



**INSPECTOR-GENERAL
OF THE
AUSTRALIAN DEFENCE FORCE

ANNUAL REPORT**

01 July 2019 to 30 June 2020

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LETTER OF TRANSMITTAL



Inspector-General of the Australian Defence Force

Senator the Hon Linda Reynolds CSC
Minister for Defence
Parliament House
CANBERRA ACT 2600

Dear Minister

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 2019 to 30 June 2020. This report is provided under section 110R of the *Defence Act 1903*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J.M. Gaynor', with a long, sweeping flourish extending to the right.

JM Gaynor CSC
Inspector-General of the Australian Defence Force

29 October 2020

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INSPECTOR-GENERAL OF THE AUSTRALIAN DEFENCE FORCE

REPORT FOR THE PERIOD

01 JULY 2019 TO 30 JUNE 2020

PREAMBLE

The Inspector-General of the Australian Defence Force (IGADF) is a statutory appointment under Part VIII B of the *Defence Act 1903*. Mr James Gaynor, CSC was appointed as the IGADF on 01 December 2016 by the then-Minister for Defence, in accordance with section 110E.

IGADF was first established in 2003 following Justice Burchett QC' inquiry into military justice in the Australian Defence Force. Originally, IGADF's role appeared deceptively simple: to provide the Chief of the Defence Force (CDF) with internal audit and review of the military justice system independent of the ordinary chain of command and to provide an avenue by which failures of the system, systemic or otherwise, may be examined and remedied as necessary.

Over the years, amendments to the *Defence Act* and statutory framework have clarified and enhanced the independence, powers and functions of the IGADF. Changes to Defence workforce administrative arrangements have also diversified the range of decisions which fall within IGADF's jurisdiction.

Section 110C of the *Defence Act* and section 5 of the *Inspector-General of the Australian Defence Force Regulation 2016* define the IGADF's functions. In addition to providing oversight of the health and effectiveness of the military justice system, the IGADF provides an avenue for ADF deaths and other matters affecting the ADF to be independently investigated. The IGADF may make recommendations to command about these matters.

These functions are prescribed as:

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

In essence, this means the Office of the IGADF provides advice to Command and deals with a range of matters including complaints associated with abuse of authority or process, denial of procedural fairness, allegations of cover-ups or a failure to act, unlawful punishment, victimisation and harassment, and avoidance of due process.

As outlined in the previous reporting period, the Office of the IGADF's vision, mission and value statements play a key role in aligning the broad functions and diverse work force of the Office of the IGADF. The IGADF vision, mission and value 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* – we respect ourselves, our work and everyone we deal with
- *Integrity* – we act with integrity in all aspects of our work
- *Independence* we uphold the independence of the IGADF
- *Impartiality* – we are impartial in our work and our decisions

The Office has five goals to achieve the IGADF vision:

- Promote military justice values across the ADF
- Improve confidence in IGADF's decisions and products
- Ensure complaints are properly managed within the ADF
- Recruit staff with the appropriate aptitude and attitude to undertake the work of the IGADF
- Ensure the IGADF is respected and trusted across the ADF

Key Performance Indicators

In February 2020, and in association with the implementation of a new vision and mission statement, the Office of the IGADF established a set of key performance indicators to assist in measuring the quality and efficiency of the outputs of this office.

The IGADF will use the KPIs to hold his Office accountable in future reporting periods.

MILITARY JUSTICE SYSTEM

The military justice system is intended to promote good order and discipline and thereby enhance operational effectiveness of the ADF. This system provides the ADF with an Australian legal framework that applies to all ADF members in times of peace and armed conflict, both in Australia and overseas.

It is imperative that the requirements of such a system provide an acceptable and appropriate balance between the need to enforce and maintain discipline in the ADF, and ensuring that members' individual rights are protected. A military justice system that is capable of achieving and maintaining this balance will ensure a greater operational capability and effectiveness.

The military justice system is made up of four main components which are:

- a. taking disciplinary action under the *Defence Force Discipline Act 1982* (DFDA) to enforce and maintain Service discipline
- b. initiating administrative sanctions to correct individual behaviour and to protect the reputation of the ADF
- 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 submitted by ADF members to ensure systemic or individual failings are identified and remediated, to improve and enhance operational effectiveness.

INSPECTOR-GENERAL OF THE AUSTRALIAN DEFENCE FORCE'S MESSAGE

Recent reporting periods have shown the Office of the IGADF has been consistently operating at a high level. Despite domestic natural disasters and the global pandemic, the operating tempo in 2019–20 continued this trend and remained consistently high.

In addition to the regular conduct of military justice performance audits and the submission of complaints under the redress of the grievance process, the Office of the IGADF saw an increase in the number, and complexity, of military justice submissions it received. There was a slight increase in the number of reported deaths of ADF members.

The workload of the Office of the IGADF also increased because of the number of ongoing highly complex inquiries of a sensitive nature requiring experts with legal, military and operational experience.

IGADF Afghanistan Inquiry

IGADF's Inquiry into the conduct of Special Forces members deployed in Afghanistan during the period 2005 to 2016 is nearing completion. Previous IGADF annual reports outlined the Inquiry's five overlapping phases. In 2019–20 the Inquiry focused on phases three, four and five.

During the reporting period, the Inquiry conducted a further 159 witness interviews. By 30 June 2020 the Inquiry had conducted a total of 497 witness interviews since its commencement in May 2016.

The Inquiry has identified 60 separate incidents or issues constituting possible breaches of the Law of Armed Conflict. This is five more incidents or issues than the Inquiry had identified by the end of the previous reporting period.

Submissions and complaints

In the 2019–20 reporting period, IGADF received 66 new military justice submissions, which was comparable to the 65 submissions received and reported in the previous year.

Despite facing challenges in the daily operations of the office in the second half of the reporting period because of COVID-19, IGADF continued to resolve matters promptly, with 73 submissions finalised during the reporting period, including 37 the Office received in earlier reporting periods. As at 30 June 2020, 30 submissions remained open.

The Office received 25 complaints relating to Military Police professional standards; this was comparable with the 24 professional standards complaints the Office received in the previous reporting period. Of these, 11 were investigated as disciplinary matters; seven were considered administratively, and a further seven complaints were assessed as not requiring further investigation or inquiry. At the end of the reporting period, seven complaints remained open.

Military justice audits

Between July 2019 and March 2020, IGADF audit teams conducted 39 military justice performance audits of ADF units – nine Navy, 18 Army, 11 Air Force and one joint (or tri-Service) unit audit. This represents a decrease of around 37 percent from the 62 audits conducted in the 2018–19 period.

In addition, 19 activities comprising only focus groups (Navy five, Army eight, Air Force two and Joint four) were conducted during the same period

After the introduction of COVID-19 travel restrictions in March 2020, the remaining audit schedule for 2019–20 was postponed.

IGADF audit reports made a total of 223 recommendations (Navy 34, Army 119, Air Force 69 and Joint 1) during the course of the audit program in 2019–20. There were an additional 215 suggestions (Navy 37, Army 121, Air Force 52 and Joint 5) provided to ADF units.

During the conduct of military justice performance audits in the reporting period, 3179 ADF personnel (Navy 713, Army 1794, Air Force 475 and Joint 197) participated in focus group discussions.

Service death inquiries

In 2019–20, IGADF received notification of, and commenced inquiries into, 44 deaths of ADF members.

In 2019–20, IGADF finalised 28 inquiries into deaths in service; 15 related to deaths that occurred in previous years with the remaining 13 deaths occurring in this reporting period.

