



**INSPECTOR-GENERAL  
OF THE  
AUSTRALIAN DEFENCE FORCE  
ANNUAL REPORT**

*01 July 2018 to 30 June 2019*

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**Inspector-General of the Australian Defence Force**

**The Hon Linda Reynolds MP**  
**Minister for Defence**  
Parliament House  
CANBERRA ACT 2600

Dear Minister

Pursuant to section 110R of the *Defence Act 1903*, I am pleased to give you my report—on the operations of the Inspector-General of the Australian Defence Force for the period 01 July 2018 to 30 June 2019—for presentation to the Parliament.

Yours sincerely



**JM Gaynor, CSC**  
Inspector-General of the Australian Defence Force

25 November 2019

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**INSPECTOR-GENERAL OF THE AUSTRALIAN DEFENCE FORCE**  
**REPORT FOR THE PERIOD**  
**01 JULY 2018 TO 30 JUNE 2019**

**PREAMBLE**

The position of the Inspector-General of the Australian Defence Force (IGADF) is established under section 110B of the *Defence Act 1903*. The position performs an important governance and oversight role in relation to certain ADF activities and processes, including the military justice system.

This is achieved through the IGADF being a statutory appointment who sits outside the ordinary chain of command, and who provides centralised, independent and dedicated complaint handling, review, audit and inquiry functions. The IGADF reviews complaints, inquires into deaths of ADF members and also monitors or inquiries into military justice related issues and alleged failures in the military justice system.

On 01 December 2016, and in accordance with section 110E of the Defence Act, the then-Minister for Defence appointed Mr James Gaynor, CSC as the IGADF for a period of five years. Mr Gaynor continued in his appointment as the IGADF during the period covered by this report.

Section 110C of the Defence Act and section 5 of the *Inspector-General of the Australian Defence Force Regulation 2016* prescribe the functions of the IGADF, which are to:

- a. inquire into or investigate matters concerning the military justice system
- b. conduct performance reviews of the military justice system, including internal audits, at the times and in the manner IGADF considers appropriate
- c. advise on matters concerning the military justice system, including making recommendations for improvements
- d. promote military justice values across the ADF
- e. inquire into or investigating deaths of ADF members in service
- f. oversee the statutory Redress of Grievance scheme
- g. if directed by the Minister or the Chief of the Defence Force (CDF) to do so – inquire into or investigate a matter concerning the ADF, and
- h. do anything incidental or conducive to the performance of the IGADF's other functions.

During the reporting period, the IGADF Executive participated in a strategic planning day as part of a broader IGADF strategic planning project. One of the main aims of the strategic planning project has been to update the IGADF's vision and mission statements noting the significant change in the roles and functions of the IGADF since the previous vision and mission statements were developed.

In an organisation with broad functions and a diverse work force like the Office of the IGADF, vision, mission and values statements play an important role in aligning staff with a common purpose to anchor the positive work of the office. The new statements are:

***Vision*** – *To be trusted and promote fairness in the ADF*

***Mission*** – *Provide impartial, fair and independent decisions and oversight of matters concerning the ADF*

***Values*** –

- *Respect*
- *Integrity*
- *Independence*
- *Impartiality*

## **MILITARY JUSTICE SYSTEM**

The military justice system provides the ADF with an Australian legal framework that applies to all ADF members in times of peace and armed conflict, whether in Australia or overseas.

There are four components that make up the ADF military justice system, each of which is intended to promote good order and discipline and thereby enhance operational effectiveness. These are:

- a. taking disciplinary action under the *Defence Force Discipline Act 1982* (DFDA) to enforce and maintain Service discipline
- b. imposing administrative sanctions to correct individual behaviour
- c. conducting administrative inquiries and investigations to establish the facts of an occurrence and make recommendations to remediate systemic or individual failings, and
- d. handling and managing complaints by ADF members to ensure systemic or individual failings are identified.

The ADF's operational capability relies heavily on a military justice system that balances the maintenance and protection of ADF members' individual rights, with the maintenance and enforcement of a high level of discipline. The IGADF is uniquely placed to ensure this balance is achieved and maintained.

## **INSPECTOR-GENERAL OF THE AUSTRALIAN DEFENCE FORCE'S MESSAGE**

There has been a consistently high operating tempo in the Office of the IGADF over recent reporting periods. This continued in 2018–19 as a result of an increase in the number of military justice performance audits conducted, and numbers of submissions received for investigation or inquiry and grievance complaints that were generally consistent with the previous reporting period.

The number of deaths of ADF members was comparable with previous reporting periods.

During the 2018–19 reporting period, IGADF assessed 104 submissions outside the statutory Redress of Grievance scheme, including 65 new matters and 39 matters carried over from the previous reporting period.

Of the 65 new submissions received, 31 were finalised during the reporting period. Of the submissions received in previous reporting periods, 25 were finalised. At the end of the reporting period, 48 matters were undergoing review.

As previously reported, in May 2016 the IGADF established an Inquiry into the conduct of Special Forces members who were deployed in Afghanistan during the period 2005 to 2016.

IGADF also received 24 complaints relating to Military Police professional standards. This represents a reduction of 31 per cent from the 35 complaints received during the previous period. Of those complaints received in 2018–19, 12 were investigated and closed, five were not investigated following assessment and seven remain open. In two cases disciplinary action was recommended, and five recommendations for adverse administrative action were made.

IGADF conducted 62 military justice performance audits (Navy 12, Army 33, Air Force 14 and Joint units three) in 2018–19. This represents an increase of approximately nine per cent from the 57 audits conducted in 2017–18. During the reporting period, two units were found to have material deficiencies in the unit's adherence to military justice law and policy, necessitating a re-audit within 12 months of the original audit.

During the course of the 2018–19 audit program, a total of 325 (Navy 39, Army 195, Air Force 70 and Joint 21) recommended corrective actions were made to ADF units. A further 667 (Navy 116, Army 346, Air Force 165 and Joint 40) suggestions were made during the audit program.

A total of 4723 ADF personnel (Navy 1064, Army 2702, Air Force 692 and Joint or tri-service units 265) participated in a focus group discussion during the course of the audit program in 2018–19.

In 2018–19, IGADF received notification of, and commenced inquiries into, 31 deaths of ADF members.

During the same period, IGADF finalised 48 inquiries into deaths in service; 28 related to deaths that occurred in previous years with the remaining 20 deaths occurring in this reporting period. Twenty-three per cent of those deaths finalised were found to have arisen out of, or in the course of, the ADF member's service.

Of those 48 deaths, the broad causes of death were:

- 19 (40 per cent) suicide
- 13 (27 per cent) accident
- 12 (25 per cent) illness
- 2 (4 per cent) drug toxicity, and
- 2 (4 per cent) misadventure.

ADF members submitted 360 Redress of Grievance complaints in 2018–19, which represents a nine percent decrease on the 392 complaints received in 2017–18. The number of complaints submitted by Navy members decreased by 26 per cent (84 compared to the previous period of 113). The number of complaints from Army members remained relatively stable (195 compared to the previous period of 190), and the number of Air Force members' complaints decreased by 9 per cent (81 compared to the previous period of 89).

In 2018–19, the highest proportion of Redress of Grievance complaints across the ADF related to the career issues (41 per cent), termination of service (39 per cent) and entitlements (11 per cent).

As at 1 July 2018, there were 132 open complaints by ADF members, which decreased by 33 per cent to 89 as at 30 June 2019.

