from the provisions of the *Crimes Act 1914, Crimes Act 1900* or the *Criminal Codes* unless such a course would not adequately reflect the gravity of the conduct disclosed by the evidence. Territory offences are limited in their application to ADF members by ordinary rules of statutory interpretation. In particular, where any allegedly offending conduct of an ADF member is covered by both a territory offence and an offence under the DFDA, the general provision in a statute yields to the specific provision. This was confirmed by the Full Court of the Federal Court of Australia in *Hoffman v Chief of Army* (2004) 137 FCR 520. The case provides that the question of whether a general territory offence will be excluded by a specific non-territory offence, or vice versa, is to be determined on a case-by-case basis, having regard to the purposes of the provisions under consideration, and the differences between the elements and seriousness of the offences.

Under no circumstances should charges be laid with the intention of providing scope for subsequent charge negotiation.

4. MODE OF TRIAL

The DMP may deem it appropriate to have regard to the following additional factors when deciding which service tribunal should deal with specific charges:

a. **Sentencing options.** The adequacy of the sentencing powers that are available at the various levels of service tribunal will always be an important consideration in deciding by which service tribunal charges should be tried.

b. **Cost.** For service offences or breaches of discipline, cost may be a relevant consideration in deciding what level of service tribunal should be used.

c. **Discretion to decide that an offence be tried by Defence Force magistrate, restricted court martial or general court martial.** Sections 103(1)(c) & (d) of the DFDA provide the DMP with the discretion to decide that an offence be tried by a Defence Force magistrate (DFM), a restricted court martial (RCM) or a general court martial (GCM). In making such a determination, and in addition to a careful consideration of the individual circumstances of the alleged offence(s) in the Brief of Evidence, the DMP may consider:

(1) the objective seriousness of the alleged offence(s);

(2) whether like charges would ordinarily be tried in the absence of a jury in the civilian courts in Australia;

(3) whether the nature of the alleged conduct has a particular service context that relates to the performance of duty and may be best

considered by a number of officers with general service experience;

(4) whether the scale of punishment available would enable the accused person, if convicted, to be appropriately punished;

(5) the prior convictions of the alleged offender

d. **Victims compensation schemes.** In relation to members of the Reserve forces and civilians who are alleged victims of violent offences, the availability of civilian victims of crime compensation may be a relevant consideration in determining whether the matter is prosecuted under the DFDA or referred to a civilian prosecution authority for disposal.

5. DELAY

Avoiding unnecessary delay in bringing matters to trial is a fundamental obligation of prosecutors. Accordingly all prosecutors should:

a. prepare a brief for the DMP with a proposed course of action for the disposal of the matter promptly;

b. when recommending prosecution, draft charges for approval of the DMP and arrange for delivery of the charge documentation to the accused as soon as possible;

c. balance requests for further investigation of the matter with the need to bring the matter to trial in a timely fashion; and

d. remain in contact with witnesses and ascertain their availability for attendance at trial as soon as practical.

6. SEXUAL MISCONDUCT PREVENTION AND RESPONSE OFFICE

The Sexual Misconduct Prevention and Response Office (SeMPRO) was established on 23 July 2013. SeMPRO is focused on providing support, advice and guidance to ADF members who have been affected by sexual misconduct. SeMPRO also provides advice and guidance to commanders and managers of persons affected by sexual misconduct to assist them in appropriately managing the reported incident.

Although there is no formal operational relationship between the office of the DMP, and SeMPRO there is a clear benefit in ensuring that the office of the DMP supports SeMPRO objectives.

To that end, the staff of the office of the DMP may assist SEMPRO in dealing with matters of alleged sexual misconduct, regardless of the decision to lay charges or not. This includes:

a. **informing** victims of the role and availability of SeMPRO in order to invite any victim to report the instance of alleged sexual misconduct to SeMPRO to assist SeMPRO with its reporting, prevalence and trend analysis functions,

b. **liaising** (if the victim consents to that liaison) with SeMPRO staff to assist them in ensuring that victims of sexual misconduct are kept informed throughout the prosecution process and fully supported by SeMPRO staff during the prosecution process; and

c. **reporting** (in accordance with the privacy laws) instances of alleged sexual misconduct (even when not ultimately prosecuted) and the results of trials involving alleged sexual misconduct to assist SeMPRO to identify causative or contributory factors and in its education and reporting functions.