Of those 28 deaths, the causes of death were:

- 6 (21.4 per cent) suicide
- 6 (21.4 per cent) accident
- 16 (57.1 per cent) illness

Redress of grievance scheme

ADF members submitted 318 complaints in 2019–20, which represents a 12 percent decrease from the 360 complaints received in 2018–19.

Over the course of this reporting period, 336 complaints (Navy 76; Army 170 and Air Force 90) were finalised.

Of the 336 complaints finalised in 2019–20:

- 178 (53 per cent) were found not to be substantiated
- 37 (11 per cent) were withdrawn by complainants
- 54 (16 per cent) were outside jurisdiction of the Redress of Grievance system
- 15 (four per cent) were partially upheld
- 36 (11 per cent) were fully upheld, and
- 16 (five per cent) were resolved administratively outside the Redress of Grievance system.

In 2019–20, and in keeping with trends over the past few reporting periods, the highest proportion of complaints across the ADF concerned members' careers (32 per cent), termination of service (31 per cent) and entitlements (23 per cent).

STAFFING AND RESOURCES

While IGADF is a statutory office holder, the Office of the IGADF workforce is drawn from the Australian Public Service and the Australian Defence Force. On occasion, the Office of the IGADF also relies on contracted support. A professional, skilled and motivated workforce is key to enabling IGADF to fulfil his statutory role.

During the reporting period an O7 Deputy IGADF and O6 Director of Select Incident Review commenced duties. Some staff took opportunities for secondments and additional responsibilities. One staff member was seconded to support Operation Bushfire Assist, and also the Defence response to COVID-19. Two Defence APS employees who are also reserve ADF members volunteered for Continuing Full-Time Service in other areas in Defence.

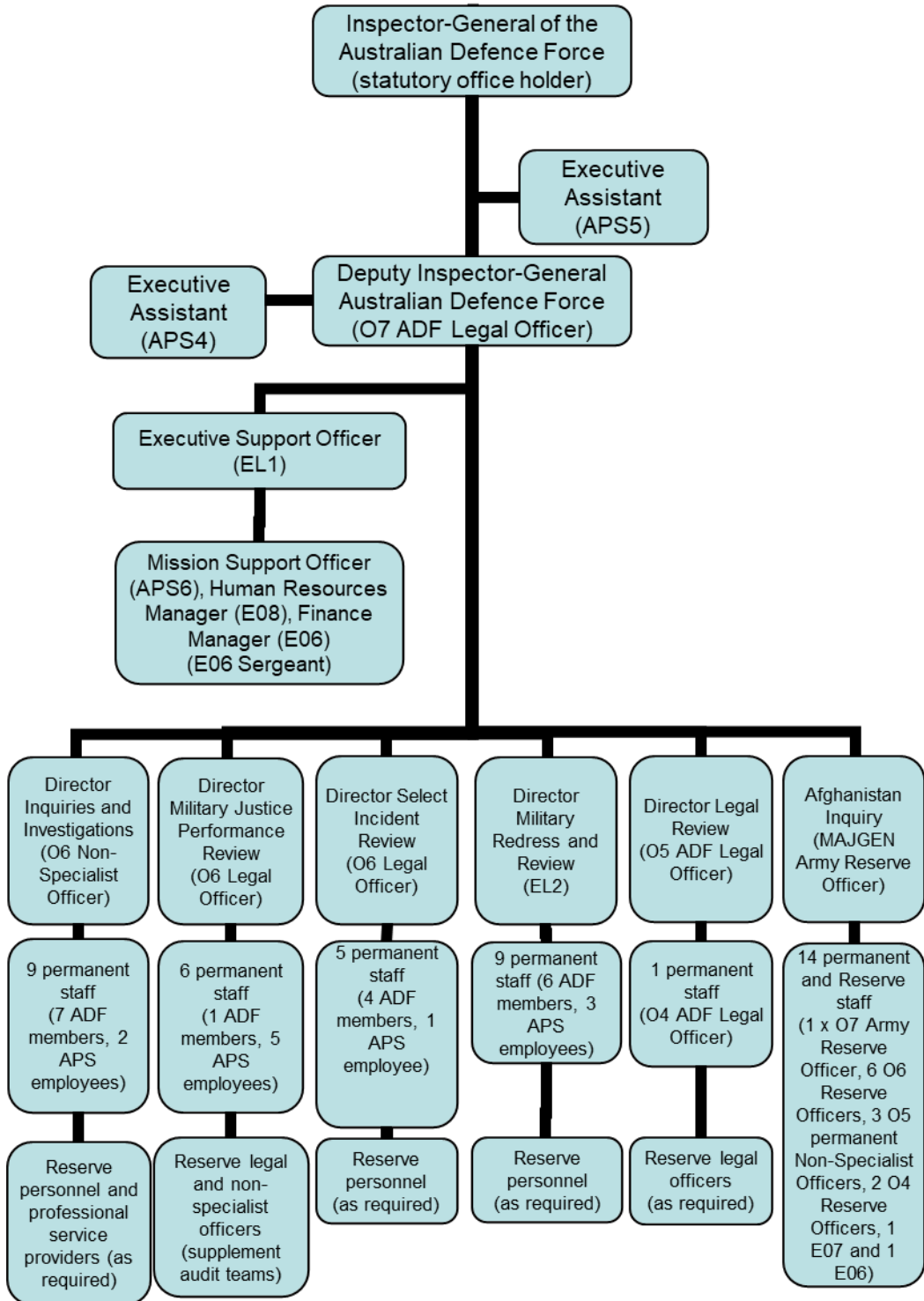
IGADF staff also participated in training and development opportunities in addition to annual training which is mandatory for all ADF members and Defence APS employees. These additional opportunities included training organised by the Office of the IGADF, the Department of Defence as well as external organisations and training providers. They included training in conducting inquiries, Freedom of Information, 'accidental counsellor' training, effective writing and – for legally qualified staff – continuing professional development.

By the end of the reporting period, the staffing numbers in the Office of the IGADF totalled 109 people, consisting of 43 permanent staff and 66 Reserve personnel.

Service	Permanent head count	Reserve head count
Navy	9	12
Army	7	35
Air Force	9	19
Australian Public Service	18	n/a
Total	43	66

The Office of the IGADF's organisational structure, as outlined on the next page, is designed to support the IGADF's statutory roles, functions and responsibilities, as well as provide necessary administrative support.

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



Staffing outlook

IGADF's capability requirements continue to evolve with the increasingly complex and sensitive inquiry and investigative work undertaken by the Office. The recruitment and retention of personnel with the necessary expertise and specialist skills to meet the capability and strategic demands of the Office is integral to the overall effectiveness of IGADF's role.

With appropriate resourcing the Office of the IGADF is better equipped to attract, develop and retain APS and ADF staff, and others, with the requisite knowledge, experience and skills to assist IGADF.

To meet the challenges of the rapidly changing Defence environment in 2020–21, the Office of IGADF will continue to work within its budget allocation and will be agile in the management of short term needs through careful administration of staffing resources, including drawing on experienced reserve personnel and professional service providers.

Professional service providers

Professional service providers are occasionally engaged by the Office of the IGADF to provide a range of services in times of high operating tempo, and in circumstances where the Office of the IGADF needs specialist expertise or advice.

In 2019–20, the Office of the IGADF engaged professional service providers to undertake specific tasks including inquiry work, and legal and training services.

The Office of the IGADF continues to engage professional service providers in accordance 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 inquiry or investigation.