During the reporting period, 403 complaints (Navy 104, Army 218 and Air Force 81) were closed.

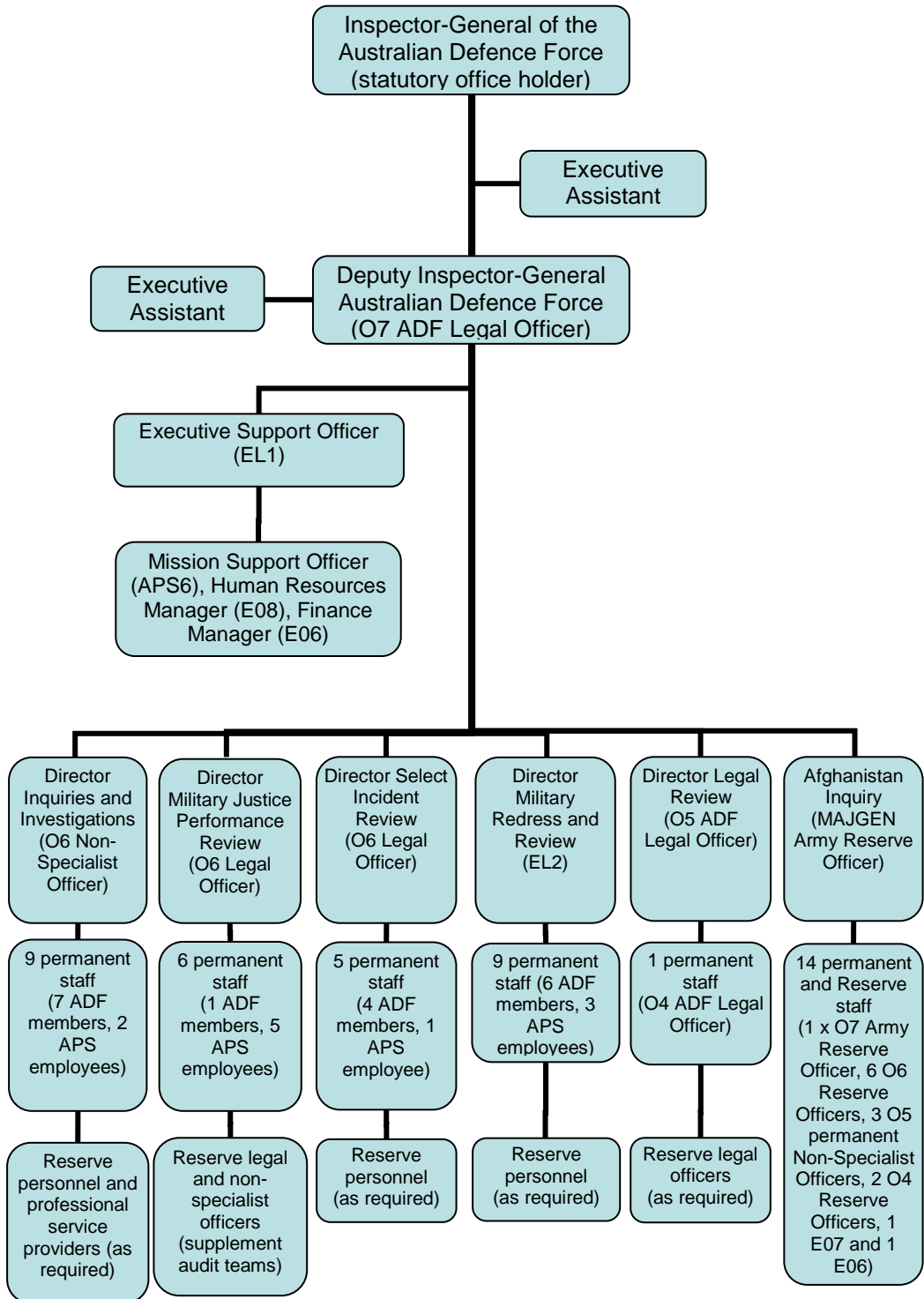
## **STAFFING AND RESOURCES**

The Office of the IGADF is an integrated work environment and consists of Australian Public Service (APS) employees as well as permanent and reserve ADF personnel. All staff have relevant Defence experience including, where necessary, demonstrated knowledge of the military justice system which enables them to support the IGADF to perform his statutory role and functions.

The Office of the IGADF's organisational structure is designed to support these statutory functions, as well as provide necessary administrative support.



The structure of the Office of the IGADF is as follows:



At 30 June 2019, the Office of the IGADF staffing numbers totalled 103 personnel, consisting of 42 permanent staff and 61 Reserve personnel.

	Permanent head count	Reserve head count
Navy	5	14
Army	11	23
Air Force	10	24
Australian Public Service	16	n/a
<b>Total</b>	<b>42</b>	<b>61</b>

At the end of the reporting period, recruitment activity for three vacant APS positions was ongoing with the positions expected to be filled early in 2019–20.

During the second half of the reporting period, from December 2018 to 30 June 2019, an O6 officer was the Deputy IGADF. This will continue until January 2020 when a new O7 Deputy IGADF will commence her posting.

### **Staffing outlook**

Appropriate resourcing is critical to meet the capability and strategic demands of the Office of the IGADF.

As the inquiry and investigative work of the IGADF increases in complexity and sensitivity, demand for more highly skilled and experienced staff also increases. The Office of the IGADF works within its budget allocation and manages short term needs through careful management of staffing resources, including drawing on experienced reserve personnel and professional service providers.

In 2019–20, the Office of IGADF will continue to work to attract and retain APS and ADF staff, and others, with the requisite knowledge, experience and skills to assist IGADF.

### **Professional Service Providers**

The Office of the IGADF engages professional service providers to provide a range of services for the organisation in surge periods and in circumstances where the necessary expertise is not available in the Office of the IGADF.

In 2018–19, five professional service providers were engaged by the Office of the IGADF to undertake inquiry work. A further six providers delivered a range of services including legal expertise, data analysis, mediation activities, and training delivery and facilitation.

Professional service providers are engaged consistent with Defence procurement rules. Engagements in excess of \$10 000 are published on the AusTender website unless they are privileged or would prejudice the conduct of an audit, inquiry or investigation.

## **IGADF AFGHANISTAN INQUIRY**

### **Background**

Since May 2016, the IGADF has been conducting an independent Inquiry to determine whether there is any substance to rumours and allegations relating to possible breaches of the Law of Armed Conflict (LOAC) by members of the Special Operations Task Group (SOTG) in Afghanistan over the period 2005 to 2016.

The Inquiry is an administrative process, not a criminal investigation. This process is intended not only to ascertain whether there is substance to rumours and allegations of misconduct, but also to exonerate those who may be affected by unsubstantiated rumours and allegations.

The Inquiry has powers to compel the production of evidence similar to those of a Royal Commission.

### **Staffing**

The Inquiry is led by Major General the Honorable Justice Paul Brereton AM RFD, a Judge of Appeal of the Supreme Court of New South Wales, who is supported by a dedicated team drawn from across the permanent and reserve forces. Consistent with Defence's total workforce model, the size and composition of the team are informed by the breadth of skillsets required, the interrelationship of many lines of inquiry, the need to maintain control of sensitive information, and the efficient use of available resources. As new lines of inquiry emerged during the reporting period additional resources—including personnel—were allocated to the Inquiry.

