Australian Government

Inspector-General of the Australian Defence Force

Inquiry into the Weaponisation of the Military Justice System

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Acknowledgments

The Inspector-General is very grateful for the contributions of those current and former ADF members and their family members with a living and lived experience who made a submission to the Inquiry.

The Inspector-General thanks the following for their work on the Inquiry:

Inquiry Director: Major David Allison
Senior Legal Advisor: Wing Commander Anthony Erman
Executive Secretary and Advisor: Ms Emily Osborne

The Inquiry is grateful to the following for their assistance and support: Brigadier Tracy Garrett, Deputy Inspector-General of the Australian Defence Force; Mr Cameron Gill, Acting Assistant Secretary Enabling Functions; the IGADF Directors and their teams; and Ms Catherine McGregor AM.

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Defence All-hours Support Line 1800 628 036	✓	✓				✓	
	Confidential service for ADF members and families that connects you with mental health professionals who can help you access psychology, medical, social work, and chaplaincy services.						
Defence Member and Family Helpline 1800 624 608	✓	✓				✓	
	Helpline for ADF members and families staffed by qualified social workers who can provide information, support, and connect to your local Defence community.						
1800 IMSICK 1800 467 362	✓						
	Nurse triage and health support service for ADF personnel who become ill or injured after hours or off-base.						
Defence Employee Assistance Program 1300 687 327		✓		✓	✓	✓	
	Counselling service for Defence APS employees, ADF Reservists, ADF cadets, and their immediate families that provides support for work and personal concerns.						
Defence Chaplaincy 1300 333 362	✓	✓		✓	✓	✓	
	Independent pastoral care, support and advice for ADF members and families.						
Open Arms 1800 011 046	✓	✓	✓			✓	
	Counselling service for ADF members, veterans and families.						
Safe Zone Support 1800 142 072	✓	✓	✓			✓	
	Anonymous counselling service for ADF members, veterans and families						
Sexual Misconduct Prevention and Response Office 1800 736 776 (1800 SeMPRO)	✓	✓	✓	✓	✓	✓	✓
	Confidential support service for those affected by an incident of sexual violence and for those managing incidents of sexual violence in Defence.						
National Alcohol and Other Drug Hotline 1800 250 015	✓	✓	✓	✓	✓	✓	✓
	Phone service that provides counselling, advice and information for those struggling with addiction.						
Lifeline 13 11 14	✓	✓	✓	✓	✓	✓	✓
	National crisis support service.						
13YARN 13 92 76	✓	✓	✓	✓	✓	✓	✓
	National support line for First Nations people in crisis.						

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INSPECTOR-GENERAL'S FOREWORD

An effective military justice system is fundamental to the strength and credibility of the Australian Defence Force (ADF). It underpins command authority, protects individual rights, and enables the discipline upon which operational capability depends. When it functions well, military justice is largely invisible – understood, trusted and accepted as part of professional service. When it does not, the consequences are profound: confidence erodes, morale suffers, cohesion weakens, and capability is diminished.

This Inquiry was undertaken at a time when trust in institutional systems, within Defence and across Australian society, has been under sustained pressure. For the ADF, the stakes are higher. Military justice operates in an environment defined by hierarchy, unique legal obligations and, at times, life-and-death decision making. In that context, perceptions of unfairness – whether well-founded or not – can be as corrosive as actual injustice. They distort behaviour, discourage early engagement with lawful processes, and foster a belief that systems intended to ensure discipline may instead be used as instruments of harm.

A consistent theme runs through the evidence before the Inquiry and through its conclusions and recommendations: an acknowledgment of the significant impact that the weaponisation, or perceived weaponisation, of the military justice system can have on the mental health and wellbeing of individuals. Where processes are experienced as beyond their lawful purpose, unpredictable, or disproportionate, the effects can be enduring, can significantly increase psychological distress, and can exacerbate mental health concerns. The Inquiry heard that fear of adverse consequences can amplify stress, undermine psychological safety, and deter personnel from seeking help or engaging constructively with command. Recognising and addressing these impacts is not ancillary to military justice; it is central to maintaining a disciplined, resilient and effective force.

The Inquiry was therefore not driven by a presumption of widespread wrongdoing, but by a recognition that legitimacy is as important as legality. A system that is technically sound yet perceived as rigid, opaque or indifferent to human impact will ultimately fail to achieve its purpose. Addressing both the reality and the perception of weaponisation of the military justice system is essential if military justice is to remain a source of strength.

This Inquiry's conclusions and recommendations are measured, evidence-based and firmly anchored in the principle that discipline and fairness are not competing values but mutually reinforcing ones. The proposed reforms seek to restore clarity, consistency and proportionality, while recognising and preserving the central role of command. They also aim to strengthen confidence in military justice, reduce avoidable harm, and reinforce discipline as a foundation of capability, now and into the future.

The Inquiry received submissions from more than 360 individuals and organisations, including current and former ADF members from all 3 Services and across a wide range of ranks. Those submissions have been critical to informing the Inquiry's work.

I acknowledge and thank the Inquiry team for their impressive research and diligence in helping my office deliver this comprehensive examination of a complex and sensitive system. I am also grateful to the Advisory Panel, whose experience and insights have been invaluable throughout the Inquiry.

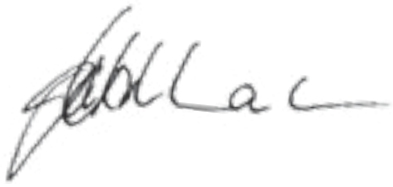
James Gaynor CSC
Inspector-General of the Australian Defence Force

ADVISORY PANEL STATEMENT

Pursuant to section 110P of the *Defence Act 1903* (Cth), the Inspector-General of the Australian Defence Force appointed each of us as members of an independent Advisory Panel to provide independent strategic advice, insight and oversight throughout this Inquiry. We were actively engaged at each stage of the Inquiry's work, with access to relevant information and evidence as it emerged. We tested developing themes, offered observations drawn from our respective experience, and provided independent input on the Inquiry's scope, approach, analysis, conclusions and recommendations.

We endorse this Report and commend it to Defence. It is a careful, evidence-informed and balanced contribution to strengthening the military justice system. In our view, the Report considers and explains what is meant by weaponisation of the military justice system in the relevant context, examines the allegations and perceptions that the system has been – or has the potential to be – abused, and identifies the features and drivers that may enable such abuse. It also sets out practical actionable recommendations aimed at strengthening accountability and protective factors, and at minimising or eliminating the risk of future misuse.

We encourage Defence leaders and policy-makers to support and implement the recommendations in a transparent and properly resourced way, mindful of the importance and significance of a fair military justice system to all members of the ADF



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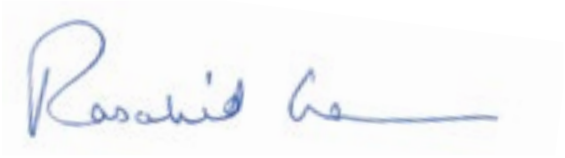
Doctor Nikki Jamieson



Emeritus Professor Rosalind Croucher AM FAAL FRSN

IGADF Weaponisation Inquiry Advisory Panel

19 May 2026

EXECUTIVE SUMMARY

If military justice is viewed with exclusivity, suspicion, uncertainty, unease, or if it is complicated in its accessibility, it falls short of its intended purpose … military justice is, and must be considered, an essential component of capability.[1]

The purpose of the military justice system

1. The proper functioning of any defence force rests on good order and military discipline. The primary purpose of Australia's military justice system is to instil and enforce discipline so that the Australian Defence Force (ADF) can defend Australia and its national interests.

2. Military justice must be accessible, trusted, and clearly understood to serve this purpose. Effective discipline in a fighting force depends on a careful balance between individual rights and organisational needs. When this balance is lost, capability suffers. Prioritising discipline over rights undermines morale and effectiveness. Overemphasising rights can weaken discipline with similar consequences. Therefore, military justice is not just a legal and policy framework – it is a vital element of operational capability.

3. The military justice system also plays a critical role in the protection of civilians and prisoners of war during armed conflict. It is a sad fact that ill-disciplined troops are more likely to perpetrate outrages on civilian populations in times of war and to mistreat or kill captured enemy soldiers. In addition to the moral imperative, Australia also has an international legal obligation to maintain an internal military discipline system.[2]

4. It is essential that discipline be instilled and enforced throughout the ADF. If the military justice system is used during peacetime, it becomes instinctive during war. As former Chief of the Defence Force, General the Honourable Sir Peter Cosgrove AK AC (Mil) CVO MC (Retd), noted:

> [d]iscipline is integral to the effectiveness and efficiency of professional fighting forces. In preparing for armed conflict during times of peace, members of the ADF must behave to those same exacting high standards which will be demanded in the event of armed conflict.[3]

An inquiry into the weaponisation of the military justice system

5. This inquiry commenced on 16 August 2024 as an own-initiative inquiry by the Inspector-General of the Australian Defence Force (IGADF), Mr James Gaynor CSC, pursuant to the *Inspector-General of the Australian Defence Force Regulation 2016* (Cth).

6. After submissions to the Office of the IGADF started to include specific complaints that the military justice system had been 'weaponised' against ADF members, the IGADF proposed to investigate the concept of 'weaponisation' and its meaning in respect of military justice. The need for such an inquiry was reinforced by the Royal Commission into Defence and Veteran Suicide (Royal Commission), in which witnesses spoke of perceptions that the military justice system had been, or had the potential to be, 'weaponised'. The Royal Commission delivered its report in September 2024. Its recommendation that the IGADF prioritise an inquiry into the weaponisation of the military justice system was endorsed by Government in December 2024.[4] The Inquiry terms of reference were finalised in March 2025.[5]

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[1] Inquiry submission 282.

[2] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Geneva, 8 June 1977) [1978] UNTS 75 p 287.

[3] Australian Senate Foreign Affairs, Defence and Trade Reference Committee (2005) *The Effectiveness of Australia's Military Justice System,* p 10.

[4] *Royal Commission into Defence and Veteran Suicide* (Final Report, September 2024); Australian Government (2024) *Australian Government Response to the Final Report of the Royal Commission into Defence and Veteran Suicide*, Australian Government.

[5] The Inquiry Directions are set out at Enclosure 1.

7. Australia's military justice system has been the subject of multiple inquiries and investigations over the last 25 years.[6] Most of these inquiries and investigations have examined specific aspects of the system or individual incidents, complaints or deficiencies. Each has made considered and well-intentioned recommendations. However, in aggregate, the sheer number and variety of inquiries and recommendations, and the resultant frequency of changes, has led to confusion and trepidation among users of the military justice system.

8. The purpose of this Inquiry was to examine allegations and perceptions that the military justice system has been, or has the potential to be, weaponised or abused, consider the extent of any such abuse, and identify any features of the military justice system that may allow for abuse. The Inquiry evaluated the protective factors that already exist to prevent weaponisation and made recommendations for a more effective, trusted and fairer military justice system.

9. The Inquiry has considered both 'weaponisation' and 'perceptions of injustice'. Both have a significant effect on ADF members' perceptions of fairness and their trust in the military justice system and their mental health and wellbeing.

10. For the purpose of the Inquiry, weaponisation was considered to refer to deliberate use of military justice processes that causes injustice to another ADF member. This includes the orchestration of otherwise legitimate processes to victimise an ADF member. The Inquiry concluded that weaponisation can occur both through the deliberate use of military justice processes as well as through inflexible, incompetent or callous use of military justice processes. The Inquiry considered weaponisation at all levels, including cases where subordinates have used the military justice system against their superiors.

11. Perceptions of injustice was considered to refer to ADF members' perceptions that military justice processes have been or can be misused, even if processes may have been legitimate.

12. This perception of misuse or notion of injustice, whether based on fact or feeling only, was of significant concern to the Inquiry. Negative perceptions of how the military justice system is applied, particularly perceptions that the system is applied unfairly, directly undermine faith and trust in the proper functioning of the military justice system, to the detriment of good order, discipline and cohesion of the ADF. This constitutes a risk to the primary purpose of the military justice system. The scale of the problem warrants remedial action.

13. To address this broad scope, the Inquiry considered the following questions:

- What is meant by the term 'weaponisation of the military justice system'?
- To what extent do military justice system processes appear to have been abused within the ADF?
- Which military justice system processes are most susceptible to abuse?
- What are the key reasons and causes for such behaviour and actions?
- What mechanisms exist for identifying potential abuse of the military justice system and for holding commanders to account who are found to abuse military justice processes and whether these mechanisms are effective?
- How can any abuses be minimised or eliminated?

[6] For example, Australian Senate Foreign Affairs, Defence and Trade Reference Committee (2005) *The Effectiveness of Australia's Military Justice System;* Street L and Fisher L (2009) *Report of the Independent Review of the Health of the Reformed Military Justice System,* Department of Defence, Australian Government; Gyles R (2011) *HMAS Success Commission of Inquiry: Allegations of Unacceptable Behaviour and the Management Thereof,* Department of Defence, Australian Government; Inspector General of the Australian Defence Force (2011) Review of arrangements for the management of complaints and incidents in Defence including civil and military jurisdiction, Inspector-General of the Australian Defence Force, Australian Government; Department of Defence (2017) *Review of the Summary Discipline System,* Department of Defence, Australian Government.

14. To assist the Inquiry, the IGADF appointed an Advisory Panel of 4 eminent Australians to provide independent expert guidance, strategic advice and oversight to ensure the Inquiry's objectives, as set out in the Directions, were met. The Advisory Panel comprised Her Honour Sylvia Emmett AM RAN (Retd), Emeritus Professor Rosalind Croucher AM FAAL FRSN, Dr Nikki Jamieson and Warrant Officer Janet Brennan.

15. While this Inquiry necessarily traversed some issues common to its predecessors, it was consciously system-focused and reform-oriented. The Inquiry's purpose was to address deficiencies in the military justice system, to identify systemic issues that affect the ADF now, and to recommend potential solutions.

16. The Inquiry considered all 4 elements of the military justice system: investigations, prosecutions and proceedings under the *Defence Force Discipline Act 1982* (Cth); the conduct of administrative inquiries; adverse administrative action; and review and complaint mechanisms.[7] The Inquiry examined both the military discipline system and the military administrative system. These systems are intertwined inextricably and can be used concurrently.

17. The Inquiry recognises that Defence is currently undertaking significant work to implement a number of other recommendations from the Royal Commission about military justice. This Inquiry seeks to complement such work. Where relevant, this Report will note that areas of Defence are already working to implement a specific Royal Commission recommendation.

Inquiry framing principles

18. When evaluating military justice processes and making recommendations to minimise and eliminate weaponisation and perceptions of injustice, the Inquiry adopted a set of non-hierarchical and interdependent framing principles to anchor deliberations and to underpin the recommendations for this report:

- **System integrity.** The military justice system should be coherent and reliable.
- **Fairness and impartiality.** All ADF members involved in military justice processes should be treated fairly and impartially, regardless of rank or position.
- **Timeliness.** Military justice processes should be conducted in a timely way, both to support command and to provide certainty of outcomes to ADF members.
- **Transparency.** Military justice processes and their outcomes should be known to participants.
- **Support and protection**. Military justice processes should incorporate support to all participants, including complainants, respondents and other affected people, to promote a sense of personal security, wellbeing and trust in the system. Military justice processes should be trauma-informed and trauma-responsive and promote wellbeing, collaboration, adaptation and safety for those who have been exposed to traumatic experiences.
- **Effectiveness.** The military justice system should provide commanders with effective tools for maintaining and enhancing service discipline without compromising an individual's right to respect, fair treatment and a fair hearing.
- **Flexibility.** Military justice processes should be sufficiently flexible and adaptable so that they can be implemented both during peacetime and on operations and deployments.

[7] Parliament of Australia (2025) *Inspector-General of the Australian Defence Force Annual Report 1 July 2023 to 30 July 2024,* Australian Government.

19. The Inquiry notes that Defence has recently published a new *Military Justice Policy*, which identifies five objectives of the military justice system:

- Easy to use, particularly at the lowest levels and in a deployed environment
- Timely and responsive, thereby enabling commanders to effectively manage personnel and immediately address behavioural concerns
- Fair and just towards all personnel involved in military justice processes
- Trusted by the ADF and the wider community
- Minimises unintended harm.[8]

20. The *Military Justice Policy* additionally identifies 4 principles of military justice:

- Professional self-regulation
- Centrality of command
- Effectiveness for the battlefield
- Risk of harm to personnel is balanced and mitigated.

21. The objectives and principles of the military justice system are broadly consistent with the framing principles that have guided the Inquiry.

Inquiry methodology

22. The Inquiry drew on various sources of information including relevant IGADF case reports, Defence and IGADF documents, and military justice statistics. The Inquiry consulted widely with key stakeholders and held 3 expert or constituency-based roundtables. During the Inquiry, IGADF military justice performance audit teams included specific questions on weaponisation in audit focus groups conducted with ADF members across all rank levels in audited units. The Inquiry's deliberations were assisted by input from Defence officials.

23. The Inquiry sought public submissions through its website and print and social media between 17 March and 22 June 2025. The Inquiry received 362 submissions from current serving ADF members, former ADF members, interested organisations and members of the public.

Principal conclusions

24. The Inquiry has reached several principal conclusions. These conclusions recognise that deliberate misuse is not widespread, but that poor, rigid or insensitive application of military justice processes can nonetheless cause harm to ADF members and foster perceptions that the system has been weaponised or misused.

PRINCIPAL CONCLUSIONS:

The Inquiry did not find widespread misuse or abuse of military justice processes by ADF commanders.

While weaponisation of the military justice system is not widespread, it can and does occur at multiple levels of the ADF.

Implementing military justice processes rigidly, ineptly or blindly can amount to unintentional weaponisation or, at the very least, lead some ADF members to the conclusion that the military justice system has been weaponised against them.

[8] Department of Defence (2025) *Military Justice Policy*, Department of Defence, Australian Government.

25. There are several factors that lead to perceptions of weaponisation or injustice:

- **Distrust and a lack of faith in the military justice system.** Some ADF members' distrust and lack of faith in the military justice system means that they may think a military justice process is being misused to harm them or others, even where it has been used properly and for legitimate purposes.
- **Concurrent use of discipline and administrative sanctions**. Some ADF members perceive that concurrent use of the administrative and discipline systems is a misuse of the military justice system and is 'double jeopardy'.
- **Issues with fact finding**. Frequent, lengthy, poorly-conducted and intrusive fact finding means that some ADF members feel they are under constant scrutiny. ADF members may have concerns about unfairness, bias, or a lack of thoroughness or about the qualifications and expertise of the fact finding officer.
- **Lack of timeliness.** Delay, particularly if it goes unexplained, creates a not-unreasonable suspicion that military justice processes are being weaponised.
- **Lack of transparency**. Some ADF members perceive that military justice processes are not transparent to the people involved in them.
- **Lack of accountability.** Some ADF members perceive that those who misuse military justice processes are not held to account or worry that military justice processes are not overseen.

Resulting conclusions and recommendations

26. Cascading from the principal conclusions, the Inquiry has made a series of conclusions and recommendations aimed at addressing perceptions of injustice and strengthening accountability of ADF members who misuse or abuse military justice processes. The recommendations provide a set of reforms that are anchored strongly in the framing principles and address all aspects of the military justice system examined in this Inquiry.

27. The Inquiry notes that, as of May 2026, the Defence Force Discipline Amendment (RCDVS Implementation and Related Measures No. 1) Bill 2026 (the Bill) is currently before Parliament. The Bill seeks to implement key recommendations of the Royal Commission and is intended to, among other things, introduce a suite of fairness, streamlining and efficiency measures in the military discipline framework.[9] Noting that the Bill is yet to pass Parliament as at the time of publication, this Inquiry welcomes any legislative initiative to enhance fairness. Where relevant, the Inquiry has considered the effect of the Bill in framing the recommendations below.

CONCLUSION 1: ADF discipline processes provide greater transparency and more robust safeguards, compared with administrative processes, contributing to higher levels of fairness and confidence in the military justice system.

RECOMMENDATION 1: Where conduct may disclose a *Defence Force Discipline Act 1982* offence, the ADF consider discipline action in the first instance.

NOTE: The Defence Force Discipline Amendment (RCDVS Implementation and Related Measures No. 1) Bill 2026 is consistent with the intent of this recommendation. The Bill intends, among other measures, to create a 'summary contravention scheme' to enable minor disciplinary matters to be addressed more efficiently without compromising fairness.

[9] Defence Force Discipline Amendment (RCDVS Implementation and Related Measures No. 1) Bill 2026, Explanatory Memorandum, para 2.

CONCLUSION 2: Involuntary termination of service is confronting for ADF members and may give rise to concerns of unfairness if it is perceived to be arbitrarily applied. Decisions to end an ADF member's service on the basis that it is not in the interests of the Defence Force should therefore be initiated and finalised consistently and at appropriate levels to maintain fairness and confidence in the military justice system. While unit commanders must retain operational discretion as to whether particular members should serve under their command, they should not have authority to use the potential termination of ADF service as a means of leverage over personnel.

RECOMMENDATION 2: The Chief of the Defence Force withdraw commanding officers' delegations to initiate termination of an ADF member's service on the grounds that their service is not in the interests of the Defence Force.

CONCLUSION 3: The use of the terms 'dismissal' in disciplinary processes and 'termination' and 'early end of service' in administrative processes, to describe essentially the same outcome, creates confusion and undermines confidence in the military justice system. This confusion is reinforced, and gives rise to a perception of 'double jeopardy', when an ADF member's service is involuntarily administratively terminated or ended early after a Service tribunal declines to impose a punishment of 'dismissal' following a discipline trial.

RECOMMENDATION 3: Relevant legislation and policy be amended to harmonise the terms 'dismissal', 'termination' and 'early end of service'.

CONCLUSION 4: Administrative termination of an ADF member's service following discipline proceedings that considered but did not impose a punishment of dismissal leads to perceptions of 'double jeopardy' and injustice.

RECOMMENDATION 4: Relevant legislation be amended to require courts martial and Defence Force magistrates, where dismissal is available as a punishment option, to:

- consider and determine whether dismissal is an appropriate punishment and provide written reasons for that determination
- consider submissions from the relevant Service before imposing punishment.

Relevant legislation be further amended to preclude the ADF from subsequently administratively terminating a member's service solely on the same factual basis.

NOTE: The Defence Force Discipline Amendment (RCDVS Implementation and Related Measures No. 1) Bill 2026 proposes changes Part IV (Punishments and orders) of the Defence Force Discipline Act. In the case of a court martial, it would be the judge advocate who would be required to take action under Part IV. The judge advocate would be required to provide reasons for each punishment or order imposed. A Defence Force magistrate is already required to provide reasons for action taken under Part IV.

CONCLUSION 5: ADF members, especially inexperienced personnel, may be vulnerable to injustice associated with the disciplinary infringement process. This is in contrast to other discipline proceedings that include mandatory protective factors, such as defending officers.

RECOMMENDATION 5: Relevant legislation and policy be amended to mandate that an infringed member choose a reasonably available advocate to assist them through all parts of a disciplinary infringement process.

CONCLUSION 6: Limited understanding and situational pressure during the discipline infringement process can lead some ADF members to make ill-considered elections with lasting consequences. They may be susceptible to pressure to choose an option, irrespective of their actual culpability, that suits their own or their chain of command's administrative convenience. Requiring ADF members to provide reasons when electing to have an infringement dealt with by a discipline officer would help ensure the decision is informed and voluntary, and uphold the integrity of the process.

RECOMMENDATION 6: Relevant policy be amended to mandate that an infringed member give reasons in writing for their election to have their infringement dealt with by a discipline officer.

CONCLUSION 7: The lack of clear and consistent time limits on the use of infringement records creates uncertainty for ADF members, may fuel perceptions of unfairness in career management, and may lead to inequitable outcomes. A longer, fixed retention period would reduce inconsistency, improve transparency, and address the potential unfairness of the current arrangements.

RECOMMENDATION 7: Relevant law and policy be amended to prohibit accessing or using infringement records after a period of 24 months.

CONCLUSION 8: Current Military Police evidence-gathering powers are outdated and can frustrate, impede, or unnecessarily prolong investigations. This undermines confidence in the military justice system and can create perceptions among both victims and alleged offenders that processes are weaponised against them. Harmonising Military Police investigative powers with those of civilian police would enable the effective investigation of all offences involving ADF members in Australia and overseas. Enhanced powers would improve efficiency, reduce perceptions of weaponisation arising from ineffective investigations, and better align evidence-gathering powers with community expectations.

RECOMMENDATION 8: Relevant legislation be amended to harmonise Military Police powers (including investigative powers, powers of entry, search and seizure powers and use of force powers) with those of the Australian Federal Police.

NOTE: The Defence and Veterans' Service Commission will be conducting an inquiry into military sexual violence in the ADF, as recommended by the Royal Commission. The Royal Commission recommended that an examination of Military Police investigative powers ought to be an aspect of that inquiry.

CONCLUSION 9: Existing arrangements for sharing evidence between military and civilian proceedings can prevent the admission of relevant evidence when it is collected by a different investigative body. This can weaken confidence in the military justice system. Where these limitations prevent prosecutors from adducing lawfully-obtained evidence, or are exploited by accused persons and their counsel, victims may perceive that evidence laws are weaponised against them to avoid accountability.

RECOMMENDATION 9: Relevant legislation be amended to confirm that evidence collected by the Australian Federal Police during an investigation is, subject to the usual rules of admissibility of evidence, prima facie admissible in Defence Force Discipline Act proceedings and that evidence collected by Military Police is likewise prima facie admissible in civilian criminal court proceedings.

NOTE: The Defence Force Discipline Amendment (RCDVS Implementation and Related Measures No. 1) Bill 2026 would change who is an 'investigating officer' for the purposes of the Defence Force Discipline Act, which would include the ability to appoint a civilian to be an 'investigating officer'. The Bill would also permit an 'investigating officer' to disclose certain investigation information to, among others, the ADF or a state or territory police force.

CONCLUSION 10: Certain legislative and procedural constraints can unnecessarily delay the timely collection of relevant evidence for subsequent proceedings. Such delays risk undermining confidence in the military justice system by creating perceptions among victims and alleged offenders that the process is being used against them rather than to ensure fairness.
RECOMMENDATION 10: Relevant legislation and policy be amended to remove impediments, including criteria specifying rank or gender limitations, to the gathering of evidence by Military Police, provided that appropriate safeguards are implemented.

NOTE: The Defence Force Discipline Amendment (RCDVS Implementation and Related Measures No. 1) Bill 2026 seeks to remove certain gender-based language from the current investigation provisions of the Defence Force Discipline Act.

CONCLUSION 11: The legislative reform proposal to expand the circumstances in which removal orders can be made, following conviction of a service offence, is supported. However, current provisions relating to the seizure, retention and handling of electronic devices and imagery may result in unintended adverse consequences for ADF members, particularly where personal electronic devices are removed from a member's possession for extended periods. Smart devices now play a central role in accessing financial and health services, as well as contacting sources of wellbeing and support.

RECOMMENDATION 11: Relevant legislation be amended to expand the circumstances in which removal orders may be imposed following conviction for a service offence. Defence review whether existing legislative and policy settings governing the retention of seized devices during investigations appropriately balance investigative needs, victims' interests, and the reasonable needs of ADF members under investigation.

NOTE: The Defence Force Discipline Amendment (RCDVS Implementation and Related Measures No. 1) Bill 2026 seeks to extend the existing power to issue removal orders so that it applies not only to cyber bullying offences, but also to any service offences involving the provision of intimate images of another person via social media or electronic services.