IGADF AFGHANISTAN INQUIRY

Since May 2016, and following a CDF direction under section 110C of the Defence Act, IGADF has been conducting an independent Inquiry into rumours and allegations of misconduct relating to possible breaches of the Law of Armed Conflict by members of the Special Operations Task Group during deployments in Afghanistan over the period 2005 to 2016.

As previously reported, the Inquiry is an administrative process and not a criminal investigation. This process is intended not only to ascertain whether there has been misconduct, but may also exonerate those who may be affected by unsubstantiated rumours and allegations.

As a CDF-directed Inquiry, the Inquiry has powers to compel the production of evidence from any person similar to those of a Royal Commission.

Staffing

Since its establishment, the Inquiry has been led by Major General the Honourable Justice Paul Brereton AM RFD, a Judge of Appeal of the Supreme Court of New South Wales. Major General Brereton is supported by a dedicated team of permanent and reserve ADF members.

The size and composition of the team is determined primarily by the breadth of skillsets required to undertake such a highly sensitive task, while efficiently using the resources that are available to the Office of the IGADF.

The IGADF allocated additional resources, including personnel, to the Inquiry during the reporting period as new lines of inquiry emerged.

During the reporting period the Inquiry team comprised:

- a. one O8 Army Reserve Officer (Major General Brereton)
- b. one O7 Army Reserve Officer
- c. nine O6 Reserve Officers (three Navy and six Army)
- d. five O5 Officers (one Navy Reserve officer, two Army Reserve officers, one permanent Air Force officer and one Air Force Reserve officer)
- e. two O4 Reserve officers (one Army and one Air Force)
- f. one E7 Reserve member (Army), and
- g. one E6 Reserve member (Navy)

A conscious effort has been made to keep the Inquiry team relatively small. This is due to the seriousness of the rumours and allegations, the interrelationship between many of the lines of inquiry, and the classified nature of the operational circumstances of the incidents under inquiry.

The Office of the IGADF continued to provide administrative support to the Inquiry team during this reporting period. As aspects of the inquiry's subject matter and evidence are confronting, the IGADF also ensured ready availability of counselling support for inquiry team members.

Conduct of the Inquiry

The Inquiry continues to be conducted in private, because it involves matters of operational security, a need to ensure identities are protected, and for the protection of witnesses. The Inquiry must also ensure the reputations of individuals—who may be unfairly harmed by publication of unsubstantiated rumours—are not adversely affected.

Background detail about the Inquiry's overlapping phases is available in the IGADF Annual Report (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 continued its focus on phases three, four and five. There was increasing emphasis on drafting sections of the Inquiry's report and preparing for a rigorous procedural fairness process.

Notwithstanding this shift in emphasis, further lines of inquiry continued to emerge. By the end of the reporting period, the Inquiry had commenced issuing procedural fairness notices to potentially affected persons. These notices advised such persons about potential adverse findings under consideration.

The Inquiry conducted a further 159 witness interviews during the reporting period. This brought the number of witness interviews since the Inquiry's commencement in May 2016 to a total of 497.

Last year's report included information that the Inquiry had identified and was inquiring into more than 55 separate incidents or issues. By the end of June 2020, this number had increased by five to 60 separate incidents or issues, covering a range of possible breaches of the Law of Armed Conflict. As reported in the IGADF Annual Report for 2018–19, the incidents and issues under inquiry predominantly relate to the unlawful killing of persons who were non-combatants or were no longer combatants.

The Inquiry is also examining incidents relevant to the organisational, operational and cultural environment which enabled the alleged Law of Armed Conflict breaches to occur.

The Inquiry is not focused on decisions made during the 'heat of battle'. Rather, its focus is on the treatment of persons who were clearly non-combatants, or who were no longer combatants.

The time frame for the Inquiry continues to be influenced by a number of factors. These include 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 complexity and breadth of this inquiry should not be underestimated. It is worth reiterating the challenges faced by the inquiry team that were mentioned in the last IGADF report.

The initial impetus for the inquiry was vague rumours of serious wrongdoing by some Special Forces soldiers, dating from 2005. The fact that the rumours were about events that occurred more than 10 years previously has contributed to the length of the inquiry process. It has been necessary to find out the content of each rumour, interview many witnesses and review records in order to ascertain whether the rumour has any substance.

In addition, it has taken years for some members of the Special Forces community to develop enough trust in the inquiry—as well as in the genuineness of Defence senior leadership's desire to determine the validity of these rumours—before they have been willing to make disclosures to the inquiry.

As the confidence and trust of these Special Forces community members have developed, the number of disclosures made to the inquiry has increased. This has resulted in new evidence which has led to additional lines of inquiry or reinforced existing lines of inquiry. It is partly for these reasons that new lines of inquiry have continued to emerge throughout the course of the inquiry.

At the conclusion of the Inquiry, IGADF will provide a report to the CDF for consideration, including what further action may be warranted.

Support to persons involved in the Inquiry

Throughout the reporting period there has been substantial effort to ensure that all persons involved in the Inquiry were provided with relevant information on accessing legal assistance and welfare support services.

The Inquiry engaged an additional four experienced ADF members to act as Witness Liaison Officers. Their role is to assist witnesses, and where requested, their family members, by providing information on a range of available legal, psychological, medical, and pastoral and social work support services. The Office of the IGADF arranged appropriate additional training – including accidental counsellor training – to equip these Witness Liaison Officers for their roles.

The IGADF continues to encourage persons involved in the inquiry to seek support and assistance as required.

Details of welfare support services are available at the following link: <https://afghanistaninquiry.defence.gov.au/welfare-support>.

DIRECTORATE OF INQUIRIES AND INVESTIGATIONS

The Directorate of Inquiries and Investigations (DII) promotes fairness and transparency in the ADF through inquiring into, or investigating, matters concerning the military justice system, as well as through the investigation of professional standards complaints relating to the conduct of Military Police.

Inquiries are conducted under the provisions of the Defence Act and the Inspector-General of the Australian Defence Force Regulation. This legislation provides for inquiries and investigations to occur at the direction of the Minister for Defence, the CDF, or the IGADF. Submissions can also be accepted for assessment from members of the public, organisations, Australian Public Service staff and current and former ADF members.

The IGADF receives submissions on a broad range of matters including unacceptable behaviour, administrative mismanagement, technical policing issues and health care complaints. While findings and recommendations from IGADF inquiries are not legally binding on Defence, in practice, Defence decision-makers usually rely upon the findings and implement any recommendations.

Submissions

As demonstrated over previous reporting periods, submissions continue to be lengthy and complex. IGADF takes an agile approach to the management of the assessment and decision-making process.

When IGADF receives a military justice submission, it is reviewed and assessed by a case officer to determine the best way to resolve the complaint. Complaints are resolved at the lowest level where possible including, where appropriate, referral to another area of the Department for further action.

Of the matters received by IGADF, around 30 per cent proceed to a formal inquiry, while the majority are resolved through the assessment process, with a small number referred to another area for resolution.

Vulnerable complainants

IGADF acknowledges the potential impact an inquiry or investigation process can have on a complainant, particularly those with pre-existing health conditions. The Office seeks to support complainants through identifying any particular requirements early, and remaining focused on achieving procedurally fair and timely outcomes.

IGADF staff are able to recognise and support complainants' needs, including through linking complainants to the welfare support services available inside and outside the Department.

Inquiry caseload

In the 2019–20 reporting period, IGADF received 66 new military justice submissions, which was comparable to the 65 submissions received and reported in the previous year.

Despite challenges in the daily operations of the Office in the second half of the reporting period posed by COVID-19, IGADF continued to resolve matters relatively promptly, with 73 submissions finalised during the reporting period, 37 of which were received in previous reporting periods. As at 30 June 2020, 30 submissions remained open.