During the reporting period the dedicated team assisting Major General Brereton comprised:

- a. one O7 Army Reserve Officer
- b. six O6 Reserve Officers (three RAN and three Army)
- c. three O5 Officers (one RAN Reserve Officer, one Army Reserve Officer and one Permanent Air Force Officer)
- d. two O4 Reserve Officers (one Army and one Air Force)
- e. one E07 Reserve Warrant Officer (Army), and
- f. one E06 Reserve Chief Petty Officer.

These officers work according to the needs of the Inquiry. The decision to keep the inquiry team relatively small has been deliberate. This is because of the seriousness of the rumours and allegations, and the classified nature of the operational circumstances of the incidents under inquiry. A relatively small team facilitates the control of inquiry information.

During the reporting period, additional administrative support was provided from time to time by the Office of the Inspector-General of the Australian Defence Force.

### **Support to persons involved in the Inquiry**

During the reporting period, persons involved in, or concerned by, the Inquiry continued to have access to a range of legal, psychological, medical, pastoral and social work support services. The Inquiry conducts its proceedings so as to minimise the impact on witnesses and ensure that they have access to appropriate support mechanisms.

### **Conduct of the Inquiry**

The Inquiry is being conducted in private:

- because it involves matters of operational security and protected identities

- for the protection of witnesses and of the reputations of individuals who may be unfairly harmed by publication of rumours that turn out to be unsubstantiated, and
- to protect lines of inquiry.

As reported last year, the Inquiry is being conducted in five phases: phase 1—familiarisation; phase 2—Evidence and information gathering; phase 3—consideration of alleged incidents; phase 4—consideration of cultural, psychological, operational and organisational factors; and phase 5—report preparation and finalisation. Further background detail about these phases can be found on pages 7–8 of the IGADF Annual Report for the period 01 July 2017 to 30 June 2018 <https://www.defence.gov.au/mjs/Master/docs/IGADF-AnnualReport2017-18.pdf>.

During the reporting period, the Inquiry's focus shifted from phases two, three and four to phases three, four and five. However, further lines of inquiry have continued to emerge.

From its commencement in May 2016, by the end of the reporting period the Inquiry had examined 338 witnesses.

At the end of the reporting period there were 55 separate incidents or issues under inquiry covering a range of alleged breaches of the Law of Armed Conflict, predominantly unlawful killings of persons who were non-combatants or were no longer combatants, but also 'cruel treatment' of such persons. The Inquiry is also examining incidents relevant to the organisational, operational and cultural environment which may have enabled the alleged Law of Armed Conflict breaches. The Inquiry is not focused on decisions made during the 'heat of battle'. Rather, its focus is the treatment of persons who were clearly non-combatants or who were no longer combatants.

The time frame for the Inquiry is influenced by the number and complexity of lines of inquiry; the number, location, availability and welfare of witnesses; and above all the need for thoroughness and fairness.

The Inquiry is now approaching the final stages of evidence-taking. Evidence gathering remains ongoing in relation to some lines of inquiry, concurrently with drafting of sections of the Inquiry's report.

The Inquiry's task has been very difficult not only because of its serious subject matter. Most other inquiries commence following specific allegations where not only the incidents and events themselves but also potential witnesses are known or can be easily identified. The starting-point for the IGADF Afghanistan Inquiry—vague rumours of Special Forces soldiers' very serious wrongdoing over a period of more than ten years—was much less well defined. The Inquiry team has had to find out what rumours there were, and then to try to track each rumour through multiple witnesses and documentary records back to its source.

It has also taken some years for members of the Special Forces community—both those who continue to serve and former members—to develop sufficient confidence in the Inquiry and the genuineness of Defence senior leadership's desire to find out if the rumours are true, to be prepared to make disclosures to the Inquiry.

Gaining the confidence and trust of some of these witnesses, whose ADF careers have been spent in an environment in which secrecy is treated as fundamental, has required considerable effort and time. As this has been progressively achieved, more witnesses have been prepared to make disclosures, and new evidence has continued to emerge, some resulting in new lines of inquiry, and some reinforcing or corroborating existing lines of inquiry.

During the reporting period and even now, some witnesses are only just becoming willing to make disclosures.

Once evidence gathering is complete, given the seriousness of the allegations, there will necessarily have to be a rigorous procedural fairness process.

On completion of the Inquiry, IGADF will provide a report to the Chief of the Defence Force who will decide on further action. The report will include:

- a. A summary and analysis of the evidence pertaining to each significant line of inquiry, and a conclusion as to whether or not and to what extent there is evidence of a breach of the Law of Armed Conflict or other misconduct.
- b. Where there is evidence of misconduct, appropriate and nuanced recommendations, having regard to the available evidence and its strength, for consideration by the Chief of the Defence Force, as to what action should be taken to address it.
- c. A review of the structural, operational, command and cultural environment in which these acts may have occurred and which may have enabled them, and make recommendations for consideration by the Chief of the Defence Force about potential reforms and measures to address them, in order to minimise any risk of recurrence.
- d. Provide closure for SOCOMD by exposing past misconduct where appropriate to do so, enabling it to be considered separate from but informing the present and future development of the Command.
- e. Provide closure for the many serving and former soldiers who have lived with concerns about the subject matter of these rumours for many years.

## **DIRECTORATE OF INQUIRIES AND INVESTIGATIONS**

The Directorate of Inquiries and Investigations (DII) conducts administrative inquiries following submission by an individual or organisation, or at the direction of the Minister for Defence or CDF. Inquiries undertaken by the IGADF are conducted under the provisions of the *IGADF Regulation 2016*.

DII also investigates potential breaches by Military Police of the Military Police Code of Conduct.

An IGADF inquiry can make findings and recommendations in relation to whether an alleged injustice has been substantiated. The scope of IGADF recommendations can include suggested improvements to the military justice system, or in the case of matters directed by the Minister for Defence or CDF, recommendations for improvement to the ADF more broadly. As with other formal ADF inquiries, IGADF inquiry staff and witnesses are protected against civil suit for actions conducted in good faith in the course of an inquiry.

During 2018–19, all outstanding legacy inquiries under the previous regulations were completed. These were finalised in accordance with the transitional provisions<sup>1</sup> applying to Part 7 of the *Defence (Inquiry) Regulations 1985*.

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<sup>1</sup> See Part 3 of the *Defence (Inquiry) Amendment (2016 Measures No. 1) Regulation 2016*

While the most common source of submissions remains serving or former serving members and their families, there has been a small increase in submissions from members of the public. Submissions can range from relatively simple contemporaneous single issue complaints through to highly complex complaints raising multiple issues stretching over years or decades.

A key focus is providing procedural justice to individuals who have made submissions. Ensuring individuals know that they have been heard and understand the basis for inquiry findings promotes greater confidence in the military justice system.

## **Staffing**

DII is currently led by a specialist O6 Legal Officer, responsible to the IGADF for the conduct of inquiries and investigations into military justice incidents or complaints, Military Police professional standards and inquiries into matters affecting the ADF as directed by the Minister for Defence or CDF.

During the reporting period DII had nine permanent staff members consisting of: one O6 officer, two O5 officers, one O4 officer, three E09 service police, one APS EL1 and one APS6. In addition to these permanent staff, the Directorate engages reserve officers and suitably experienced contractors as required.

The work of DII is specialised and has for some years been reliant on the expertise of long-term staff who are now nearing retirement. The Directorate is building capacity by increasing its trained reserve workforce to provide long-term inquiry capability. This will provide a pool of suitably qualified members for the next five to ten years.