CONCLUSION 12: Receiving a Notice to Show Cause can be highly confronting, particularly where termination of service is contemplated. ADF members may be vulnerable to actual and perceived injustice in adverse administrative action processes if they have limited understanding of relevant procedures, rights and safeguards. Current policies for appointing support officers are inconsistent across the Services, and the role is largely confined to facilitating communication with the chain of command. Greater alignment between the support provided to an accused person in Defence Force Discipline Act proceedings and that available to an ADF member issued with a Notice to Show Cause is therefore desirable. Providing reasonable access to an advocate of the ADF member's choosing may enhance both actual fairness and perceptions of fairness.

RECOMMENDATION 12: Relevant policy be amended to mandate that all ADF members receiving a Notice to Show Cause choose a reasonably available advocate to assist them.

CONCLUSION 13: Legal reviews are routinely conducted in practice before finalising administrative termination decisions. However, the absence of a mandated review process may limit their effectiveness as a consistent protective measure for ADF members.

RECOMMENDATION 13: Relevant policy be amended to require that all administrative involuntary termination of service decisions be subject to a legal review prior to finalisation and implementation of the decision.

CONCLUSION 14: Current fact finding processes are no longer fit for purpose. Fact finding processes routinely become protracted and overly formalised, causing avoidable harm to ADF members and reinforcing perceptions of injustice and weaponisation.

RECOMMENDATION 14: Fact finding be abolished and replaced with a revised Quick Assessments process as the preferred Defence-wide initial incident decision support tool.

CONCLUSION 15: Suspension of ADF members under the disciplinary and administrative systems is not aligned, so far as presumption of pay is concerned, and can result in disproportionate and avoidable harm to ADF members.

RECOMMENDATION 15: Relevant legislation and policy be amended so that the default position for all administrative and disciplinary suspensions is that ADF members continue to be paid. Suspension without pay should only be imposed in exceptional circumstances.

CONCLUSION 16: The timely provision of clear, specific and accessible information on military justice processes, beyond that provided in the Defence Charter for Military Justice Proceedings, is essential to building trust, reducing uncertainty, and supporting affected or interested ADF members.

RECOMMENDATION 16: A brief fact sheet outlining ADF members' rights, obligations, major milestones and available support measures be developed and provided at the earliest opportunity to all complainants, respondents and other witnesses involved in military justice processes.

CONCLUSION 17: Feedback to the Inquiry demonstrated that the PM008 form and process has become discredited in the eyes of a significant portion of ADF members. In particular, its association with suitability assessments for continued service in the ADF has entrenched stigma, mistrust and perceptions of misuse.

RECOMMENDATION 17: The current Form PM008 – Referral for a Mental Health/Psychological Assessment and Management Advice be abolished and replaced with 2 distinct policy-based processes, namely a clinical assessment and an organisational assessment. Neither process should be instituted or used to assess suitability for retention in the ADF.

CONCLUSION 18: Inadequate guidance on the appropriate use of Records of Conversation has led to misunderstanding and misuse, thereby reinforcing mistrust and perceptions among some ADF members that Records of Conversation function as a precursor to arbitrary administrative action.

RECOMMENDATION 18: Defence-wide policy guidance on the purpose, use and implementation of the Record of Conversation be developed. Such guidance must explicitly state that Records of Conversation are not to be used as a threat or as a form of administrative sanction.

CONCLUSION 19: Declining levels of integrated discipline, administrative and complaint-handling training have contributed to the degradation of skills and reduced confidence. This limits the use of military justice processes in an effective, flexible and coordinated manner.

RECOMMENDATION 19: Defence re-establish mandatory, competency-based, integrated discipline, administrative and complaint-handling training as a pre-requisite for promotion at every level.

CONCLUSION 20: The deliberate weaponisation, abuse or misuse of military justice processes undermines discipline and can cause serious harm. Stronger sanctions are therefore required to both address such conduct and deter others. The current offence of prejudicing the discipline of the ADF is a minor offence, with a maximum penalty of three months' imprisonment, which is insufficient to reflect the seriousness of this behaviour.

RECOMMENDATION 20: Relevant legislation be amended to increase the maximum penalty for the offence of prejudicing the discipline of the ADF to 12 months' imprisonment.

CHAPTER 1 — CONTEXT, INQUIRY BACKGROUND AND METHODOLOGY

The idea of 'weaponisation'

1. The term 'weaponisation' when applied to military justice is of very recent vintage. Before its mention during the Royal Commission into Defence and Veteran Suicide in 2024, the term had almost no currency in Australia outside of limited academic circles.

2. The Royal Commission questioned several witnesses about the perception that the military justice system has, or has the potential to be, weaponised. In its final report in September 2024, the Royal Commission also recommended this Inquiry be prioritised (Recommendation 30). This recommendation was endorsed by the Government in December 2024.

3. While this Inquiry has necessarily used the term 'weaponisation of the military justice system', it means different things to different people and is ambiguous. Weaponisation confuses and conflates the *what* of military justice with the *how* of military justice. The Inquiry has found little evidence that the military justice system as a whole (the *what* of military justice) is structured or used as a weapon against members. Rather, the mischief is found in the implementation of that military justice system (the *how* of military justice). Inept, vindictive, thoughtless or rigid implementation of the system may constitute weaponisation and lead to perceptions of injustice. It is on the *how*, specifically how military justice processes can be improved and additional guardrails and protections provided to members, that this Inquiry has focused.

The scope of the military justice system

4. The term 'military justice' has gained wide currency in Australia as a catch-all term to describe the various mechanisms used both for disciplinary and administrative purposes in the ADF. Both former Justice James Burchett QC and the Senate Foreign Affairs, Defence and Trade Reference Committee adopted similar definitions in their respective 2001 and 2005 reviews of the military justice system.[10]

5. In *Military Law in Australia*, Professors David Letts and Robert McLaughlin describe the military justice system as comprising both the discipline and administrative systems as well as 'the right of an ADF member to make a complaint regarding his or her military service and the military inquiry system'.[11]

6. When an ADF member refers to the 'military justice system', through a personal lens, they will likely mean the broad range of processes that can be used to discipline and administer them.

7. Consistent with this common-sense understanding, and with the definition adopted by the IGADF, by the Royal Commission, by Defence, and by previous military justice inquiries, this Inquiry has adopted the term 'military justice' as encompassing the following:

- investigations, prosecutions and proceedings under the Defence Force Discipline Act
- the conduct of administrative inquiries
- adverse administrative action
- review and complaint mechanisms.[12]

[10] Burchett J (2001) *Report of an Inquiry into Military Justice in Australian Defence Force,* Department of Defence, Australian Government; Australian Senate Foreign Affairs, Defence and Trade Reference Committee (2005) *The Effectiveness of Australia's Military Justice System.*

[11] Creyke R, Stephens D and Sutherland P (eds) (2024) *Military Law in Australia*, 2nd edn, Federation Press, Sydney.

[12] Department of Defence (n.d.) *Military Justice System*, Department of Defence website, accessed 24 November 2025.

8. Broadly, the above processes are divided into 2 distinct but overlapping systems, namely the discipline system and the administrative system.

The discipline system

9. The traditional system for enforcing service discipline and punishing breaches of the Defence Force Discipline Act is the preserve of the discipline system. The discipline system comprises 3 levels of processes, increasing in complexity and severity of potential punishments. Which avenue is used depends on the seriousness of the alleged offence. The 3 levels of the discipline system are:

- the discipline infringement scheme
- the summary discipline system
- trials by courts martial or Defence Force magistrates, and appeals to the Defence Force Discipline Appeals Tribunal.

10. The Department of Defence's Disciplinary Infringement Manual describes the discipline system as follows:

> The Defence Force Discipline Act 1982 establishes a tiered framework to manage breaches of discipline at an appropriate level. The Superior Tribunal System deals with the most serious conduct, with charges heard by courts martial and Defence Force magistrates.
>
> In the summary discipline system, Commanding Officers and superior summary authorities hear charges of service offences. Both these levels of the system are service tribunals that use adversarial processes to determine guilt or innocence and result in a conviction of a service offence if the member is found guilty, with lasting consequences.
>
> The lowest tier of the discipline system is the Disciplinary Infringement scheme. Under the Disciplinary Infringement scheme, commanders and supervisors can manage relatively minor discipline breaches in a non-adversarial way, without leading to a conviction of a service offence. Members have the opportunity to admit to the breach of discipline and have the matter managed quickly, fairly and simply as a disciplinary infringement, rather than as a service offence.[13]

The administrative system

11. The administrative system relies on a combination of the inherent power of command and Defence policy and legislation. The command power derives from both the ancient prerogative rights of the Crown and from the command powers outlined in the Constitution mediated through the Defence Act.[14]

12. Traditionally, the administrative system has not been regarded as part of the system used to discipline ADF members but as the incidental powers and processes necessary to administer the ADF. For example, if a member repeatedly failed to meet fitness standards, their service could be terminated via an administrative process rather than via a discipline process. Health, promotion, pay, conditions, leave, and retirement are all captured by this system.

13. Broadly, the administrative system was designed to cover *performance* or people-management matters. In contrast, the discipline system covers *behavioural* breaches, namely breaches of the Defence Force Discipline Act.

[13] Department of Defence (2022) *Discipline Infringement Manual*, p iii.

[14] *Commonwealth of Australia Constitution Act 1900* (Imp), s 68; *Defence Act 1903* (Cth), s 9.

14. This once bright divide between the systems has been steadily reduced over the past 25 years. There is now considerable overlap between them. Command may use administrative processes to address (or punish) behavioural breaches that were once the exclusive preserve of the discipline system. This overlap will be examined in detail in Chapter 3.

15. While the administrative system covers an extremely broad range of processes and policies, this Inquiry has focused on 3 administrative processes that appear to be of most concern to ADF members and that have the greatest potential to be weaponised:

- involuntary termination of service[15]
- censure, formal warning and reduction in rank
- unacceptable behaviour complaints.

The nature of military service

16. An evaluation of military justice processes and, by extension, concepts of weaponisation, can only be made when recognising the unique nature of service in the Defence Force. It is unique in terms of the tasks that ADF members are called on to carry out, many of which are uncomfortable, some of which are dangerous, and a few which ultimately call on ADF members to be placed directly in harm's way. It is also unique in terms of the legal structures governing the recruitment, retention and disciplining of ADF members.

17. When members join the ADF, they take on certain obligations in addition to those that they have as an ordinary member of society. A 'contract of unlimited liability' is how many have framed the nature of service in the ADF.[16] Upon joining the ADF, members become subject to the lawful orders of command and to the strictures of the military justice system.

18. ADF members are not employees in a traditional sense. There is no contract of employment between a member of the ADF and the Commonwealth.[17] At common law, a member serves entirely at the pleasure of the Crown and can be dismissed 'at any time and for any reason, or for no reason or for a mistaken reason'.[18] Many civilian legal concepts, such as employment law, do not apply neatly, or at all, in the military context.

19. Certain military justice processes or decisions may appear harsh if evaluated from a purely civilian lens and yet may be perfectly acceptable, and indeed necessary, when viewed from the perspective of the centrality of maintaining good order and discipline of the ADF.

20. Take, for example, the apparently minor infraction of being a few minutes late for work. In a civilian context, such an infraction may not be considered very serious. In a military context, however, it could expose an ADF member to a charge or infringement under the Defence Force Discipline Act for being absent without leave. Failure to attend duty when and where required can conceivably expose colleagues to danger and even imperil a military facility or action. Accordingly, the military justice system can impose harsh punishment for such a breach.

[15] Termination nomenclature: On 28 October 2025, Defence issued a DEFGRAM (608/2025) that confirmed changes to language and nomenclature in relation to the termination of service process under section 24(1)(c) of the Defence Regulation. The name of the notice for involuntary separations under section 24(1)(c) is now 'Notice of Proposed Separation – Involuntary'. In addition, on 13 December 2025, amendments to section 24 of the *Defence Regulation 2016* have replaced the former wording 'Termination of Service' under section 24 with the term 'Early End of Service'. As all information, documents, submissions and interviews conducted during this Inquiry refer to 'termination' (and 'notice to show cause' instead of notice of proposed separation – involuntary) previous terms have been retained in this Report for consistency.

[16] Hackett J (1962) *The Profession of Arms – Armies of the Nation State*, p 15.

[17] *Defence Act 1903* (Cth), s 27.

[18] *Coutts v Commonwealth of Australia* (1985) 59 ALR 699.

21. Despite certain military justice processes appearing similar to civilian counterparts (for example, Defence Force Discipline Act proceedings and civilian criminal processes), the military justice system is not simply a military analogue to civilian justice provisions. In 2020, the High Court affirmed the principle that Service Tribunals are neither subordinate nor secondary to civilian courts, but rather a distinct and complementary system:

> The jurisdiction of service tribunals is not secondary to the jurisdiction of the ordinary courts; rather it s complementary to that jurisdiction for the purposes of the nation's defence. In that regard, the system of military justice pursues the specific purpose of securing and maintaining discipline within the armed forces rather than the general purpose of punishing those guilty of criminal conduct.[19]

22. While recognising that military justice processes are distinct from comparable civilian processes, the High Court went on to reiterate that:

> the power is required to be exercised judicially, that is to say, in accordance with the requirements of reasonableness and procedural fairness to ensure that discipline is just.[20]

23. Accordingly, while the purpose of maintaining good order and discipline of the ADF must take primacy when evaluating a military justice process, in the modern context there must also be an evaluation of whether the process has been exercised 'judicially' in the manner outlined by the High Court.

24. Nevertheless, the above traditional description of the nature of military service, as one of unlimited liability and with no security of tenure, has been tempered in recent years through specific legislation. For example, the termination provisions of the Defence Regulation have provided more certainty of process and have enshrined in legislation the right of affected personnel to be afforded procedural fairness and to be heard before a decision is made to terminate their service.

25. In addition, courts have reiterated that the termination of ADF members must be 'exercised in accordance with Australian law, reasonably and by a fair process'.[21] General principles of Australian administrative law apply to termination of ADF members. Likewise, independent statutory bodies, such as the IGADF, are charged with, among other things, ensuring that:

> the system achieves the right balance – helping supervisors, managers and commanders to maintain discipline and order in our armed forces, without compromising an individual's rights to respect, fair treatment and a fair hearing.[22]

26. While the ultimate purpose of the military justice system is to maintain and enforce service discipline, such enforcement must be carried out in a manner which is both fair and respectful to the individual concerned. Modern Australian society and the modern ADF demand a certain level of fairness be afforded to all individuals subject to military justice processes.

[19] *Private R v Cowan* [2020] HCA 31 at [54].

[20] *Private R v Cowan* [2020] HCA 31 at [56].

[21] *Chief of the Defence Force v Gaynor* [2017] FCAFC 41 at [103].

[22] Inspector-General of the Australian Defence Force, *What we do*, Inspector-General of the Australian Defence Force website, accessed 24 November 2025.

Developing the Inquiry evidence and information base

27. Specific evidence and information reviewed by the Inquiry included:

- IGADF cases, audits and data
- Inquiry submissions
- stakeholder consultations
- stakeholder roundtables.

IGADF cases, audits and data

28. The Inquiry reviewed a selection of current or past IGADF Inquiries, Redresses of Grievance and audit reports that disclosed weaponisation. The Inquiry also drew on information from the IGADF Military Justice Performance Review audit program. Unlike other periodic surveys into ADF members' attitudes, IGADF audits allow longitudinal analysis of the health of the military justice system and ADF members' attitudes towards it.[23] From March to July 2025, a selection of audit focus groups also included questions about weaponisation.

Inquiry submissions

29. The Inquiry received 362 submissions from current serving ADF members, veterans, interested organisations and members of the public, the highest number ever received by any IGADF inquiry.

30. The Inquiry did not conduct a separate inquiry of specific matters raised in each submission. Instead, the Inquiry team extracted key themes from each submission to form an overall view of experiences with and perceptions of the military justice system. The Inquiry approached each submission disclosing weaponisation with the following precept: could this happen and, if it could, how could it be prevented from happening?

31. Some submissions raised matters that had already been subject to individual assessment or inquiry by the IGADF. In all other cases, submitters were offered the opportunity to have their submissions referred to the IGADF Directorate of Inquiries and Investigations for individual assessment.

32. The gender and service breakdown of submitters who identified details about themselves mirrored the current composition of the ADF. However, while the Inquiry received submissions from across all ranks, a substantially higher proportion of submissions were from junior officers and senior non-commissioned officers relative to their proportion in the ADF. This is not surprising. Junior officers and senior non-commissioned officers deal with complaints and implement military justice processes on a day-to-day basis and may have significant experience with the military justice system. A breakdown of submitters is included at Annex B.

33. While the Inquiry received and considered submissions about events before 2020, it asked submitters to focus on events from the last 5 years. This allowed the Inquiry to identify those issues with the military justice system that continue to affect the ADF today.

Stakeholder consultations

34. The Inquiry consulted widely with Defence and other Government officials. It conducted 41 consultations and considered written materials provided by Defence officials. A full list of Inquiry participants is set out at Annex A.

[23] Statistics from IGADF audits are made available to the public by way of the IGADF Military Justice Statistics Catalogue and the IGADF Annual Report, both published on the IGADF website.

Stakeholder roundtables

35. The Inquiry held roundtable discussions with groups of academics, judges and Ex-Service Organisation representations.

Academic roundtable

36. On 28 July 2025, the IGADF held a roundtable discussion with 9 senior academics. Each participant had studied and published extensively on aspects of the military justice system, military cultural reform, and the impact of service life, including military justice processes, on ADF members and their families. A list of participants in the academic roundtable is included at Annex A.

37. The roundtable discussion focused on those aspects of the military justice system that have the greatest potential to be weaponised and explored participants' suggestions for reform.

Judicial roundtable

38. On 30 July 2025, the IGADF held a roundtable discussion with 4 eminent current or former judges. Each participant was highly experienced in military justice matters and had sat as either the Judge Advocate General or as a member of the Defence Force Discipline Appeals Tribunal. A list of participants in the judicial roundtable is included at Annex A.

39. The roundtable discussion focused on discipline processes in the military justice system and, in particular, aspects of processes at the courts martial and Defence Force magistrate level that could be improved to reduce perceptions of injustice among ADF members.

Ex-Service Organisation roundtable

40. On 18 September 2025, the IGADF held a discussion with Ex-Service Organisation (ESO) representatives from the Department of Veterans' Affairs ESO peak bodies, the ESO Round Table and the Younger Veterans Contemporary Needs Forum.

41. The roundtable discussion focused on those aspects of the military justice system most vulnerable to weaponisation and on how the military justice system ought to be reformed to prevent weaponisation.

Submissions raising concerns about the IGADF

42. The IGADF oversees the military justice system, and its inquiries occur outside that system. Therefore, any concerns about the IGADF itself fall outside the scope of this Inquiry.

43. Any submissions that made complaints about IGADF processes or inquiries were referred to a staff member outside of the Inquiry team for review.

CHAPTER 2 — WEAPONISATION OF THE MILITARY JUSTICE SYSTEM

Development of the term 'weaponisation'

44. The term 'weaponisation' has become increasingly prevalent.[24] From the turn of the 21st Century, the word has come to mean 'to use (something, such as an issue, gender, race, religion, etc.) as a means of attack or to cause injury or harm'[25] or, alternatively, 'to use or repurpose (something) in order to undermine, criticize, or oppose others, or in order to spread discord'.[26]

45. The term first appeared in relation to legal matters around 2018, when Justice Elena Kagan of the United States Supreme Court made the following comment in her dissenting opinion in the case of Janus:

> It [the majority] does so by weaponizing the First Amendment, in a way that unleashes judges, now and in the future, to intervene in economic and regulatory policy.[27]

46. The Royal Commission asked several witnesses for their views on weaponisation but did not settle on an authoritative definition.

47. Then Vice Admiral David Johnston AC RAN, the then Vice Chief of the Defence Force (and current Chief of the Defence Force), said that weaponisation was 'the use of the [military] justice system in an adverse manner to individuals'.[28]

48. The then Director General Military Legal Service, Air Commodore Patrick Keane AM CSC, observed that:

> when we speak … about weaponising the military justice system, the way that we conceive of that would be the use of an authority or power in bad faith or for an improper purpose. So there would be, I guess, three general examples of how things might transpire.
>
> So, one, if a military justice process was used properly and for proper purpose and conducted well, it would still be possible for someone to suffer harm if it resulted in their termination from service.
>
> The second one would be if a military justice process was conducted poorly, that is through making of mistakes or errors, then it could result - it could result in harm to individuals.
>
> Then the third case would be if there was evidence that an official who is exercising authority was pursuing a military justice process in bad faith or for an improper purpose, and that would also have potential to cause harm to individuals.[29]

49. Volume 3 of the Final Report of the Royal Commission referred to the work of Professor Ben Wadham and Associate Professor James Connor who described weaponisation or 'administrative violence' as:

> the discretion commanders can draw upon within a closed military justice system to harass and discriminate against a serving member. Administrative violence is how commanders use military justice to harass, disadvantage, violate, or socially terminate members deemed troublesome or anathema to unit or ADF success.[30]

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[24] *Oxford English Dictionary* (2025).

[25] *Macquarie Dictionary* (2025).

[26] *Oxford English Dictionary* (2025).

[27] *Janus v State, County and Municipal Employees*, 585 U.S. 878 (2018) at [26].

[28] Johnston D, Testimony to Royal Commission into Defence and Veteran Suicide (4 March 2024), p 86-8512.

[29] Keane, P, Testimony to Royal Commission into Defence and Veteran Suicide (7 September 2023), p 84-8251.

[30] *Royal Commission into Defence and Veteran Suicide* (Final Report, September 2024), vol 3, p 253, para 235.

Weaponisation as used in this Inquiry

50. In consultation during this Inquiry, Air Commodore Keane further expanded on his understanding of weaponisation. He elaborated that, in his view, for a military justice process to be weaponised, there must be some form of intent or intention to cause harm.[31] That is, the person who is said to be weaponising a process must mean to use the process to cause harm or must be aware that the harm is likely to occur. To constitute weaponisation, on this view the harm must be the primary purpose rather than for the purpose of maintaining and enforcing the good order and discipline of the ADF.

51. An omission in both the Wadham and Connor definition and that proposed by Air Commodore Keane is that they appear to consider that weaponisation can only occur when commanders misuse processes against a subordinate. However, Inquiry submissions suggest that military justice processes are misused by ADF members of all ranks. Around 25% of the submissions received were accounts of subordinates weaponising military justice processes against their superiors, often in retaliation for unfavourable performance management.

Deliberate versus unintentional weaponisation

52. It is possible to divide weaponisation conceptually into 2 broad categories, deliberate and unintentional:

- **deliberate weaponisation.** A person can intentionally misuse a military justice process for the primary purpose of inflicting harm.
- **unintentional weaponisation**. Sometimes military justice processes may be used for legitimate purposes yet cause excessive harm to a member due to thoughtlessness, delay, or rigid compliance with policy irrespective of circumstances.

53. While the impact on the member is ultimately the same, irrespective of the type of weaponisation, these labels are nevertheless helpful to identify the source of the weaponisation and, accordingly, where reforms and protective factors should be directed.

Perceived misuse of the military justice system

54. While the concept of intention is useful to delineate and define deliberate weaponisation, evidence and information reviewed by this Inquiry, including consultations, submissions and IGADF military justice statistics, suggests that while instances of weaponisation can and do occur, it is not system-wide. In particular, instances of deliberate weaponisation are relatively rare in the modern ADF.

55. Nevertheless, a number of current and former ADF members believe or perceive that military justice processes have been used against them in a manner that constitutes an abuse of power or process and caused them excessive harm. Accordingly, this Inquiry has examined perceptions of misuse or perceptions of injustice in relation to the military justice system in addition to deliberate and unintentional weaponisation.

Prevalence of weaponisation

56. Information reviewed during this Inquiry suggests that, while weaponisation, both deliberate and unintentional is relatively infrequent, it can and does occur.

[31] Inquiry interview, Air Commodore Patrick Keane AM CSC, Director General Military Legal Service, 19 September 2024.

Stakeholder consultations

57. Many Defence and other Government officials with whom the Inquiry consulted strongly rejected the suggestion that weaponisation was widespread in the ADF.

58. Some initially made comments such as, 'weaponisation certainly exists in the ADF', but when further questioned explained that what they meant was that sometimes unfair or unintended outcomes would occur through thoughtlessness, poor implementation, or overly rigid application of rules and policy rather than targeted, deliberate or malicious use of the system. These are examples of unintentional weaponisation, as defined above.

59. Useful insights were provided by Colonel Richard Cawte, Director of Defence Counsel Services.[32] Responsible for providing direct legal assistance and advice to ADF members, Defence Counsel Services handled over 1,800 legal assistance matters in the last year alone. Despite the volume, and the fact that his Directorate observes matters from the ADF member's perspective and with their interests top of mind, the Directorate reported that it has not observed any systemic or widespread abuse of the formal military justice system during the past year.

IGADF cases

60. Despite the strong rejection of the existence of systemic and deliberate weaponisation from most Defence officials, cases reviewed by the IGADF reveal that instances of deliberate weaponisation have in fact occurred.

61. In one troubling case, in which the IGADF was critical of a senior officer a few years ago, an enlisted ADF member was investigated for fraud at that senior officer's request, despite there being no apparent evidence of an intent to gain a benefit by deception. When the investigation proved inconclusive, the enlisted ADF member was then subjected to adverse administrative action for unrelated minor behavioural issues. While each step appeared procedurally correct and arguably legally defensible in isolation, it would not have been unreasonable for that enlisted ADF member to perceive that the system was being weaponised against them. The impact was severe: a previously high-performing enlisted ADF member became overwhelmed, humiliated, and was ultimately discharged from the ADF with mental health issues.

62. This Inquiry has found, however, that cases like the above are rare. There are relatively few cases where there was any reason to suspect that military justice processes had been maliciously used against members. Existing checks and balances (including the Redress of Grievance process and complaints to the IGADF) are generally sufficient to deal with this type of systems abuse. The difficulty is that often those checks and balances are only effective after the harm has occurred. For that reason, this Inquiry has focused as much as possible on protective factors to prevent harm to ADF members by detecting abusive use of the military justice system as early as possible.

[32] Inquiry interview, Colonel Richard Cawte, Director Defence Counsel Services, 18 July 2025.

IGADF data

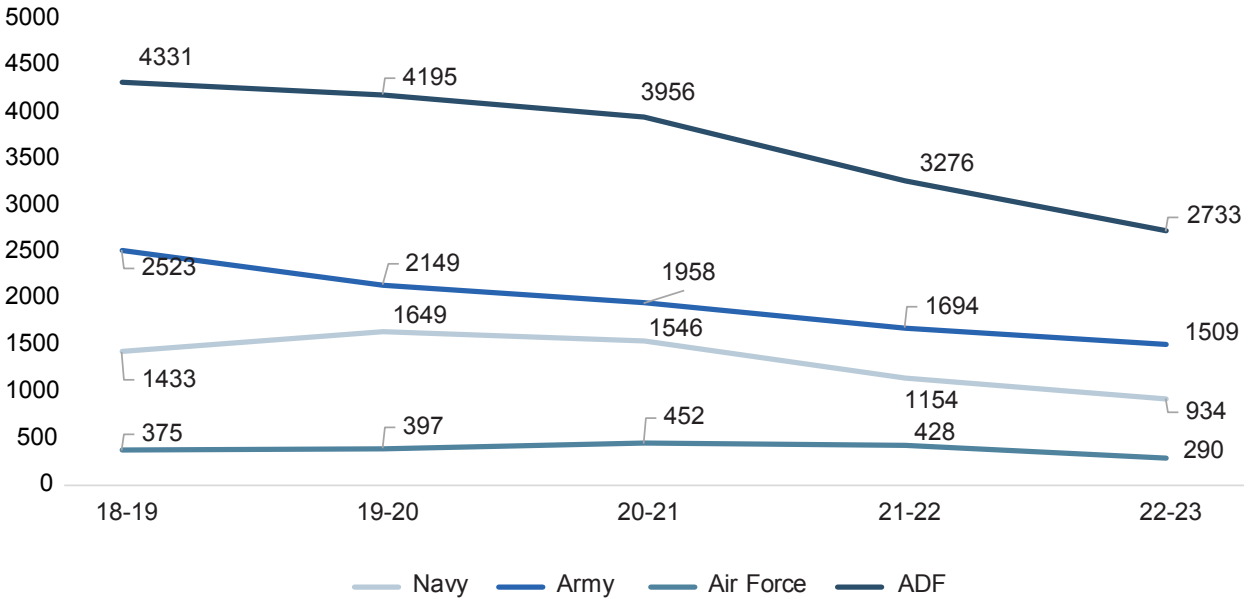
63. Military justice statistics compiled by the Office of the IGADF indicate that weaponisation of the military justice system, including malicious use, is rare. Over the past five years, there has been a marked decline in the use of certain military justice processes, despite the overall number of ADF personnel remaining relatively stable.