Notification of inquiry outcomes

IGADF recognises that effective communication of the reasons for decisions allows the complainant to understand how a decision was reached, and improves confidence in the military justice system. For this reason, IGADF usually provides complainants with detailed information about how their complaint has been managed and assessed, to the extent permitted by privacy law. This approach has achieved a reduction in the number of complainants seeking to have their matters reviewed by external bodies.

COVID-19 lessons learned

The COVID-19 pandemic resulted in IGADF inquiry and investigation staff relocating to home-based work, and affected the ability to conduct interviews in person. IGADF implemented alternative arrangements to enable inquiries to continue wherever

possible – using video and teleconferencing methods. While some matters could not be completed without providing respondents the opportunity to be interviewed in person, many matters were able to progress and this technology will continue to be used, where possible.

Throughout this period, IGADF was cognisant of a greater level of overall stress in the Australian community, including IGADF staff. This was due to the COVID-19 pandemic and an effect of the summer bushfires. Because of these stressors, IGADF ensured there was additional focus on the wellbeing of complainants, witnesses and staff.

Increasing involvement of Defence APS employees in IGADF inquiry processes

An inevitable consequence of workforce integration as part of *One Defence* has been that Defence APS employees are increasingly involved as decision makers in administrative aspects of the military justice system. This includes where APS supervisors handle complaints from or take adverse administrative action against their ADF subordinates. Such decisions fall within IGADF's jurisdiction.

Another consequence of workforce integration is that Defence APS employees are also increasingly involved in IGADF processes as complainants, in circumstances where their supervisors are ADF members.

Historically there has been a lack of awareness in the Defence APS workforce about how they might be asked to assist an IGADF inquiry or complaint handling process. Ongoing work to educate the Defence workforce includes developing, in consultation with Defence People Group, an IGADF fact sheet to inform new Defence employees about IGADF's role and function, as well as how they might assist IGADF during their Defence careers. This is similar to information about relevant regulatory bodies which is provided to officials who work in other regulated fields such as intelligence and taxation.

Defence People Group also supported IGADF to start developing other support arrangements – including welfare support – for Defence APS employees who assist an IGADF inquiry or complaint handling process.

ADF members are entitled to free legal assistance from Reserve legal officers whenever they are under investigation or inquiry; Defence APS employees are not. When appropriate during an inquiry, IGADF tries to ensure the availability of legal assistance to any potentially affected person regardless of their employment category. While a requirement for legal support is relatively uncommon, IGADF and Defence Legal have refined the process to arrange this support for any potentially affected person who is an APS employee.

Simplified inquiry paperwork

IGADF has reduced the amount of paperwork witnesses receive and work is ongoing to reduce its complexity. Information witnesses receive now places greater emphasis on available welfare and other support avenues. Following an inquiry, IGADF gives all affected persons information about where to complain if they are dissatisfied with the inquiry or complaint handling process.

Military Police professional standards

All complaints Defence receives alleging failures in Military Police professional standards are recorded and assessed by IGADF.

During 2019–20, IGADF received 25 complaints relating to Military Police professional standards. This was a slight increase from 24 in the previous reporting period. Of the complaints that were received, 11 were investigated as disciplinary matters; seven were considered administratively, and a further seven complaints were not investigated following their assessment. At the end of the reporting period, seven complaints remained open.

Following assessment, and where a breach of the Military Police professional standards was established, IGADF recommended disciplinary action in two cases and adverse administrative action in four cases. The remaining cases related to minor breaches where administrative action had already been taken at the unit level, or administrative action was not warranted.

The timeliness of professional standards assessments was affected by the limitations to travel that were in place during the COVID-19 pandemic, however, alternative methods were implemented to allow this work to continue, including video and teleconferencing.

Introduction of the new 'fit and proper person' test

With the introduction of CDF Directive 25/2019 - *Military Police Professional Standards Framework: A Military Police Code of Conduct and Management of Military Police Professional Standards Matters* in November 2019, each Military Police professional standards assessment now incorporates a determination of whether the Military Police member is a 'fit and proper person'. The assessment is intended to inform and assist Commanders and the Services when considering affected Military Police persons' future career management.

DIRECTORATE OF MILITARY JUSTICE PERFORMANCE REVIEW

The Directorate of Military Justice Performance Review (DMJPR) is responsible for conducting performance reviews of the military justice system and providing statistical data on military justice activity in the ADF.

An important aim of the ADF's military justice arrangements is to achieve an appropriate balance between commanders' maintenance and enforcement of discipline on the one hand, and the protection of ADF members' rights on the other.

IGADF military justice performance audits of ADF units – including ships, battalions and squadrons – provide an objective examination of the application of military justice processes at unit level. IGADF audits are independent of the ADF chain of command.

The IGADF audit program assesses an ADF unit's compliance with relevant military justice law and policy. It provides an avenue by which failures and flaws in the military justice system can be identified so the cause of any injustice – systemic or otherwise – may be remedied. The audit program also benefits the ADF and ADF members by: ensuring units improve military justice processes and practices; promoting 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.

IGADF aims to conduct approximately 60 military justice performance audits each financial year, representing around 13 per cent of all ADF units. ADF units are routinely selected to be audited approximately every four to five years; initial training establishments – including officer and recruit schools – are audited more frequently. On occasion, a higher Headquarters, or the relevant Commanding Officer, may request a particular unit be audited.

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

The audit involves an audit team visiting the ADF unit to conduct a combination of spot-checks of available records, and face-to-face discussions with unit ADF personnel. In this way, the IGADF audit program not only monitors the health and effectiveness of the military justice system at each ADF unit but also gives a voice to ADF members across all rank groups through focus group discussions.

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 knowledge of the military justice system, and to gain an understanding of how each rank level perceives military justice is being implemented at the unit.

The audit report may contain recommended corrective actions for the unit to implement to ensure compliance with law or policy and suggested improvements which are representative of best practices the unit may consider implementing.

The most common findings from the audits conducted during 2019–20 were failures to comply with policy. All units involved were offered remedial assistance at the time of the audit and the relevant recommended corrective actions and suggested improvements were recorded formally in the audit reports.

Military justice performance audit program

COVID-19 travel restrictions resulted in suspension of the military justice performance audit program in March 2020. As a consequence, only 39 military justice performance audits (Navy nine, Army 18, Air Force 11 and Joint one) were conducted during the reporting period. This represents a decrease of around 37 per cent compared with the 62 audits conducted in 2018–19 period.

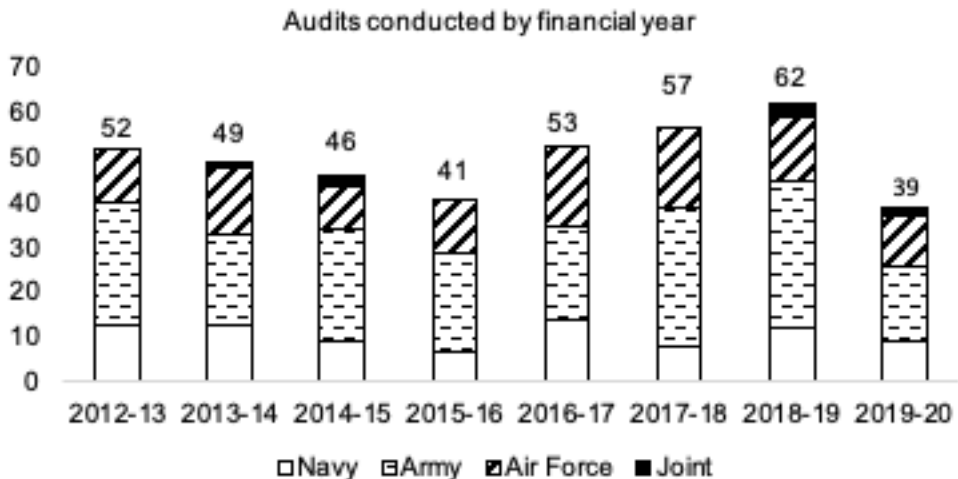
In addition, 19 focus group only activities (Navy five, Army eight, Air Force two and Joint four) were conducted during 2019–20. These were typically held at sub-units whose higher unit headquarters was subject to a full military justice performance audit.