## **Submissions**

IGADF receives submissions from a range of individuals and organisations relating to their concerns about military justice matters. These submissions span from simple procedural matters to complex legal and regulatory issues, and can be contemporaneous or historical. In addition IGADF can be directed to undertake an inquiry by the Minister for Defence or CDF.

On receipt, submissions are assessed and a determination made as to whether to inquire, refer or not proceed. The referral power is used primarily for first-instance complaints, where a service headquarters can effectively resolve the issue.

During this reporting period, IGADF received 65 new submissions. 31 submissions were finalised during the reporting period. Twenty-five submissions from previous reporting periods were closed. At 30 June 2019, IGADF had 48 open submissions.

Twenty-four complaints were received relating to Military Police professional standards. 12 complaints were investigated, five were not investigated following assessment and seven remain open. In two cases disciplinary action was recommended, with 5 recommendations for adverse administrative action.

## **Inquiry caseload**

During 2018–19 reporting period IGADF assessed 104 matters and closed 56 of these. This included 65 new matters and 39 matters carried over from the previous reporting period.

Submissions are becoming increasingly lengthy, complicated and often cross groups in Defence. This results in matters taking longer to complete as areas of inquiry are added.

Equally affected are the range and complexity of documentary evidence and witness testimony.

Substantiation of matters varies in accordance with the manner and type of submission and the requirements of IGADF directions. However, in terms of findings of breaches of administrative law, policy or jurisdiction the substantiation of these remains consistent at approximately 10 percent.

### **Lessons learned regarding Defence inquiries**

IGADF has identified a number of lessons to improve Defence inquiries and complaint management more broadly.

### **Vulnerable complainants**

IGADF receives a number of submissions from individuals who have a mental illness or individuals experiencing distress. In these cases, IGADF has found that it is sometimes time- and cost-saving to dedicate resources to assist the individual to articulate their complaint. By ensuring that the complaint is properly understood at the outset, resources can be applied more effectively and procedural justice can be achieved.

### **Notification of inquiry outcomes**

An essential component of procedural justice is ensuring that the complainant understands the process by which their matter was assessed and the way in which the outcome was derived.

Outcome correspondence that merely provides the conclusion (for example that a complaint was substantiated or not substantiated) does not promote confidence in military justice outcomes and can in some cases lead to erroneous assumptions. Accordingly, the Office of the IGADF provides comprehensive notification of inquiry and assessment outcomes. Where relevant, this can include an opportunity for the complainant to read an unredacted copy of the inquiry report.

### **Military Police Professional Standards**

ADF Military Police professional standards are governed by CDF Directive 14/2014 *Service Police Professional Standards: A code of conduct and management of complaints against Service Police*.

All complaints against the conduct of Military Police are recorded and assessed. In 2018–2019, IGADF received 24 complaints, a reduction from the 35 complaints received during the previous period. Of those complaints received, 12 were investigated and closed, five were not investigated following assessment and seven remain open. In two cases disciplinary action was recommended, with 5 recommendations for adverse administrative action.

The professional standards section of the Directorate has adopted an engagement program to support commanders with early notification of concerning behavioural trends of an individual that may not have been identified at unit level due to the regular movement of staff.

The section provided advice to unit commands on potential avenues to address individual or group behaviours that do not accord with the expected standards of a Military Police member, either through training, counselling, formal administrative sanctions or disciplinary action.

IGADF staff began the process to amend the Service Police code of conduct to reflect recommendations of IGADF's own-motion review of military police professional standards. This work was ongoing at the end of the reporting period.

## **DIRECTORATE OF MILITARY JUSTICE PERFORMANCE REVIEW**

The Directorate of Military Justice Performance Review (DMJPR) is responsible to IGADF for conducting performance reviews of the military justice system. This is done by way of internal audits of individual ADF ships, units and establishments.

The IGADF audit program monitors the health and effectiveness of the military justice system at each ADF unit and, by extrapolation, the ADF. Approximately 60 military justice performance audits are undertaken by IGADF audit teams during each financial year. This figure represents just under 13 per cent of all ADF units.

The IGADF's military justice audit program is conducted in line with the relevant Australian Standard on Assurance Engagements (ASAE) 3100 *Compliance Engagements*.

Major ADF units are routinely selected to be audited approximately every four to five years with initial training establishments selected more frequently. A team from OIGADF visits the unit and conducts a combination of spot-checks of available records and discussions with unit personnel, to determine the appropriateness of the military justice practices being employed in the unit.

The aim of each audit is to assess the unit's compliance with Defence law and policy relating to military justice. Audit reports will result in making recommendations to the unit on corrective action that needs to be undertaken to ensure compliance with law or policy. The audit report may also make suggestions for the unit to consider to implement best practice.

Audit teams conduct focus group discussions with representative unit personnel, grouped according to worn rank and, where appropriate, gender. These discussions allow the audit team to gauge each participant's appreciation of the military justice system, and to gain an understanding of how military justice is implemented across each of the rank levels at the unit being audited.

Minor failures to comply with policy are the most common findings from the audits. However, on occasion, auditors may conclude that the unit has not complied, in material respects, with the requirements of military justice law and policy as identified in the audit criteria. Where these material deficiencies impact individual members' rights, or are indicative of a systemic break down in military justice procedures in the unit, the unit will be subject to re-audit within 12 months.

The IGADF audit program benefits the ADF and ADF members in numerous respects. This includes encouraging a unit to improve military justice processes and practices using audit criteria as a guide; receiving subject matter expertise from audit team members during an audit; the promotion of military justice values among unit commanders and staff who are accountable for military justice in their unit; and educating unit personnel about the military justice system.

### **Staffing**

DMJPR is led by an O6 Legal Officer and comprises one other permanent ADF member and five APS employees. One ADF member is on a flexible working arrangement. The Director and one ADF member joined IGADF in 2019. The majority of the Directorate have a long

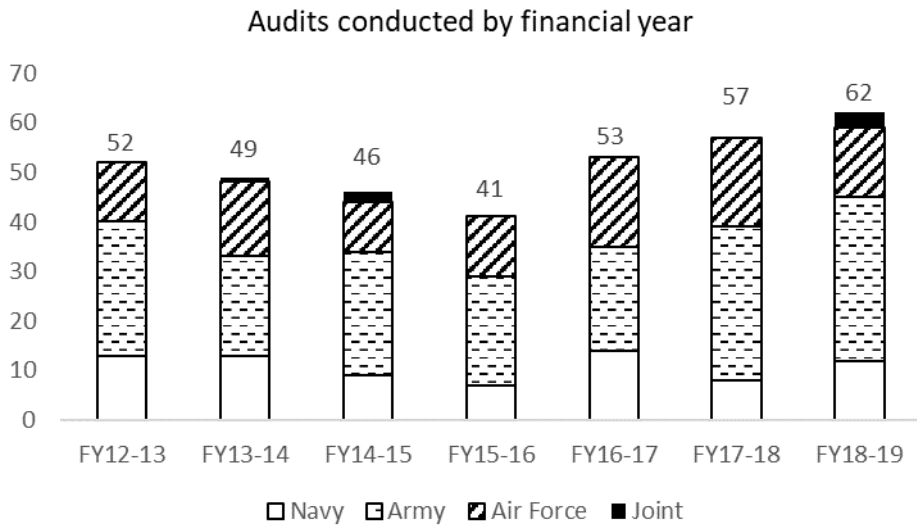


association with IGADF and hold a depth of corporate knowledge. Reserve legal and non-specialist officers comprise the majority of the military justice audit teams, supplemented by the core permanent Directorate staff.