7. DISCLOSURE

It is an important part of the ADF disciplinary system that prosecutions be conducted fairly, transparently, and according to the highest ethical standards. It is a long standing tenet of the Australian criminal justice system that an accused person is entitled to know the case that is to be made against him or her, so that the accused person is able to properly defend the charges. An accused person is entitled to know the evidence that is to be brought in support of the charges as part of the prosecution case, and also whether there is any other material which may be relevant to the defence of the charges. This right imposes an obligation of 'disclosure' on the prosecution.

7.1 What is 'disclosure'?

'Disclosure' requires the prosecution to inform the accused of:

a. the prosecution's case against him/her;
b. any information in realtion to the credibility or reliability of the prosecution witnesses; and
c. any unused material

The obligation is a continuing one (even during the appeal process) requiring the prosecution to make full disclosure to the accused in a timely manner of all material known to the prosecution which can be seen on a sensible appraisal by the prosecution:

a. to be relevant or possibly relevant to an issue in the case;
b. to raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use; or
c. to hold out a real as opposed to fanciful prospect of providing a lead to evidence which goes to either of the previous two matters.

The prosecution will disclose to the accused all material it possesses which is relevant to the charge(s) against the accused which has been gathered in the course of the investigation (or during the proofing of witnesses) and which:

a. the prosecution does not intend to rely on as part of its case, and
b. either is exculpatory or runs counter to the prosecution case (i.e. points away from the accused having committed the offence) or might reasonably be expected to assist the accused in advancing a defence, including material which is in the possession of a third party.

The prosecution duty of disclosure does not extend to disclosing material:

a. relevant only to the credibility of defence (as distinct from prosecution) witnesses;
b. relevant only to the credibility of the accused;
c. relevant only because it might deter an accused from giving false evidence or raising an issue of fact which might be shown to be false; or
d. for the purpose of preventing an accused from creating a forensic disadvantage for himself or herself, if at the time the prosecution became aware of the material, it was not seen as relevant to an issue in the case or otherwise disclosable.

The duty on the prosecution to disclose material to the accused imposes a concomitant obligation on the service police / investigators to notify the prosecution of the existence of all other documentation, material and other information, including that which concerns any proposed witnesses, which might be of relevance to either the prosecution or the defence. If required, in addition to providing the brief of evidence, the service police / investigators shall certify that the prosecution has been notified

of the existence of all such material. Such material includes statements made by witnesses that have not been signed

Subject to public interest immunity considerations, such material, if assessed as relevant according the criteria identified above, should be disclosed.

Where a prosecutor receives material / information that may possibly be subject to a claim of public interest immunity, the prosecutor should not disclose the material without first consulting with the service police/investigators, and where appropriate, Defence Legal. The purpose of the consultation is to give the service police/investigators the opportunity to make a claim of immunity if they consider it appropriate.

The prosecution must not disclose counselling files relating to complainants in sexual offence proceedings , unless the court otherwise orders. In this regard it is relevant to note the provisions of Division 4.5 of the *Evidence (Miscellaneous Provisions) Act 1991* relating to protected confidence material.

7.2 Unused material

"Unused material" is all information relevant to the charge/s against the accused which has been gathered in the course of the investigation and which the prosecution does not intend to rely on as part of its case, and either runs counter to the prosecution case (ie. points away from the accused having committed the alleged offence(s)) or might reasonably be expected to assist the accused in advancing a defence, including material which is in the possession of a third party (ie. a person or body other than the investigation agency or the prosecution).

The prosecution should disclose to the defence all unused material in its possession unless:

a. it is considered that the material is immune from disclosure on public interest grounds;

b. disclosure of the material is precluded by statute, or

c. it is considered that legal professional privilege should be claimed in respect of the material.