After the introduction of COVID-19 travel restrictions in March 2020, the remaining audit schedule for 2019–20 was postponed.

During 2019–20, there were two occasions where auditors determined significant or serious compliance breaches of military justice legal or policy requirements were present in the units audited.

DMJPR determined the material deficiencies found during these audits had the potential to either impact individual members' rights, or were indicative of a systemic break down in military justice procedures in the units involved. Both units will be subjected to re-audit within 12 months.

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

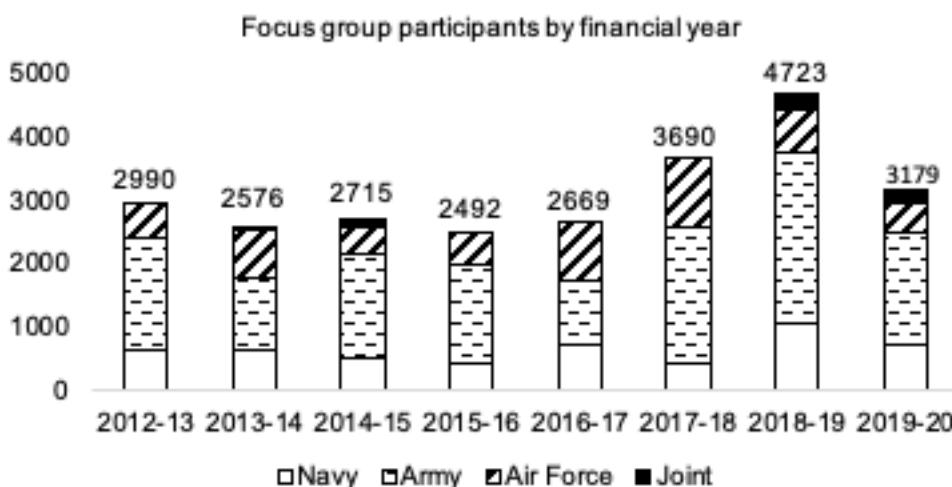


IGADF audit reports made a total of 223 recommendations (Navy 34, Army 119, Air Force 69 and Joint 1) during the course of the audit program in 2019–20. There were an additional 215 suggestions (Navy 37, Army 121, Air Force 52 and Joint 5) provided to ADF units. Continuing recent trends, common shortfalls or areas for improvement for units with compliance breaches in 2019–20 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.

During the conduct of military justice performance audits in the reporting period, 3179 ADF personnel (Navy 713, Army 1794, Air Force 475 and Joint 197) participated in focus group discussions.

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



Focus group survey outcomes

A military justice survey is administered to each focus group participant to gauge their perceptions about the military justice system and the effectiveness of this system at their unit. An analysis of the survey responses is highlighted below and provides a useful indication of the participants' perceptions.

Responses to the focus group survey in 2019–20 showed:

- a. 78 per cent of participants believed the discipline process is fairly and consistently applied
- b. 83 per cent of participants believed the DFDA is an effective tool for the maintenance of discipline

- c. 57 per cent of participants believed they receive adequate discipline training to allow the member to discharge their DFDA responsibilities
- d. 68 per cent of participants believed complaints made to their chain of command were dealt with fairly, promptly and impartially
- e. 80 per cent of participants believed their unit would treat them fairly and impartially if they were the subject of an administrative inquiry
- f. 90 per cent of respondents understood the concept of the 'right to be heard' or the 'right of reply', otherwise known as procedural fairness
- g. 21 per cent of participants believed adverse administrative action procedures take too long
- h. 79 per cent of participants had confidence in their chain of command to resolve complaints
- i. 64 per cent of participants believed their unit maintained a balance between the rights of complainants and the rights of respondents
- j. 14 per cent of participants believed they had experienced unacceptable behaviour at their unit
- k. 86 per cent of participants believed appropriate action would be taken if they reported an incident of unacceptable behaviour
- l. 87 per cent of participants knew where to obtain advice or information on unacceptable behaviour
- m. 73 per cent of participants believed all ranks would be treated equally under the military justice system
- n. 77 per cent of participants believed all genders would be treated equitably under the military justice system
- o. 48 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. 73 per cent of respondents believed morale was good

DIRECTORATE OF SELECT INCIDENT REVIEW

The Directorate of Select Incident Review (DSIR) conducts inquiries into the death of an ADF member – where the death appears to have arisen out of, or in the course of, the member's service in the ADF. A report is provided to the CDF.

This role is undertaken in accordance with section 5(a) of the *Inspector General of the Australian Defence Force Regulation 2016*.

This function provides assurance to the CDF, Government and the public that Defence is responding appropriately to service-related deaths.

Death inquiry process

After the relevant Service notifies IGADF an ADF member's death, DSIR staff collate information for assessment. The IGADF writes to each deceased ADF member's next-of-kin to inform them IGADF will be conducting inquiries into the circumstances of death. That correspondence also informs the next-of-kin the inquiry will be conducted independently of the chain of command, and invites them to contribute information they believe may be relevant to the inquiry.

Depending on the circumstances of the death, the inquiry process may be a desktop assessment of documentary evidence. In more complex cases, including any suicide that appears to be service-related, the inquiry will usually be a more formal process in which the IGADF issues directions and witnesses are called to give evidence.

At the conclusion of an inquiry the IGADF provides a report to the CDF explaining the circumstances of the death; whether an ADF member's death related to their service; and whether or not Defence policies and procedures have been followed.

Where necessary, the report will evaluate whether relevant policies and procedures are suitable. A report may also make recommendations about how any policies or procedures might be improved.

DSIR will engage and consult with a number of internal and external organisations. These include Defence Community Organisation, relevant Service headquarters, State and Territory police and coroners, Department of Veteran Affairs, Comcare, State and Territory Registries of Births, Deaths and Marriages, and other subject matter experts.

Where necessary, DSIR can use coercive powers to obtain information. Experiences to date have shown that a number of external agencies prefer to be compelled to provide evidence, as it provides them legal authority and protection for the release of information. An additional benefit is that evidence can be shared among agencies, including IGADF. This reduces the number of occasions on which witnesses to a death are required to give evidence and thereby re-live a distressing experience.

During the course of an inquiry, IGADF staff endeavour to take the utmost care when engaging with witnesses and the family of deceased ADF members to reduce any additional grief or stress from the inquiry process. In some cases, DSIR will request the Director of Defence Counsel Services appoint a reserve legal officer to liaise with the next-of-kin and provide legal assistance in the interests of the deceased.

Service death inquiries

In 2019–20, IGADF received notification of, and commenced inquiries into, 44 deaths of ADF members.

In 2019–20, IGADF finalised 28 inquiries into deaths in service; 15 related to deaths that occurred in previous years with the remaining 13 deaths occurring in this reporting period.

