



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

*01 July 2020 to 30 June 2021*

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## **LETTER OF TRANSMITTAL**



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

**The Hon Peter Dutton MP**  
**Minister for Defence**  
Parliament House  
CANBERRA ACT 2600

Dear Minister

In accordance with section 110R of the *Defence Act* 1903, I am pleased to submit to you my Report on the operations of my office for the period 01 July 2020 to 30 June 2021.

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

26 November 2021

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# **INSPECTOR-GENERAL OF THE AUSTRALIAN DEFENCE FORCE**

## **REPORT FOR THE PERIOD**

**01 JULY 2020 TO 30 JUNE 2021**

### **PREAMBLE**

The Office of the Inspector-General of the Australian Defence Force (IGADF) was established in 2003, following Justice Burchett QC's inquiry into military justice arrangements in the Australian Defence Force. The position of IGADF is a statutory appointment under Part VIIIB of the *Defence Act 1903* (the Act), and sits outside the ordinary chain of command to ensure its independence.

Mr James Gaynor CSC was appointed as the IGADF by the Minister for Defence on 1 December 2016. The appointment is a five year term and was made in accordance with section 110E of the Act.

Section 110C of the Act and section 5 of the *Inspector-General of the Australian Defence Force Regulation 2016* define the IGADF's roles and functions. In essence, the role provides the Chief of the Defence Force (CDF) with an internal audit and review mechanism of the military justice system, and provides an avenue by which failures and flaws in the military justice system, or in matters concerning the ADF more broadly, can be identified, examined and ultimately remedied.

Originally, IGADF's role was to audit and review of the military justice system to identify, examine and recommend remedies for any failures. Since 2016 amendments to the statutory framework have enhanced the powers, functions and independence of the Office.

In addition to providing oversight of the health and effectiveness of the military justice system, including the conduct of Military Police and officials with specific roles within the military justice system, the IGADF inquires into the deaths of ADF members where their death appears to have arisen out of, or in the course of, their service. The IGADF also reviews complaints submitted by ADF members to their chain of command under the statutory redress of grievance complaint system.

The functions of the Office of the IGADF are prescribed as follows:

- 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 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.

Due to the integrated nature of the Defence workforce, matters affecting the ADF military justice system increasingly involve other components of the Defence workforce, including Defence APS employees and contractors. As a consequence, and while maintaining its military justice focus, the Office increasingly works collegially with other parts of Defence to address integrity-related matters involving ADF members together with the broader Defence workforce.

### **Vision, Mission and Values**

The Office of the IGADF's vision, mission and value statements ensure alignment across the broad functions of the office and its diverse and dynamic workforce.

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

## **MILITARY JUSTICE SYSTEM**

The military justice system is instrumental to a well-functioning military and provides ADF members with an Australian legal framework that applies during times of peace and armed conflict, both in Australia and overseas.

A fair and effective military justice system promotes good order and discipline and thereby enhances the operational effectiveness of the ADF.

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

The ADF 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 fact finding, administrative inquiries and investigations to establish the facts of an occurrence and make recommendations to remediate any 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**

The operating tempo in the Office of IGADF was higher during 2020-21 than that experienced in 2019-20, despite the ongoing uncertainty of the global pandemic.

The caseload was characterised by an unprecedented increase in the number of submissions (including referrals) to IGADF. The number of complaints submitted relating to possible breaches of Military Police professional standards also increased.

In addition, there was a significant increase in the number of military justice performance audits undertaken, despite almost a third of the scheduled audits being postponed due to COVID-19 restrictions.

The number of death notifications received by the Office of IGADF during 2020-21 was similar to those reported during the previous reporting period. Despite some public commentary during the reporting period, in the months following publication of the IGADF Afghanistan Inquiry Report, there were no suicides of currently-serving ADF members who had been witnesses in the Inquiry.

### **IGADF Afghanistan Inquiry**

On 29 October 2020 the IGADF Afghanistan Inquiry Report into rumours of serious misconduct by members of Australia's Special Forces in Afghanistan from 2005-2016 was completed.