64. For example, the use of the discipline infringement scheme has significantly decreased, particularly following changes to infringement record retention rules. Under the revised rules, since 2022, infringement records are no longer destroyed after 12 months but may be retained and used for career management purposes for a substantially longer period. Similarly, there has been a reduction in the imposition of administrative sanctions, coinciding with the ADF's implementation of trauma-informed practice training.

65. One contributing factor to this decline appears to be that leaders are exercising their responsibilities more judiciously to avoid causing unnecessary harm to ADF members. If this assessment is correct, it would be inconsistent with any suggestion of widespread weaponisation by ADF leaders.

66. As noted above, there has been a significant decrease in use of the discipline infringement scheme between 2018 and 2023. Discipline infringements fell from 4,331 in 2018 to 2,733 in 2023 – a 37% decrease.[33]

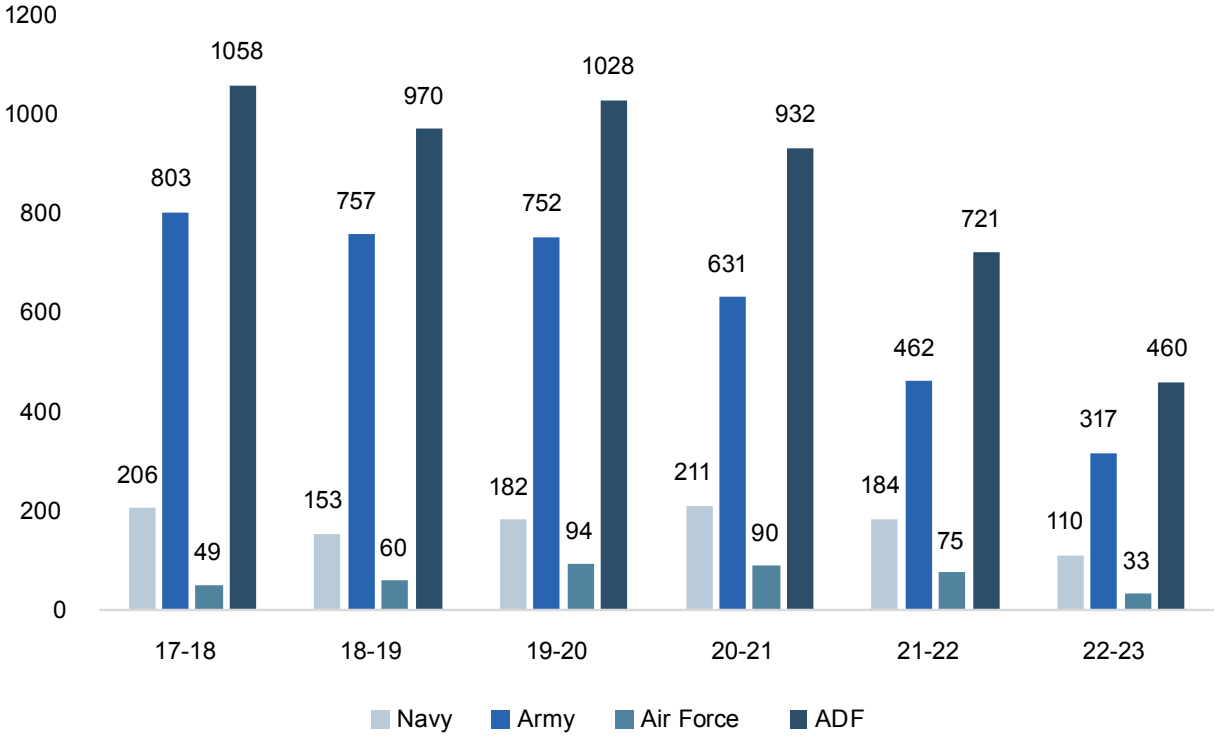
Figure 1. Discipline infringements by statutory reporting period



67. During the same period, use of the summary discipline system (trials before Commanding Officers) also decreased. Between 2021 and 2023, use of summary trials decreased by 36% from 721 summary trials in 2021 to 460 summary trials in 2023.

[33] Inspector-General of the Australian Defence Force (2025), *Military Justice Statistics Catalogue FY 2022–2023*, Inspector-General of the Australian Defence Force, Australian Government.

Figure 2. Summary trials by statutory reporting period

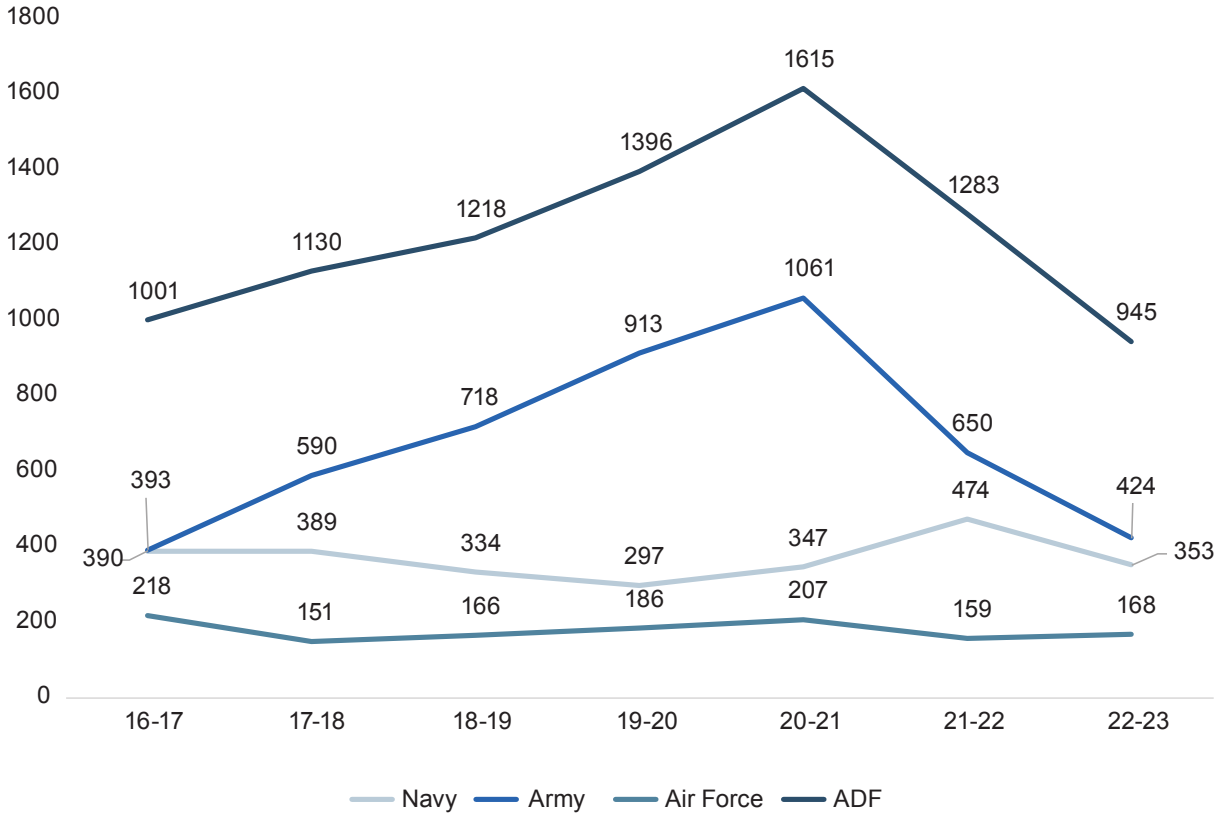


68. Inquiry submitters and participants advanced multiple reasons as to why use of both the summary discipline system and the discipline infringement scheme have been rapidly declining. These included perceptions of increased complexity of using the summary discipline system and decreasing familiarity with the system as it is used less often. It is also plausible that the COVID-19 pandemic had some effect, at least during the 2020–2021 period.

69. Whatever the reason for the decline, the statistics show that the discipline system is being used significantly less frequently than before 2020.

70. Likewise, administrative sanctions (formal warnings, censure, termination and formal counselling) are also being imposed at a significantly reduced rate than the past. While use of administrative sanctions rose during the COVID-19 period (2020–2021), in particular in the Army, their use has now resumed the downward trend and in 2023 sat well below historical levels. In 2023, the use of administrative sanctions was 22% lower than in 2018.

Figure 3. Administrative sanctions by statutory reporting period



71. These statistics only provide a snapshot of overall trends in military justice. There are likely many reasons for the downward trajectory in both discipline and administrative actions against members. These include decreasing familiarity with the system, a reduction in training, and effects of the COVID-19 pandemic. It is also possible that the downward trend in the use of military justice processes reflects that training is working and that an increased proportion of matters are being addressed appropriately at the lowest level and without the need to use the formal discipline or administrative systems. The scrutiny placed on military justice processes via external processes, including the Royal Commission, may also have had some effect on commanders, leading to a reluctance to use the military justice system.

72. Overall, the statistics support a conclusion that the military justice system as a whole is not being deliberately weaponised against members. If widespread, deliberate weaponisation existed, one would expect to see that reflected in the use of military justice processes. However, the statistics argue against a conclusion of increased, or even steady state, use of the military justice system against members and rather show the reverse. The overall drop suggests that command is using the military justice system less, rather than more, frequently against members.

73. Reduction of case numbers alone does not mean that deliberate weaponisation does not exist. However, when taken in conjunction with other evidence reviewed by this Inquiry, it supports the conclusion that instances of deliberate weaponisation are low and that deliberate weaponisation is not a systemic issue in terms of prevalence.

Inquiry submissions

74. While a large number of submissions alleged that command, or other members, had misused the military justice system, when analysed few submissions claim or show that command had engaged in a concerted, targeted or deliberate campaign of misuse of the system against the member. Rather, most submissions focused on failure to properly apply aspects of the system. Alternatively, thoughtless and mechanical application of processes led to poor or unfair outcomes.

Summary of evidence on the prevalence of weaponisation

75. Information reviewed by the Inquiry from multiple sources strongly suggests that, while there are cases where command has deliberately misused the military justice system against ADF members, it is not common. On the contrary, most commanders, and members of the ADF, engage with the military justice system in good faith, apply processes in accordance with policy, and try to do the right thing by their peers and subordinates.

Prevalence of perceptions of injustice

76. Nevertheless, the view that the military justice system has been or can be misused against members is held by a significant minority of ADF members, most acutely among those who have been involved in or directly affected by military justice processes.

77. Information reviewed by the Inquiry showed that there are a number of military justice processes and aspects of the military about which ADF members are most concerned.

Inquiry submissions

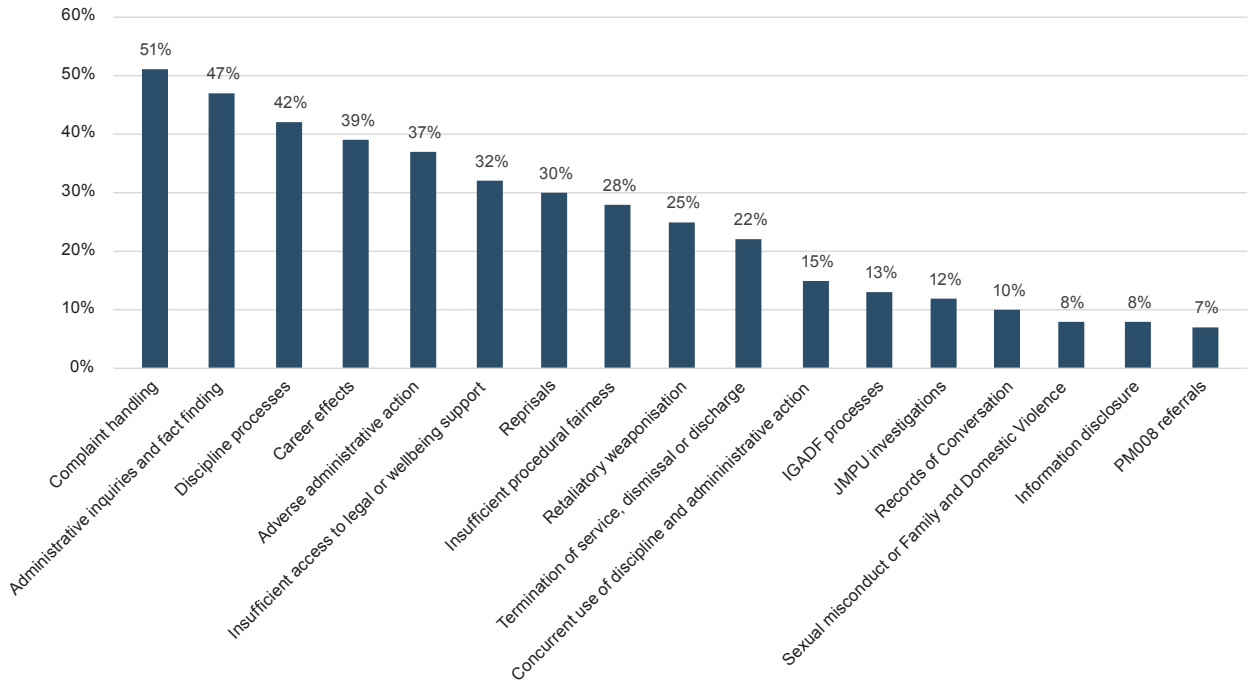
78. Inquiry submissions were crucial in identifying those issues that are of most concern to members and most likely to create perceptions of injustice.

79. The submissions forcefully illustrated the very real impact that military justice processes can have on an ADF member's life, physical and mental health, family and career.

80. The Inquiry was aware, of the subjective nature of submissions. Some submissions were anonymous, and none was tested or challenged in any way.

81. Such factors would reduce the usefulness of such submissions if the objective was to inquire into the specific circumstances of each complaint. However, as a wide survey of key military justice issues and themes that are of key concern to current and former ADF members, the submissions have been invaluable. Several themes and issues have been included in multiple submissions from a variety of sources (that is, different Services, different ranks and genders). Such recurring themes highlighted areas for further investigations and consideration by the Inquiry. Accordingly, the most common recurring themes identified by the submissions have informed the Recommendations in this Report.

Figure 4. Inquiry submissions by theme[34]

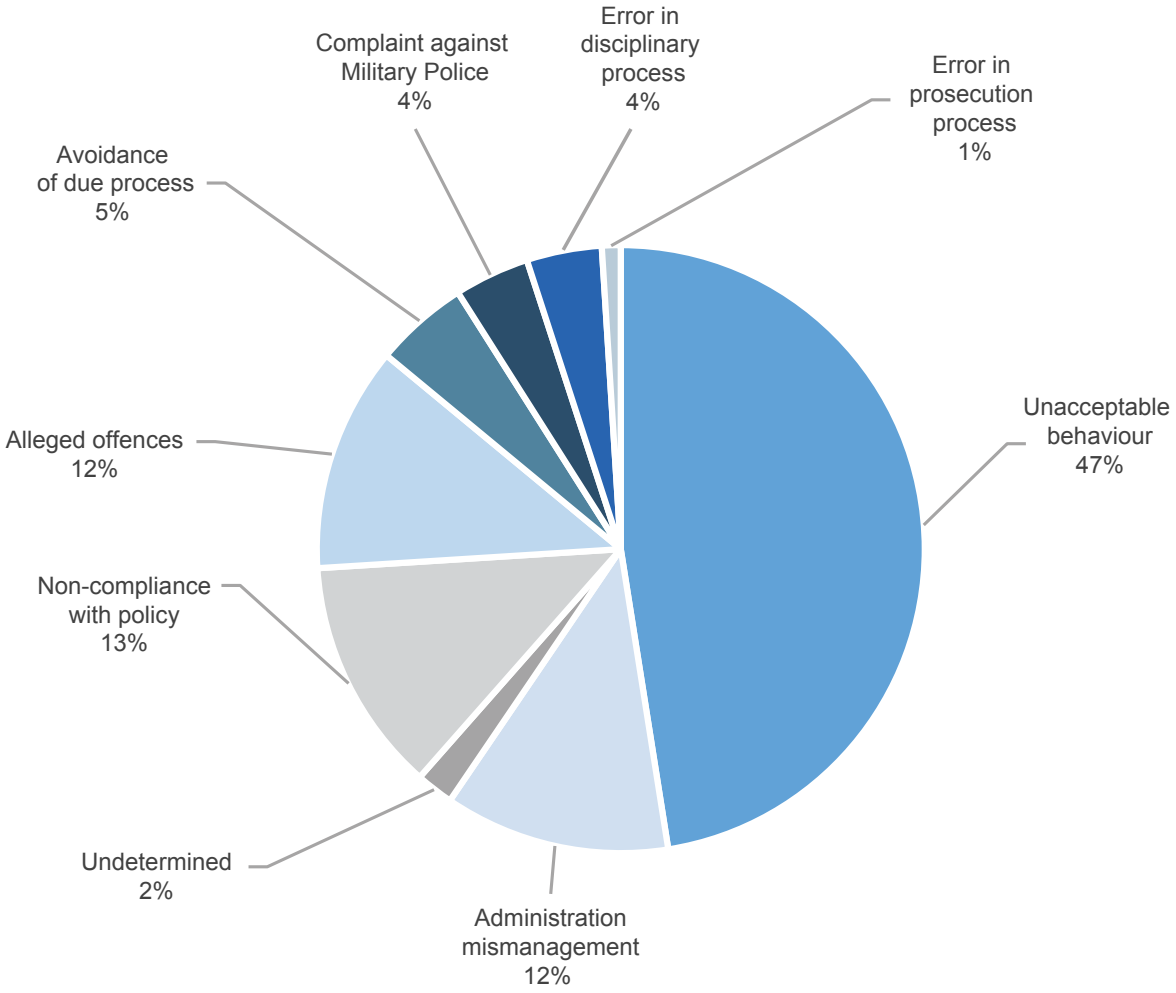


IGADF cases and data

82. Complaints submitted to the IGADF through its Directorate of Inquiries and Investigations indicate the areas of military justice of most concern to members.

[34] Each submission did not necessarily deal with a single issue. Most submissions dealt with many overlapping issues. Hence, the percentages in Figure 4 add up to over 100%. Certain categories included in the above graph do not neatly correspond to a single or discrete military justice process. For example, 'complaint handling' includes submissions that said that a fact finding into their complaints was done poorly but also more generalised complaints of issues like delay and mismanagement.

Figure 5. IGADF Directorate of Inquiries and Investigations complaint category for 2023-24



83. As with submissions to the Inquiry, categorising IGADF complaints for reporting purposes is difficult, as most complaints comprise more than one category of complaint. For example, while the largest area of complaints were unacceptable behaviour complaints, under this broad 'topic' lies a range of specific complaints – for example, concerns about the quality and timeliness of fact finding and information gathering, complaints about delay, and complaints about other members allegedly filing unacceptable behaviour complaints in a malicious way and as a form of retaliation against another member or commander.

84. Not all of the categories of complaint identified in the IGADF Annual Report for 2023–24 necessarily relate directly to concerns about weaponisation. Nevertheless, it assists in identifying those areas of most concern to ADF members.

Consultations and roundtables

85. Consultation with key stakeholders and roundtables with groups of academics, judges and Ex-Service Organisation representatives also gave insights into the root causes of perceptions of injustice

86. The military justice processes or features most commonly cited as potentially leading to increased perceptions of injustice were:

- overlap between administrative and discipline processes and concurrent or cascading administrative and discipline processes
- poorly-conducted fact finding
- involuntary termination of service
- the Notice to Show Cause process
- an overreliance on administrative processes
- the discipline infringement scheme
- Records of Conversation
- mental health referral processes including psychological and organisational referrals.

87. In addition to these specific processes, many participants expressed a general concern that ADF members are becoming less familiar with using military justice processes in an integrated manner. Fewer commanders now appear to have sufficient training or necessary skills to use military justice processes well and navigate an increasingly complex military justice landscape. A senior official told the Inquiry that inefficient or drawn-out processes may lead the ADF members involved to the conclusion that delays are deliberate and that the military justice system is being weaponised against them.

Summary and issues of most concern

88. Identifying and addressing matters that influence 'perception' is a difficult undertaking. Synthesising the submissions, the IGADF cases and data, as well as comments from Inquiry participants in the academic and judicial roundtables, the Inquiry identified those issues and processes that were likely to influence ADF members' perceptions of the military justice system and whether it has the potential to be weaponised. These are:

- concurrent administrative and discipline action
- fact finding
- involuntary termination of service
- the discipline infringement scheme
- the investigative powers of Military Police
- the suspension of members subject to military justice processes
- mental health referral processes including psychological and organisational referrals
- Records of Conversation
- retaliatory complaints
- holding perpetrators to account.

These issues will be examined in detail in Chapters 3, 4 and 5 of this Report.

CHAPTER 3 — MILITARY DISCIPLINE AND ADMINISTRATIVE PROCESSES — TOWARDS A REBALANCING

Have the many reforms connected with military decision making in the last 10 to 15 years over-reached their mark? Has the pendulum swung too far towards individual rights? Even if the pendulum has not in fact swung too far, do those in command think it has, and are they consequently 'gun-shy' about taking action to maintain discipline?[35]

89. The Hon Roger Gyles AO KC posed these questions as part of the 2011 Commission of Inquiry into the allegations of inappropriate behaviour on ex-HMAS *Success*. Over the last 15 years, relatively little has changed. The ADF continues to rely on the administrative system, rather than the discipline system, to investigate and punish poor behaviour.

90. As discussed in Chapter 2, much of ADF members' concerns about the military justice system revolved around the administrative system and, in particular, the overlap between the administrative and discipline systems. This leads to a question: is there a relationship between the increased use of the administrative system to address behavioural deficiencies and the apparent prevalence in weaponisation and perception of injustice?

91. Chapter 3 examines that question and discusses whether a rebalancing towards the discipline system could help to address perceptions of weaponisation.

A shift to administrative system to address behavioural issues

92. Information examined during this Inquiry showed a relatively greater dissatisfaction among members with aspects of the administrative system as opposed to the discipline system. As described in Chapter 2, the majority of submissions to this Inquiry complained that aspects of the administrative system had the potential to be weaponised against members. This includes specific components of larger administrative processes, like fact finding.

93. Many Inquiry participants also noted an increasing trend over the past 25 years towards commanders preferring to use the administrative system to address behavioural issues rather than the formal discipline system. This shift represents a change in the balance between the administrative and discipline systems and has coincided with increased dissatisfaction by ADF members with the military justice system.

94. The marked shift towards use of administrative rather than discipline processes began in the late 1990s. In the *Report into Military Justice Procedures in the ADF*, the Joint Standing Committee on Foreign Affairs, Defence and Trade recommended that:

> the ADF prepare and issue guidelines regarding the use of the administrative action rather than the disciplinary process for cases of professional failure.[36]

95. Defence adopted these suggestions and the trend gathered pace during the early and mid-2000s. Between 2013 and 2023, use of administrative sanctions across the ADF nearly doubled. At the same time, summary trials conducted at the unit level decreased markedly.

[35] Gyles R (2011) *HMAS Success Commission of Inquiry: Allegations of Unacceptable Behaviour and the Management Thereof,* Department of Defence, Australian Government, Pt 3, para 2.1.

[36] Joint Standing Committee on Foreign Affairs, Defence and Trade (1999) *Report into Military Justice Procedures in the Australian Defence Force,* Pt 5, para 161.

96. Also contributing to the decrease in summary trials was the establishment and increased use of the discipline officer scheme (the forerunner of the current discipline infringement scheme). Taken together, the mid-2000s saw a year-on-year increase in the use of administrative sanctions and decreased use of the more formal summary discipline system.

97. The significant increase in the use of administrative sanctions over this period is likely attributable to several factors, including perceived ease of use, speed and simplicity. Several consultees and submitters noted that the training and familiarity with the formal discipline system had dropped dramatically in recent years. This could explain in part the preference for resort to administrative sanctions, even for behaviour that ordinarily would constitute an offence under the Defence Force Discipline Act.

98. Coinciding with the increased use of administrative sanctions, an increasingly voluminous and complex set of guidance has been issued to commanders over this period. Policy guidance on matters such as the requirements of procedural fairness, privacy, content of notices which must be supplied to participants, and the conduct of fact finding may be seen as having turned what was meant to be a simple process into an increasingly convoluted, quasi-legal and time-consuming undertaking. When faced with an increasingly complicated set of policy and guidance material, some commanders may have defaulted to the most complex procedures, even when the underlying issue is relatively simple. This may be seen as risk aversion on the part of some commanders. It may also be attributable to lack of sufficiently deep familiarity in how to apply these processes flexibly.

99. A concern about the shift towards increased use of the administrative system is not confined to Australia. In 2018, the then United States Secretary of Defence, General James Mattis, issued a memo to the entire Force, expressing his concerns:

> The military justice system is a powerful tool that preserves good order and discipline while protecting the civil rights of Service members. It is a commander's duty to use it … Leaders must be willing to choose the harder right over the easier wrong. Administrative actions should not be the default method to address illicit conduct simply because it is less burdensome than the military justice system. Leaders cannot be so risk-averse that they lose their focus on forging disciplined troops ready to ferociously and ethically defeat our enemies on the battlefield.[37]

100. Overreliance on the administrative system to address behavioural matters may lead to increased perceptions of injustice. This is because the administrative system itself has fewer checks and balances built into it than are built into the discipline system.

101. For example, in Defence Force Discipline Act proceedings, the member has access to a Defending Officer who is assigned to assist them. Decisions are subject to automatic reviews, including a mandatory legal report, before being implemented. Guilt is assessed at the higher criminal standard, 'beyond reasonable doubt', rather than the significantly lower 'balance of probabilities' standard that is used in administrative proceedings.

102. Administrative processes lack direct contact and interaction between the affected ADF member and the decision-maker. In contrast, the immediacy of contact in discipline proceedings allows the decision-maker to hear the evidence directly, hear arguments from the accused ADF member, and allows the member to immediately challenge evidence. This immediacy protects the accused ADF member and enhances their ability to present their case fairly. Immediacy also has significant benefits for command. It reinforces the centrality of command in the military discipline arena and allows all parties to see that justice is being done.[38]

[37] Mattis J (17 August 2018) *Secretary of Defence: Message to the Force*, United States Marine Corps website, accessed 24 November 2025.

[38] Centrality of Command is also a fundamental principle of the Military Justice System highlighted in the recently promulgated *Military Justice Policy*, issued by Defence in December 2025

103. The checks and balances that exist in the discipline system form a powerful argument for a rebalancing and a renewed preference for use of the discipline system to address behavioural matters that could constitute an offence under the Defence Force Discipline Act.

104. There is, however, support in some areas of Defence for the administrative system to remain the primary means for addressing behavioural concerns. This may reflect Service differences. Comments from a number of participants highlighted that, despite the growing joint nature of service in the ADF, there still remains significant cultural differences between the Services.