Of those 28 deaths, the causes of death were:

- 6 (21.4 per cent) suicide
- 6 (21.4 per cent) accidents, none of which appeared to be related to the deceased's ADF service
- 16 (57.1 per cent) illness

National Commissioner for Defence and Veteran Suicide Prevention

On 5 February 2020, Prime Minister, the Hon Scott Morrison MP, announced the creation of the National Commissioner for Defence and Veteran Suicide Prevention (National Commissioner) as an independent statutory office holder within the Attorney-General's Department.

Since the Government's announcement, DSIR on behalf of IGADF has engaged with key Defence and Government stakeholders in preparation for the National Commissioner's independent review of Defence and veteran suicides between 2001 and 2018.

Following the National Commissioner's appointment, IGADF will continue to inquire into suicides of ADF members. In doing so, IGADF will complement and support the role and functions of the National Commissioner to support the prevention of future deaths by suicide.

DIRECTORATE OF MILITARY REDRESS AND REVIEW

The Directorate of Military Redress and Review (DMRR) considers Redress of Grievances, known as 'complaints', submitted by serving members of the ADF. A complaint must be related to a decision, an act or omission which relates specifically to the member's ADF service.

Defence Regulation 2016 mandates that ADF members submit their complaint to their Commanding Officer to initiate the process.

DMRR has set up a liaison staff member for each of three Services, who primarily provide general guidance to commanding officers on the most appropriate means by which to consider their member's complaint.

During 2019–20, DMRR designed and implemented streamlined administrative mechanisms to assist commanding officers to resolve complaints for their members earlier. These administrative mechanisms have assisted commanding officers and their staffs to gain confidence in the process, and to develop a better understanding of how *Defence Regulation 2016* operates.

These new mechanisms should serve to reinforce ADF members' confidence that commanding officers are appropriately handling, considering and resolving their complaints.

Outreach

DMRR on behalf of IGADF continued to provide information briefs to Commanding Officer and Executive Officer courses, both in person, and more recently during the COVID-19 pandemic, via webinars.

DMRR continued to refine these information briefs to ensure they remain clear and practical for those who may be involved in managing the complaint process.

Through this, newly appointed commanding officers and their support staff have gained a greater level of confidence and effectiveness in managing those complaints submitted by their members. This is demonstrated in better quality decision making at unit level, resulting in ADF members overall lodging fewer complaints under the statutory Redress of Grievance scheme.

Caseload

On 1 July 2019 there were 89 open Redress of Grievance complaints. ADF members submitted 318 new complaints during 2019–20, which represents a 12 per cent decrease from the 360 complaints submitted in 2018–19.

The number of complaints Navy members submitted decreased by 17 per cent from 84 in 2018–19 to 70. Similarly the number of complaints from Army members decreased by 19 per cent from 195 to 158 during the same period; Air Force experienced an increase of 11 per cent from 81 in 2018–19 to 90 in 2019–20.

Natural disasters and the start of the COVID-19 pandemic in Australia may have had an impact on the number of Redress of Grievance complaint submissions. In the first quarter of 2020, there was a 40 per cent decrease in complaints submitted, compared to the same period in 2019.

Over the course of this reporting period, 336 complaints (Navy 76; Army 170 and Air Force 90) were finalised.

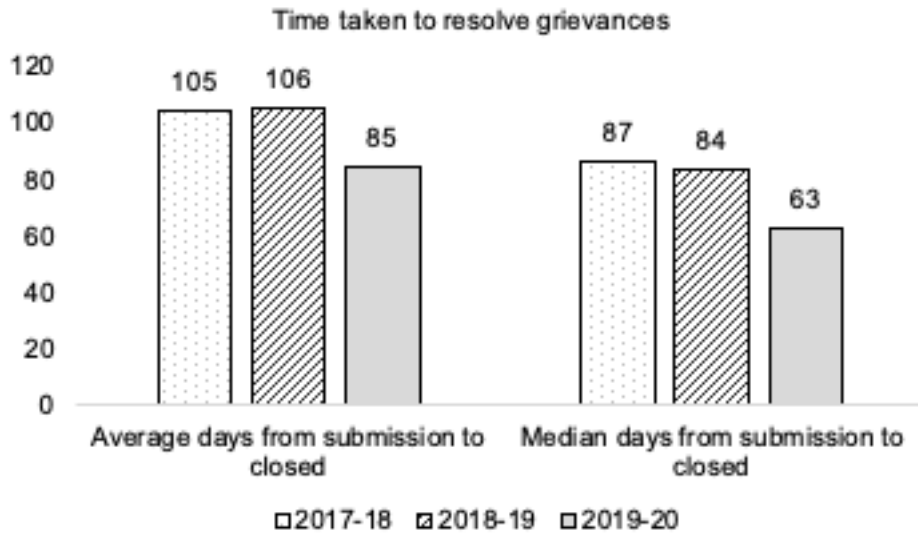
Other statistics

In 2019–20, and in keeping with trends over the past few reporting periods, the highest proportion of complaints across the ADF concerned members' careers (32 per cent), termination of service (31 per cent) and entitlements (23 per cent).

Of the 336 complaints closed in 2019–20:

- 178 (53 per cent) were found not to be substantiated
- 37 (11 per cent) were withdrawn by members
- 54 (16 per cent) were outside jurisdiction of the Redress of Grievance system
- 15 (four per cent) were partially upheld
- 36 (11 per cent) were fully upheld
- 16 (five per cent) were resolved administratively outside the Redress of Grievance system

The average days taken to close all complaints closed in 2019–20 was 85 days and the median days was 63 days.



DIRECTORATE OF LEGAL REVIEW

The Directorate of Legal Review (DLR) provides internal legal advice to the IGADF Executive and Directorates. DLR also provides advice on proposed changes to military justice.

DLR has responsibility for:

- a. reviewing proposed legislative and policy changes in military justice and advising on potential impacts
- b. coordinating legal advice to support IGADF review and inquiry functions and protect IGADF interests
- c. providing current military justice operational perspective to Directorates and the Executive
- d. providing legal advice in relation to investigations, inquiries, sanctions, redress of grievance and other complaints

Activities

In 2019–20 DLR coordinated the development of a position paper and Ministerial submissions for IGADF legislative reform. The proposed reforms will reinforce the integrity of IGADF processes.

DLR developed proposals for a dedicated IGADF ADF reserve legal officer pool. The pool will strengthen ADF reserve legal officer support to the IGADF by ensuring the continued availability of high quality legal advice and support.

DLR also provided or coordinated advice on litigation proceedings.

INFORMATION TRACKING SYSTEMS

The IGADF continues to *sponsor two information tracking systems* that are crucial in providing and tracking data for analysis of the health and effectiveness of the military justice system. 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, management tool for the tracking and recording of statutory administrative inquiries. The ADFAITS system was developed by the IGADF in order to satisfy user requirements, and provides a repository of information relating to administrative inquiries conducted across the ADF.

ADFAITS currently tracks data of varying quality and completeness associated with administrative inquiries. During the reporting period there were six new Army related administrative inquiries added to ADFAITS. There were no new Air Force or Navy related administrative inquiries added during this period.

As part of a personnel database which records and tracks ADF members' individual conduct, CRTS has become an integral tool that contributes towards effective career management and the maintenance of discipline throughout the ADF.

CRTS is track and record a range of military justice processes, such as ADF members' disciplinary convictions and administrative sanctions.

During the reporting period, IGADF staff, in consultation with Service representatives, undertook considerable improvements to the CRTS system. These improvements allow for better capturing of data, and improved functionality for users as outlined below.