IGADF staff provided technical and administrative support to the Inquiry team throughout the Inquiry. Following the Inquiry's completion, preparing the report for printing and publication as quickly as possible, and finalising other administrative aspects, was a whole-of-office endeavour.

The IGADF is very grateful to all IGADF staff for the dedication and commitment they demonstrated during this time in undertaking these tasks, and which made it possible for him to deliver the report to the Chief of the Defence Force on 6 November 2020, and for the report's publication on 19 November 2020.

The total cost of the Afghanistan Inquiry was \$7.243m. This included Army's reimbursement of the New South Wales Department of Justice under the *Employer Support Payment Scheme* to cover Major General Brereton's absence from the Supreme Court. Major General Brereton did not receive an Army Reserve salary during the Inquiry.

Since completion of the Inquiry, the Office of IGADF has been appropriately engaged with the Defence Afghanistan Inquiry Task Force during their consideration of implementation actions.

The Office of the IGADF has also been responsive to the Afghanistan Inquiry Implementation Oversight Panel, and has been appropriately engaged with the Special Counsel assisting the Office of the Special Investigator, which was established in November 2020, to consider criminal investigations arising from the IGADF Afghanistan Inquiry's findings.

During the reporting period the Office of IGADF also made submissions in legal proceedings to protect the integrity of IGADF inquiry processes.

In anticipation of these ongoing support requirements, a Post-Inquiry Coordination Cell was established within the Office to manage requests for information, external liaison and further referrals in connection with the IGADF Afghanistan Inquiry.

## **Submissions to IGADF**

During the past 12 months there was an increase of 75 per cent in the number of submissions (including referrals) to the Office of the IGADF, from 66 submissions in 2019-20 to 116 submissions for the 2020-2021 reporting period. The number of submissions for 2020-21 also represents an 81 per cent increase in submissions when compared to the longer term average of 64 submissions per year.

Despite challenges posed by COVID-19 in the daily operations of the Office of IGADF in the second half of the reporting period, the Office continued to resolve matters relatively promptly, with 88 submissions finalised during the reporting period. As at 30 June 2021, 30 submissions remained open.

During 2020-21, IGADF received 49 complaints relating to Military Police professional standards. This was a significant increase from 25 complaints the previous year. Of these, after assessment, four were investigated as disciplinary matters, and the remainder were dealt administratively.



## **Military justice audits**

Despite COVID-19 restrictions, 52 military justice performance audits were conducted in 2020-2021 (Navy 7, Army 21, Air Force 22 and Joint 2). This included re-audits of two units from the previous year. The number of audits conducted in 2020-21 represents an increase of around 38 per cent compared with the 39 audits conducted in 2019-20.

In addition, 12 focus group only activities were conducted during 2020-21. These were typically held in sub-units whose higher unit headquarters was subject to a full military justice performance audit.

Audit reports recommended a total of 347 corrective actions (Navy 26, Army 178, Air Force 136 and Joint 7) during the military justice audit program in 2020–21. In addition, the reports made a 402 suggestions (Navy 36, Army 178, Air Force 169 and Joint 19) to ADF units.

During the conduct of military justice performance audits in this reporting period, 3558 ADF members (Navy 240, Army 1844, Air Force 1272 and Joint 202) participated in focus group discussions.

## **Service death inquiries**

In 2020-21, the Office of IGADF received notification of, and commenced inquiries into, the death of 45 Defence Force members.

In addition to those notifications, in 2020-21, 17 inquiries into the deaths of Defence Force members were finalised. This number was lower than in previous years because of challenges associated with conducting sensitive inquiries during the global pandemic.

## **Redress of Grievance scheme**

Members of the ADF submitted 269 new complaints to their chain of command under the statutory Redress of Grievance scheme during 2020-21. This represents an approximate decrease of 15 per cent over the 318 complaints submitted in 2019-20.

During the reporting period, 288 complaints (Navy 66, Army 131 and Air Force 91) were finalised.