105. This shows in each Service's preference for using either the administrative or discipline system. Some senior officials noted that Air Force prefers to address behaviour concerns through the administrative system, as Air Force does not seek to charge people who confess to genuine errors. In contrast, a senior Army official told the Inquiry that, in Army, discipline action should be preferred to administrative action. They also noted that discipline processes are more immediate, and that discipline processes can connect the chain of command and members and can be restorative in nature.

A rebalance – discipline action to address behavioural concerns

106. The Inquiry has concluded that the 'pendulum has swung too far' in favour of use of administrative systems in Defence, particularly in relation to behavioural breaches and actions which could result in termination or reduction in rank. Overreliance on the administrative route for matters which could be tried under the discipline system leads to increasing perceptions of injustice and reduces faith in the military justice system.

107. Some areas of Defence have already commenced this rebalancing process. In May 2025, Army provided guidance to commanders to reprioritise discipline processes. This Army guidance noted that the new direction:

> derives from the premise that discipline is immediate, restorative and has commander-soldier connection whereas administrative processes are often long, bureaucratic, cause the soldier to feel the whole weight of Defence bearing down on them and often result in involuntary transitions.[39]

108. The Inquiry agrees with the above comment. The Report recommends a reprioritisation of discipline action over administrative action throughout Defence for addressing behavioural failings, which may constitute a Defence Force Discipline Act offence. Without fettering command discretion to utilise the administrative system in appropriate cases, the Inquiry recommends that where conduct may constitute a Defence Force Discipline Act offence, the ADF must consider discipline action in the first instance.

CONCLUSION 1: ADF discipline processes provide greater transparency and more robust safeguards, compared with administrative processes, contributing to higher levels of fairness and confidence in the military justice system.

RECOMMENDATION 1: Where conduct may disclose a *Defence Force Discipline Act 1982* offence, the ADF consider discipline action in the first instance.

[39] Australian Army (May 2025) *FRAGO 1 to Army Order 2025–26*.

Processes to support a rebalance

109. While this Inquiry recommends a rebalancing in favour of the discipline system, merely mandating a preference without altering the current military justice ecosystem is unlikely to lead to change, at least in the short to medium term. Cultural change without structures to enforce such change will likely take a long time to be realised.

110. Accordingly, this Inquiry recommends the following systemic issues be addressed to enhance the appeal and effectiveness of the discipline system:

- concurrent or consecutive discipline and administrative action
- aspects of the discipline infringement scheme
- Military Police investigative powers.

Concurrent or consecutive discipline and administrative action

111. One of the issues most frequently raised during this Inquiry was the so-called 'double tap' situation whereby an ADF member receives a punishment under both the discipline system and concurrently a sanction under the administrative system in relation to substantially the same conduct.

112. This concern was particularly acute in cases where a member had their service administratively terminated after (and sometimes before) receiving a punishment as a result of a Defence Force Discipline Act process.[40] The concern arises from the perceived unfairness of being penalised twice for ostensibly the same behaviour. Some Inquiry submissions and participants used the term 'double jeopardy',[41] which although technically inaccurate from a legal perspective, does convey the feeling and concern of members appearing to be penalised twice.

113. A hypothetical situation to illustrate is where an ADF member is charged with a service offence of theft of monies belonging to another service member. The member is found guilty by court martial and receives a punishment of a fine and 14 days detention in the Defence Force Correctional Establishment. Upon release from detention, the member is issued with a Notice to Show Cause why their service in the Defence Force should not be terminated – that is, the process to begin administrative termination takes places immediately after their court martial-imposed punishment. [42]

114. It is this type of situation that gives rise to complaints of 'double jeopardy', essentially 2 'punishments' arising out of the same factual circumstances but imposed via 2 different systems.

[40] While concurrent administrative sanctions can include warnings and sanctions, the following discussion will focus on administrative termination rather than other forms of administrative sanction.

[41] 'Double Jeopardy' is a general principle of the criminal law that '…prevents a person from being prosecuted more than once for an offence of which he or she has been previously finally acquitted or convicted'. In most Australian jurisdictions, the scope of the Double Jeopardy principle has been narrowed, especially in cases where 'fresh and compelling evidence' has been found. ACT Human Rights Commission (n.d.) *Right not to be tried or punished more than once*, ACT Human Rights Commission website, accessed 27 November 2025.

[42] Often abbreviated to NTSC. A NTSC is essentially a document outlining the concerning behaviour and inviting the member to provide a written response to command outlining the factors that command should consider before deciding whether to impose the administrative sanction.

Prevalence of concurrent discipline and administrative action

115. This issue has been raised and examined in several quarters. The Royal Commission considered concurrent discipline and administrative action and noted the justification that Defence gave for retaining both avenues:

> Disciplinary and administrative action serve two different purposes. Disciplinary action relates to imposing punishment on an individual, whereas administrative action is designed to protect ADF members from harm.[43]

116. Approximately 15% of Inquiry submissions raised concurrent administrative and discipline processes. Many of these submissions also complained more broadly about 'fairness', and the unfairness of being punished twice.

117. One submission noted that:

> putting aside my personal discomfort, the concept of proportionality is not being served by using the administrative process to achieve a result such as termination of service when this was not available as a punishment through the disciplinary system. The administrative process requires a lower standard of proof (balance of probabilities) and should not be allowed to apply a harsher punishment.[44]

Judicial comment on concurrent discipline and administrative action

118. There has recently been considerable judicial criticism of the effective crossover of the use of the Defence Force Discipline Act and subsequent use of the administrative separation system based on the same factual circumstances. In *Howieson v Chief of Army,* Logan, Perry and Brereton JJ observed:

> in a case where a court martial panel has deliberately chosen not to impose a sentence of dismissal from the Defence Force and, instead, imposed a sentence in which the opportunity of rehabilitation is an element, the taking of such administrative action [referring to termination pursuant to section 24 of the Defence Regulation 2016] could be regarded as undermining the court martial.[45]

119. Detention is a prime example of a punishment that takes into account the probability of positive rehabilitation. In fact, there is a legislative prohibition on imposing detention in concert with the punishment of dismissal.[46]

120. In *Randall v Chief of the Defence Force*, civil action was commenced in the Federal Court of Australia seeking judicial review of the Chief of the Defence Force decision to terminate the service of (previously) Warrant Officer Class 2 Randall.[47]

121. Then Warrant Officer Randall had been charged with 28 charges of unauthorised access (or modification of) restricted data. Brought before a Restricted Court Martial, Randall was convicted of 11 charges. He was sentenced to either a reprimand or severe reprimand on the 11 charges. Randall appealed to the Defence Force Discipline Appeals Tribunal.[48] While his convictions were under appeal, Randall was issued with an involuntary termination of service notice on the basis that his retention was not in the interest of the Defence Force.

[43] *Royal Commission into Defence and Veteran Suicide* (Final Report, September 2024), vol 3, para 322.

[44] Inquiry submission 267.

[45] *Howieson v Chief of Army* [2021] ADFDAT 1 at [59].

[46] *Defence Force Discipline Act 1982* (Cth), s 71(3).

[47] *Randall v Chief of the Defence Force* [2020] FCA 1327

[48] *Randall v Chief of the Army* [2018] ADFDAT 3.

122. The issuing of that notice, while the convictions were under appeal under the Defence Force Discipline Act, was the subject of adverse comment by Justice Tracey, the then President of the Defence Force Discipline Appeals Tribunal. In July 2018, the Defence Force Discipline Appeals Tribunal quashed each of the 11 convictions on the basis that Randall's job description, as a system administrator, authorised access to the data that was the subject of the charges.

123. Nevertheless, Defence then sought again to terminate the service of Warrant Officer Randall on the basis of the same material upon which he had been acquitted by the Defence Force Discipline Appeals Tribunal. The subsequent Federal Court action settled on confidential terms.

Justification for concurrent use of the discipline and administrative action

124. The criticism noted above is not new, and generalised complaints of 'unfairness' in this overlapping system have existed for some time. Defence justifies the 2 systems operating side by side (or concurrently) on the grounds that the purpose which each system addresses is different.

125. In a submission to the Royal Commission, Defence noted the complementary nature of the administrative and discipline processes. Explaining the conceptual underpinnings of concurrent action, Defence wrote:

> Administrative action may be initiated concurrently with, or consecutively to, disciplinary action. This is because they are different actions in nature and purpose. A disciplinary proceeding is punitive in character; it determines individual guilt beyond reasonable doubt, convicts if appropriate and decides on individual punishment according to strict legal criteria.
>
> Administrative sanctions have a protective character, that is they are designed to limit the harm or risk of harm to the ADF and its community of members from an individual's misconduct. While the individual member may feel that an administrative sanction constitutes a punishment because of its impact on them, and the sanction requires facts about the individual's conduct to be established to the balance of probabilities, the purpose is not to punish the member for breaching discipline but to protect the ADF and its members, based on evaluative judgments about what is in the interests of the ADF…
>
> Defence acknowledges that this is a high-level distinction in concept and purpose, and that there is overlap in effect given that both administrative and disciplinary components of the military justice system support good order and discipline in the ADF. This is why careful consideration should be, and is, given to concurrent actions.[49]

126. As Defence readily acknowledged, this distinction between the intended purpose of the 2 systems and the actual impact on the member in practice is a relatively sophisticated distinction and unlikely to be understood by most users of the military justice system.

127. Professor Matthew Stubbs and Dr Kellie Toole described the overlap as follows:

> There is, therefore a considerable potential overlap between the purpose of the disciplinary and administrative systems, notwithstanding that the former is a quasi-criminal system whereas the latter is a purely civil system. Not only is there an overlap of purpose, but there can be an overlap of result. Both systems provide a pathway to involuntary separation.[50]

[49] Department of Defence, Submission to the Royal Commission into Defence and Veteran Suicide, *Military Justice Submission to the Royal Commission into Defence and Veteran Suicide* (28 February 2024), para 90.

[50] Stubbs M and Toole K (2024) 'Legal Issues Arising from Administrative Termination and Disciplinary Dismissal' in Creyke R, Stephens D and Sutherland P (eds) *Military Law in Australia*, 2nd edn, Federation Press, Sydney.

Analysis of concurrent discipline and administrative action

128. There is no legal restriction on overlapping discipline and administrative processes. In fact, the existence of 2 parallel systems to regulate conduct is common among many professional bodies. For example, a legal practitioner who is alleged to have committed fraud could expect both to be charged with a criminal offence and to be subject to investigation and discipline by their professional standards body. Potentially, the guilty lawyer could receive both a gaol sentence and be 'struck off' the roll of practitioners. Likewise, a medical practitioner convicted of negligence would, in addition to any civil penalty imposed by the Court, be very likely to be investigated by the Medical Board and could be suspended or disqualified.

129. In each of the above examples, the criminal and civil proceedings are intended to enforce the law and punish the offender, whereas the investigation and proceedings conducted by the professional body is intended to protect the relevant profession in terms of preserving the public's faith in the relevant institution.

130. In theory, the discipline and administrative systems operate in a similar fashion. The Inquiry concluded that it is both legally and conceptually sound that Defence has the ability to punish a member under the Defence Force Discipline Act and to consider imposing administrative sanctions in appropriate cases. It is both reasonable, and often necessary, that Defence have the ability to impose administrative sanctions, including termination of a member's service in cases where retention of the member is not in the interests of Defence.

131. The purpose of the military justice system and the nature of service in the ADF assist in explaining the reason why both systems can and should continue to co-exist. Maintenance of discipline is the primary purpose of the military justice system. Such maintenance requires that command has a range of options beyond simply imposing a punishment as a consequence of committing a Defence Force Discipline Act offence. Maintaining discipline of the ADF as a whole may require the termination of a member's service, where such retention negatively impacts the morale, welfare and discipline of the force or even negatively impacts the reputation and community standing of the Defence Force.

132. Returning to the previous example of a member convicted of theft of monies from another service member, irrespective of any specific punishment imposed as a result of the Defence Force Discipline Act offence, Defence may nevertheless consider termination of the member on the grounds that their service is no longer in the interests of the Defence Force. Theft from other Defence members is a particularly corrosive offence in a Defence setting, eroding fundamental trust between members who may ultimately need to fight together on operations. In such a case where trust in the offending member has been irreparably lost, and overall morale of the unit may be adversely affected, it is necessary for Defence to have the ability to consider whether termination of the offending member is necessary.

133. The Inquiry concluded that it is important that Defence, as an organisation, retain the ability to utilise both discipline and administrative tools in appropriate cases, either concurrently or sequentially.

134. The Inquiry also notes the specific issue of 'sexual violence' where legislation mandates that if the Chief of the Defence Force is satisfied that a member has engaged in sexual violence, then the Chief of the Defence Force must give the member a notice to end the member's service.[51] While this may in some cases give rise to the application of concurrent discipline and administrative sanctions, it is, neverthless, a carefully considered legislative amendment directly responding to recommendations made by the Royal Commission.[52]

[51] Section 24(2A) *Defence Regulation 2016*

[52] Royal Commission recommendation 21: 'Implement a 'presumption' of discharge for Australian Defence Force members found to have engaged in certain forms of sexual misconduct'.

Concurrent discipline and administrative action at the unit level – initiating termination decisions

135. Many submissions complained about administrative actions that were initiated at the unit level, particularly those initiated by a member's commanding officer. It is at this level that an aggrieved member may conclude (rightly or wrongly) that concurrent action has been initiated due to bias or personal animosity on the part of their commanding officer rather than based on wider considerations of the best interests of the Defence Force.

136. The Inquiry considers that conceptually the 2 systems can coexist and overlap. However, this Inquiry also considers that there is merit in re-evaluating whether a decision to terminate a member's service, where it appears to be no longer in the 'interests of the Defence Force', ought to be initiated at the unit level. Involuntary termination of service is arguably the most confronting form of adverse administrative action for an ADF member because it threatens status and livelihood.

137. The decision to terminate a member's service is a complex decision based on a sweeping power. The delegate must consider what is in the 'interest of the Defence Force'. While the final decision is made by an authorised career management agency delegate, the process leading up to it – that is, the raising and issuing of a notice to show cause – is generally initiated by a commanding officer, who is not necessarily positioned to comprehensively assess what is properly in the 'interests of the Defence Force' as a whole.

138. The concern of this Inquiry was that such decisions must be made lawfully, consistently and in a way that alleviates the risk of arbitrariness. The current system of delegations whereby commanding officers may initiate termination action under the Defence Regulation does not sit comfortably with those concerns.

139. Commanding officers at the unit level should instead either prioritise dealing with behavioural deficiencies via the discipline system, or in cases where a member has been convicted of a service offence or has a pattern of poor behaviour, the commanding officer should be able to recommend to a higher headquarters, or career management agency, initiating termination of a member's service on the basis that retention is not in the interests of the Defence Force. So much is consistent with the fact that, where a member has engaged in sexual violence, the minimum level of authority to give formal notice proposing to end a member's service on that basis is vested within the Military Personnel Division, not the commanding officer.[53]

140. A further rationale for this recommendation is that it removes an avenue for alleging bias, misuse or weaponisation at the unit or commanding officer level. If this recommendation is agreed and adopted, it will remove from units the burden of conducting extensive administrative fact finding and administrative processes relating to termination, these being frequent areas of complaint and reasons leading to allegations of misuse of the military justice system.

141. This recommendation also reinforces the primacy of the discipline system to enforce service discipline at the unit level. The intention is to make the process of initiating termination at the unit level fairer and reduce perceptions of bias or arbitrariness.

[53] Chief of the Defence Force, *Command Authorisations Instrument, Personnel-Related Decision-Making Functions*, 15 December 2025

CONCLUSION 2: Involuntary termination of service is confronting for ADF members and may give rise to concerns of unfairness if it is perceived to be arbitrarily applied. Decisions to end an ADF member's service on the basis that it is not in the interests of the Defence Force should therefore be initiated and finalised consistently and at appropriate levels to maintain fairness and confidence in the military justice system. While unit commanders must retain operational discretion as to whether particular members should serve under their command, they should not have authority to use the potential termination of ADF service as a means of leverage over personnel.

RECOMMENDATION 2: The Chief of the Defence Force withdraw commanding officers' delegations to initiate termination of an ADF member's service on the grounds that their service is not in the interests of the Defence Force.

Dismissal following trial by courts martial or Defence Force magistrate

142. As noted above, there has been considerable judicial criticism of situations in which ADF members have had their service administratively terminated following a discipline process, in particular where courts martial or Defence Force magistrates specifically decide not to impose a punishment of dismissal. In these situations, the subsequent administrative termination could be regarded as undermining the court martial.[54]

143. To strengthen the effect of a decision made by a Superior Service Tribunal, and to ensure that it is not perceived as being undermined by subsequent administrative action, the Inquiry recommends that dismissal be specifically considered and ruled upon by the court martial or Defence Force magistrate, in cases where dismissal is a sentencing option. Where a court martial or Defence Force magistrate decides not to impose a sentence of dismissal, administrative termination action on substantially the same factual basis should not be permitted.

144. To ensure that the legitimate interests of the Service are adequately considered before ruling on a sentence of dismissal, the relevant Service will be required to make submissions to the court martial or Defence Force magistrate outlining the factors why the relevant ADF member's continued service is or is not '… in the interests of the Defence Force', outlining in particular the factors in section 6(2) of the Defence Regulation 2016 and any other relevant factor. The court martial or Defence Force magistrate will also be required to give reasons for its decision.

145. This recommendation removes the possibility of 'double dipping' in relation to the same factual scenario and addresses the issue of termination of the member at one time. This approach both reinforces the decisions of the Service Tribunal while also removing a process which is perceived as being greatly unfair to members. By dealing with the issue of termination/dismissal/early end of service at a single stage – sentencing – this reform also removes the possibility of a termination 'hanging over the head' of a member who has been convicted of an offence but otherwise has been determined as still having potential to continue to serve.

146. The Defence Force Discipline Act currently does not provide for a punishment of Termination (now referred to as 'early end of service') but only of Dismissal. This Inquiry concluded that the 2 terms do not differ in any material way or that the imposition of a sentence of Dismissal or an administrative Termination imposes any practical difference or detriment upon a member, for example, financial impacts. To that extent, the Inquiry recognises that Dismissal punishments have evolved over time. For example, prior to the enactment of the Defence Force Discipline Act, dismissal with disgrace was a punishment available in relation to members of the Navy, the consequences of which included forfeiture of pay and allowances as well as the increased stigma when compared with a 'normal' dismissal. The effect of the enactment of the Defence Force Discipline Act was to abolish such distinctions, partly in recognition of the fact that the 'simple' dismissal was an adequate punishment in most cases.

[54] *Howieson v Chief of Army* [2021] ADFDAT 1 at [62].

147. The Inquiry considers that the presence of 2 different terms for essentially the same effect could lead to arguments that they are in fact 2 separate processes, and that consideration of one does not equate to consideration of the other. The Inquiry therefore recommends that the terms be harmonised throughout Defence policy and Defence-related legislation, including the Defence Force Discipline Act.

CONCLUSION 3: The use of the terms 'dismissal' in disciplinary processes and 'termination' and 'early end of service' in administrative processes, to describe essentially the same outcome, creates confusion and undermines confidence in the military justice system. This confusion is reinforced, and gives rise to a perception of 'double jeopardy', when an ADF member's service is involuntarily administratively terminated or ended early after a Service tribunal declines to impose a punishment of 'dismissal' following a discipline trial.

RECOMMENDATION 3: Relevant legislation and policy be amended to harmonise the terms 'dismissal', 'termination' and 'early end of service'.

CONCLUSION 4: Administrative termination of an ADF member's service following discipline proceedings that considered but did not impose a punishment of dismissal leads to perceptions of 'double jeopardy' and injustice.

RECOMMENDATION 4: Relevant legislation be amended to require courts martial and Defence Force magistrates, where dismissal is available as a punishment option, to:

- consider and determine whether dismissal is an appropriate punishment and provide written reasons for that determination
- consider submissions from the relevant Service before imposing punishment.

Relevant legislation be further amended to preclude the ADF from subsequently administratively terminating a member's service solely on the same factual basis.

Aspects of the discipline infringement scheme

148. The discipline infringement scheme (the scheme) is the lowest tier of the ADF's statutory discipline system. Under the scheme, commanders and supervisors can manage minor discipline breaches in a relatively quick and non-adversarial manner.[55]

149. While the scheme has long been an effective tool in maintaining service discipline, the Inquiry is concerned with its potential to be misused in certain circumstances. Namely, the Inquiry has identified instances where the scheme may be vulnerable to misuse against members of the ADF whose knowledge of the discipline system is limited, including junior enlisted members.

[55] Department of Defence (2022) *Discipline Infringement Manual*, p iii.

Background and purpose of the discipline infringement scheme

150. The scheme was introduced in 1995 as a mechanism by which infringements, which were purely disciplinary and neither serious nor of a criminal nature, could be dealt with speedily and 'without undue formality' or compromising fairness.[56] The scheme applies to all ranks up to and including junior officers. The following features are central to the operation of the scheme:

- **No investigation necessary.** An infringement officer, who is typically a member at or above the rank of non-commissioned officer,[57] may issue an infringement notice if they believe, on reasonable grounds, that a 'prescribed defence member' (an infringed member) has committed a disciplinary infringement and that the member does not have a reasonable excuse for committing the infringement.[58] The conclusion that no investigation is necessary may be reached based on reasonably available information.
- **Election-based.** Upon receipt of an infringement notice, the infringed member may elect to be dealt with under the scheme, thereby admitting to the infringement for the purposes of the scheme.[59] If the member elects, the infringement officer must refer the infringement to the relevant discipline officer.[60] If the member does not so elect, or fails to elect, the member is taken to have opted-out of the scheme. At that point, the infringement officer may, but is not obliged to, refer the matter to an authorised member to determine whether there are reasonable grounds to consider that a service offence has been committed.[61] The infringement officer must specify a period within which an election must be made.[62] Under policy, that period should normally be between 24–48 hours and must in any event be a 'reasonable opportunity to consider' the election decision and to seek advice.[63] A member may seek an extension of time in which to make an election, as long as the extension is requested within the original election period.[64] A member may withdraw their election at any time before a discipline officer makes a decision in respect of the infringement.[65]
- **Distinct from service tribunals.** Disciplinary infringements are not service offences, and discipline officers are not service tribunals. If a member is dealt with under the scheme, they may not be charged and tried by a service tribunal for an offence arising out of the same conduct.[66]
- **Non-adversarial and informal.** A discipline officer proceeding is non-adversarial. There is no prosecuting officer. The infringed member may not be represented but they may call witnesses and present evidence. The procedure by which a discipline 'hearing' takes place is not prescribed by statute, but rather is a matter for the Chief of the Defence Force to specify.[67]

[56] The Defence Force Discipline Act was relevantly amended by the *Defence Legislation Amendment Act 1995* (Cth), which introduced Part IXA – Special Procedures Relating to Certain Minor Disciplinary Infringements.

[57] *Defence Force Discipline Act 1982* (Cth), s 9HA.

[58] *Defence Force Discipline Act 1982* (Cth), *s* 9E(1).

[59] *Defence Force Discipline Act 1982* (Cth), *s* 9C; Department of Defence (2022) *Disciplinary Infringement Manual*, para 1.9.

[60] Department of Defence (2022) *Disciplinary Infringement Manual*, para 3.39.

[61] *Defence Force Discipline Act 1982* (Cth), s 9E(3)(c)(ii).

[62] *Defence Force Discipline Act 1982* (Cth), s 9E(3)(b)(iii).

[63] Department of Defence (2022) *Disciplinary Infringement Manual*, para 3.29-3.30.

[64] Department of Defence (2022) *Disciplinary Infringement Manual*, para 3.35.

[65] *Defence Force Discipline Act 1982* (Cth), s 9EA.

[66] *Defence Force Discipline Act 1982* (Cth), s 9C(2).

[67] *Defence Force Discipline Act 1982* (Cth), s 9FA(1). The procedures are presently outlined in the Discipline Infringement Manual.

Legislative expansion of the discipline infringement scheme

151. The scheme was expanded in 2022 as part of a package of wider legislative reforms of the discipline system.[68] Key reforms included:

- **Additional infringements and powers of punishment.** The number of infringements has increased from 7 'minor disciplinary infringements' (for example, absent without leave for less than 3 hours) to include 9 more serious forms of infringement (for example, absent without leave for less than 24 hours).
- **Senior discipline officer.** The reforms abolished the role of subordinate summary authority (the lowest level of unit summary proceeding) and created the role of senior discipline officer. The senior discipline officer has exclusive jurisdiction to deal with the new range of more serious infringements in addition to the 'legacy' infringements.[69] The senior discipline officer is intended to 'replace much of the jurisdiction and punishment powers of a subordinate summary authority'.[70] A senior discipline officer has commensurately increased powers of punishment, which at their highest may amount to a fine not exceeding 3 days pay.[71]
- **Command review.** A commanding officer must review the decision of a senior discipline officer to impose punishment 'as soon as practicable' after the decision.[72]
- **Record-keeping.** Prior to the 2022 reforms, all 'relevant records' in relation to an infringement were required to be destroyed at the end of a 12-month period.[73] Under the reforms, the handling of Disciplinary Infringement scheme records (known as 'Part IA records') is now subject to rules made by CDF. Those rules no longer permit the destruction of records; rather, they create a system for use and access in defined circumstances.[74]

Infringement notices

152. Defence has prescribed a self-contained 'smart form' *Form AF155 C1: Disciplinary Infringement Notice* (Form C1) by which infringement notices are issued. If the matter proceeds to a discipline officer hearing, the outcome of that process is also reflected in the form. Of note:

- The infringement officer is required to raise the form and specify an election period. If that period is 'shorter than 24 hours or longer than 48 hours', reasons must be provided.
- A script is included which the infringement officer must read to the infringed member. That script includes the following:

  2. You can elect to have this disciplinary infringement dealt with by the type of discipline officer nominated … above. If you elect to be dealt with by a discipline officer or senior discipline officer:

     a. You are admitting to the conduct alleged.

     b. A permanent record of this disciplinary infringement will be kept and used for personnel management purposes, including discipline and career management.

[68] The *Defence Legislation Amendment (Discipline Reform) Act 2021* (Cth) repealed Part IXA and introduced a heavily revised discipline infringement scheme in Part IA.

[69] *Defence Force Discipline Act 1982* (Cth), s 9A(c).

[70] Explanatory Memorandum, Defence Legislation Amendment (Discipline Reform) Bill 2021, para 5.

[71] *Defence Force Discipline Act 1982* (Cth), s 9FB(2).

[72] *Defence Force Discipline Act 1982* (Cth), s 9G.

[73] *Defence Force Discipline Act 1982* (Cth), s 169H (section repealed by the *Defence Legislation Amendment (Discipline Reform) Act 2021* (Cth)).

[74] *Defence Force Discipline (Disciplinary Infringement Records) Rules 2022* as made under section 9JB(1) of the *Defence Force Discipline Act 1982* (Cth).

3. You are to read the attached Disciplinary Infringement Notice Information Sheet, which contains information about the disciplinary Infringement scheme, your rights, and how disciplinary infringement records are kept and used.

4. You are to report to me on the date and time specified above to tell me whether or not you elect to have this disciplinary infringement dealt with under the disciplinary Infringement scheme. This is your election period.

5. You may request an extension of time in which to make your election. I will consider any request and determine whether to extend the election period at my discretion.

- Whether the infringed member elects to be dealt with by a discipline officer or not, both the infringement officer and the infringed member must sign or certify the form. The infringement officer first certifies that they 'have not said or otherwise represented anything to the member' that is inconsistent with the infringement officer's obligations or 'has the purpose of deterring the member from exercising the member's options'. The infringed member confirms, through signature, that they read and understood the notice and the included Disciplinary Infringement Notice Information or 'information sheet' and that they 'voluntarily make this election'.
- The information sheet comprises the last 2 pages of the form and contains a summary of the infringed member's rights and obligations with respect to seeking legal support, exercising elections, discipline officer proceedings, the range of available punishments, review and appeal, and use of records.