Discipline Trial Review Phase. The PMKeyS/Defence One discipline functionality was enhanced to allow Defence to monitor the timeliness of discipline matters. The modifications require CRTS users at unit level to enter additional information related to the timeliness of post-trial administration for discipline convictions. The additional data included the legal review phase and the time taken to notify convicted ADF members of automatic review decisions.

Summary Discipline Manual 2020. Defence released the *Summary Discipline Manual* on 09 March 2020 which introduced changes to the summary discipline trial process. Changes include providing for a trial to be adjourned if an accused person pleads not guilty, to allow the unit to conduct a secondary and more detailed investigation of the alleged incident. CRTS was modified to reflect these changes to the discipline trial process.

Recording Non-Imposed Administrative Sanctions. During the reporting period work began to modify the recording, and management of, administrative sanctions on CRTS. The proposed enhancements included recording an Imposing Authority's decision not to impose a sanction. This allows Command to have a comprehensive

record of not only those administrative sanctions that were imposed but also those proposed sanctions which Command instigated but ultimately did not impose.

Concurrently, a comprehensive review was conducted into the functionality of the PMKeyS/Defence One system, and the complexity in recording an administrative sanction. It was noted that the current processes were causing some confusion for CRTS users. In response, IGADF recommended reducing the number of steps required to be entered and recorded for an administrative sanction to assist with more accurate and timely data entry.

Case Management System

During the reporting period IGADF staff continued to work with Audit and Fraud Control Branch on the new Case Management System (CMS) project. A single enterprise solution is crucial to enable Defence to manage and monitor incidents and complaints, including not only unacceptable behaviour and sexual misconduct but also incidents occurring on operational deployments.

The CMS will replace a number of existing information tracking systems (including CRTS and ADFAITS) to deliver a modern, single system more suited to cope with the end-to-end management of incidents and cases in Defence. Many of these existing systems are outdated and stove-piped, making it difficult to aggregate information.

CMS will provide Defence leadership greater visibility of the totality of incidents and increased assurance that appropriate action was being or had been taken. It should also enable accurate enterprise-wide reporting and trend data analysis.

As a key stakeholder and end user of the CMS, IGADF staff will continue to work with, and provide support to, the Audit and Fraud Control branch until the new system is released.

CONFERENCES, VISITS AND OTHER ACTIVITIES

Commonwealth Government Inspectors-General

On 20 February 2020 the Inspector-General of Intelligence and Security hosted the third annual meeting of the Commonwealth Government Inspectors-General in Canberra. This annual meeting provides an opportunity for the Commonwealth Inspectors-General to meet and share their experiences in order to enhance governance.

While each Inspector-General has unique functions and responsibilities, previous meetings have identified many common issues including managing independence, innovation within small agencies and managing large inquiries.

The meetings also provide participants with insights into alternative approaches to common challenges. The themes of this year's meeting included:

- 'Whistleblowing', including balancing the protection of individuals and providing procedural fairness
- determining fairness and propriety

International conference of ombuds institutions for armed forces

The 11th International Conference of Ombuds Institutions for the Armed Forces (11ICOAF) was held from 27 to 29 October 2019, in Sarajevo, Bosnia and Herzegovina. This conference was attended by the IGADF and DMJPR.

The conference is an annual event, with the 11th conference marking a decade since the first of these international conferences was held in Berlin in 2009.

11ICOAF focused on the topic of 'Building Resilient and Sustainable Ombuds Institutions'. Topics included how Ombuds institutions are able to develop stronger internal capabilities to withstand possible threats, and how they are able to adapt to a changing, yet challenging environment.

When attending the 10th ICOAF conference in 2018, the IGADF and the Commonwealth Ombudsman's representative held initial discussions about the potential for Australia to co-host the 13ICOAF in 2021. During the reporting period further planning was undertaken for Australia to 13ICOAF conference in Sydney during October 2021. Planning is underway for the conference to be presented in both physical and virtual formats.

Military justice seminars, training and forums

Throughout the reporting period, the IGADF and members of his staff responded to numerous invitations to attend military justice seminars and forums to present on the role of the Office of the IGADF or on a broad range of military justice topics.

In addition, the IGADF presented on ADF training courses including postgraduate law courses, command courses and reserve legal officer training activities.

CONCLUSION

Despite domestic natural disasters and the global pandemic, the operating tempo in the Office of IGADF remained consistently high in 2019–20, continuing the trend experienced over recent reporting periods.

The caseload was characterised by an increase in the number of submissions received for inquiry and in the number of ADF death notifications. Significant progress was made in further reducing the mean and median timeframes to deal with complaints lodged under the statutory Redress of Grievance scheme.

Moving forward, the Office of the IGADF will continue to develop innovative solutions and evolve mission delivery to provide impartial, fair and independent decisions and oversight of matters concerning the ADF.

At the same time, the Office of the IGADF remains true to its original mission of providing CDF ongoing oversight of effectiveness of the military justice system.

I remain satisfied with the rate of effort achieved by my Office, particularly during the challenges in the last quarter of the reporting period.

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GLOSSARY OF ACRONYMS AND ABBREVIATIONS

Australian Defence Force	ADF
ADF Administrative Inquiry Tracking System	ADFAITS
ADF Investigative Service	ADFIS
Australian Public Service	APS
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