Where disclosure is withheld on public interest grounds the defence is to be informed of this and the basis of the claim in general terms (for example that it would disclose the identity of an informant or the location of a premises used for surveillance) unless to do so would in effect reveal that which it would not be in the public interest to reveal.

In some instances it may be appropriate to delay rather than withhold disclosure, for example if disclosure would prejudice ongoing investigations. Disclosure could be delayed until after the investigations are complete.

Legal professional privilege will ordinarily be claimed against the production of any document in the nature of an internal DPP advice or opinion. Legal professional privilege will not be claimed in respect of any record of a statement by a witness that is inconsistent with that witness's previous statement or adds to it significantly, including any statement made in conference, provided the disclosure of such records serves a legitimate forensic purpose.

The requirement to disclose unused material continues throughout a prosecution. If the prosecution becomes aware of the existence of unused material during the course of a prosecution which has not been disclosed, that material should be disclosed as soon as reasonably possible.

Where feasible the accused should be provided with copies of the unused material. If this is not feasible (for example because of the bulk of the material) the accused should be provided with a schedule listing the unused material, with a description making clear the nature of that material, at the time the brief of

evidence is served. The defence should then be informed that arrangements may be made to inspect the material.

If the prosecution has a statement from a person who can give material evidence but who will not be called because they are not credible, the defence should be provided with the name and address of the person and, ordinarily, a copy of the statement.

Where the prosecution is aware that material which runs counter to the prosecution case or might reasonably be expected to assist the accused is in the possession of a third party, the defence should be informed of:

a. the name of the third party;

b. the nature of the material; and

c. the address of the third party (unless there is good reason for not doing so and if so, it may be necessary for the prosecutor to facilitate communication between the defence and the third party.)

There may be cases where, having regard to:

a. the absence of information available to the prosecutor as to the lines of defence to be pursued, and/or

b. the nature, extent or complexity of the material gathered in the course of the investigation,

there will be difficulty in accurately assessing whether particular material satisfies the description of unused material. In these cases, after consultation with the relevant investigating agency, the prosecutor may permit the defence to inspect such material.

7.3 Disclosure affecting credibility and/or reliability of a prosecution witness

The prosecution is also under a duty to disclose to the accused information in its possession which is relevant to the credibility or reliability of a prosecution witness, for example:

a. a relevant previous conviction or finding of guilt;
b. a statement made by a witness, whether signed or unsigned, which is inconsistent with any prior statement of the witness;
c. a relevant adverse finding in other criminal proceedings or in non-criminal proceedings;
d. any physical or mental condition which may affect reliability;
e. any concession which has been granted to the witness in order to secure the witness's testimony for the prosecution.

Previous convictions

It is not possible for the service police to conduct criminal checks for all prosecution witnesses. Prosecutors should only request a criminal history check for a prosecution witness where there is reason to believe that the credibility of the prosecution witness may be in issue.

While the duty to disclose to the accused the previous convictions of a prosecution witness extends only to relevant prior convictions, a prior conviction recorded against a prosecution witness should be disclosed unless the prosecutor is satisfied that the conviction could not reasonably be seen to affect credibility having regard to the nature of, and anticipated issues in, the case. In that regard, previous convictions for offences involving dishonesty should always be disclosed.

The accused may request that the prosecution provide details of any criminal convictions recorded against a prosecution witness. Such a request should be complied with where the prosecutor is

satisfied that the defence has a legitimate forensic purpose for obtaining this information, such as where there is a reason to know or suspect that a witness has prior convictions.

8. CHARGE NEGOTIATION

Charge-negotiation involves communications between an accused person via his/her defending officer and the DMP in relation to charges to be proceeded with. Such negotiations may result in the accused person pleading guilty to fewer than all of the charges he/she is facing, or to a lesser charge or charges, with the remaining charges either not being proceeded with or taken into account without proceeding to conviction.

The DMP is the sole authority to accept or negotiate offers made by an accused person who is to be tried by a DFM, RCM or GCM. A legal officer who prosecutes on DMP's behalf must seek DMP's instructions prior to accepting an offer made in these charge-negotiations.