**Military justice performance audit program**

Audit teams conducted 62 military justice performance audits of ADF units (12 Navy, 33 Army, 14 Air Force and three joint or tri-service units) in 2018–19. This represents an increase of approximately nine per cent from the 57 audits conducted in 2017–18.

The following graph shows the number of audits conducted by service since financial year (FY) 2012–13.



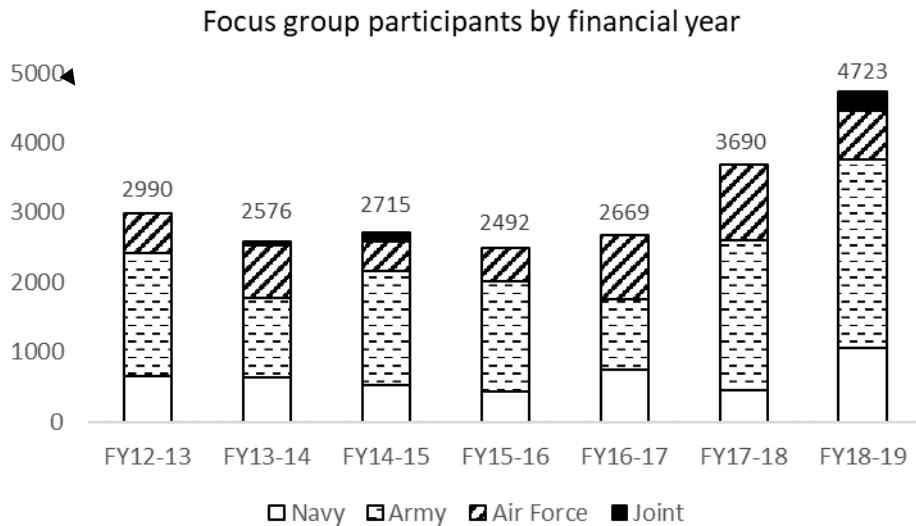
Of the units audited during the reporting period, two were identified to have had material deficiencies, necessitating a re-audit within 12 months.

During the course of the 2018–19 audit program, a total of 325 (Navy 39, Army 195, Air Force 70 and Joint 21) recommendations were made to ADF units. IGADF audit reports made a further 667 (Navy 116, Army 346, Air Force 165 and Joint 40) suggestions. Common shortfalls or areas for improvement for units with compliance breaches in 2018–19 include:

- a. record keeping and data entry relating to military justice cases
- b. awareness of military discipline arrangements (although there was no evidence this shortfall had resulted in injustice to any accused person)
- c. promulgation of alcohol testing areas, and
- d. frequency of prohibited substance testing.

A total of 4723 ADF personnel (Navy 1064, Army 2702, Air Force 692 and Joint units 265) participated in audit focus group discussions during the reporting period.

The graph below depicts the focus group participation rate across the services since FY2012–13.



### Focus group survey outcomes

A military justice survey is completed by each focus group participant. An analysis of the survey responses provides a useful indication of the participants' perceptions of the effectiveness of the ADF's military justice system administered at their unit.

During the reporting period, responses to the focus group survey showed:

- a. 73 per cent of participants believed the discipline process is fairly and consistently applied
- b. 80 per cent of participants believed the DFDA is an effective tool for the maintenance of discipline
- c. 60 per cent of participants believed they receive adequate discipline training to allow the member to discharge their DFDA responsibilities
- d. 75 per cent of participants were aware of their rights and obligations under the discipline system
- e. 78 per cent of participants believed their unit would treat them fairly and impartially if they were the subject of an administrative inquiry
- f. 87 per cent of respondents understood the concept of the 'right to be heard' or the 'right of reply', otherwise known as procedural fairness
- g. 27 per cent of participants believed adverse administrative action procedures take too long
- h. 80 per cent of participants had confidence in their chain of command to resolve complaints

- i. 67 per cent of participants believed their unit maintained a balance between the rights of complainants and the rights of respondents
- j. 18 per cent of participants believed they had experienced unacceptable behaviour at their unit
- k. 87 per cent of participants believed appropriate action would be taken if they reported an incident of unacceptable behaviour
- l. 89 per cent of participants knew where to obtain advice or information on unacceptable behaviour
- m. 70 per cent of participants believed all ranks would be treated equally under the military justice system
- n. 75 per cent of participants believed all genders would be treated equitably under the military justice system
- o. 46 per cent of participants believed the military justice system provides sufficient feedback to complainants and respondents
- p. 93 per cent of participants believed appropriate action would be taken against an incident or complaint of sexual misconduct, including sexual assault, and
- q. 77 per cent of respondents believed morale was good.

## **DIRECTORATE OF SELECT INCIDENT REVIEW**

Pursuant to section 5(a) of the *Inspector General of the Australian Defence Force Regulation 2016* the IGADF inquires into the death of a member of the Defence Force where the death appears to have arisen out of, or in the course of, the member's service in the ADF.

Since 01 July 2014 the Directorate of Select Incident Review (DSIR) in the Office of IGADF has conducted inquiries into ADF members' deaths. In discharging this responsibility, the IGADF provides assurance to the CDF, Government and the public that Defence is responding appropriately to service-related deaths. All IGADF inquiries are conducted according to law and independently of the chain of command.

### **Staffing**

The Directorate is usually led by an O6 Legal Officer. However, for much of the second half of the reporting period, DSIR was led by an EL2 public servant seconded from the Department of Veterans' Affairs, as part of a reciprocal exchange. The Director is supported by four permanent ADF personnel and one APS employee. When required, Specialist Reserve Officers and contractors support DSIR's caseload.

### **Death inquiry process**

Following notification an ADF member has died, DSIR will gather information. This information gathering process commences with formal correspondence to the deceased ADF member's next-of-kin. That correspondence informs the next-of-kin IGADF will be conducting an independent review of the death and invites them to contribute relevant information.

The subsequent inquiry process may be as simple as a desktop review of documentary information through to a full-scale inquiry in which witnesses are summoned to give evidence.

IGADF uses the information DSIR gathers to report to CDF and explain the circumstances of the death. All such reports are unique as they are dependent on the type of incident and the circumstances that led to each ADF member's death.

Any report produced will identify whether or not Defence policies and procedures have been followed and, where necessary, will evaluate whether relevant policies and procedures are suitable. A report may also make recommendations about how any policies or procedures might be improved.

Where relevant, DSIR will engage and consult with a number of internal and external organisations. This includes State and Territory police and coroners, DVA, Open Arms (formerly Veterans and Veterans Families Counselling Service), Comcare, State and Territory Registries of Births, Deaths and Marriages, and other subject matter experts.

Through any inquiry process, DSIR consults with the Defence Community Organisation (DCO) and the relevant Service Headquarters to ensure that the utmost care is taken when engaging with the family of deceased ADF members. This is to ensure that no additional grief or harm is caused as a result of a death inquiry.

Where necessary, DSIR can use coercive powers to obtain information. Experiences to date have shown that a number of external agencies prefer to have requests under compulsion, as it provides them legal authority and protection for the release of information.

### **Service death inquiries**

In 2018–19, IGADF received notification of, and commenced inquiries into, 31 deaths of ADF members.

In 2018–19, IGADF finalised 48 inquiries into deaths in service; 28 related to deaths that occurred in previous years with the remaining 20 deaths occurring in this reporting period. In 23 per cent of the inquiries finalised in 2018–19, the ADF member's death was found to have arisen out of, or in the course of the member's service.