The average time taken to finalise complaints during the reporting period was 75 days.

## **STAFFING**

A professional, skilled and motivated workforce is key to enabling the IGADF to fulfil his statutory role.

Although the IGADF is a statutory office holder, the Office of the IGADF workforce is drawn from the Australian Public Service (APS) staff and the ADF members. The Office of the IGADF also uses contract arrangements, where specialist non-ongoing support is required.

During the 2020-2021 reporting period two Defence APS employees, who are reserve ADF members volunteered to render Continuous Full-Time Service in the Department of Defence. Another APS employee was seconded to the Australian Government's COVID-19 task force for much of this reporting period.

Like all workforces, the Office of the IGADF was affected by COVID. Much of the part-time workforce is spread across Australia and some individuals, particularly those who are Melbourne-based, were affected by lockdowns. The work of almost all IGADF staff members was affected by travel restrictions. During the reporting period particular attention was paid to supporting staff members' resilience and mental wellbeing.

Two ADF members filled two Directors' position in an acting capacity due to the long-term absences of the incumbents. They were not replaced, so two Directorates operated below optimal manning for a proportion of the reporting period.

Over the course of the past year, staffing numbers fluctuated due to staff turnover and change in the work requirements including completion of the IGADF Afghanistan Inquiry. As at 30 June 2021, the Office of the IGADF staffing totalled 82 people. This number does not include the Inspector-General. A breakdown of service and permanent/reserve status is provided in the table below.

<b>Service</b>	<b>Permanent head count</b>	<b>Reserve head count</b>
Navy	6	13
Army	4	18
Air Force	10	13
Australian Public Service	18	n/a
<b>Total</b>	<b>38</b>	<b>44</b>

#### **Office of the IGADF structure:**

The Office of the IGADF's organisational structure comprises six Directorates and is designed to support delivery of the IGADF's statutory roles, functions and responsibilities, and includes necessary administrative support. The Directorate of Business Management and Governance, which includes a Post-Inquiry Coordination Cell, was established as a new Directorate in the reporting period.