Concerns with the discipline infringement scheme

153. Several submissions raised a concern that the lack of military justice knowledge among junior enlisted members is apt for exploitation by unscrupulous superiors in positions of authority under the scheme.[75]

154. One submitter observed that junior members who received infringement notices for minor indiscretions elect to be dealt with under the scheme in circumstances where little to no evidence to support a charge existed. The junior members were unlikely to 'escalate' the matter – that is, opt out of the scheme – out of fear of being charged.[76]

155. A further theme in the submissions was that infringement notices may be issued in the expectation that the infringed member would likely 'cop it on the chin'.[77] Some Inquiry participants noted that very junior members, especially those in training establishments, sometimes feel 'nudged towards accepting', possibly based on fear of delay or the potential for harsher outcomes if the matter proceeded further.[78]

156. For example, a senior non-commissioned officer acknowledged that they expected prescribed defence members to accept responsibility and have matters dealt with by a discipline officer, because electing a Commanding Officer's trial was only likely to result in the same outcome with a more severe punishment. The perception appears to be that the design of the infringement scheme encourages prescribed defence members to accept responsibility for an infringement, even in circumstances where they may believe they are not at fault, so as to avoid a harsher punishment at a Commanding Officers's trial. This, in turn, could lead to perceptions that this aspect of the discipline system can be weaponised against ADF members.

157. Information collected during IGADF Military Justice Performance Review audits provides some support for the concerns raised in submissions. Of a total of 97 infringements reviewed during the 2024–2025 period, only one member elected to contest the Infringement.

[75] Inquiry submission 121; Inquiry submission 131; Inquiry submission 137.

[76] Inquiry submission 121.

[77] Inquiry submission 107; Inquiry submission 121; Inquiry submission 127; Inquiry submission 131.

[78] The submissions noted above do not reference whether the behaviour complained of occurred before or after the scheme was reformed in 2022.

158. While such a low uptake may suggest some form of pressure being applied, further analysis of the audited infringements suggests otherwise. Feedback from infringed members reveals a very low perception that pressure had been applied to them to accept the infringement and not take up the election.

159. Recent audit findings indicate that, although explicit pressure on members to accept an infringement without making an election may be uncommon, instances of more subtle influence persist within the current framework. Such pressures may undermine the integrity of the election process, rendering the option less real and more illusory than intended.

Analysis of the discipline infringement scheme

160. The reforms to discipline infringements in 2022 did not significantly alter the fundamental nature of the process. The 'cop it on the chin' attitude might be more reflective of attitudes that existed prior to the reforms, when the scheme required destruction of infringement records after 12 months. Less scrupulous (or experienced) infringement officers might have used that fact to their advantage when urging infringed members to 'cop' the infringement and move on, when a permanent record would not be created. As a result of the scheme's revised record-keeping rules that, by design, might create longer-lasting records, such behaviour might be less prevalent. However, fundamental concerns in relation to the process still exist.

161. The protections built into the scheme do not resolve the tension that may arise where an infringed member, particularly a very junior member, seeks to assert their right to opt out of the scheme, a move which may be perceived as a challenge to a superior's authority.

162. Assuming an infringement officer acts in good faith, there are still vulnerabilities in the scheme.

163. Putting to one side the considerable personal impact of a decision to opt out of the scheme, which carries some risk if the matter proceeds to charge, the decision is not without impact on the unit. The following might be the typical consequences if a member opts-out:

- the infringement officer refers the matter to an authorised officer
- the authorised officer considers whether a discipline investigation is required, which may or may not require appointing an investigating officer
- following investigation and obtaining relevant evidence, which may require ensuring availability of witnesses, a determination is made whether a charge is open and appropriate as a matter of command discretion
- if a charge is preferred, unit officials must organise a summary authority hearing before the commanding officer
- where a member wishes to contest the charge, a contested hearing must be anticipated
- if a conviction is entered, the matter proceeds to automatic review.

164. A charge is not a foregone conclusion if an ADF member opts-out of the scheme, a fact that may not be apparent to many ADF members.

165. Whether or not a charge is in fact preferred, the decision to opt-out is clearly not without resource implications for the unit. While such implications are entirely within the intent of the scheme and the discipline system as a whole, it is not difficult to imagine how a reasonably impressionable member, influenced by infringement officers who might prefer to avoid pursuing more formal discipline mechanisms, might simply prefer to 'cop' the infringement and avoid unnecessary 'escalation'.

166. Similarly, a member who has made an election, and who has a right to withdraw that election (up to a point), might feel obliged to stick with their original decision, notwithstanding any subsequent misgivings. Once an election is made, the infringement officer is obliged to refer it to a discipline officer. That alone might act as a deterrent to exercising the right to opt-out, for the process does not necessarily pause to give a member an opportunity to reflect on their decision which, as noted above, may end up being made within a very narrow window of time.

167. While the current scheme framework does support the making of informed decisions, it assumes, perhaps unrealistically in all cases, that infringed members operate from a reasonably equal level in terms of their authority in the unit structure, and their knowledge of the discipline system. With respect to the more junior members of the ADF workforce, who generally lack authority and discipline knowledge, this Inquiry concluded that further protective measures should be established.

Changes to the discipline infringement scheme process

168. **Member's advocate.** This Inquiry recommends that an infringed member must be able to nominate a reasonably available advocate to protect their interests throughout the infringement process, including receipt of the infringement notice, exercising the election, and appearing before a discipline officer. An advocate would serve the following protective functions:

- ensuring that the process as a whole takes place in the manner intended by law and policy, so far as the infringed member's rights are concerned
- advising and supporting a member in considering their options which best serve the member's own interests.

169. Some participants to the Inquiry expressed concern that introducing a mandatory assistance requirement could slow the discipline infringement process or render it more technical and complex. It was also noted that the scheme already contains a number of procedural checks and balances. However, while such safeguards exist in theory, the Inquiry concluded that, in practice, disparities in knowledge and experience between discipline officers and infringed members – particularly junior and inexperienced personnel – can significantly diminish their effectiveness. In these circumstances, the scheme's protections may operate more as a formality than as a meaningful safeguard against unfair or ill considered outcomes.

170. The concept of an advocate is simply intended to balance out the forces that might otherwise operate within a unit to dissuade junior members from opting out of the scheme, where such decisions may require significant courage, or ensuring they have all the information they need to make an informed election.

CONCLUSION 5: ADF members, especially inexperienced personnel, may be vulnerable to injustice associated with the disciplinary infringement process. This is in contrast to other discipline proceedings that include mandatory protective factors, such as defending officers.

RECOMMENDATION 5: Relevant legislation and policy be amended to mandate that an infringed member choose a reasonably available advocate to assist them through all parts of a disciplinary infringement process.

171. **Member must give reasons for election.** Presently, a member's election is effected through an electronic signature on the relevant form, which signifies that the member has 'read and understood [the] Disciplinary Infringement Notice and information sheet, and voluntarily make[s] this election'. A further recommended protective factor is requiring the member to provide reasons for their election, prior to their signature. This requirement would provide a means to verify that a member has turned their mind to how the election serves their best interests, among other possibilities. It enables a member to provide input – in their own words – into what is arguably the most significant decision in the whole process.

CONCLUSION 6: Limited understanding and situational pressure during the discipline infringement process can lead some ADF members to make ill-considered elections with lasting consequences. They may be susceptible to pressure to choose an option, irrespective of their actual culpability, that suits their own or their chain of command's administrative convenience. Requiring ADF members to provide reasons when electing to have an infringement dealt with by a discipline officer would help ensure the decision is informed and voluntary, and uphold the integrity of the process.

RECOMMENDATION 6: Relevant policy be amended to mandate that an infringed member give reasons in writing for their election to have their infringement dealt with by a discipline officer.

172. **Records should be retained for a maximum of 24 months.** While the revised system of record-keeping is only a few years old, and a comprehensive assessment of its efficacy – at least compared to its predecessor – cannot be made, certain conclusions can be drawn simply based on its framework.

173. For one, the relatively complex legislative requirements that prescribe how infringement records must be stored, accessed and used make it plainly apparent that infringement records are liable to have a comparatively more negative impact upon infringed members and their careers, as compared with the previous scheme, where records were simply destroyed after 12 months.

174. This potential negative impact persists notwithstanding the so-called 'archiving events' which, in the case of an infringed member who is not undergoing recruit or officer training, will only occur if that member substantively promotes to a higher rank (or ends their service).[79] Substantive promotion may take years, if it takes place at all. Indeed, having an infringement on their record may be the discriminator that precludes an infringed member's subsequent promotion.

175. Even 'archiving' does not prevent entirely the records being used for personnel or discipline management of that member.[80] To that extent, the revised system is inherently less fair than its predecessor.

176. The Inquiry notes that Defence is currently undertaking work to clarify that disciplinary infringement records should be used only for limited purposes. While this work is welcome, the Inquiry considers it insufficient. In the absence of a clear and fixed time limit, reliance on a moving and indeterminate 'archiving event' creates uncertainty and exposes members to prolonged and potentially disproportionate career impacts. This is incongruent with the intent of a scheme designed to deal with 'relatively minor disciplinary breaches in a non adversarial manner', yet which may nonetheless result in long term adverse consequences for a member's career.

177. This Inquiry has concluded that a middle ground ought to be struck. Whereas the previous system of destroying infringement records after a 12-month period was overly advantageous to infringed members, the current system swings the pendulum too far in the opposite direction, and is liable to have a chilling effect on the use of the scheme in the longer term.

178. This Inquiry therefore recommends infringement records be retained for a period of up to 24 months, after which the records can no longer be accessed or used in relation to the member. This Inquiry considers the previous 12-month retention period too short for effective management. Whereas certain members may be able to 'ride-out' a 12-month period of heightened scrutiny over their behaviour, it becomes much more difficult to do so over a 24-month period, which for some members equates to an entire posting.

[79] *Defence Force Discipline (Disciplinary Infringement Records) Rules 2022*, s 7(3).

[80] *Defence Force Discipline (Disciplinary Infringement Records) Rules 2022*, s 9(4).

179. Whether the records are physically destroyed after the relevant period, as required under the previous system, or whether they are simply archived in a way that prevents their use against the member is a matter for Defence, having regard to Commonwealth law and policy as it relates to contemporary record-keeping requirements.

CONCLUSION 7: The lack of clear and consistent time limits on the use of infringement records creates uncertainty for ADF members, may fuel perceptions of unfairness in career management, and may lead to inequitable outcomes. A longer, fixed retention period would reduce inconsistency, improve transparency, and address the potential unfairness of the current arrangements.

RECOMMENDATION 7: Relevant law and policy be amended to prohibit accessing or using infringement records after a period of 24 months.

Military police investigative powers

180. The Defence Force Discipline Act is the legislative mechanism by which the ADF maintains service discipline. It prescribes various service offences, the procedures for investigation and prosecution before service tribunals, and it details the powers available to Military Police.

181. Military Police are required to 'police the force', being the application of policing effects with respect to ADF members, and to provide 'police support to the force', being the delivery of policing effects into a battle space in support of an operation. These are unique roles in support of Defence activities, both domestically and globally.[81]

182. The Judge Advocate General's 2020 Annual Report noted that the quality of the Joint Military Police Unit's investigations have a direct bearing on the efficacy of trials conducted by superior service tribunals. Investigations that closely follow applicable investigative procedures directly contribute to fair and efficient trials.[82]

183. The Inquiry has identified that Military Police powers are limited when compared to those of civilian police. The lack of powers risks undermining effective Military Police investigations, which in turn magnifies the risk of weaponisation in the military justice system.

Policing powers

184. Policing powers can be grouped broadly into 4 categories:

- investigative powers
- powers of entry
- search and seizure powers
- use of force powers.

185. Parts V and VI of the Defence Force Discipline Act prescribe the majority of the powers Military Police may exercise within each of these categories.

[81] Department of Defence (2021) *Australian Defence Force Military Police Manual*, vol 1, para 2.9.

[82] Parliament of Australia (2021) *Judge Advocate General Defence Force Discipline Act 1982 Report for the period 1 January to 31 December 2020*, Australian Government, p 25.

Comparison between Military Police and civilian police powers

186. The powers available to Military Police are less extensive than those available to their civilian counterparts. For example, the following powers are commonly exercised by State and Territory police but are not available to Military Police under the Defence Force Discipline Act:

- declaring a crime scene and controlling access on that basis
- conducting surveillance through interception and use of listening devices
- compelling DNA samples
- compelling personal identification numbers or passwords to unlock personal electronic devices.[83]

187. Accordingly, Military Police investigations can be limited in scope when compared to those conducted by civilian police. This limitation has been highlighted by the Judge Advocate General in previous Judge Advocate General reports, the Royal Commission, the Provost Marshal – ADF, and submissions to this Inquiry.[84]

188. The lack of a full complement of policing powers has the capacity to undermine the effectiveness of Military Police, which in turn may diminish confidence in the ADF to maintain service discipline.

Enabling Military Police to carry out investigations into serious criminal offences

189. In addition to uniquely military offences, the Defence Force Discipline Act enables the investigation and prosecution of so-called 'territory offences', namely breaches of Commonwealth and ACT criminal law.[85] In this manner, ADF members can be held to account for offences such as an act of indecency without consent.[86]

190. The institution of service tribunal proceedings with respect to the most serious kinds of territory offences, such as murder or sexual assault under the Crimes Act 1900 (ACT), requires the consent of the Director of Public Prosecution of the Commonwealth if the offence was committed in Australia.[87] Consent is not required if the offence was committed outside Australia.[88] Further, the requirement for consent does not, in and of itself, prevent Military Police investigating the offence. Indeed, certain policing powers remain available notwithstanding that consent has not been obtained.[89]

191. It therefore stands to reason that Military Police ought to have the kinds of powers available to their civilian counterparts such that they are able to investigate service or territory offences that may be committed by ADF members, particularly when the ADF is operating beyond Australian territory. Any gap between the powers that are currently available to Military Police, and the powers they reasonably require to effectively conduct robust investigations, ought to be minimised as far as possible.

192. Noting police powers across individual states and territories vary in scope, this Inquiry recommends that the powers available to Australian Federal Police should be considered as a benchmark for further review and standardisation.

[83] Department of Defence, Submission to the Royal Commission into Defence and Veteran Suicide, *Defence Response to NTG-DEF-277* (3 April 2024), para 6.

[84] *Royal Commission into Defence and Veteran Suicide* (Final Report, September 2024), vol 3, p 262, para 287; Inquiry submission 283.

[85] *Defence Force Discipline Act 1982* (Cth), s 61.

[86] *Crimes Act 1900* (ACT), s 60.

[87] *Defence Force Discipline Act 1982* (Cth), s 63(1).

[88] *Defence Force Discipline Act 1982* (Cth), s 63(1)(a)

[89] *Defence Force Discipline Act 1982* (Cth), s 63(2)

CONCLUSION 8: Current Military Police evidence-gathering powers are outdated and can frustrate, impede, or unnecessarily prolong investigations. This undermines confidence in the military justice system and can create perceptions among both victims and alleged offenders that processes are weaponised against them. Harmonising Military Police investigative powers with those of civilian police would enable the effective investigation of all offences involving ADF members in Australia and overseas. Enhanced powers would improve efficiency, reduce perceptions of weaponisation arising from ineffective investigations, and better align evidence-gathering powers with community expectations.

RECOMMENDATION 8: Relevant legislation be amended to harmonise Military Police powers (including investigative powers, powers of entry, search and seizure powers and use of force powers) with those of the Australian Federal Police.

Military Police briefs of evidence in criminal prosecutions

193. Notwithstanding any extension of Military Police powers, this Inquiry acknowledges that there may be other reasons why Military Police may seek to refer an investigation to civilian police. As the Military Police Manual notes:

> civilian police are generally best placed to investigate [sexual and other very serious] offences noting that they regularly deal with these incidents and have the experience, resources and legislation to provide the best options for a successful prosecution.[90]

194. On that basis, and upon suspicion of a serious offence, Military Police may determine that civilian investigation is more appropriate at the outset.

195. However, there also is the possibility that Military Police may commence, or even complete, an investigation under the Defence Force Discipline Act, with a view to handing over a brief of evidence to civilian authorities for further action as appropriate.

196. This Inquiry understands that there have been isolated instances where Military Police briefs of evidence have been used successfully, whether in whole or in part, in aid of civilian criminal prosecutions. However, this Inquiry also understand that this is the exception rather than the rule. Whether any given Military Police brief of evidence can be relied upon by a civilian prosecuting authority in a criminal court is a question that is essentially dependent on the particular jurisdiction, the offence in question and even the individuals involved in the process.[91]

197. Without a clear legislative basis by which Military Police briefs of evidence can be lawfully relied upon in civilian criminal proceedings, and vice versa, the issue will essentially remain a matter for case-by-case determination.

198. This Inquiry considers that it is highly undesirable that there should be any lack of certainty in this respect. There is no reason, at least in principle, why an investigation properly conducted by military or civilian police cannot then form the basis for a prosecution in a criminal court or military tribunal, respectively. In this regard, it is noted that the legal burden of proof on a prosecutor in a criminal context – namely proof beyond reasonable doubt – applies as a matter of law, along with all general principles of criminal responsibility, to service offences under the Defence Force Discipline Act.[92]

[90] Department of Defence (2021) *Australian Defence Force Military Police Manual*, vol 2, para 2.11.

[91] Inquiry interview, Group Captain Terrence Lewis, Provost Marshal – ADF, 24 October 2025.

[92] *Defence Force Discipline Act 1982* (Cth), s 10.

199. Practically speaking, there might be occasions where Military Police are the first (or only) investigative authority able to receive evidence following commission of an alleged offence during an ADF deployment to a remote area of Australia. Should it become subsequently apparent to Military Police that the investigation should be referred to civilian authorities, it would be highly unfortunate if a civilian authority declined to accept (or act upon) a military brief of evidence purely on the basis that it may have been unclear if it was lawful to do so.

200. On that basis, this Inquiry considers that any barriers, be they legislative or otherwise, to enable evidence that has been collected under the Defence Force Discipline Act to be utilised in civil criminal processes, should be identified and removed.

201. Similarly, any barriers that might prevent a civilian brief of evidence to be relied upon in a Defence Force Discipline Act prosecution context should be removed through relevant legislative or policy amendments.

CONCLUSION 9: Existing arrangements for sharing evidence between military and civilian proceedings can prevent the admission of relevant evidence when it is collected by a different investigative body. This can weaken confidence in the military justice system. Where these limitations prevent prosecutors from adducing lawfully-obtained evidence, or are exploited by accused persons and their counsel, victims may perceive that evidence laws are weaponised against them to avoid accountability.

RECOMMENDATION 9: Relevant legislation be amended to confirm that evidence collected by the Australian Federal Police during investigation is, subject to the usual rules of admissibility of evidence, prima facie admissible in Defence Force Discipline Act proceedings and that evidence collected by Military Police is likewise prima facie admissible in civilian criminal court proceedings.

Removing impediments to the conduct of effective Defence Force Discipline Act investigations

202. Several Defence Force Discipline Act policing powers are qualified in ways that either do not reflect best practice, or do not properly reflect the makeup of the modern ADF. Where such qualifications serve as artificial impediments to the conduct of efficient Defence Force Discipline Act investigations, this Inquiry considers that they ought to be systematically identified and removed through legislative amendment.

203. For example, searches in emergencies must not be conducted by, or in the presence of, a person who is not of the same sex as the person being searched.[93] While this qualification is not unreasonable in and of itself, consideration should be had as to whether it is fit for purpose and in keeping with equivalent civilian powers, noting that emergency searches are likely to be conducted outside of a Military Police facility and where there is not necessarily the available gender split of Military Police. It may suffice that such a requirement is predicated on it being 'practicable', as is the case with an equivalent search power in the Crimes Act 1900 (ACT).[94]

204. Further, the power to make an application for fingerprints or samples as a general investigative action is open only to an investigative officer who is an officer or a warrant officer.[95] Noting that many Military Police are below officer and warrant officer ranks, there is a question whether those rank limitations make practical sense in relation to the current military policing capability, particularly if any risks attendant with devolving power can be mitigated through other means.

[93] *Defence Force Discipline Act 1982* (Cth), s 101Z(5).

[94] See, for example, *Crimes Act 1900* (ACT), s 240.

[95] *Defence Force Discipline Act 1982* (Cth), s 101L.

CONCLUSION 10: Certain legislative and procedural constraints can unnecessarily delay the timely collection of relevant evidence for subsequent proceedings. Such delays risk undermining confidence in the military justice system by creating perceptions among victims and alleged offenders that the process is being used against them rather than to ensure fairness.

RECOMMENDATION 10: Relevant legislation and policy be amended to remove impediments, including criteria specifying rank or gender limitations, to the gathering of evidence by Military Police provided that appropriate safeguards are implemented.

Expanding the availability of removal orders

205. The enactment of the *Defence Legislation Amendment (Discipline Reform) Act 2021* introduced new cyber-bullying offences into the Defence Force Discipline Act.[96]

206. Where a person is convicted of cyber-bullying involving the provision of material on a social media service or relevant electronic service, a service tribunal is empowered to order that person to take reasonable action to remove, retract, recover, delete or destroy the material.[97]

207. As at the time of this Report, such an order was not available in respect of a conviction for any other service offence. However, the Inquiry notes that, as of 1 April 2026, the Defence Force Discipline Amendment (RCDVS Implementation and Related Measures No. 1) Bill 2026 seeks to extend the power to issue removal orders in circumstances beyond a conviction for cyber-bullying.[98] The Inquiry is in favour of expanding the scope of this power to ensure offending material can, in appropriate circumstances, be removed by order of a service tribunal.

Balancing the harm involved in seizing personal devices

208. In certain circumstances, personal electronic devices may be seized from an ADF member during the course of an investigation. Such seizure may be necessary to preserve evidence, prevent further offending, or support the effective investigation and prosecution of an offence.

209. The Inquiry recognises, however, that prolonged deprivation of a personal electronic device may cause significant and unintended harm to an ADF member. In the modern environment, personal electronic devices are integral to daily life. They are commonly used for communication, access to essential services, financial management, and personal wellbeing. Extended removal of a device may therefore have consequences that are disproportionate to the legitimate objectives of the military justice process.

210. As legislation currently stands, where a member has illegally obtained, possessed or distributed intimate imagery or video footage of another person, that conduct may be prosecuted under the Defence Force Discipline Act. However, there is no express power to order the targeted removal of the offending imagery or footage while permitting the return of the personal electronic device. In some cases, the return may be all but impossible.

211. However, this Inquiry considers that Defence should explore whether the current legislative and policy provisions relating to retaining seized devices, pending investigation, are suitably balanced between the legitimate needs of the investigation, the interests of victims, and the reasonable needs of a member under investigation.

[96] *Defence Force Discipline Act 1982* (Cth), s 48A

[97] *Defence Force Discipline Act 1982* (Cth), s 84A

[98] Defence Force Discipline Amendment (RCDVS Implementation and Related Measures No. 1) Bill 2026 Part 14

CONCLUSION 11: The legislative reform proposal to expand the circumstances in which removal orders can be made, following conviction of a service offence, is supported. However, current provisions relating to the seizure, retention and handling of electronic devices and imagery may result in unintended adverse consequences for ADF members, particularly where personal electronic devices are removed from a member's possession for extended periods. Smart devices now play a central role in accessing financial and health services, as well as contacting sources of wellbeing and support.

RECOMMENDATION 11: Relevant legislation be amended to expand the circumstances in which removal orders may be imposed following conviction for a service offence. Defence review whether existing legislative and policy settings governing the retention of seized devices during investigations appropriately balance investigative needs, victims' interests, and the reasonable needs of ADF members under investigation.

CHAPTER 4 — PROTECTIVE FACTORS AND SPECIFIC MILITARY JUSTICE PROCESSES OF CONCERN

[T]he time, bandwidth and energy required to constantly fight and respond to the kinetic nature of the ADF complaints system, genuinely jeopardised my ability to execute and achieve my directed tasks and mission. The process of fact finding Investigations, Inquiry Officer Investigations, being referred for a potential [Defence Force magistrate], trying to find legal representation, giving interviews to Military Police, providing affidavits and statements … all in order to clear my name … felt like going through a 'meat grinder' of scrutiny and investigations that was difficult to bear.[99]

212. The reinvigorated discipline system recommended by the Inquiry in Chapter 3 is intended to have a positive effect on reducing perceptions of abuse and injustice at the macro level. However, from the perspective of the individual ADF member, it is the regular accumulation of many inexpertly or thoughtlessly applied smaller processes, that can have a disproportionately negative effect on the member's perceptions and trust in the system.

213. A number of specific processes were identified by participants in the Inquiry as particularly susceptible to misuse or which have disproportionately negative effects if applied poorly or thoughtlessly.

214. Chapter 4 analyses those processes and recommends ways in which they can be improved. The objective of these recommendations is to introduce additional protective factors or 'guardrails' to ameliorate against potentially unfair outcomes for ADF members and thereby, reduce perceptions of weaponisation.

215. Specific processes identified during the Inquiry were:

- Notices to Show Cause for involuntary termination of service
- fact finding in support of military justice processes
- suspension of members subject to military justice processes
- mental health referral processes including psychological and organisational referrals.
- Records of Conversation
- military justice training.

Notices to Show Cause for involuntary termination of service

216. As addressed in Chapter 3, a substantial number of submissions complained about the overlap of administrative termination and discipline action and, in particular, administrative termination which is initiated at the commanding officer and unit level. The Inquiry recommendations on termination address this issue from a structural perspective by removing the power of unit level commanding officers to initiate termination based on behavioural failings. This Inquiry recommends that, in most cases, they should be addressed via the formal discipline system.

[99] Inquiry submission 300.

217. The Inquiry concluded that even if initiated and considered at a higher and more central level, the current support processes in place to assist a member who receives a notice to show cause for termination are insufficient. Legislative requirements, policy guidance and general administrative law principles, which contemplate the provision of procedural fairness, collectively ensure that a member will be given an opportunity to respond to the notice before a decision is made.[100] However, beyond these protections, support to the affected member can vary considerably dependent on the member's own knowledge of available support structures or on a proactive command that provides relevant information, for example, about Defence Counsel Service support.

218. In contrast, the discipline system includes comparatively more comprehensive checks and balances. For example, a member charged with a service offence is automatically provided with a Defending Officer to represent and assist them. A Defending Officer is available at both the summary level (commanding officer level) and at the Superior Service Tribunal level (Defence Force magistrates and courts martial).

219. The receipt of a Notice to Show Cause can be overwhelming to some members. The receipt of a notice which potentially signals the end of a member's career is of itself stressful, and responding effectively to it can challenge some members. Accordingly, this Inquiry makes 2 recommendations to provide practical assistance to members facing a Notice to Show Cause, namely:

- the establishment of an ADF member's advocate
- formalising the requirement for a legal review prior to administrative involuntary termination decisions.

ADF member's advocate for Notices to Show Cause

220. In Defence Force Discipline Act proceedings, a member is provided with a Defending Officer to support and represent them. At the summary level, a member may nominate a Defending Officer of their choice, provided that officer is reasonably available. Otherwise, a Defending Officer will be allocated to the accused member. At the court martial or Defence Force magistrate level, the accused member is provided with a list of available legal officers from which they may choose one to advise and represent them, free of charge.[101] In both cases, the provision of a dedicated person to represent and advocate on behalf of the accused member is a significant protective factor and an important guardrail to help ensure the discipline process is fair and that the member is properly supported.

221. There is no similar provision of dedicated, specialist support to members served with a Notice to Show Cause, even in the most serious of cases where the member may be facing involuntary termination of service. While in practice, the Services do regularly provide a member facing significant adverse administrative action with a Support Person, this role is often makeshift, ill-defined and may be little more than an information conduit.