Of those 48 deaths, the causes of death were:

- 19 (40 per cent) suicide
- 13 (27 per cent) accident
- 12 (25 per cent) illness
- 2 (4 per cent) drug toxicity, and
- 2 (4 per cent) misadventure.

### **DIRECTORATE OF MILITARY REDRESS AND REVIEW**

The Directorate of Military Redress and Review (DMRR) primary role is to consider Redress of Grievances, known as 'complaints', submitted by serving ADF members. A complaint must be about a decision, act or omission that relates to the member's ADF service.

Complaints are submitted to the member's Commanding Officer (CO). DMRR has designated desk officers for each service who liaise with members and their chain of command on the most appropriate means by which to consider each complaint.

2018–19 is the second complete financial year that complaints have been considered under Part 7 of the *Defence Regulation 2016* (DR 2016). The process continues to be refined and improved to provide expedited, independent and fair resolution for complainants.

The majority of complaints continue to be dealt with by the complainant's CO. However, IGADF is aware of and considers all complaints, and retains oversight or the ability to further consider matters where appropriate.

If a complainant is dissatisfied with the outcome of IGADF's consideration of their complaint, they may ask for internal review. They may also approach the Defence Force Ombudsman.

### **Staffing**

DMRR continues to be led by an Executive Level (EL) 2 APS Director with many years' experience in Defence administration and complaint handling. The Deputy Director is a permanent Wing Commander (O5 equivalent), Air Force Personnel Capability Officer. They lead a team of permanent and Reserve ADF members who make up the IGADF Service Desk Officers.

IGADF consideration of complaints is undertaken by ADF and APS members located throughout Australia. DMRR is also supported by an EL1 Lawyer.

### **Outreach**

IGADF first became responsible for Redress of Grievance system oversight on 01 July 2014. Since then, a key feature of IGADF's approach to Redress of Grievance complaint handling has been dedicated DMRR staff providing general, procedural guidance to complainants and also to Redress of Grievance decision-makers. This has resulted in better and timelier decision-making.

During the reporting period DMRR reviewed and simplified information presented to Navy and Air Force pre-command and personnel officer courses, thereby improving the training's usefulness.

### **Caseload**

ADF members submitted 360 complaints in 2018–19 which represents a nine percent decrease on 2017–18 (392). The number of complaints submitted by Navy members decreased by 26 per cent (84 against the previous period of 113). The number from Army members has remained relatively consistent (195 against the previous period of 190), while Air Force decreased by 9 per cent (81 against the previous period of 89).

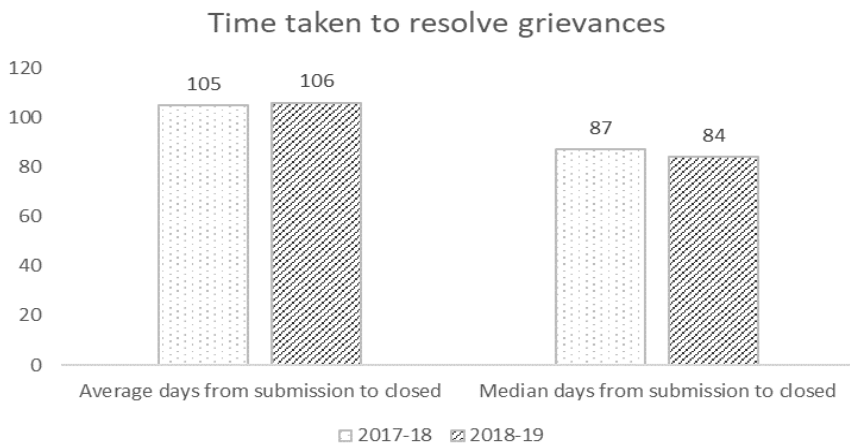
In 2018–19, the highest proportion of complaints across the ADF concerned member's career (41 per cent), termination of service (39 per cent) and entitlements (11 per cent).

As at 1 July 2018, there were 132 open complaints by ADF members, which by 30 June 2019 had decreased by 33 percent to 89 open complaints.

Of the 403 complaints completed in 2018–19 (Navy 104, Army 218 and Air Force 81):

- 231 were found not to be substantiated
- 53 were withdrawn by members
- 55 were outside jurisdiction of the Redress of Grievance system<sup>2</sup>
- 19 were partially upheld
- 29 were fully upheld
- 16 were resolved administratively outside the complaint process.

The average time taken to close these complaints was 106 days and the median time was 84 days.



## **DIRECTORATE OF LEGAL REVIEW**

The Directorate of Legal Review (DLR) provides strategic legal advice to government on behalf of IGADF and the Office of IGADF in order to assist the IGADF to fulfil his statutory function.

DLR fulfils this role by:

- conducting legal reviews of IGADF inquiry reports
- participating in audits throughout Australia to improve military justice performance
- advising on legislative and policy changes to improve and enhance the military justice system

<sup>2</sup> Where this occurs, the complaint may be considered under the IGADF's broader military justice jurisdiction or the complainants are referred to the appropriate avenue for their specific complaint including, for example, the scheme for Compensation for Detriment caused by Defective Administration, or the Defence Force Ombudsman.

- d. providing legal advice in relation to investigations, inquiries, sanctions, redress of grievance and other complaints, and
- e. designing and developing awareness training to promote military justice.

### **Staffing**

DLR is led by an O5 ADF Legal Officer and comprises one other permanent ADF legal officer supplemented by specialist reserve and APS legal officers.

### **Activities**

In 2018–19 DLR managed legislative reform projects on behalf of IGADF which resulted in regulatory amendments to enhance the management of complaints and the conduct of inquires under the *IGADF Regulation 2016*.

DLR also engaged with Defence partners to enhance Public Interest Disclosure arrangements for complainants to IGADF. The new arrangements ensure those disclosers who complain to IGADF retain protections available to them under the Public Interest Disclosure scheme, including the right to remain anonymous and protections against reprisal.

### **SUMMARY DISCIPLINE SYSTEM REVIEW**

During the reporting period IGADF staff provided ongoing support, including statistical information, to the ADF's Summary Discipline Implementation Team who are implementing the recommendations made during their review into the Summary Discipline System in 2017.

### **INFORMATION TRACKING SYSTEMS AND STATISTICAL DATA**

As reported previously, IGADF sponsors two information tracking systems. These two systems are: the ADF Administrative Inquiries Tracking System (ADFAITS); and Defence One—Conduct Reporting and Tracking System (CRTS).

ADFAITS remains the principal, ADF-wide, information system capturing and tracking administrative inquiries. ADFAITS is an information repository of such inquiries. ADFAITS relies heavily on units and formation level headquarters maintaining and updating information in the database. During the reporting period, 15 inquiry officer inquiries were entered in ADFAITS. Navy accounted for one, Army 12, Air Force one and Joint command units one.

CRTS is part of a personnel database which records and tracks ADF members' individual conduct. CRTS tracks individual disciplinary cases and administrative sanctions. As such CRTS becomes an integral tool for effective career management and discipline maintenance.

By default, data entry into CRTS is primarily each ADF unit's responsibility. Qualified staff at each ADF unit enter conduct data for ADF members posted to that unit. Ultimately timely and accurate data entry by the unit is paramount to the quality of the data output produced from CRTS. It is that data on which IGADF relies to identify discipline trends and provide military justice statistical data and analysis to the ADF.