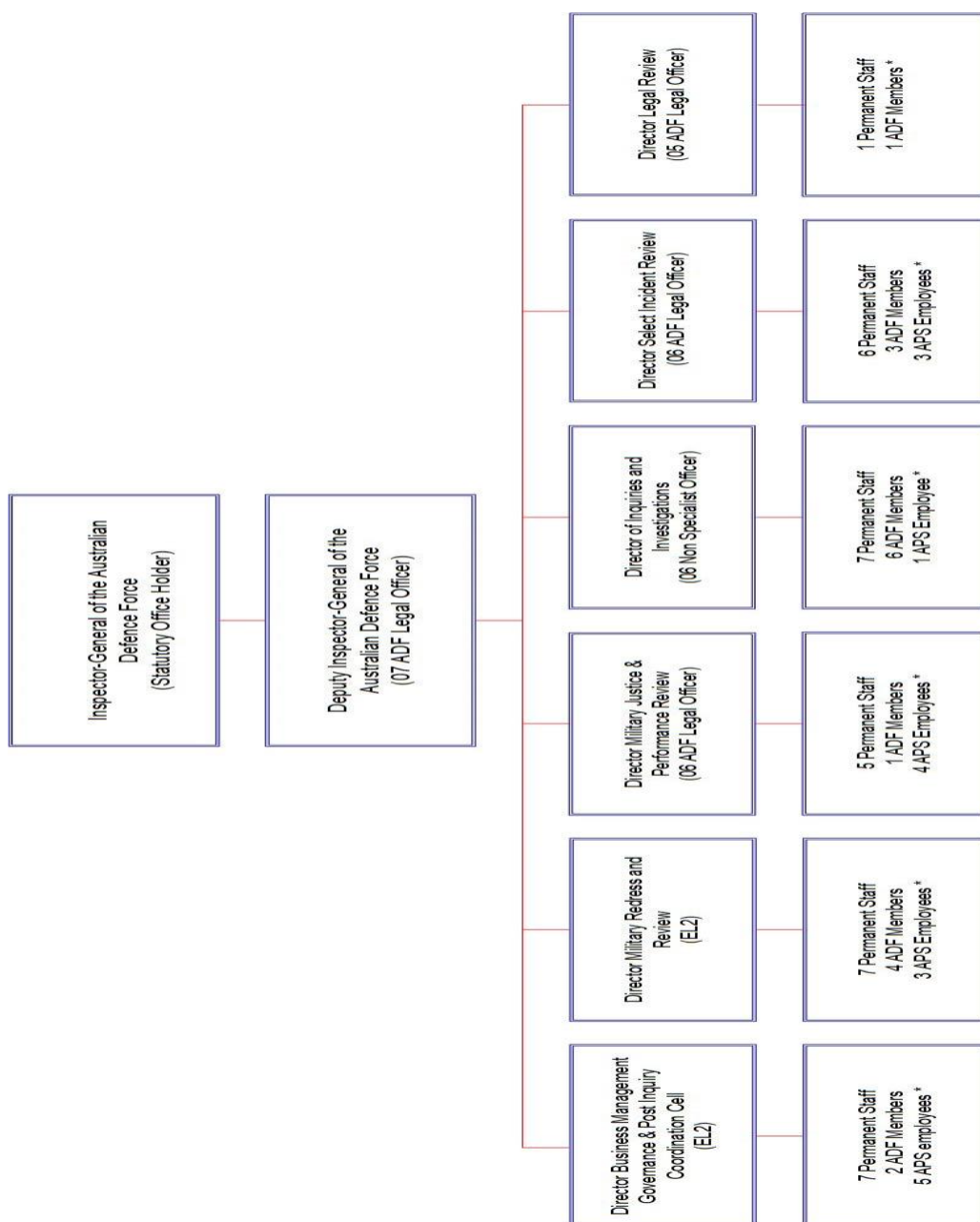
#### **Directorate of Business Management and Governance, and Post-Inquiry Coordination Cell**

The Directorate of Business Management and Governance is responsible for the business enabling functions of the Office of the IGADF including workforce management and personnel support, financial management, safety, security and governance arrangements.

In anticipation of requirements to support Defence and the Office of the Special Investigator, after completion of the IGADF Afghanistan Inquiry, a Post-Inquiry Coordination Cell was established to supplement the Directorate of Business Management and Governance.

Diagram 1

## Structure of the Office of the IGADF



\*Directorates are supported by ADF Reserve personnel including Legal and Non-Specialist Officers, and professional service providers.

Diagram 1 depicts the Office of the IGADF organisational structure.

## **Professional development**

Throughout the reporting period IGADF staff participated in a range of training and development opportunities in addition to annual mandatory training.

IGADF staff were able to participate in training organised by the Office of the IGADF, and training available through the Department of Defence and external organisations. Training focused on the conduct of inquiries, Freedom of Information, accidental counsellor, effective writing and employment-specific continuing professional development.

## **Professional service providers**

Professional service providers are engaged by the Office of the IGADF to provide specialist expertise and advice.

The professional service providers are engaged in accordance with Commonwealth procurement rules. Professional service contracts in excess of \$10 000 are published on the AusTender website, unless the contract is subject to a confidentiality arrangement or where publication would prejudice the conduct of an inquiry or investigation.

## **IGADF AFGHANISTAN INQUIRY**

On 29 October 2020, the IGADF Afghanistan Inquiry report into rumours of serious misconduct by members of Australia's Special Forces in Afghanistan from 2005-2016 was completed by Assistant IGADF Major General the Honourable Justice Paul Brereton AM RFD.

IGADF delivered the Inquiry report to the Chief of the Defence Force on 06 November 2020 in accordance with section 27(3) of the *Inspector-General of the Australian Defence Force Regulation 2016*.

In November 2020 a redacted version of parts 1 and 3 of the Report was published on the Defence Afghanistan inquiry website: <https://afghanistaninquiry.defence.gov.au/>.