222. During consultations, several Inquiry participants noted the desirability of having a more formal support structure in place. This would consist of a dedicated person to assist the member in preparing their response to the Notice to Show Cause, navigating the associated administrative processes, acting as a conduit and communication channel with command and to help the affected member to access relevant support services. Critically, the affected member would see that they had someone 'on their 'side'.

[100] For example, section 24(2) of the *Defence Regulation 2016* (Cth) mandates that a member must be given at least 21 days to respond to a notice proposing early end of service (previously known as 'termination'); Department of Defence (2022) *Good Administrative Decision-Making Manual*, Ch 5.

[101] *Defence Force Discipline Act 1982* (Cth), s 137.

223. When asked for their view on this proposed structure, many Inquiry participants voiced their support, with some difference of opinion on who would be best placed to act as a member's advocate.

224. The Inquiry concluded that a member's advocate would provide significant benefit to both affected members and command. By assisting the affected member to navigate sometimes complex processes, pointing them to support structures, and providing support by demonstrating that there is someone 'on their side', an advocate would reduce the stress and impact on the involved member. By ensuring that the affected member has assistance to quickly and efficiently access the supports they need and to properly address the core issues of the Notice to Show Cause, an advocate would foster a more efficient and focused process, one that is ultimately fairer to the ADF member involved.

225. Accordingly, the Inquiry recommends that Defence institute the provision of a member's advocate (or similar title) to all ADF members in receipt of a Notice to Show Cause.

226. The member's advocate could be any other ADF member that the member wishes to support them and who is reasonably available. If the affected member's choice is not available, another member's advocate should be appointed. While the member has the choice as to who will be their advocate, most participants suggested that an appropriately qualified senior non-commissioned-officer or junior officer in the member's chain of command would be well placed to fulfil that role.

227. Some participants noted that the success of an advocate would depend in part on the skill and experience of the relevant person chosen. Therefore, it is suggested before an ADF member can act as a member's advocate, they should undertake some form of specialised training. It is envisaged training would likely be online, self-paced learning. This method of training delivery would ensure that it is widely and readily available and to ensure that lack of training is not a barrier to appointing someone to act as a member's advocate.

CONCLUSION 12: Receiving a Notice to Show Cause can be highly confronting, particularly where termination of service is contemplated. ADF members may be vulnerable to actual and perceived injustice in adverse administrative action processes if they have limited understanding of relevant procedures, rights, and safeguards. Current policies for appointing support officers are inconsistent across the Services, and the role is largely confined to facilitating communication with the chain of command. Greater alignment between the support provided to an accused person in Defence Force Discipline Act proceedings and that available to an ADF member issued with a Notice to Show Cause is therefore desirable. Providing reasonable access to an advocate of the ADF member's choosing may enhance both actual fairness and perceptions of fairness.

RECOMMENDATION 12: Relevant policy be amended to mandate that all ADF members receiving a Notice to Show Cause choose a reasonably available advocate to assist them.

Legal review of administrative involuntary separation decisions

228. All Defence Force Discipline Act convictions are currently subject to an automatic review by a competent Reviewing Authority.[102] As part of that process, a legal report is completed in order to ensure that the conviction and punishment are legally sound. These automatic reviews, which are generally bound by any opinions on matters of law contained in the legal report, provide another level of oversight and protection to members accused and convicted of a Defence Force Discipline Act offence.

229. During the Inquiry, several of those consulted suggested that an 'automatic review', including a legal report, should also be required in relation to proposed termination decisions, prior to a final decision being made. This would add another level of assurance that the proposed decision is legally correct, all required processes have been followed, and sufficient procedural fairness has been extended to the affected member.

230. The Inquiry notes that the Defence Force Discipline Act framework legislatively prescribes the requirement for an automatic review, and that a similar approach for administrative decisions would require legislative amendment. The Inquiry also understands that, in practice, legal reviews are conducted prior to issuing a decision on a notice to show cause. However, this is not a formalised process.

231. The Inquiry recommends formalising, through policy, a mandatory requirement to obtain a legal review prior to making a final decision. The rationale for this recommendation includes that it will enhance protective measures associated with administrative termination of service decisions, similar to those measures available for service offence convictions.

232. Given the potentially very significant consequences, including potential mental health and wellbeing consequences, to a member in receipt of a Notice to Show Cause for termination, this suggestion has obvious merits. As well as providing a further level of protection to affected members, it should also assist in reducing delay in providing a final decision as fewer decisions should be challenged on the grounds of lack of procedural fairness or other legal errors.

CONCLUSION 13: Legal reviews are routinely conducted in practice before finalising administrative termination decisions. However, the absence of a mandated review process may limit their effectiveness as a consistent protective measure for ADF members.

RECOMMENDATION 13: Relevant policy be amended to require that all administrative involuntary termination of service decisions be subject to a legal review prior to finalisation and implementation of the decision.

[102] *Defence Force Discipline Act 1982* (Cth), ss 152, 153, 154.

Fact finding in support of military justice processes

233. Defence uses fact finding as a process to obtain information to support decision-making. Fact finding is used for 'anything from checking a fact, through to a methodical and comprehensive information-gathering process.'[103]

234. However, submissions to this Inquiry, as well as previous IGADF Inquiry cases, have identified significant concerns with fact finding, particularly in relation to complex matters. In addition, this Inquiry has identified that fact finding constitutes one of the greatest areas of dissatisfaction amongst ADF members with the military justice system.

235. Fact finding was introduced in 2015 and replaced the previous system of Quick Assessments and Routine Inquiries that had previously operated throughout Defence since 2007.

236. The key policy reference for the conduct of fact finding is the Good Administrative Decision-Making Manual. The Manual notes that fact finding may be conducted by the decision-maker personally or, more commonly, by another person (a fact finding officer) acting on the decision-maker's behalf. In all instances the decision-maker retains overall responsibility for the fact finding.[104] Even when fact finding is delegated to a subordinate fact finding officer, the commander or manager retains ultimate responsibility.

237. A fact finding officer is not a distinct employment category or full-time role. Fact finding officers are generally permanent or reserve members who undertake the role as and when directed by a commander or a supervisor. The role and duties of a fact finding officer are generally on top of the fact finding officer's primary role.

238. A great deal of flexibility is provided in the conduct of a fact finding process. The decision-maker can apply different approaches, resources and time, depending on the complexity of a matter. A typical fact finding may include:

- interviewing witnesses and obtaining expert opinions
- obtaining or checking various Defence records
- ascertaining policy or statutory requirements
- undertaking site visits and examining physical evidence.[105]

239. The Good Administrative Decision-Making Manual is clear on the limits of fact finding. It states that fact finding 'may not be appropriate … where an incident involves complex circumstances'. Indicators as to what may be 'complex' include 'significant uncertainty as to the facts and determining what they are' and psychosocial risks.[106]

240. The Manual's guidance is not restricted to fact finding into unacceptable behaviour complaints or other personnel-related matters. It is general in scope and theoretically can be used as an information gathering and decision support tool for many incidents and occurrences throughout Defence.

[103] Department of Defence (2026) *Good Administrative Decision-Making Manual*, Edition 2, Ch 3.

[104] Department of Defence (2026) *Good Administrative Decision-Making Manual*, Edition 2 para 3.2.

[105] Department of Defence (2026) *Good Administrative Decision-Making Manual*, Edition 2 para 3.14-3.15.

[106] Department of Defence (2026) *Good Administrative Decision-Making Manual*, Edition 2 para 3.18-3.20.

241. Where fact finding is to be used in relation to unacceptable behaviour allegations, a commander or supervisor must read the Complaints and Alternative Resolutions Manual in conjunction with the Good Administrative Decision-Making Manual. The Complaints and Alternative Resolutions Manual prescribes supplementary obligations on a commander and manager when managing complaints of unacceptable behaviour. For example, a commander or manager has positive obligations to 'keep parties informed of actions to be taken in response to the complaint and ensure parties are kept up to date throughout the complaint management process'.[107]

Concerns with fact finding

242. Multiple sources have noted dissatisfaction with fact finding in its current form. Recent IGADF Annual Reports identify fact finding, and processes related to it, are among the most common areas of concern noted in military justice audits.[108] Even in otherwise fully compliant units, fact finding accounted for 12% of all audit recommendations in the 2022 to 2023 reporting period.[109]

243. Approximately 47% of Inquiry submissions expressed some level of concern with administrative inquiries and fact finding. Dissatisfaction with fact finding mainly focused on being poorly conducted, flawed or insufficient:

- They were delayed or excessively long.
- There were often failures to afford procedural fairness, including apparent bias on the part of a fact finding officer.
- There was a lack of training on the part of the fact finding officer.

244. These submissions echoed the negative findings and recommendations in relation to fact finding made in multiple IGADF inquiries. In addition to the concerns noted above, IGADF inquiries have regularly identified flaws in fact finding such as:

- the fact finding officer failed to interview a respondent or other critical witness
- terms of reference or directions did not cover all aspects of a complaint
- excessive rigidity of process, with fact finding officers refusing to explore issues outside the terms of reference or directions
- automatic use of complex and formal processes even for the simplest cases, without tailoring the process to suit the circumstances of the case.

245. The Inquiry considers that the extreme flexibility that underpins the fact finding process is not only a strength of the process but also a considerable weakness.

246. The above failures and concerns are particularly manifest when the issues subject of the fact finding are complex. Complexity often arises where multiple parties are involved, or where specific factors such as privacy or mental health concerns are present.

247. On the other hand, even apparently simple matters can regularly be subject to fact finding processes that are needlessly long, complicated and bureaucratic. Both Inquiry submissions and IGADF cases have revealed instances where fact finding officers (and the commander who ordered the fact finding) adopted overly complex processes without question, even when the underlying circumstances of the case did not warrant such a strategy.

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[107] Department of Defence (2025) *Complaints and Alternative Resolutions Manual*, para 3.3.0.5.6.

[108] Parliament of Australia (2025) *Inspector-General of the Australian Defence Force Annual Report 1 July 2023 to 30 June 2024*, Australian Government, pp 19–22

[109] Parliament of Australia (2025) *Inspector-General of the Australian Defence Force Annual Report 1 July 2023 to 30 June 2024*, Australian Government, p 19.

248. The use of fact finding has also become excessively widespread. Between February 2025 and February 2026, of 75 units the IGADF audited, a total of 478 fact findings were conducted, an average of 6.4 fact findings per unit audited. Given the total personnel strength across those 75 units was approximately 15,700, and noting the ADF is approximately 90,000 personnel in strength, the number of fact findings across the entire ADF could approach 2800 in any given year. It is important to note that this number is not representative of the total number of fact findings conducted across Defence in any given year, because the fact findings identified in IGADF military justice performance audits are focused on disciplinary and administrative personnel issues.

249. Increasingly, complex fact finding appears to have become a reflexive response to almost any problem, rather than a considered process driven by command and tailored to the specifics of the actual circumstances. In particular, where an incident is considered 'serious', command often automatically resorts to a fact finding, even if a closer analysis of the circumstances may have suggested that it was not the most appropriate process. The Inquiry concluded that conduct that appears to suggest a service (or criminal) offence is better dealt with via a formal discipline investigation at the earliest stage possible (with its inbuilt protections and processes designed to obtain admissible evidence and protections for the accused), rather than conducting an initial fact finding which may confuse matters, delay speedy resolution, compromise evidence or negatively affect potential victims.

250. To harness the strength of the flexibility built into fact finding, constant care and attention from command is critical. Without it, processes can drift, the scope of inquiry may thoughtlessly expand, with the result being unexpected consequences at best and, at worst, an unresolved 'inquiry' hanging over the heads of affected members for long periods of time.

251. The flexibility of a fact finding process means that they can be employed from the simplest of matters to very complex inquiries. However, many commanders, particularly those at the unit level may not have the time, skill or experience to actively manage and direct the most complex of matters which could conceivably be subject to a fact finding. This may lead to significant detriment (and dissatisfaction) to both command and to members.

252. Where a commander or manager makes a decision based on a fact finding report that is seen as inadequate – for example, because of its failure to test any information gathered – the result will generally be a poor decision and outcome for the impacted members. In addition, overly long, stalled or seemingly directionless fact finding, can lead to a negative perception among members. Having a fact finding 'investigation' hanging over an affected member's head for a long period of time can lead to anxiety, concern or speculation as to both the effectiveness and fairness of the fact finding process and whether it has in fact been commenced for proper purposes. These can all contribute to perceptions of weaponisation.

253. While the flexibility built into the fact finding process is a theoretical benefit to both members and command, in reality this level of flexibility may not assist possibly time-poor commanders to make decisions quickly as to the most appropriate course of action following notification of an incident. While there is nothing to suggest that commanders or managers seek to 'outsource' their responsibilities in fact finding, the concerns raised during this Inquiry are consistent with claims that certain commanders may not have exerted sufficient oversight of the process.

254. Furthermore, out of necessity, most fact finding is delegated to the nearest readily available fact finding officer rather than the best qualified fact finding officer to handle that particular matter. The absence of dedicated pools of full-time or highly experienced fact finding officers means that commanders and supervisors have little choice as to the most appropriate or most highly trained fact finding officer and have to allocate the fact finding tasks to those personnel who are readily available. Commanders are alive to this issue and in order to manage risk many commanders (and fact finding officers) will default to using the full suite of processes and documentation outlined in the Good Administration Decision-Making Manual so as to avoid any future criticism that the fact finding was not thorough enough. The result may be 'mission creep', over bureaucratisation, delay and, critically, potentially poor outcomes.

255. The Inquiry conclude that fact finding has tried to become all things to all people, capable of being deployed in respect of any situation, no matter how trivial or how complex.

Abolition of fact finding

256. The Inquiry has concluded that while some form of initial incident handling remains necessary, the current fact finding process is no longer fit for purpose. Negative perceptions of fact finding are so entrenched that minor adjustments to policy and process would be inadequate. The number of increasingly complex fact findings into insignificant matters conducted across Defence in any given year represents a significant resource and emotional burden on the Defence organisation as a whole. Significant reform is therefore recommended to abolish the existing fact-finding process and replace it with a simpler, early-stage information-gathering approach – similar to the former Quick Assessment system – to support command decision-making at the outset of the military justice process.

257. This Inquiry notes that on 27 March 2026, Defence issued a revised version of the Good Administrative Decision-Making Manual which contains improved guidance as to the conduct of fact finding. While the bulk of the chapters dealing with fact finding remain largely unchanged, helpful improvements include further and more detailed explanation of what may constitute a 'complex case' as well as a revised series of templates and FAQs designed to assist commanders better decide how to use the fact finding process. The revised manual appears to be premised on the belief that the current fact finding system is generally fit for purpose but could be strengthened through minor adjustments of policy.

258. This Inquiry acknowledges the good faith work being undertaken to reform the fact finding process. However, the Inquiry concluded that it cannot be sufficiently improved via policy tweaks and guidance. Extremely negative perceptions about fact finding, coupled with the structural deficiencies of the current fact finding process, mean that it is no longer salvageable.

A return to Quick Assessments

259. Between 2007 and 2015, Defence relied on Quick Assessments (QA) to obtain basic information about an incident that allowed a commander to make a decision. As described in the relevant policy:

> [a] QA is not an investigation. The purpose of a QA is to quickly assess the known facts, and to identify what is not known about an occurrence, so that a decision can be made about the most appropriate course of action in response to it. A QA is not a precursor to a service or police investigation.
>
> A QA must not be used as a basis for adverse findings, or to replace the need for a separate inquiry or investigation where such action would be necessary.[110]

260. While superficially similar to some aspects of the current fact finding process, the Quick Assessment importantly was not flexible. It was envisaged only to act as an initial decision-making tool and nothing more. When a commander became aware of any 'significant incident, allegation or problem', a Quick Assessment would be conducted to assist and inform further decision-making.

261. Speed was an essential part of the Quick Assessment process and a Quick Assessment report would be prepared and delivered to the commander within 24 hours (or in exceptional cases, 72 hours), after which the commander would decide on a further course of action. The further courses of action could include, for example, referral to the Military police for investigation, conduct a formal investigation, or no further action to be taken.

[110] Department of Defence (2007) *Defence Instruction (General) ADMIN 67-2* Quick Assessment [cancelled].

262. The advantage of the Quick Assessment process was that it was designed purely to assist commanders to obtain the basic information required to choose the best course of action. It was not meant to be a complete decision-making tool, but instead a quick and efficient first step. When the Quick Assessment revealed that more complex or detailed investigations were necessary, appropriately qualified personnel and appropriate inquiry processes could then be initiated.

Renewed Quick Assessments

263. While many participants consulted in this Inquiry saw the merit in the previous Quick Assessment system, there were also some instinctive negative reactions among some who had used the old system – for example, noting that Quick Assessments were 'rarely quick'.

264. In 2011, the IGADF conducted an Inquiry into the Management of Incidents and Complaints in Defence. In that Inquiry, the IGADF identified certain deficiencies with the Quick Assessment process, namely:

> [p]urpose is misunderstood. This perceived problem has two aspects—the initiation of QAs in circumstances where they are unnecessary, and the conduct of QAs not in accordance with policy intent.[111]

265. These deficiencies were addressed through amendment to the relevant policy. IGADF military justice performance audit data from 2013 shows that by 2013, Quick Assessments were well used and understood across all units of the ADF. Auditors reviewed 1178 Quick Assessments in 2013 from across 50 units and made only 64 recommendations. The recommendations mainly focused on minor administrative discrepancies, such as formatting and record keeping. Only one audited Quick Assessment showed that the Quick Assessment officer had exceeded the scope of the Quick Assessment and had conducted something akin to a mini-inquiry. The IGADF audit data confirms that, by 2013, Quick Assessments were being used appropriately and in accordance with policy throughout the ADF.

266. Nevertheless, as result of work initiated to remedy the deficiencies reported in the 2011 IGADF Report, and the recommendations from the subsequent Re-thinking Systems Review Report, by 2013, momentum had already grown to suggest that Quick Assessments and Routine Inquiries should be abolished and replaced with flexible fact finding. In retrospect, it was perhaps premature to replace Quick Assessments and Routine Inquiries with fact finding, just as Quick Assessments were beginning to work well throughout the ADF.[112]

267. This Inquiry recommends the reestablishment of a renewed Quick Assessment process as the first step in dealing with incidents through Defence. It is envisaged that the new process would utilise many of the aspects of the previous Quick Assessment process.

268. The revised Quick Assessments should function only as a decision support tool and not, either by design or practice, become an inquiry. The revised Quick Assessment will provide a commander, after notification of an incident, a brief pause to collect sufficient information, and then make a well-informed decision as to next steps and courses of action.

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[111] Inspector-General of the Australian Defence Force (2011) *Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction*, Inspector-General of the Australian Defence Force, Australian Government, para 29.

[112] In 2011, Defence commissioned a review of all investigation, inquiry, review and audit systems, processes and structures across the Department of Defence, known as the *Rethinking Systems Review*. The Review's Report was issued in 2014. The institution of fact finding one of its recommendations.

269. It is envisaged that all Quick Assessments would be completed within 24 hours or 72 hours in exceptional circumstances. At the end of this period, the commander should then make one of 4 decisions, namely:

- take no action
- resolve informally
- initiate discipline action (including a discipline investigation)
- initiate an Inquiry Officer Inquiry (to be conducted by the Service Headquarters Inquiry cells).[113]

270. The options of instituting discipline action or a formal Inquiry Officer Inquiry under the *Defence (Inquiry) Regulations 2018* are established processes across the ADF and relevant processes and guidance are already in place.

271. Informal resolution options could include:

- direct conversation to achieve a way forward
- manager/commander-facilitated discussions
- mediation
- coaching or mentoring
- team meeting or group discussion
- apology and agreement.

272. Limiting commanders to the 4 decisions outlined above would:

- promote more decisive action
- reduce the number and impact of administrative inquiries, minimizing resource demands and mental strain on those involved
- accelerate decisions to use formal disciplinary processes when appropriate
- enable quicker resolution of less serious matters.

CONCLUSION 14: Current fact finding processes are no longer fit for purpose. Fact finding processes routinely become protracted and overly formalised, causing avoidable harm to ADF members and reinforcing perceptions of injustice and weaponisation.

RECOMMENDATION 14: Fact finding be abolished and replaced with a revised Quick Assessments process as the preferred Defence-wide initial incident decision support tool.

Suspension of members subject to military justice processes

273. A member may be suspended from duty and ordered to stop attending work when charged with an offence under the Defence Force Discipline Act or suspended administratively based on provisions of the Defence Act, the Defence Regulation 2016 or the command power. The suspended member may be suspended with pay, without pay or with reduced pay.

[113] Regardless of the type of decision, records must be kept in the Defence Case Management System as appropriate.

274. Suspension is an important tool that command may utilise while an offence or complaint is being investigated. Suspension of an accused member can ensure that no further harm is being done to the organisation or to other members or complainants pending final resolution of the issue.

275. Some submissions to the Inquiry noted the negative consequences that are imposed on a member who is suspended from duty. This includes the negative impact on their career, family and finances. Such damage is difficult to remedy, even if the member is ultimately found not to have committed an offence or engaged in the alleged conduct.

276. In terms of financial impact, suspension without pay can have serious negative effects on a member. A loss of pay, even for a few months, can have a devastating financial, relational and mental health effects on a member and their family, especially those junior members with more modest means.

277. For administrative suspensions, suspension without pay may only be imposed after giving the member an opportunity to respond.[114] However, for disciplinary suspensions, section 100(2) of the Defence Force Discipline Act establishes a default position of suspension without pay for members charged with a service or other offence. The relevant authority may direct a member be paid during the period of suspension.[115] However, this is a discretionary power and only available upon the application of the accused person. If the member is unaware of their right to apply for suspension with pay, and in the absence of proactive action from command or other support persons, a member could potentially experience significant financial consequences as a result of this default position.

278. Because of the significant financial and emotional impact of a sudden loss of pay on a member and their family, and the inadequate means of remedy should the member be found not guilty, this Inquiry recommends that section 100 of the Defence Force Discipline Act be amended to reverse the presumption so that the default position is suspension with pay.

279. Reversal of the presumption does not mean that suspension without pay is unavailable in all cases but rather serious consideration and assessment must be made prior to considering imposing suspension without pay. It is noted that this recommendation is in line with Recommendation 18 of the Royal Commission.

CONCLUSION 15: Suspension of ADF members under the disciplinary and administrative systems is not aligned, so far as presumption of pay is concerned, and can result in disproportionate and avoidable harm to ADF members.

RECOMMENDATION 15: Relevant legislation and policy be amended so that the default position for all administrative and disciplinary suspensions is that ADF members continue to be paid. Suspension without pay should only be imposed in exceptional circumstances.

[114] *Defence Regulation 2016* (Cth), s 28(4).

[115] *Defence Force Discipline Act 1982* (Cth), s 100(3).

Military justice information fact sheets

280. So that an affected member may engage effectively with military justice processes and obtain the support and assistance that is available, the member must be provided with relevant information and in a timely manner. Defence routinely publishes a great deal of information about military justice processes. Inquiry submissions report that such information is not always readily available or in a form that is most helpful to an affected member.

281. The majority of military justice proceedings will have a relevant manual or policy document which discusses how the process is intended to work. Relevant forms, for example the *Form C2 - Charge Sheet and Decision Record*, also detail a member's rights and obligations on the back of the form. Certain websites on the Defence Intranet, the Defence Protected Network, likewise explain military justice processes and the related support that is available. Finally, single Services, units and formations also regularly publish military justice related information.

282. While such resources are useful, they only assist a member who knows where they are and knows how to navigate the many documents and web pages that are available. Furthermore, not all Defence members always have access to the Defence Protected Network. In some remote units, there may only be a small number of terminals available for junior members to use and access time may be limited.

283. Accordingly, brief and uniform fact sheet documents should be created for each major military justice process applicable to the whole ADF. These should clearly and simply outline a member's rights and obligations in relation to that process, the support that is available and where to look for further information. These brief fact sheets must be provided to every member when they first engage in a military justice process.

284. The Inquiry notes that in response to Royal Commission Recommendation 37, Defence has recently issued a Defence Charter for Military Justice Proceedings.[116] The Charter outlines the minimum standards that all members can expect when involved in military justice processes and addresses matters such as dignity, privacy, information and accessibility, communication and participation, responsibility and support. While the newly promulgated Charter will be useful in setting baseline expectations in relation to all military justice processes, it will not address the specifics of how a particular process works and the member's rights and obligations in relation to that process. This Inquiry recommends that there should be specific information sheets.

285. Inquiry participants have noted that some commanding officers are active and provide a plain-language cover letter whenever they issue a Notice to Show Cause. Such cover letters typically explain the process to the member, highlight timelines and resources, and point the member towards the support measures that are available for them.

286. This recommendation is intended to support the measures that are currently in place and institute similar standard processes for all major military justice processes, in particular administrative processes. The rationale for this recommendation includes that it will enhance trust in military justice processes by providing information to affected or interested members.

287. Some submissions also suggested supplying a flow chart with key milestones highlighted providing a road map to all parties involved in the process.[117] The suggestion is useful and, where appropriate, could also be included in certain fact sheets.

[116] Department of Defence (2025) *Defence Charter for Military Justice Proceedings*, Department of Defence, Australian Government.

[117] Inquiry submission 283.

CONCLUSION 16: The timely provision of clear, specific and accessible information on military justice processes, beyond that provided in the Defence Charter for Military Justice Proceedings, is essential to building trust, reducing uncertainty, and supporting affected or interested ADF members.

RECOMMENDATION 16: A brief fact sheet outlining ADF members' rights, obligations, major milestones and available support measures be developed and provided at the earliest opportunity to all complainants, respondents and other witnesses involved in military justice processes.

Mental health referral processes, including PM008 referrals

288. The PM008 is a form used throughout Defence for command to refer an ADF member to a mental health professional for a mental health assessment and support. While the PM008 is technically a simple form, designed to initiate assessment and action from a mental health professional, approximately 7% of submissions commented negatively on the use of PM008s, claiming that the PM008 has the potential to be misused against ADF members. Likewise, feedback received during both the Academic and Ex-Service Organisation roundtables noted that the PM008 process is perceived very poorly by certain members and is regarded as a tool designed to obtain 'evidence' for use against a member, rather than a protective tool to assist them. This is consistent with feedback from IGADF Military Justice Performance Audit focus groups.

289. For example, one submission said:

> [a] common pattern involves issuing an NTSC or initiating charges against a member, followed immediately by a mental health referral. The referral is framed as concern for the member's well-being, given the serious nature of the allegations. However, in practice, this referral serves another function.[118]

290. A number of those consulted also commented that ADF members may have negative views about the PM008 process and its uses. For example, one Inquiry participant commented:

> no longer is it seen as a tool to help people but as a process to obtain evidence to [support a command preferred outcome].

291. Adding weight to such observations was the work of Associate Professor James Connor of UNSW Canberra. Associate Professor Connor is an expert sociologist who has conducted extensive research among current and former serving members as part of his work into culture and abuse in the military. In consultation, Associate Professor Connor said that his research indicates that there is significant stigma attached to the current PM008 process and that many ADF members now reacted instinctively and negatively upon hearing a PM008 had been issued. His research echoed the views above that many members now view the PM008 as a means of improperly collecting 'evidence' to support a pre-determined termination decision, irrespective of whether the PM008 was issued in good faith and for proper purposes or not.

292. Associate Professor Connor was of the view that the negative stigma attached to the PM008 is now so great that it cannot be reformed but must be abolished and replaced with another system if members' faith and trust in mental health referrals is to be regained.

[118] Inquiry submission 154.

Purpose and process of the PM008

293. The primary purpose of the PM008 form, as set out on the form itself, is to enable commanders and managers wanting to refer ADF members for a mental health assessment and or support.

294. There is no dedicated policy or guidance governing use of the PM008. However, there are extensive guidelines on the form itself that outline how the form is to be used and the information that must be provided by command to the mental health professional.