Charge-negotiations are to be distinguished from consultations with a service tribunal as to the punishment the service tribunal would be likely to impose in the event of the accused pleading guilty to a service offence. No legal officer prosecuting on behalf of the DMP is to participate in such a consultation.

Nevertheless, arrangements as to charge or charges and plea can be consistent with the requirements of justice subject to the following constraints:

a. any charge-negotiation proposal must not be initiated by the prosecution; and

b. such a proposal should not be entertained by the prosecution unless:

   (1) the charges to be proceeded with bear a reasonable relationship to the nature of the misconduct of the accused;

(2) those charges provide an adequate basis for an appropriate sentence in all the circumstances of the case; and

(3) there is evidence to support the charges.

Any decision by DMP whether or not to agree to a proposal advanced by the accused person, or to put a counter-proposal to the accused person, will take into account all the circumstances of the case and other relevant considerations, including:

a. whether the accused person is willing to cooperate in the investigation or prosecution of others, or the extent to which the accused person has done so;

b. whether the sentence that is likely to be imposed if the charges are varied as proposed (taking into account such matters as whether the accused is already serving a term of imprisonment) would be appropriate for the misconduct involved;

c. the desirability of prompt and certain dispatch of the case;

d. the accused person's antecedent conduct;

e. the strength of the prosecution case;

f. the likelihood of adverse consequences to witnesses;

g. in cases where there has been a financial loss to the Commonwealth or any person, whether the accused person has made restitution or reparation or arrangements for either;

h. the need to avoid delay in the dispatch of other pending cases;

i. the time and expense involved in a trial and any appeal proceedings; and

j. the views of the victim(s) and/or complainant(s), where this is reasonably practicable to obtain.

The proposed charge(s) should be discussed with any complainant(s) and where appropriate an explanation of the rationale for an acceptance of the plea ought to be explained. The views of the complainant will be relevant and need to be weighed by the decision maker but are not binding on the DMP.

In no circumstances will the DMP entertain charge-negotiation proposals initiated by the defending officer if the accused person maintains his or her innocence with respect to a charge or charges to which the accused person has offered to plead guilty.

A proposal by the Defending Officer that a plea of guilty be accepted to a lesser number of charges or a lesser charge or charges may include a request that the proposed charges be dealt with summarily, for example before a Commanding Officer.

A proposal by the Defending Officer that a plea of guilty be accepted to a lesser number of charges or to a lesser charge or charges may include a request that the prosecution not oppose a submission to the court during sentencing that the particular penalty falls within a nominated range. Alternatively, the Defending Officer may indicate that the accused will plead guilty to a statutory or pleaded alternative to the existing charge. DMP may agree to such a request provided the penalty or range of sentence nominated is considered to be within the acceptable limits of an exercise of proper sentencing discretion.

9. IMMUNITIES (UNDERTAKINGS OF DMP)

Section 188GD vests DMP with the power to give an undertaking to a person that they will not be prosecuted for a service offence in relation to assistance provided to investigators. Essentially, this provision is aimed at securing the assistance of a co-accused or accomplice in circumstances where the disciplinary efficacy of bolstering the prosecution case against the primary accused outweighs the forfeiture of the opportunity to prosecute the person to whom the undertaking is given. The preference is always that a co-accused person willing to assist in the prosecution of another plead guilty and thereafter receive a reduction to their sentence based upon the degree of their cooperation. Such an approach may not always be practicable, however.

In determining whether to grant an undertaking, DMP will consider the following factors.

a. The extent to which the person was involved in the activity giving rise to the charges, compared with the culpability of their accomplice.

b. The strength of the prosecution case against a person in the absence of the evidence arising from the undertaking.

c. The extent to which the testimony of the person receiving the undertaking will bolster the prosecution case, including the weight the trier of fact is likely to attach to such evidence.

d. The likelihood of the prosecution case being supported by means other than evidence from the person given the undertaking.

e. Whether the public interest is to be served by not proceeding with available charges against the person receiving the undertaking.