As previously reported, the Inquiry was an administrative process, not a criminal investigation. As a CDF-directed Inquiry, the Inquiry had powers to compel the production of evidence from any person, similar to those of a Royal Commission.

The Inquiry was conducted in private because it involved matters of operational security, the need to ensure identities were protected, and for the protection of witnesses. Subsequently a non-publication order has been issued pursuant to section 21 of the *Inspector-General of the Australian Defence Force Regulation 2016* to continue to protect witness identities.

## **Post-Inquiry Coordination Cell**

Since the completion of the IGADF Afghanistan Inquiry a Post-Inquiry Coordination Cell has been established to address ongoing matters relating to the IGADF Afghanistan Inquiry. This includes engagement with the Defence Afghanistan Response Task Force, responding to requests for information, engagement with the

Independent Oversight Panel and support to the work of the Office of the Special Investigator.

### **Engagement with the Office of the Special Investigator**

In November 2020 the Government announced that a Special Investigator would be appointed to address the allegations described in the IGADF Afghanistan Inquiry report.

Since the Government's announcement that an Office of the Special Investigator would be established, the Office of the IGADF has participated in high-level discussions to assist with the identification of legal, welfare, security and other administrative considerations relevant to the IGADF Afghanistan Inquiry.

The Office of the IGADF has engaged with the Special Counsel assisting the Special Investigator to assist with understanding the legal principles involved in the conduct of the Inquiry and consideration of the use of inquiry material.

In May 2021 the IGADF authorised the disclosure of the Afghanistan Inquiry Report and Inquiry related information to the Special Counsel assisting the Special Investigator.

### **Support**

Throughout the reporting period and entirety of the Inquiry, substantial effort was taken to ensure that all persons involved or affected by the Inquiry were provided with relevant information on accessing legal assistance and welfare support services.

IGADF encourages those who need support and assistance to seek it.

Details of welfare support services are available at the following link:

<https://afghanistainquiry.defence.gov.au/welfare-support>.

## **DIRECTORATE OF INQUIRIES AND INVESTIGATIONS**

The Directorate of Inquiries and Investigations (DII) inquires into, or investigates, matters related to the military justice system, promoting fairness and transparency in the ADF military justice system. In addition, DII investigates complaints about the professional conduct and standards of Military Police members.

The Act and the *Inspector-General of the Australian Defence Force Regulation 2016* provide the framework under which IGADF inquiries are conducted. Inquiries and investigations can occur at the direction of the IGADF, the Chief of the Defence Force and the Minister for Defence. There were no Minister-directed inquiries during the reporting period.

Current and former ADF members, members of the public (including ADF family members), organisations, and Australian Public Service staff can make submissions directly to the IGADF.

Submissions received by the IGADF relate to a broad range of matters including unacceptable behaviour, administrative mismanagement, technical policing issues and health care complaints.

All submissions undergo a preliminary assessment process to determine the necessary level of further inquiry. Although the IGADF has no executive authority to change decisions, findings and recommendations from IGADF inquiries are in practice highly persuasive and Defence decision-makers usually rely upon the findings and implement recommendations.

## **Submissions**

The past 12 months saw a significant increase in submissions (including referrals) to the IGADF, almost doubling to 116 submissions for the 2020-2021 reporting period, compared to 66 submissions over the same period in 2019-2020. Many of the submissions related to events that had occurred before 2020. Some of the increase may be attributed to the relatively higher profile of the office as a result of the media reporting following the completion of the IGADF Afghanistan Inquiry. The significant increase in submissions has not been matched by an increase in staffing, and has therefore resulted in an increase in the average time taken to resolve each matter.

As noted over previous reporting periods, submissions continue to be lengthy and complex. A significant amount of resources have been committed to conducting detailed assessments of submissions. Each submission is reviewed and assessed by a case officer to determine the best way to resolve the complaint.