295. As to purpose, the form notes that it may be used in relation to:

- risk assessment for an at-risk member (including potential risk of suicide)
- assessment of suitability for retention in the ADF
- assessment of suitability for deployment or employment in certain trades
- requests for advice to assist with the management of the member in the workplace
- assessment and ongoing management of behavioural issues (for example, absence from work, disruptive behaviour).

296. Importantly, the PM008 should not discuss medical information. The narrative used in the PM008, and outcomes sought by command, are critical to guiding the mental health processional on the concern that command is seeking to validate or to assist in the development of management and welfare plans tailored to the member. This narrative is written on the form by the member's chain of command, but from that point onwards, command plays no further role in the assessment or outcomes. Going forward, it is the mental health professional that meets with the member, assesses them and develops a response.

PM008 policy guidance

297. Little guidance on how to use the PM008 exists outside of the notes written on the form itself. However, individual Services and certain training establishments do provide direction on its use. Because such guidance is not uniform across Defence it has the potential to lead to inconsistency and may exacerbate the mismatch in expectations about the purpose and use of the PM008 between command and affected members as heard during this Inquiry.

298. Use of the PM008 to refer a member for mental health assessment may not be well received by members who disagree with the ultimate assessment provided by the mental health professional. A member may feel particularly aggrieved if a recommendation is made that they are not suitable for continued service in the ADF – and if made at a similar time as other discipline or military justice processes, a member may conclude that the PM008 referral is simply part of a larger conspiracy of command against them.

299. Yet, with the increased focus on mental health and protecting potentially vulnerable members, the PM008 process is a critical tool to provide information from mental health experts to command. Command would certainly be criticised if they suspected a member may have mental health concerns and then did nothing about it and failed to refer the member for further assessment.

300. When assessing criticism of the PM008 process, the Inquiry noted that there are not just 2 parties to this process (the member and command) but also the mental health professional. Mental health professionals have their own ethical and professional obligations and will give their opinions based on their professional expertise. Such health professionals are not merely instruments of command and their opinions and assessments may not necessarily align with the outcome expected by command. The independence of the mental health professionals is an important check and balance and should provide significant comfort to affected members that the process is being used legitimately and for proper purposes.

301. Overall, the Inquiry found that although instances of perceived or actual abuse had occurred, the PM008 is not routinely used in an abusive manner by command across the ADF. In addition, the independence of the mental health professionals and their own professional obligations provide appropriate checks and balances built into the PM008 process to ameliorate widespread abuse.

302. However, the negative perception of the PM008 held by some members remains. The Inquiry concluded that much of this negative perception may be attributable to very different expectations about the purpose and use of the PM008. For command, the PM008 may be seen as primarily a decision support tool with a layer of member protections included. For the member, they may assume that the tool ought to be used primarily for the purpose of identifying mental health concerns and providing support. More problematically, some members may assume that the tool is a means by which command can obtain an ultimate outcome that is not in the member's interests.

303. While the PM008 can be used for both purposes, current guidance and information provided to members does not make this clear. It is this mismatch of expectations and understanding of the purpose of the PM008 which appear to contribute to dissatisfaction with the PM008 process.

Recommendation to abolish PM008s

304. Based on submissions to this Inquiry, IGADF cases and information obtained during roundtables, it is clear that the negative perception of PM008s is widely held across a significant proportion of ADF members. In addition, a significant number of ADF members believe that the PM008 may be used as a tool of oppression rather than as a legitimate means to identify mental health concerns and ultimately support and help members.

305. The perception is now so widespread that this Inquiry concluded that it has become a discredited process. Accordingly, the Inquiry recommends that PM008s be abolished and that Defence consider instituting a new bifurcated system of (a) clinical assessments and (b) organisational assessments.

306. It is envisaged that clinical assessments will be focussed on health related aspects of a member's mental health and well-being whereas the organisational assessment will focus on the member's psychological suitability for particular roles, trades, etc. This proposal will ensure that the intent of each type of assessment is clear to both command and the affected member and should assist in removing ambiguity and unduly negative perceptions about these processes.

307. The exact format, split and operation of the new system will require extensive input and advice from psychologists and other mental health professionals.

308. However, the Inquiry considers that neither of the proposed new assessments should be directed towards the question of the member's suitability to continue serving in the ADF – as it is with the current PM008. The Inquiry heard that it is this use of the PM008 that has caused the most concern to ADF members and feeds into perceptions that the PM008 is being used by command as a tool to gather evidence to support termination decisions. By removing suitability for retention in the ADF as a command reason for the referral, the Inquiry considers that this will go a long way to reduce negative perceptions and suspicions as to the purpose of the new processes.

309. Following appropriate review and testing, medical staff and mental health professionals may still assess that an ADF member is no longer suitable for service. These medical processes are extant and will continue. The difference is that command will no longer be able to direct an assessment for continued retention based on a mental health assessment.

310. To support the new bifurcated assessment processes, the Inquiry recommends that Defence develop additional practical guidance and policy documents to assist commanders and members on how the new processes are to be used, and what all parties, including both commanders and affected members, can expect through the process. It is suggested that current Service and unit guidance be replaced with a single set of uniform, ADF-wide guidance. Ideally, such guidance will be printed on the form itself in simple, easy to understand language which can be readily understood by ADF members.

CONCLUSION 17: Feedback to the Inquiry demonstrates that the PM008 form and process has become discredited in the eyes of a significant portion of ADF members. In particular, its association with suitability assessments for continued service in the ADF has entrenched stigma, mistrust and perceptions of misuse.

RECOMMENDATION 17: The current *Form PM008 – Referral for a Mental Health/Psychological Assessment and Management Advice* be abolished and replaced with 2 distinct policy-based processes, namely a clinical assessment and an organisational assessment. Neither process should be instituted or used to assess suitability for retention in the ADF.

Records of Conversation

311. The Record of Conversation (more commonly referred to as a ROC) is another seemingly simple form which has been mentioned regularly, and negatively, during this Inquiry.

312. Although Records of Conversation are not designated in any Defence policy document as a military justice administrative sanction or process, there is a perception held by a number of members making submissions during this Inquiry that a Record of Conversation is a military justice administrative sanction in and of itself. 9% of submissions mentioned Records of Conversation in relation to perceptions of injustice. For example, some submitters reported that they were 'threatened', still others that Records of Conversation were used 'like interrogations' or as a form of bullying.

313. These comments suggest that, in the eyes of at least some ADF members, the Record of Conversation is seen as a threat of, or precursor to, taking military justice action.

314. A number of submissions also reported members being pressured into signing a Record of Conversation they believed to be incorrect.

315. Consultations conducted during this Inquiry support the view that Records of Conversation were sometimes used inappropriately. One Inquiry participant noted that there was insufficient guidance on the use, training and management of Records of Conversation and that some members viewed them as punitive after receiving comments or threats such as 'I am going to write you up'.

316. The Inquiry concluded that urgent work needs to be done to ensure that Records of Conversation are used appropriately as a support tool and not as an instrument to threaten members.

317. IGADF Military Justice Performance Audit Focus groups are asked the following questions:

> Are ROCs used at the unit? If so, are they perceived as an adverse sanction or used instead of disciplinary action/purposes?
>
> Do you have to sign a ROC? Have you been compelled to sign a ROC?
>
> NCO & Above only – Can you compel someone to sign a ROC?[119]

318. The inclusion of these questions in IGADF audits was based on a conclusion that the purpose and use of Records of Conversation are not well understood across Defence.

[119] IGADF Directorate of Military Justice Performance Review – Team Leader – Focus Group Guide and Questions.

Records of Conversation policy and guidance

319. There is no official definition outlining the purpose of a Record of Conversation in Defence documentation. It is however, generally understood to be a management tool for formally documenting a conversation between one or more people, particularly for performance management purposes.[120]

320. Although a Record of Conversation can be any formal record (such as an email or notes in a diary or notebook), the most common way of recording a conversation is via the official Defence form – OC097 Record of Conversation. There is also no formal guidance on the form itself as to how, when or why to use this document.[121]

321. There are brief references to Records of Conversation in a number of military justice-related policy documents:

> Inquiry officers will need to determine (subject to any direction from the Appointing Authority) whether interviews are transcribed or a written statement or Record of Conversation is prepared to form part of the inquiry report.[122]
>
> Make a Record of Conversation from the initial report that can be used later if needed.[123]
>
> An alternative to the ideal of a digitally recorded interview is to prepare a written statement or record of interview. Again, a witness should review the written record at the conclusion of the interview and confirm that it reflects their statement by signing the document.[124]

Records of Conversation – recording tool versus threat of action

322. The Inquiry concluded that the key concern with Records of Conversation is not the form itself but rather how they are being used and, at times, misused by some ADF members. At the most egregious level, Records of Conversation have been used as a threat of future adverse action. Less deliberately threatening, but nevertheless concerning, is misunderstanding about the purpose of the form and whether the form must be signed by the member or not.

323. A Record of Conversation is not to be confused with a formal discipline interview conducted in relation to a service offence. In such cases there are specific rules governing matters like the audio recording of such interviews and the administration of cautions to an accused person.

324. A Record of Conversation is not the same. A Record of Conversation is simply a tool, a method of recording information, and it can be used flexibly and in conjunction with a great many matters in Defence, some related to military justice and some not.

325. As a mere record of a conversation, there is no requirement for a member to sign the form if they disagree with the contents. Where a member refuses to sign the form, it can be inferred that the member disagrees with its content. In such cases, it may nevertheless be prudent to have a witness sign the form with their acknowledgment that what is recorded is an accurate record of the discussion.

[120] IGADF Directorate of Military Justice Performance Review – Team Leader – Focus Group Guide and Questions.

[121] IGADF Directorate of Military Justice Performance Review – Team Leader – Focus Group Guide and Questions.

[122] Department of Defence (2024) *Administrative Inquiries Manual*, para 2.48.

[123] Department of Defence (2025) *Complaints and Alternative Resolutions Manual*, para 9.5.0.2.2.

[124] Department of Defence (2022) *Good Administrative Decision-Making Manual*, para 3.57.

Suggested changes to Records of Conversation policy and guidance

326. To address common misunderstandings about the purpose of the form and to reduce inappropriate use, this Inquiry recommends that the Form OC97 be amended and specific policy guidance be developed.

327. This Inquiry notes that Defence is also working to harmonise the use of formal counselling, which is often recorded in a Record of Conversation, and welcomes such developments.

CONCLUSION 18: Inadequate guidance on the appropriate use of Records of Conversation has led to misunderstanding and misuse thereby reinforcing mistrust and perceptions among some ADF members that they function as a precursor to arbitrary administrative action.

RECOMMENDATION 18: Defence-wide policy guidance on the purpose, use and implementation of the Record of Conversation be developed. Such guidance must explicitly state that Records of Conversation are not to be used as a threat or as a form of administrative sanction.

Military justice training

328. Many participants consulted during this Inquiry considered that increased training is central to enhancing how the military justice system is used and also the key to improving perceptions and trust in the military justice system. This is not unique to this Inquiry and indeed, almost every inquiry, report or analysis of the military justice system conducted over the last quarter of a century has also called for improved training.[125]

329. Despite such calls and a significant overall increase in the quantity of military justice specific training within the ADF, it was noted in several submissions and consultations in this Inquiry that there was declining familiarity in the use of the summary discipline system and an overall reduction in the quantity and quality of training related to these systems. For example, one Inquiry participant told the Inquiry that:

> management tools are not trained as a whole. There is no specific training on how to be a supervisor. Often supervisors don't know how to use specific military justice tools until they have a particular issue and actually use that tool / process.

330. In addition, as discussed earlier in this Report, with changes to the summary discipline system over the past 25 years, sub-unit commanders (Major-equivalent officers) and their key command staff (Company Sergeant Major and equivalents) are conducting fewer summary trials than in the past. The result is progressively less familiarity with the use of formal military justice processes and a general loss of experience in how to both run summary trials and conduct other military justice processes in a coordinated manner.

331. A senior non-commissioned officer observed that while there are many military justice processes and systems in place, 'unless the process evolves to be useful, it may wither and die'. This suggests that unless the recommendations of this Inquiry (and indeed other Inquiries and suggestions from other military justice entities such as the Judge Advocate General) are both implemented and regularly trained, it is unlikely that significant improvements can be sustained.

[125] For example, Australian Senate Foreign Affairs, Defence and Trade Reference Committee (2005) *The Effectiveness of Australia's Military Justice System*; Street L and Fisher L (2009) *Report of the Independent Review of the Health of the Reformed Military Justice System,* Department of Defence, Australian Government; Gyles R (2011) *HMAS Success Commission of Inquiry: Allegations of Unacceptable Behaviour and the Management Thereof,* Department of Defence, Australian Government; Inspector General of the Australian Defence Force (2011) *Review of Arrangements for the Management of Complaints and Incidents in Defence including Civil and Military Jurisdiction*, Inspector-General of the Australian Defence Force, Australian Government; Department of Defence (2017) *Review of the Summary Discipline System,* Department of Defence, Australian Government.

332. This Inquiry recommends the urgent re-establishment of competency-based, integrated military justice and complaint handling training at every level of promotion course in the ADF. The training will ideally be conducted face-to-face. However, more important than the mode of instruction selected, training must allow the participants to practise the use of all aspects of the discipline and administrative system that they are likely to encounter. Such training must also include training on how to find and access appropriate support structures for members and how to implement all of the above in an integrated manner to meet both the expectations of command and ensure fairness and support to affected members.

333. The Inquiry is aware that calls for increased training of this type are easy to make but difficult to implement. Additional resources must be found and, in particular, additional time must be found, for a training recommendation to be effective. However, such training was conducted in the past and, given the significant concerns which have led to the establishment of this Inquiry, this Inquiry recommends that such training needs to be re-established in order to address the negative perceptions of the military justice system as identified in this Inquiry. The rationale for this recommendation includes that it will maintain currency of ADF leaders' proficiency in the application of contemporary military justice processes. In addition, increased training and familiarity with using the military justice system is likely to assist command in conducting efficient and effective military justice processes, and ultimately, assisting to maintain and enforce discipline within the ADF.

CONCLUSION 19: Declining levels of integrated discipline, administrative and complaint-handling training have contributed to the degradation of skills and reduced confidence. This limits the use of military justice processes in an effective, flexible and coordinated manner.

RECOMMENDATION 19: Defence re-establish mandatory, competency-based, integrated discipline, administrative and complaint-handling training as a pre-requisite for promotion at every level.

CHAPTER 5 — MONITORING, ACCOUNTABILITY AND IMPLEMENTATION

334. The Royal Commission recommended that this Inquiry 'should consider how to improve accountability of commanders who are found to misuse and abuse military justice processes'.[126] This recommendation has been reflected in the Terms of Reference for this Inquiry.

335. However, this Inquiry has identified that misuse of the military justice system is not confined to commanders and that misuse and abuse of the system can, and does, occur at all levels of the military hierarchy. Likewise, there are those who misuse the military justice processes in an apparently retaliatory, malicious or vexatious manner.

336. The Inquiry considers that the issue of retaliatory, malicious and false complaints is a significant issue and a clear example where the military justice system has been weaponised. Further, such misuse of the military justice system can occur at all levels of Defence and is used against subordinates, commanders and peers alike.

337. All who deliberately misuse the military justice system for non-legitimate or for personal reasons must be held to account, as failure to do so erodes faith and trust in the military justice system and, ultimately, negatively affects the maintenance of discipline within the ADF.

338. The Inquiry concluded that rather than creating a new offence, existing tools for taking action against those who misuse the military justice system, irrespective of rank or position, should be strengthened.

Retaliatory, malicious and false complaints

339. One area of weaponisation raised in a significant number of submissions and consultations during the Inquiry was that of vexatious, malicious or retaliatory complaints. Approximately 25% of all submissions raised the issue of the military justice system being misused by members, of all ranks, as a means of retaliation or reprisal.

340. Typical situations identified in the submissions included where a senior non-commissioned officer or junior officer had conducted performance management of a member or had given an unflattering annual performance appraisal to a member. In seeming retaliation, the member initiated a complaint of unacceptable behaviour against the assessing officer. Having lodged such a complaint, command is obliged to manage it, automatically bringing into play investigations or other forms of evidence gathering, interviews, and the production of military justice related reports and records. These activities, while necessary to ensure complaints are adequately investigated, can impose significant administrative and time-consuming burdens on command, not to mention stress.

341. 'It poisons decision making', was how one senior participant framed this issue, noting that assessing officers may be reluctant to give an honest appraisal for fear of being on the receiving end of a retaliatory unacceptable behaviour complaint. An example submitted was of a member who had filed 5 separate unacceptable behaviour complaints against a succession of previous commanders in retaliation for poor performance appraisals.

[126] *Royal Commission into Defence and Veteran Suicide* (Final Report, September 2024).

342. As one submitter noted:

> the point of making complaints within the military justice system is to protect people from bullies … it protects subordinates from Commander/Decision Makers who are bullies … but the same protection is not provided the other way. It enables subordinates who are bullies … an avenue of attack to either create harm or get what they want.[127]

343. Some submissions noted that this is a method of 'circumventing the chain of command', or to avoid being held accountable for their own misconduct.[128]

344. Alternatively, submissions noted cases where interpersonal differences led to one party, or both, filing unacceptable behaviour complaints. A number of submissions also noted situations where the 2 parties were previously in a relationship and after the relationship broke down, one or both parties filed complaints against the other, usually for unacceptable behaviour. A senior naval officer described how members experiencing challenges like marital disputes, relationship breakdowns or infidelity can easily resort to filing an unacceptable behaviour complaint. Once it is reported, a cascading effect of military justice processes automatically ensues, making the complaint an easy way to 'hit back' when a member has a personal grievance.

345. The submissions noted the toll that such an allegation takes on respondents due to the requirement to investigate or inquire into all complaints and the invariably long processes that ensue. Depending on the allegation, command may also institute numerous preliminary actions (such as suspension, removal from the workplace, restriction on communicating with certain parties) upon the respondent. Even if the allegation is found ultimately to be unsubstantiated, such actions may already have caused significant damage to the respondent.

346. A recurring theme in the submissions was that members who made false, malicious or retaliatory complaints, even when shown to be wholly unfounded, were rarely 'held to account'. This has resulted in a perception that the system is unfair and 'stacked in favour' of complainants, with the chain of command taking 'the path of least resistance'.[129]

347. The Inquiry was surprised at the large number of submissions dealing with this topic. Adopting a critical analysis of the information provided, the Inquiry was aware that some members raising this issue may have been relating only one version of the events concerned, even if they genuinely believed that what they relayed was true. In addition, there may in fact have been good reasons why the alleged complaint was raised against them, which is not evident from the face of the submission. However, the sheer number of submissions raising this issue suggested that it was a real issue in at least a substantial number of the cases submitted and thus needs to be addressed.

348. In addition, a senior Inquiry participant commented that some members may view unacceptable behaviour complaints as an avenue to put their superiors in a difficult position.

349. Likewise, a senior non-commissioned officer noted that ADF members may use the military justice system as a 'counter defence' if they considered their career was at risk and may mount a complaint 'counter offensive' against their chain of command.

[127] Inquiry submission 241.

[128] Inquiry submission 181.

[129] Inquiry submission 180.

350. However, a senior Inquiry participant cautioned that while such vexatious or retaliatory complaints likely do occur, they are also notoriously difficult to prove and the extent of its occurrence may be overstated due to 'confirmation bias' on the part of some members who believed that its occurrence was more widespread than it actually was.

351. The Inquiry concluded that the issue of retaliatory, malicious and false complaints is a significant issue and a clear example where the military justice system has been, and can be, weaponised. Further, such misuse of the military justice system can occur at all levels of Defence and is used against subordinates, commanders and peers alike.

Accountability for those who deliberately weaponise the military justice system

352. To respond to these very real concerns, the Inquiry received suggestions that a separate offence be created to deal with this type of behaviour. The rationale is that a new offence would deter members from making false and malicious complaints and offending members could finally be 'held to account'. A new offence would also be applicable to commanders who abused the system against their subordinates.

353. Some Inquiry participants cautioned against the creation of new offences, in case this led to a 'chilling effect' on those who wished to make genuine complaints. As an organisation, Defence has spent a great deal of effort in recent years to change Defence culture to actively encourage and support those who wish to submit genuine complaints. A new offence may be seen as a step backwards from such efforts. In addition, a new offence may run counter to the spirit of Royal Commission Recommendation 26, which called on Defence to '[f]oster a strong culture of reporting unacceptable behaviour'.[130]

354. There are existing administrative and discipline avenues for responding to allegedly retaliatory complaints. Current Defence policy to address false or malicious complaints of unacceptable behaviour is outlined in the Complaints and Alternative Resolution Manual at paragraph 3.2.0.5 (Vexatious or Malicious Complaints), noting that a member who makes such a complaint could be subject to administrative or discipline procedures. Alternatively, a member who makes false accusations against another member could potentially be liable for contravention of several Defence Force Discipline Act offences – including section 60, Prejudicial Conduct.[131]

355. Notwithstanding the existence of such pathways, it was not evident during this Inquiry that command was actively using them, even in clear cases. This reluctance may stem in part from a lack of knowledge about such processes. There may also be some reluctance to use these tools due to the potential chilling effect on members who wish to raise genuine complaints.

356. Reluctance of command to use the tools available, even in clear cases, may also be attributable to concerns about being blamed for 'weaponising' the military justice system themselves. Perversely, the recent focus on military justice issues and public inquiries such as the Royal Commission and this Inquiry, may deter some commanders from taking action.

357. The Inquiry concluded that any such reluctance needs to be addressed. Reduction of weaponisation relies not only on providing additional protective factors to vulnerable members, but also holding to account those who misuse the system.

[130] *Royal Commission into Defence and Veteran Suicide* (Final Report, September 2024).

[131] Specifically, *Defence Force Discipline Act 1982* (Cth), s 60(1): 'does an act that is likely to prejudice the discipline of … the Defence Force'.

358. The Inquiry is acutely aware of the very delicate balance that command must maintain between not discouraging genuine complaints and punishing the most egregious cases where the system is being abused. Failure to address both sides of this equation will likely lead to increased dissatisfaction and continued lack of faith in the military justice system.

Increased penalties for weaponising the military justice system

359. Maintenance of discipline is the primary purpose of the military justice system. Command has the duty to take action against those who misuse the system for their own purposes. Despite the reluctance of some to use the current tools that are available, command at all levels has an obligation to ensure that the military justice system is not being abused and, where it is found to have been, that members are held to account.

360. Intentional misuse of the military justice system which causes harm to another not only harms that individual but also negatively affects the discipline of the entire force. Such conduct is prejudicial to the discipline of the Defence Force.

361. This Inquiry recommends that instead of a new offence, the offence that already exists for taking action against those who misuse the military justice system – irrespective of rank or position – can be strengthened.

362. To address the seriousness of weaponisation and to provide appropriate sanctions on those who weaponise the military justice system, the Inquiry recommends that section 60 of the Defence Force Discipline Act be amended to provide an increased penalty for those whose conduct is likely to prejudice the discipline of the Defence Force. It is recommended that the penalty for prejudicing the discipline of the Defence Force through intentional misuse of the military justice system should be subject to an increased maximum penalty of 12 months imprisonment.

CONCLUSION 20: The deliberate weaponisation, abuse or misuse of military justice processes undermines discipline and can cause serious harm. Stronger sanctions are therefore required to both address such conduct and deter others. The current offence of prejudicing the discipline of the ADF is a minor offence, with a maximum penalty of three months' imprisonment, which is insufficient to reflect the seriousness of this behaviour.

RECOMMENDATION 20: Relevant legislation be amended to increase the maximum penalty for the offence of prejudicing the discipline of the ADF to 12 months' imprisonment.

Audits, monitoring and assurance

363. Audits and monitoring are important mechanisms to ensure that military justice processes are working as they should and for identifying instances where they are not or where they are being abused. There is a significant amount of work being conducted to continually monitor the health of the military justice system.

364. The Office of the IGADF has a dedicated Directorate of Military Justice Performance Review which conducts extensive audits of ADF units, ships and establishments. These audits and the data they produce allow a clear understanding of the health of the military justice system.

365. Defence also has monitoring and assurance processes built into its regular functions to ensure that recommendations such as those contained in this Inquiry are implemented. For example, Australian Defence Force Headquarters routinely monitors the implementation of all military justice recommendations made in Government Reports, Commissions of Inquiry, IGADF own-motion Inquiry Reports and Royal Commission recommendations.

366. Reports from independent statutory office holders responsible for military justice (for example, the Judge Advocate General, the Director of Military Prosecutions and the IGADF), have important roles in providing annual, evidence-based, reports to Parliament on the health of the military justice system.

367. Implementing Recommendation 28 of the Royal Commission Report, that 'Defence should establish a home for military justice governance, assurance and policy' to monitor trends across a range of military justice processes, Defence established a Military Justice System Assurance Branch in 2024, tasked to conduct regular monitoring and reporting of key military justice performance metrics. A Military Justice System Assurance Framework was promulgated in September 2025 the object of which is to outline the approach '…in conducting and delivering assurance in the management of the ADF's Military Justice System'[132]

368. The Inquiry considered whether and where enhancements could be made to the existing mechanisms for audit and evaluation.

Expanding IGADF audits

369. During this Inquiry, some participants suggested that IGADF should increase the scope and frequency of its Military Justice Performance Audits.

370. Audits conducted by the IGADF currently provide the only significant, longstanding, statistical analysis of military justice activities that are available to the ADF. These audits have collected and analysed data for over 10 years and have sampled all major ADF units several times during this period. Importantly, focus group interviews were conducted during each unit audit and these interviews sampled approximately 5% of the ADF population in any given year. The feedback generated during these interviews is extremely valuable, providing a rigorous and candid insight into the operation of the military justice system at both a unit level and also from the point of view of the individual ADF member.

371. Given the importance of these audits as a reference point and statistical basis for understanding the health of ADF military justice system, the IGADF Directorate of Military Justice Performance Review is implementing the Royal Commission's recommendation to effectively double the amount of IGADF audits over the next 3 years. This will equate to approximately 129 audit activities in each statutory reporting period.

372. It is considered that this increase in auditing is a practical means to increase monitoring, oversight and accountability of the military justice system. In addition, the audits and feedback are likely to be the best way to ascertain, both quantitatively and qualitatively, whether both instances of actual weaponisation as well as perceptions of injustice have been reduced or not.

[132] Department of Defence *Military Justice System Assurance Framework* (25 September 2025) p 2

CONCLUSION

373. This Inquiry has identified instances where the military justice system has been weaponised but has also concluded that deliberate weaponisation is rare. The Inquiry concludes that Australia's military justice system — the what — is not broken, nor is it routinely used by commanders to intentionally inflict harm. On the contrary, the evidence strongly suggests that commanders generally engage with the system in good faith and for legitimate purposes.

374. What is clear from the evidence and other information gathered during this Inquiry, however, is that military justice processes — the how — are sometimes applied poorly, rigidly, or without sufficient consideration of individual circumstances. This can result in significant harm to an ADF member's career, mental health and wellbeing, and family life. While these failures may be unintentional, they can understandably be perceived by affected members as deliberate or weaponised actions.

375. To address these perceptions and rebuild trust in the military justice system, this Inquiry makes several recommendations aimed at improving specific military justice processes and procedures. At a systemic level, it recommends rebalancing the system to favour disciplinary over administrative processes. It also proposes removing certain powers from unit-level command — not due to widespread misuse, but to mitigate perceptions of injustice and ensure greater fairness.

376. In terms of specific processes, the Inquiry strongly recommends abolishing both the existing fact finding process and the mental health referral process. Neither is fit for purpose, and the stigma attached to them is so entrenched that they cannot be salvaged through superficial reform or incremental adjustments. Their structural flaws demand a complete redesign, grounded in contemporary standards of fairness, efficiency, transparency, and psychological safety.