Considerable improvements in the quality of CRTS data had been noted in recent years, particularly in the capture of matters dealt with at the higher tribunal level. However, towards the end of the reporting period IGADF staff noticed deterioration in CRTS data entry. Following the reporting period, IGADF drew this deterioration in CRTS data entry to the

attention of the Vice Chief of the Defence Force, who has since taken action to improve the situation.

Because CRTS is part of a personnel database, aggregating CRTS data to produce organisational statistics is often a manual rather than an automatic endeavour.

### **Requests for information**

Building on previous years, the demand for military justice statistics compiled by IGADF staff continues to increase. The IGADF responded to requests from both military justice entities and other areas in Defence. Data supplied by IGADF includes unit level investigations and timeframes, DFDA trial data and timeframes, administrative sanctions, protection orders and complaint data. The Annex to this report provides a synopsis of some of the key military justice statistical information generated during this reporting period.

## **CONFERENCES, VISITS AND OTHER ACTIVITIES**

### **Commonwealth Government Inspectors-General**

On 18 March 2019 the IGADF convened the second meeting of Commonwealth Government Inspectors-General. The aim of these meetings is to enhance governance. The meetings are an opportunity each year for Commonwealth inspectors-general with similar functions and responsibilities to share new or improved oversight practices and procedures. The meetings also provide participants insights into alternative approaches to common challenges.

### **International Conference of Ombuds Institutions for Armed Forces**

The IGADF attended the 10<sup>th</sup> International Conference of Ombuds Institutions for the Armed Forces (ICOAF) in Johannesburg on 28–30 October 2018. The conference was jointly hosted by the South African Military Ombud and the Geneva Centre for the Democratic Control of Armed Forces.

The conference allows participants to share experiences and approaches to current military justice challenges.

During this conference, the IGADF together with the Commonwealth Ombudsman's representative, held initial discussions with representatives from the Geneva Centre for the Democratic Control of Armed Forces about the potential for Australia to co-host the 13<sup>th</sup> ICOAF in 2021.

### **Visit by the Israel Defence Force—Deputy Military Advocate General**

Defence Legal hosted a delegation from the Israel Defence Force, including the Deputy Military Advocate General, in November 2018. During this visit the delegation briefly attended the Office of the IGADF to gain an insight into the roles, functions and responsibilities of the IGADF and current military justice topics. Specifically, the delegation were interested in discussing law enforcement in an operational context.

Such visits are opportunities to liaise with international authorities about oversight in their armed forces.



### **Military justice seminars, training and forums**

Each year the IGADF engages with stakeholders by attending various seminars and forums across Australia, presenting on the role of the IGADF, and discussing current military justice and other topics. During the reporting period, the IGADF presented on numerous courses including: Legal Training Modules for ADF legal officers, command courses and reserve legal officer training activities.

Professional development training has been instrumental in establishing and maintaining appropriate skills for IGADF staff over recent reporting periods. During 2018–19, IGADF staff undertook development training in the analysis of evidence, complex inquiry processes, questioning witnesses and interview techniques, and influencing through communication and report writing.

### **CONCLUSION**

Recent reporting periods have identified a consistently high operating tempo in the Office of the IGADF. This continued in 2018–19 with the high workload characterised by an increase in the number of military justice performance audits, and numbers of submissions, grievance complaints and ADF death notifications that were similar to previous years.

IGADF monitoring activities, including analysis of military justice data, suggest the administration of discipline, including at unit level, appropriately protects the individual rights of ADF members. This contributes significantly to a fair and effective military justice system, thus ensuring operational effectiveness.

Overall, I remain satisfied with the rate of effort achieved by the Office of the IGADF in 2018–19 while matching the high operating tempo of previous reporting periods.

## GLOSSARY OF ACRONYMS AND ABBREVIATIONS

Australian Defence Force	ADF
ADF Administrative Inquiry Tracking System	ADFAITS
ADF Investigative Service	ADFIS
Australian Public Service	APS
Australian Standards on Assurance Engagements	ASAE
Chief of the Defence Force	CDF
Case Management System	CMS
Commission of Inquiry	COI
Conduct Reporting and Tracking System	CRTS
<i>Defence Act 1903</i>	the Act
<i>Defence Force Discipline Act 1982</i>	DFDA
Directorate of Legal Review	DLR
Directorate of Military Justice Performance Review	DMJPR
Directorate of Military Redress Review	DMRR
Directorate of Select Incident Review	DSIR
Enlisted 06	E06
Enlisted 07	E07
Enlisted 08	E08
Executive Level 1	EL1
Executive Level 2	EL2
Inspector-General of the Australian Defence Force	IGADF
Officer Level 4 (referring to a Major or equivalent)	O4
Officer Level 5 (referring to a Lieutenant Colonel or equivalent)	O5
Officer Level 6 (referring to a Colonel or equivalent)	O6
Officer Level 7 (referring to a Brigadier or equivalent)	O7
Officer Level 8 (referring to a Major General or equivalent)	O8
Redress of Grievance	ROG
Special Operations Command	SOCOMD
Special Operations Task Group	SOTG

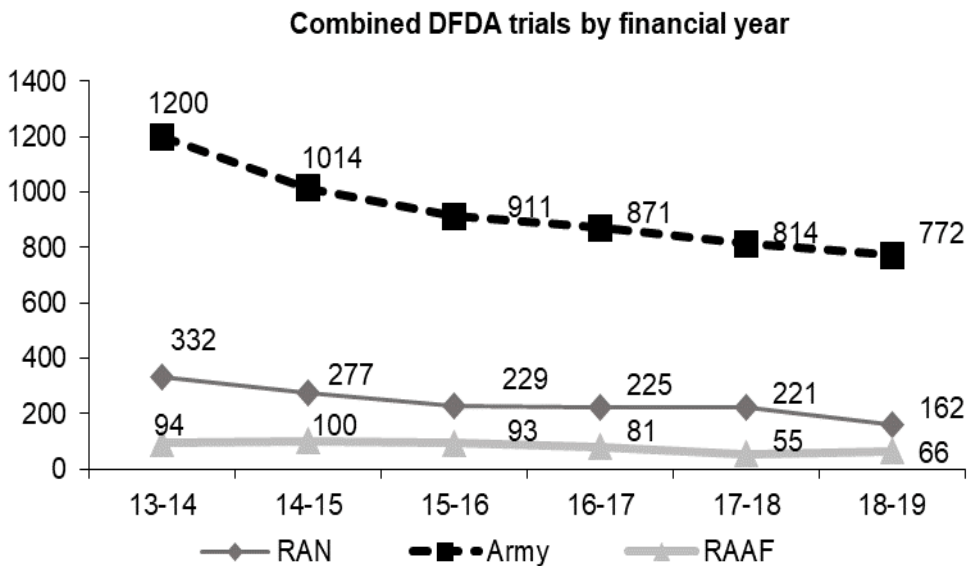
**MILITARY JUSTICE STATISTICS**

**Discipline statistics**

The steady decline in the overall number of disciplinary trials (courts martial, Defence Force magistrate trials and summary trials) continued in 2018–19 with a further reduction of eight per cent compared with the previous year.