Details of any undertaking, or of any concession in relation to the selection of charges in light of cooperation with the prosecution, must be disclosed to the service tribunal and to the accused through their Defending Officer.

10. OFFENCES OCCURRING AND/OR PROSECUTED OVERSEAS

In respect of service offences committed or intended to be prosecuted overseas, additional considerations apply. Although jurisdiction under Australian domestic criminal law will rarely exist in such cases, the nation within whose territory an alleged offence has been committed may have a claim to jurisdiction. In such cases a potential conflict of jurisdiction between the DFDA and the foreign nation's criminal law may arise. In most cases jurisdictional disputes between foreign nations and the ADF will be resolved by reference to foreign visiting forces legislation or Status of Forces Agreements or other similar arrangements.

J.A. WOODWARD CSC
Brigadier
Director of Military Prosecutions

26 October 2015

ANNEX B to
DMP REPORT 01 JAN 15 TO 31 DEC 17

CLASS OF OFFENCE BY SERVICE - 2017

Class of Offence	NAVY	ARMY	RAAF	TOTAL
01 – HOMICIDE AND RELATED OFFENCES	0	0	0	**0**
02 – ACTS INTENDED TO CAUSE INJURY	7	7	3	17
03 – SEXUAL ASSAULT AND RELATED OFFENCES	6	6	2	14
04 – DANGEROUS OR NEGLIGENT ACTS ENDANGERING PERSONS	0	3	1	4
05 – ABDUCTION, HARASSMENT AND OTHER OFFENCES AGAINST THE PERSON	0	4	1	5
06 – ROBBERY, EXTORTION AND RELATED OFFENCES	0	0	0	0
07 – UNLAWFUL ENTRY WITH INTENT/BURGLARY, BREAK AND ENTER	0	0	0	0
08 – THEFT AND RELATED OFFENCES	1	0	0	1
09 – FRAUD, DECEPTION AND RELATED OFFENCES	6	6	4	16
10 – ILLICIT DRUG OFFENCES	0	1	0	1
11 – PROHIBITED AND REGULATED WEAPONS AND EXPLOSIVES OFFENCES	0	1	0	1
12 – PROPERTY DAMAGE AND ENVIRONMENTAL POLLUTION	0	0	0	0
13 – PUBLIC ORDER OFFENCES	0	1	0	1
14 – TRAFFIC AND VEHICLE REGULATORY OFFENCES	0	0	0	0
15 - OFFENCES AGAINST JUSTICE PROCEDURES, GOVERNMENT SECURITY AND GOVERNMENT OPERATIONS	2	0	0	2
16 – MISCELLANEOUS CIVILIAN OFFENCES	3	1	0	4
17 – SPECIFIC MILITARY DISCIPLINE OFFENCES	17	11	2	30
Grand Total	**42**	**41**	**13**	**96**

TABLE OF ABBREVIATIONS

AACP	Australian Association of Crown Prosecutors
ACT	Australian Capital Territory
ACT DPP	Australian Capitol Territory Director of Public Prosecutions
ADF	Australian Defence Force
ADFIS	Australian Defence Force Investigative Service
APS	Australian Public Service
COL	Colonel
CPL	Corporal
CPO	Chief Petty Officer
CSM	Command Sergeant Major
DDCS	Defence Counsel Services
DFDA	Defence Force Discipline Act 1982
DFDAT	Defence Force Appeal Tribunal
DFM	Defence Force Magistrate
DMP	Director of Military Prosecutions
DPP	Director of Public Prosecutions
DRN	Defence Restricted Network
FCA	Federal Court of Australia
FLTLT	Flight Lieutenant
FORCOMD	Forces Command
GCM	General Court Martial
IAP	International Association of Prosecutors
LS	Leading Seaman
LTCOL	Lieutenant Colonel
MAJ	Major
ODMP	Office of the Director of Military Prosecutions
PTE	Private
RAAF	Royal Australian Air Force
RCM	Restricted Court Martial
RMJ	Registrar of Military Justice
RSM	Regimental Sergeant Major
SGT	Sergeant