377. Ultimately, this Inquiry has found that while the foundations of Australia's military justice system remain sound, its processes must evolve. Reform is not a matter of patchwork fixes but of principled transformation. Only by modernising the *how* — with empathy, clarity, and accountability — can the system truly serve those who serve.

James Gaynor CSC
Inspector-General of the Australian Defence Force

19 May 2026

IGADF acknowledges Traditional Custodians of Country throughout Australia.

ANNEXES:

A. Inquiry Participants and Roundtables

B. Inquiry Submission Statistics

ENCLOSURES:

1. Directions (Terms of Reference) — IGADF Own-Initiative Inquiry 01/24 — 'Weaponisation' of the Military Justice System

2. Advisory Panel Guidance and Direction — IGADF Own-Initiative Inquiry 01/24 — 'Weaponisation' of the Military Justice System

ANNEX A — INQUIRY PARTICIPANTS AND ROUNDTABLES

The Inquiry consulted with the following people and thanks them for their insights:

- Mr Iain Anderson – Commonwealth Ombudsman
- Air Commodore Davin Augustine AM CSM – Director General Personnel – Air Force
- Warrant Officer of the Navy Andrew Bertoncin OAM
- Lieutenant General Rick Burr AO DSC MVO – former Chief of Army
- Brigadier Brendan Casey AM – Director General Military Justice System Assurance
- Colonel Richard Cawte – Director Defence Counsel Services
- Air Marshal Stephen Chappell DSC CSC OAM – Chief of Air Force
- Ms Gwen Cherne – then Veteran Family Advocate Commissioner
- Air Marshal Robert Chipman AO CSC – Vice Chief of the Defence Force
- Colonel Joshua Clifford – then Director Defence Counsel Services
- Warrant Officer of the Air Force Ralph Clifton
- Ms Libby Cremen – Director General Defence Member and Family Support
- Warrant Officer Kim Felmingham NSC OAM – Regimental Sergeant Major – Army
- Colonel James Field – Director Military Administrative and Discipline Law
- Lieutenant General Natasha Fox AO CSC – Chief of Personnel
- Ms Justine Greig PSM – Deputy Secretary Defence People
- Air Vice-Marshal Lara Gunn – Head Joint Support Services Division
- Vice Admiral Mark Hammond AO – Chief of Navy
- Air Commodore Ian Henderson AM – Director of Military Prosecutions
- Air Marshal Mel Hupfeld AO DSC – former Chief of Air Force
- Mr Scott Jeffrey – TPI Federation of Australia
- Admiral David Johnston AC RAN – Chief of the Defence Force
- Lieutenant Colonel Vanessa Jordan – SO1 Operational Mental Health
- Air Commodore Patrick Keane AM CSC – then Director General Military Legal Service
- Senator Jacqui Lambie – Senator for Tasmania
- Group Captain Terrence Lewis – then Provost Marshal ADF
- Dr Simon Longstaff AO – The Ethics Centre
- Mr Michael Manthorpe PSM – then interim Head of the Defence and Veteran Services Commission
- Colonel Maureen Montalban – Director Military Mental Health & Psychology
- Mr Greg Moriarty AO – then Secretary of the Department of Defence
- Brigadier Andrew Moss AM CSM – then Director General Career Management – Army
- Warrant Officer Ken Robertson OAM – Senior Enlisted Advisor to the Chief of the Defence Force
- Colonel Lauren Sanders CSC – Directorate of Military Administrative and Discipline Law

- Senator David Shoebridge – Senator for New South Wales
- Brigadier Paul Smith AM – Deputy Judge Advocate General – Army
- Major General Wade Stothart AO DSC CSC – Head of Military Personnel
- Lieutenant General Simon Stuart AO DSC – Chief of Army
- Then Commodore Leticia van Stralen AM CSC – then Director General Navy People
- Ms Charlotte Webb – Defence Family Advocate
- Miss Pip Weiland CSC – then Acting Director General Mental Health and Wellbeing
- Mr Matt Yannopoulos PSM – then Associate Secretary, Department of Defence

International counterparts

The Inquiry also consulted a number of IGADF's international counterparts:

- Canada – National Defence and Canadian Armed Forces Ombudsman
- The Netherlands – Vice Admiral Boudewijin Boots – Inspector-General of the Armed Forces
- The United Kingdom – Major General Richard Allen – Director Army Legal Services
- New Zealand – Mr Brendan Horsley – then interim Inspector-General of Defence

The Inquiry held a series of roundtables and thanks participants for their contributions:

Academic Roundtable

- Professor Pauline Collins – University of Southern Queensland
- Associate Professor James Connor – UNSW Canberra
- Professor John Devereux – University of Queensland
- Dr Jacqueline Drew – Griffith University
- Professor Allison Duxbury – University of Melbourne
- Professor Robert McLaughlin – Australian National University
- Professor Cameron Moore – University of New England
- Professor Matthew Stubbs – University of Adelaide
- Professor Ben Wadham – Flinders University

Judicial Roundtable

- The Honourable Paul Brereton AM RFD SC – National Anti-Corruption Commissioner
- The Honourable Justice John Logan AM RFD SC – Federal Court of Australia
- The Honourable Justice Michael Slattery AM AM(Mil) RAN (Retd) – Supreme Court of New South Wales
- Rear Admiral the Honourable John Rush AO RFD KC RAN – Judge Advocate General

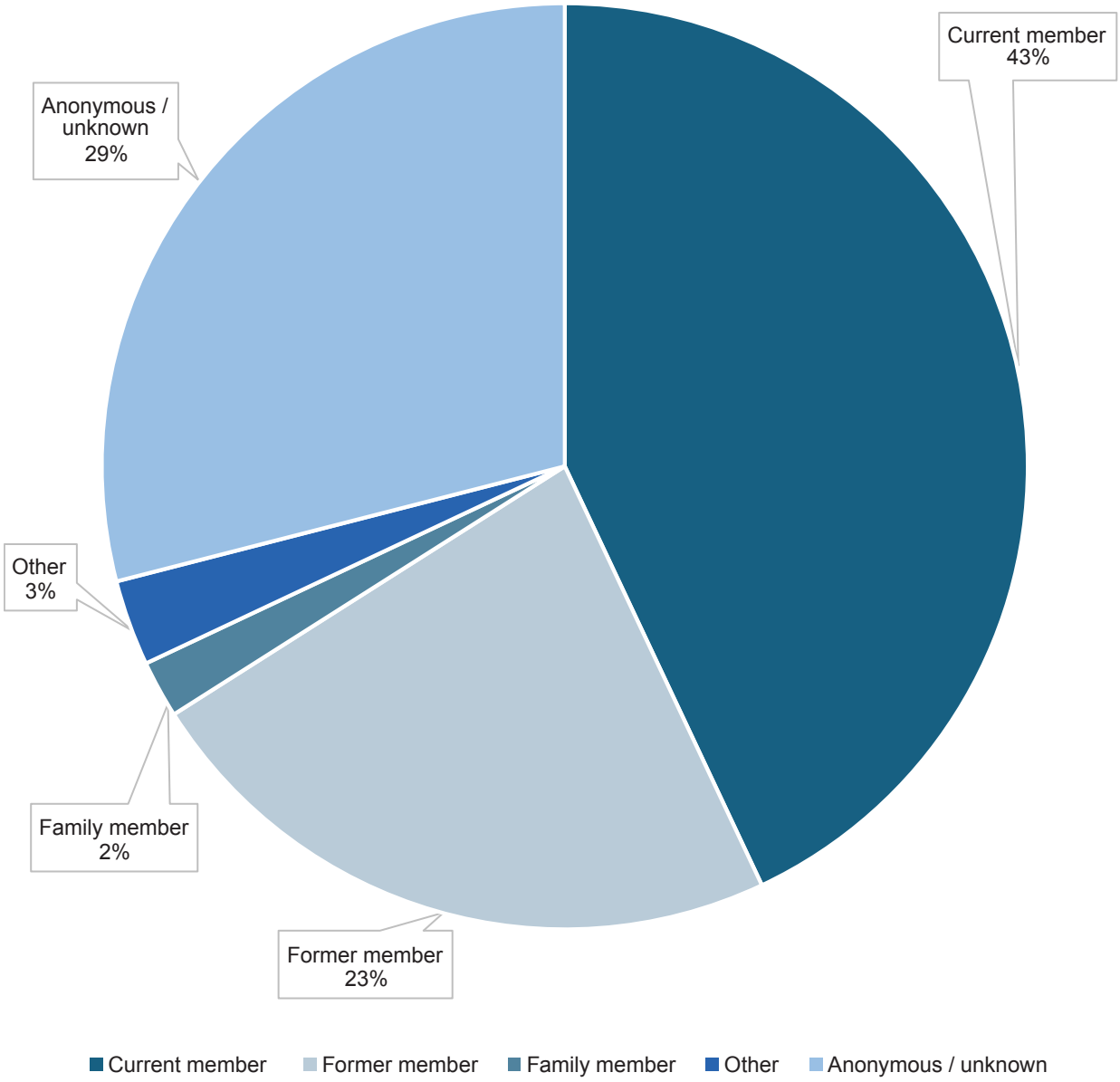
Ex Service Organisations Roundtable

- Mrs Beverley Benporath – Partners of Veterans Association of Australia Inc
- Mr James Dallas – Returned and Services League of Australia
- Squadron Leader Del Gaudry CSC (Retd) – Defence Force Welfare Association
- Mrs Jenny Gregory OAM – Australian War Widows Inc
- The Honourable Martin Hamilton-Smith – Australian Special Air Service Association
- Mr Scott Harris OAM – The Warrior's Return
- Mrs Jessica Mitchell – Defence Families of Australia
- Major General Greg Melick AO RFD KC (Retd) – Returned and Services League of Australia
- Captain Paul Moggach CSC RAN (Retd) – Australian Peacekeeper and Peacemaker Veterans' Association
- Mr Cameron Niven – Soldier's Legal Counsel (on behalf of the Australian Veteran Alliance)
- Mr William Roberts OAM – Vietnam Veterans' Federation of Australia
- Mr Nick Russon – Australian Special Air Service Association
- Mr Chris Tilley – The Royal Australian Regiment Corporation

ANNEX B — INQUIRY SUBMISSION STATISTICS

The Inquiry received 362 submissions.

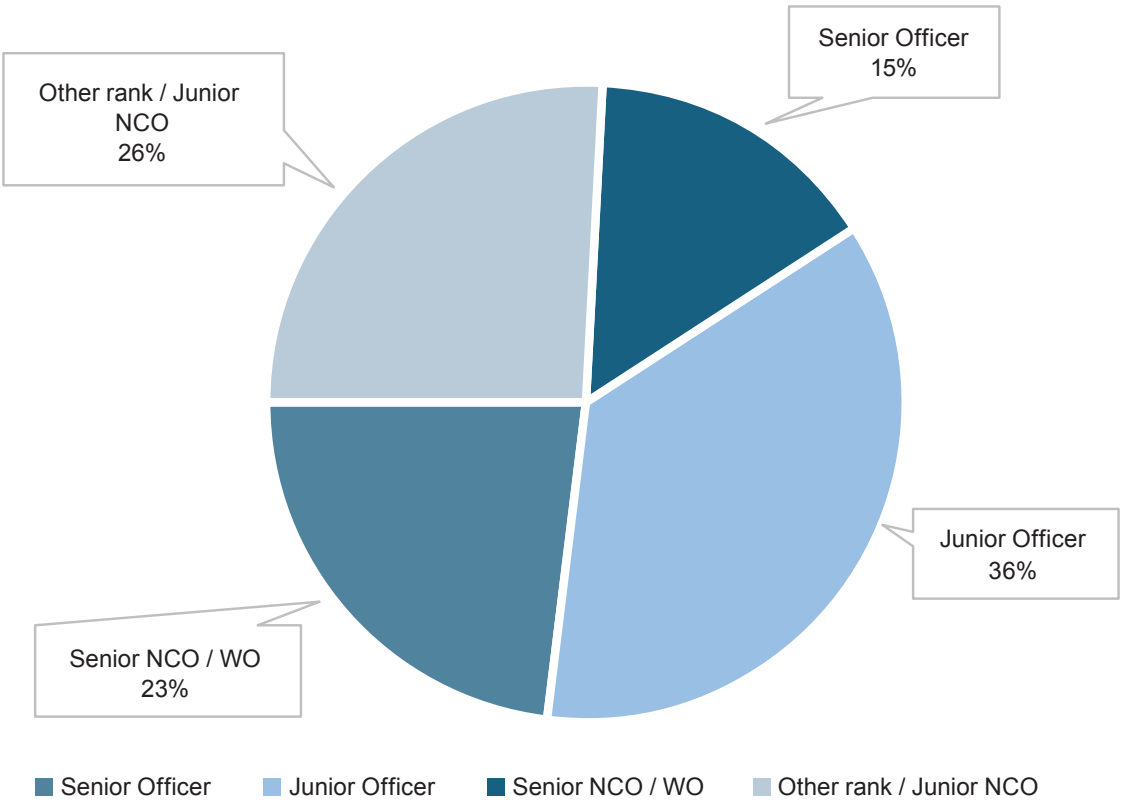
Figure 1. Submitter status



Of the 362 submissions:

- 43% of submitters (157) identified themselves as current ADF members
- 29% of submitters (104) were anonymous
- 23% of submitters (83) identified themselves as former ADF members
- 2% of submitters (6) identified themselves as family members of current or former ADF members
- 3% of submitters (12) were not in any of the above categories.

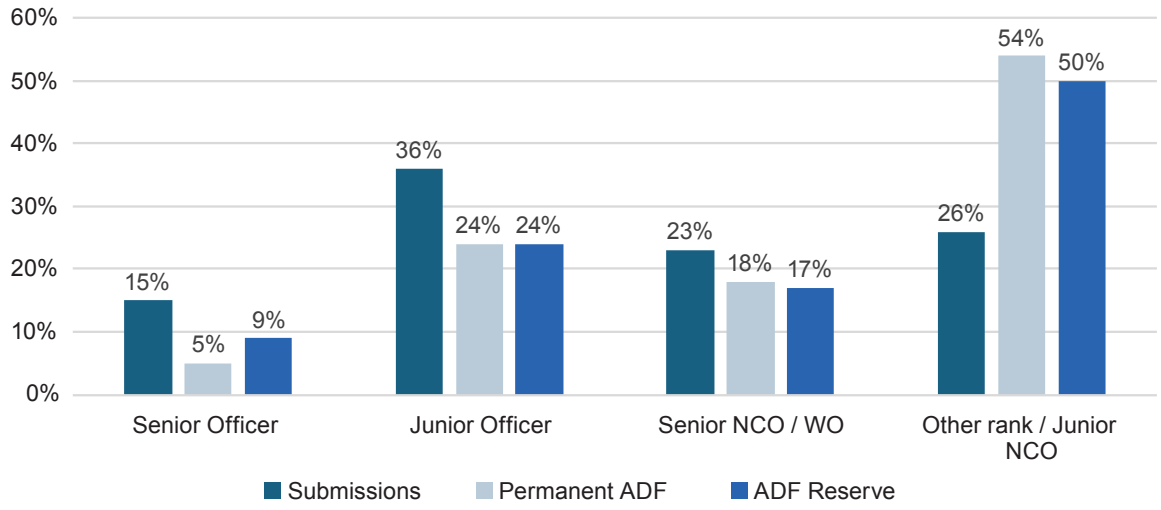
Figure 2. Rank breakdown of submitters



Of the 239 submitters who identified their current rank or rank at the time they left the ADF:

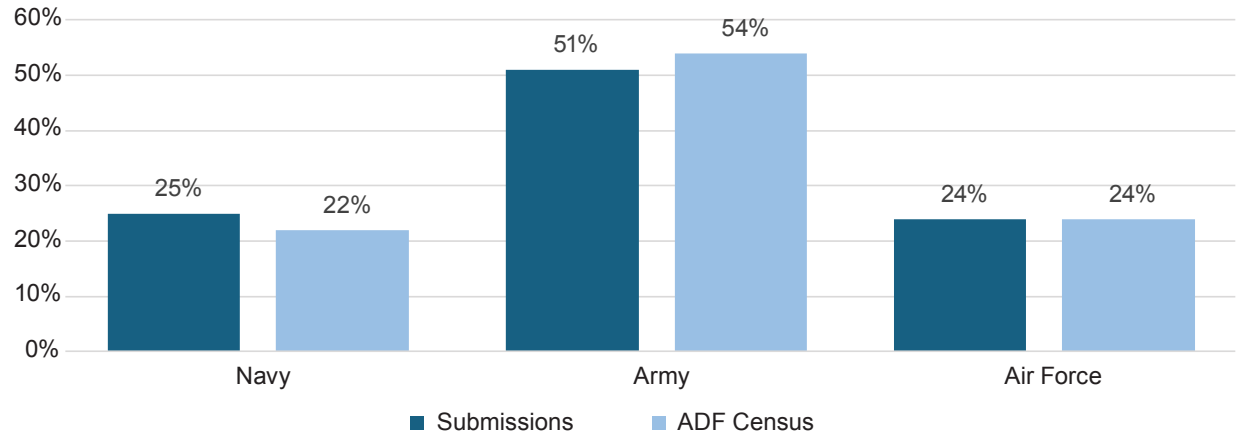
- 36% (87) were junior officers (O4 and below)
- 26% (62) were sailors, soldiers, or aviators, or junior non-commissioned officers (E5 and below)
- 23% (55) were senior non-commissioned officers or warrant officers (E6 and above)
- 15% (35) were senior officers (O5 and above).

Figure 3. Rank of all submitters compared to the 2023 ADF Census[1]



[1] The Inquiry notes that the Census values do not add to 100% due to rounding.

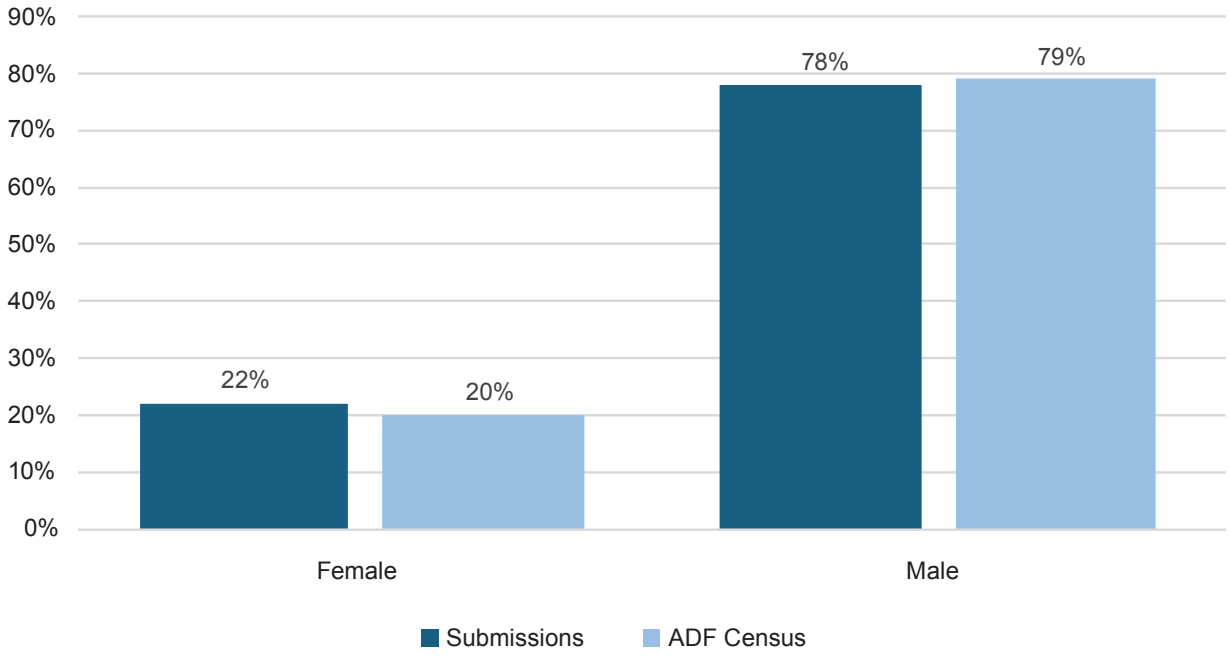
Figure 4. Service of current and former ADF submitters compared to the 2023 ADF Census



Of the 303 submitters who identified their current or former service:

- 51% (154) were from Army
- 25% (76) were from Navy
- 24% (73) were from Air Force.

Figure 5. Gender of current and former ADF submitters compared to the 2023 ADF Census[2]



Of the 273 submitters who identified both their current and former service and gender:

- 78% (212) identified themselves as male
- 22% (61) identified themselves as female.

[2] The Inquiry notes that the Census values do not add to 100% due to rounding.

ENCLOSURE 1 — DIRECTIONS (TERMS OF REFERENCE) — IGADF OWN-INITIATIVE INQUIRY 01/24 — 'WEAPONISATION' OF THE MILITARY JUSTICE SYSTEM

Australian Government
Inspector-General of the Australian Defence Force

IGADF/BO38868165

DIRECTION (TERMS OF REFERENCE)

IGADF OWN-INITIATIVE INQUIRY 1/24

'WEAPONISATION' OF THE MILITARY JUSTICE SYSTEM

Introduction

1. I have decided to inquire into allegations and perceptions that the military justice system has been, or has the potential to be, 'weaponised', such that it may cause harm.

Background

2. The military justice system comprises the following four elements:

a. investigations, prosecutions and proceedings under the *Defence Force Discipline Act 1982* (Cth)

b. administrative inquiries and fact finding

c. administrative sanctions

d. complaint handling.

3. The Royal Commission into Defence and Veteran Suicide questioned several witnesses about the perception that the military justice system has, or has the potential to be, 'weaponised'. In its final report in September 2024, the Royal Commission also recommended this Inquiry be prioritised (Recommendation 30).

4. One of the Inspector-General's roles is to oversee the quality and fairness of the military justice system. The Inquiry will examine allegations and perceptions that the military justice system has been 'weaponised' or abused, the extent of any such abuse, and any features of the military justice system that may allow for such abuse. It will also evaluate existing protective factors and recommend improvements for a more effective, trusted and fairer military justice system.

Scope of the Inquiry

5. The Inquiry is to consider and make recommendations about:

a. what is meant by the term 'weaponisation of the military justice system'

b. to what extent military justice system processes appear to have been abused within the Australian Defence Force

c. which military justice system processes are most susceptible to abuse

d. what the key reasons and causes for such behaviour and actions are

e. what mechanisms exist for identifying potential abuse of the military justice system and for holding commanders to account who are found to abuse military justice processes and whether these mechanisms are effective

f. how any abuses might be minimised or eliminated.

Consultations, submissions and Advisory Panel

6. In order to ensure that a wide range of views, experiences and perspectives are available to inform this Inquiry, it will consult widely with key Defence stakeholders. It will also invite written submissions from current and former Australian Defence Force members, their families and other members of the public who may have an interest in the Defence and veteran community.

7. An Advisory Panel of 4 eminent Australians will assist the Inquiry through the provision of specialist advice, expertise and perspectives. They will be appointed as Assistant Inspectors-General of the Australian Defence Force for the duration of the Inquiry.

JM Gaynor CSC
Inspector-General of the Australian Defence Force

7 March 2025

ENCLOSURE 2 — ADVISORY PANEL GUIDANCE AND DIRECTION — IGADF OWN-INITIATIVE INQUIRY 01/24 — 'WEAPONISATION' OF THE MILITARY JUSTICE SYSTEM

Australian Government

Inspector-General of the Australian Defence Force

IGADF/BO39661079

ADVISORY PANEL GUIDANCE AND DIRECTIONS

IGADF OWN-INITIATIVE INQUIRY 1/24

'WEAPONISATION' OF THE MILITARY JUSTICE SYSTEM

Introduction

1. Thank you for agreeing to serve on the Advisory Panel to the IGADF own-initiative inquiry into the 'weaponisation' of the military justice system. This is an important Inquiry that will examine allegations and perceptions that the military justice system has been, or has the potential to be, 'weaponised' or abused.

2. The Inquiry will examine allegations and perceptions that the military justice system has been 'weaponised' or abused, the extent of any such abuse and any features of the military justice system that may allow for such abuse. It will also evaluate existing protective factors and recommend improvements.

3. The purpose of this document is to provide you with an overview as to your key responsibilities and duties during your tenure.

Composition of the Advisory Panel

4. The Advisory Panel is comprised of four eminent Australians to assist me through the provision of specialist advice, expertise and perspectives. The Panel members are as follows:

a. Emeritus Professor Rosalind Croucher AM.

b. Her Honour Sylvia Emmett AM RAN (Retd).

c. Doctor Nikki Jamieson.

d. Warrant Officer Janet Brennan.

Role Overview

5. Advisory Panel members will provide expert guidance, strategic advice and independent oversight to ensure the Inquiry's objectives, as set out in the Directions, are met. Panel members will leverage their skills, experience and expertise to help direct the Inquiry process and will provide comprehensive and unbiased findings and recommendations.

Key responsibilities

6. During your tenure you may be asked to provide the following:

a. **Strategic Guidance.** Advise on the Inquiry Directions, scope and methodology.

b. **Expert consultation.** Provide subject matter expertise on military justice process, policies and reforms as well as the impact of such processes and policies on the military justice system and Australian Defence Force members.

c. **Oversight.** Ensure the Inquiry maintains high standards of integrity, transparency and impartiality.

d. **Identification of key issues and focus areas.** Make suggestions to the Inquiry team about key issues and focus areas to be explored in the Report.

e. **Recommendations.** Contribute to the development of actionable recommendations for systemic improvements to the military justice system.

f. **Report review.** Critically review interim and final Reports, ensuring accuracy and comprehensiveness.

7. **Monthly meetings.** You will attend a progress meeting each month with the IGADF. You may, in addition, hold meetings with other Advisory Panel members as required in order to discuss specific matters particularly in relation to key Inquiry milestones.

8. **Inquiry milestones,** In addition to monthly meetings, you will be expected to provide specific input (either written or oral) in relation to following key Inquiry milestones:

a. **Directions**. Review and comment on draft Directions prior to publication.

b. **Draft Report.** Review and comment on draft Report, Findings and Recommendations.

c. **Final Report.** Review and comment on final Report, Findings and Recommendations prior to publication.

Expectations

9. Your role as members of the Advisory Panel is likely to attract scrutiny from parties interested in the health, fairness and development of the military justice system. The IGADF expects all Advisory Panel members to adhere to the following standards:

a. **Commitment.** Attend regular meetings, actively participate in discussions and provide thoughtful and detailed feedback and suggestions in relation to each of the set milestones.

b. **Collaboration.** Work collaboratively with other Panel Members and Office of the IGADF Inquiry staff.

c. **Confidentiality.** Maintain confidentiality of sensitive information and deliberations. In particular, keep confidential the personal details of Australian Defence Force members whose details you may be provided access to as part of the Inquiry process.

d. **Independence.** Retain your independence and provide your frank and unbiased advice at all times. Your wide range of views, experiences and perspectives is a critical asset for this Inquiry. To achieve the objectives of the Inquiry, you will be expected to work collaboratively and in close consultation with other Panel members and the Office of the IGADF.

e. **Integrity:** Display high standards of professionalism in regards to both what you do and how you do it. The IGADF is an 'Integrity Agency' under the National Anti-Corruption Framework. It is important that public trust in the Office of the IGADF is maintained and enhanced through your work on the Advisory Panel.

Appointment as Assistant IGADF

10. You will be appointed as an Assistant Inspectors-General of the Australian Defence Force in accordance with section 110P of the *Defence Act 1903* (Cth).

Duration of Appointment

11. Your appointment will continue until completion and publication of the final Inquiry Report.

JM Gaynor CSC
Inspector-General of the Australian Defence Force

11 March 2025

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