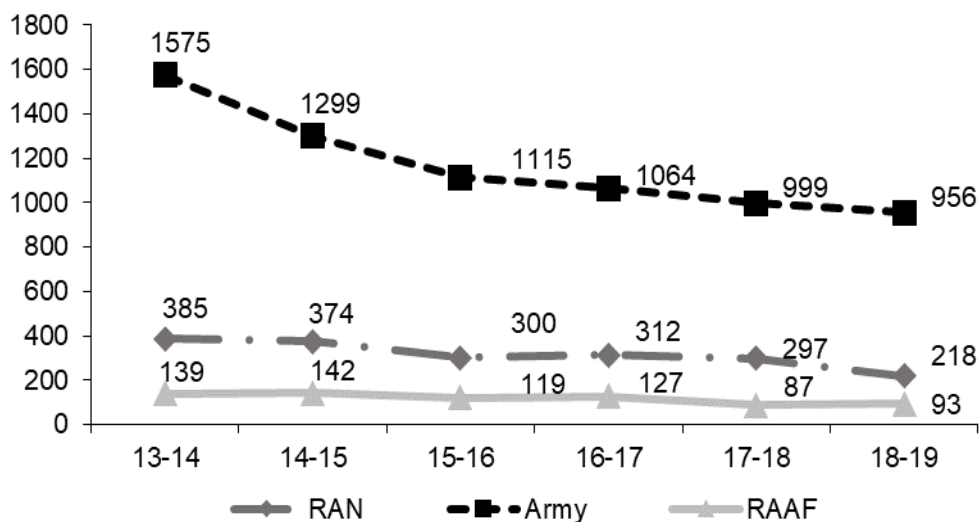
During this reporting period, there were a total of 1000 trials (Navy 162, Army 772 and Air Force 66) conducted, down from a total of 1090 trials (Navy 221, Army 814 and Air Force 55) in 2017–18.

Continuing this trend, the total number of convictions recorded across the ADF decreased by six per cent from 1383 in 2017–18 to 1267 in 2018–19<sup>3</sup>. Recent trial and conviction trends are illustrated in the below graphs.



<sup>3</sup> Discipline convictions usually outnumber trials because charge sheets often include more than one charge.

### Combined DFDA convictions by financial year



Superior trials (courts martial and Defence Force magistrate trials) decreased by a further six per cent, a trend that has been observed over the past five financial years. In 2018–19 there were 30 superior trials recorded, compared to 32 trials recorded in 2017–18.

Discipline trials at the summary level continued to decrease during the reporting period, extending this trend to the past five reporting periods. Overall there was an eight per cent decline in summary trials from 1058 (Navy 206, Army 803 and Air Force 49) in 2017–18 to 970 (Navy 153, Army 757 and Air Force 60) in 2018–19.

During the same period, the number of convictions, from summary level trials, across the three Services decreased by six per cent from 1283 (Navy 236, Army 970 and Air Force 77) in 2017–18 to 1200 (Navy 198, Army 925 and Air Force 77) in 2018–19.

In 2018–19, there was a combined total of 67 (Navy 13, Army 38 and Air Force 16) not guilty verdicts, and a further 42 (Navy 8, Army 32 and Air Force two) convictions were quashed on automatic review. These results indicate the ADF discipline system is operating fairly.

#### Alcohol conviction statistics

During this reporting period, there were 146 disciplinary convictions recorded where the misuse of alcohol was a contributing factor (excluding alcohol misuse while on deployment), equating to a 21 per cent decrease from the 185 recorded in 2017–18. Navy accounted for 44 (30 per cent), Army 90 (62 per cent) and Air Force 12 (5 per cent).

A further 34 disciplinary convictions for alcohol related offences committed on deployment during the same period, were recorded. Navy accounted for 19 (56 per cent), Army 11 (32 per cent) and Air force four (12 per cent).

#### Discipline infringement statistics

In 2018–19, there was a significant decrease of 14 per cent in the number of disciplinary

officer infringements reported to the IGADF. Overall there were 4331 (Navy 1433, Army 2523 and Air Force 375) infringements recorded in 2018–19 compared to 5047 (Navy 1981, Army 2626 and Air Force 440) recorded in 2017–18

### Administrative sanctions statistics

During this reporting period a total of 1218 (Navy 334, Army 718 and Air Force 166) administrative sanctions were imposed. The administrative sanctions system protects the reputation of the ADF through targeting and correcting shortfalls in professional or acceptable behaviour, and in a member's performance and standards.

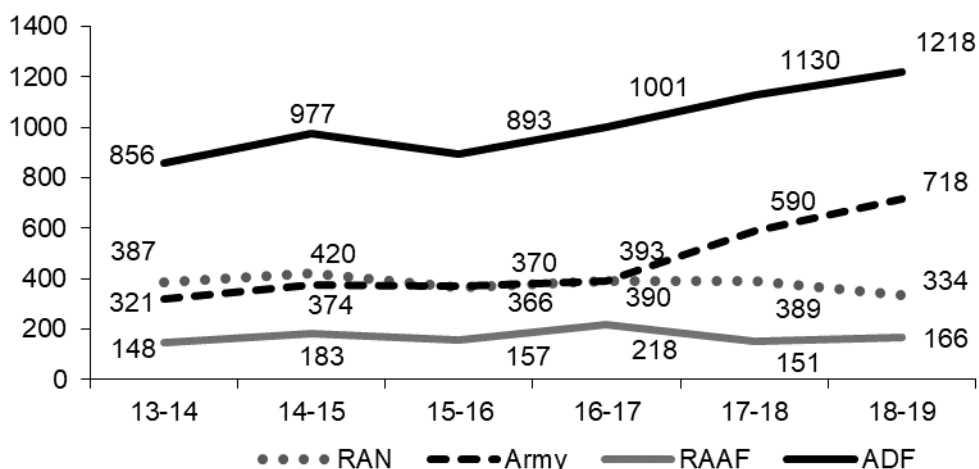
Administrative sanctions include, but are not limited to

- formal warning
- censure
- termination of service
- reduction in rank
- removal from an appointment or locality
- denial or delay of promotion or revocation of provisional promotion
- loss of security clearance, and
- change of employment category.

The main reasons for the imposition of an administrative sanction in 2018–19 were; misuse of alcohol (204), civil offences (159), fitness test failure (359), personal qualities (157) and unsatisfactory conduct (741).

As indicated in the below graph, the overall use of administrative sanctions continues to increase. Army again recorded the highest use of administrative sanctions and accounts for 59 per cent of all sanctions imposed, while Navy accounts for 27 per cent and Air Force 14 per cent.

**Administrative sanctions by financial year**



Of the 1218 sanctions imposed, formal warnings (469), counselling (343), termination of service (202), censures (78) and suspension from duty (67) account for 95 per cent of all sanctions imposed, and remain the most common form of administrative sanction imposed.

The remaining 59 (five per cent) of the sanctions imposed include reduction in rank, administrative posting and administrative warning.

### **Protection orders**

ADF members are required to report protection orders issued against them. In 2018–19, 37 protection orders were reported and recorded. Of those, six (16 per cent) were issued against Navy members, 27 (73 per cent) against Army members, and four (11 per cent) against an Air Force member.

In addition, 14 (Navy one, Army 12 and Air Force one) protection orders were extended during the reporting period.

### **Civil convictions**

Increases in the civil conviction of ADF members over recent reporting periods did not continue in 2018–19, with a 37 per cent decrease from 158 in 2017–18 to 99 in 2018–19.

Continuing with recent trends, the most common sentences imposed by civilian courts or authorities on ADF defendants in 2018–19 were monetary fines and the loss or suspension of motor vehicle licences, which together account for 88 per cent of all sentences imposed.