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ANNEX A TO

IGADF ANNUAL REPORT

01 JULY 2019 TO 30 JUNE 2020

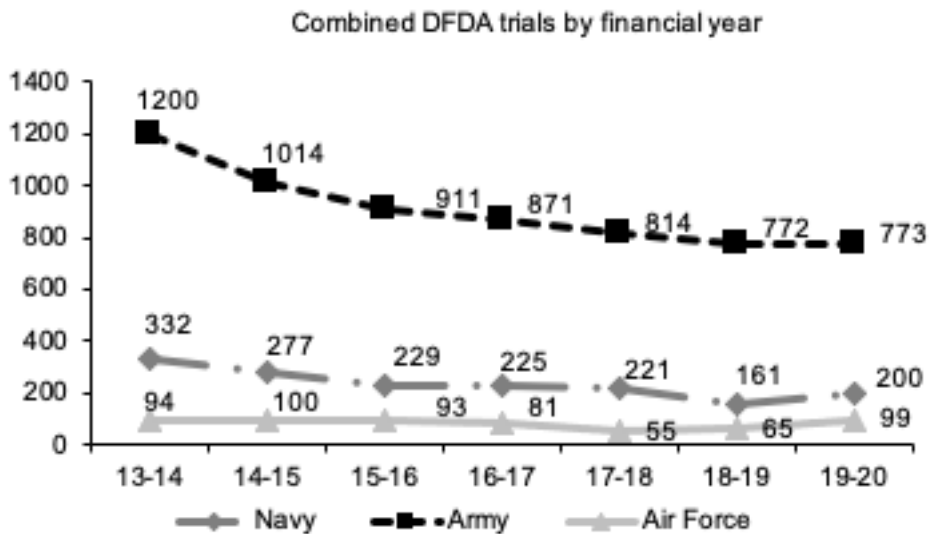
MILITARY JUSTICE STATISTICS

Discipline statistics

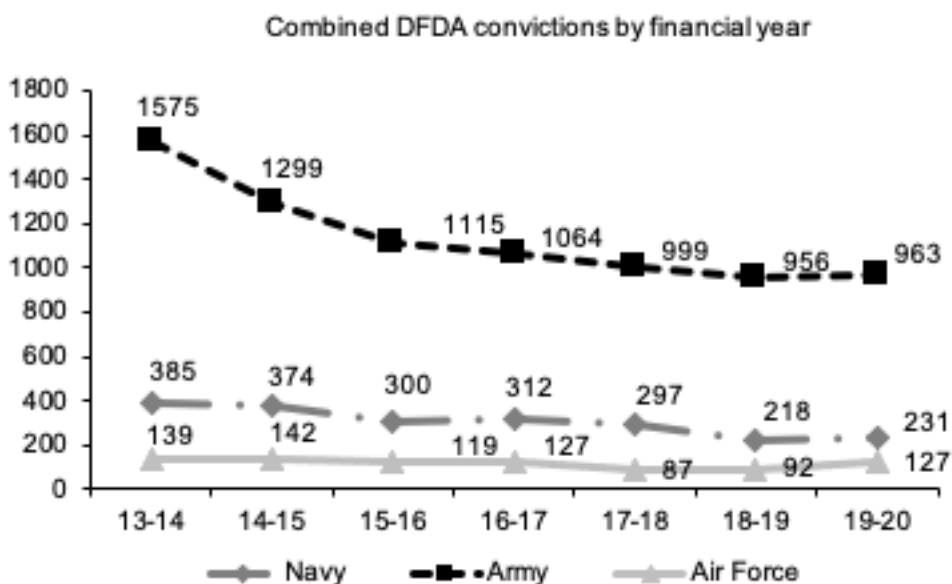
Recent trends have shown a steady decline in the overall number of disciplinary trials (courts martial, Defence Force magistrate trials and summary trials) over the past five reporting periods. This trend did not continue in 2019–20.

In 2019–20, there were a total of 1072 trials (Navy 200, Army 773 and Air Force 99), equating to an overall increase of seven per cent in comparison to the 1000 trials (Navy 162, Army 772 and Air Force 66) recorded in 2018–19.

Similarly, there was a four per cent increase in the total number of convictions recorded across the ADF. In 2019–20, there were 1321¹ (Navy 231, Army 963 and Air Force 127) convictions recorded. Recent trial and conviction trends are illustrated in the below graphs.



¹ Discipline convictions usually outnumber trials because charge sheets often include more than one charge.



During the reporting period, the number of court martial and Defence Force magistrate trials increased by an extraordinary 47 per cent, from 30 such trials in 2018–19 to 44 in 2019–20.

At the same time discipline trials at the summary level increased by six per cent, from 970 (Navy 153, Army 757 and Air Force 60) in 2018–19 to 1028 (Navy 182, Army 752 and Air Force 94). The number of convictions, from summary level trials, across the three Services increased by five per cent from 1200 (Navy 198, Army 925 and Air Force 77) in 2018–19 to 1262 (Navy 211, Army 930 and Air Force 121).

The number of not guilty findings, and convictions quashed on automatic review, for both summary and superior level trials increased by 12 per cent in this reporting period. In 2019–20, there were 106 (Navy 33, Army 61 and Air Force 12) not guilty verdicts and 71 (Navy 12, Army 54 and Air Force 5) quashed convictions recorded.

In comparison, in 2018–19 there was a combined total of 67 not guilty verdicts, and 42 quashed convictions recorded. These results continue to indicate a strong level of fairness within the ADF discipline system.

Alcohol conviction statistics

There were 170 disciplinary convictions recorded where the misuse of alcohol was a contributing factor (excluding alcohol misuse while on deployment),

This equates to a 16 per cent increase from the 146 recorded in 2018–19. Navy accounted for 48 (28 per cent), Army 110 (64 per cent) and Air Force 12 (7 per cent).

A further 19 (Navy 6, Army 11 and Air Force 2) disciplinary convictions for alcohol-

related offending on deployment were recorded for the same period. This equates to a 45 per cent decrease when compared to the 34 recorded in 2018–19

Discipline infringement statistics

Disciplinary officer infringements continued to slightly decrease in 2019–20, continuing the recent trend from 2018–19. Overall there were 4195 (Navy 1649, Army 2149 and Air Force 397) recorded in 2019–20, equating to a three per cent reduction over the 4331 infringements recorded in 2018–19.

Administrative sanctions statistics

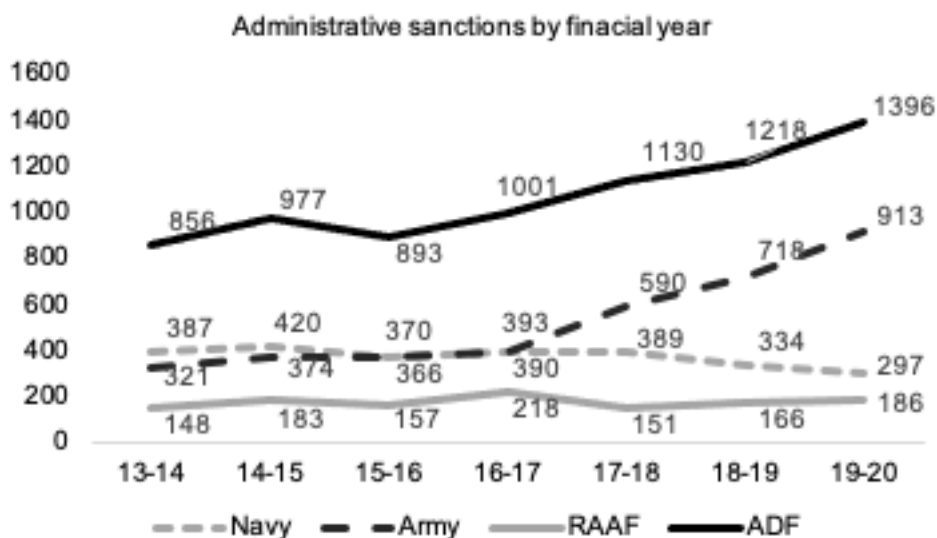
The administrative sanctions system protects the reputation of the ADF through targeting and correcting shortfalls in professional or acceptable behaviour, and in ADF members' performance and standards.

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 overall use of administrative sanctions continues to increase. During the reporting period a total of 1396 (Navy 297, Army 913 and Air Force 186) sanction were recorded, an increase of approximately 15 per cent from the 1218 sanctions recorded in 2018–19.

Army continues to record the highest use of administrative sanctions and accounts for 66 per cent of all sanctions imposed, while Navy accounts for 21 per cent and Air Force 13 per cent. The following graph highlights the trends in the use of administrative sanctions over the past 7 financial years.



Similar to previous reporting periods, the main reasons for the imposition of an administrative sanction in 2019–20 were; misuse of alcohol (152), civil offences (192), fitness test failure (495), personal qualities (165) and unsatisfactory conduct (858).

Warnings (570), counselling (386), termination of service (228), suspension from duty (105) and censures (62) account for 97 per cent of the 1396 sanctions imposed.

The remaining 45 (three per cent) of the sanctions imposed include reduction in rank, administrative posting, reprimand and removal from appointment.

Protection orders

The reporting of protection orders is a mandatory requirement for ADF members. In 2019–20, 37 protection orders were reported and recorded. Of those, nine (24 per cent) were issued against Navy members, 22 (59 per cent) against Army members, and six (16 per cent) against an Air Force member.

In addition, 13 (Navy three and Army 10) protection orders were extended during the same period.

Civil convictions

ADF member civil convictions decreased by five per cent, with 94 civil convictions recorded in 2019–20 compared with 99 in 2018–19. Since 2017–18 the number of civil convictions has decreased by 41 per cent.

The most common sentences were monetary fines (60) and the loss or suspension of motor vehicle licences (46).