Not every complaint is well articulated, and Office of the IGADF case officers work closely with complainants to ensure that the complaint is properly understood, including the complainant's desired outcome. The focus of the Directorate on a detailed initial assessment means that wherever possible most matters can be resolved more quickly at a preliminary stage. Complaints are resolved at the lowest level where possible including, where appropriate, referral to Defence for further action.

## **Own-initiative inquiries**

The IGADF can conduct inquiries, without a submission having been received, to consider specific focus areas or systemic issues. In this way the IGADF can examine and inform the ADF leadership of changes or enhancements to the military justice system that may need to be considered. During the reporting period, IGADF completed one such inquiry and commenced another.

The first own-initiative inquiry reviewed the first year of the Judge Advocate General's practice of publishing lists and outcomes of courts martial and Defence Force magistrate trials on the internet and on Defence's intranet site.

The inquiry found that the publication of court martial and Defence Force magistrate trial lists and outcomes, as governed by the Judge Advocate General's Practice Note 1, has enhanced the maintenance of service discipline by contributing to greater transparency, promoting public and ADF confidence in the superior service

tribunal system and achieving consistency with the publication of Defence Force Discipline Appeal Tribunal outcomes.

The inquiry also found that the publication of lists of upcoming court martial and Defence Force magistrate proceedings is satisfactory, but the report made a number of recommendations which are being considered by Defence or have been referred to the Judge Advocate General for his consideration.

IGADF commenced a second own-initiative inquiry into the Australian Defence Force Prohibited Substance Testing Program to assess the nature and operation of the program and to identify any significant issues for further examination. The focus of the inquiry was to review the current legislation and policy, assess if the current process reflects 'best practice', and if the process is being applied fairly and consistently.

### **Changes to inquiry process due to COVID-19**

In 2020-21, the COVID-19 pandemic saw a great portion of Australia in 'lock-down' or with significant travel restrictions for short and long periods that were unpredictable in nature.

While most staff have returned to the office, the pandemic continues to affect what used to be 'normal' operations. In the past 12 months, the restrictions have varied across state and territory jurisdictions and often changed at short notice. All staff, permanent and part-time, have required resilient and adaptive plans.

Unless a face-to-face interview is essential, staff continue to use alternative interviewing methods, such as video and teleconferencing. Even without a specific travel restriction, staff now consider what method of communication is appropriate for each individual and factor this into planning. Taking this approach has reduced the number of unexpected delays to inquiries. We have also found that IGADF witnesses have also adapted during this time and are less concerned, or more comfortable, with using different types of communication media.

### **Performance**

Due primarily to the increase in submissions and travel restrictions associated with the global pandemic, during the reporting period the Directorate was often unable to achieve completion of tasks within the desired timeframes. The Directorate continues to work through process improvements, and resource allocations with the aim of reducing the time taken to finalise matters.

### **Military Police professional standards**

The Military Police Professional Standards section records and assesses complaints about Military Police. These complaints come from either individuals – including members of the public – or are referred to the Professional Standards section by Defence units and organisations.

During 2020–21, IGADF received 49 complaints relating to Military Police professional standards. This was a significant increase from 25 complaints the

previous year. Of these, after assessment, four were investigated as disciplinary matters, with the remainder being dealt with administratively. When considered together with matters that remained open from the previous reporting period, during the reporting period matters closed were:

- **Disciplinary investigations:** Nine matters were closed with a median time of 325 days for closure. This significant time period was due to the inability to conduct face-to face interviews in the first half of the reporting period as a result of COVID-19 travel restrictions, coupled with significant workplace absences of a number of Professional Standards investigators during the same period. Due to the nature of disciplinary investigations, including the rigidity of statutory powers and requirements, video and teleconferencing methods for interview were not available.
- **Administrative matters:** Sixty matters were closed during the reporting period with a median time of 72.5 days. This result reflects the greater flexibility of administrative inquiry processes to be adapted in situations where travel is not possible, and the diversion of IGADF resources to these matters while the disciplinary investigation case load could not be progressed.

The Professional Standards section has streamlined internal processes and procedures during the reporting period. Additionally, stakeholder engagement with organisations such as the Joint Military Police Force and 1<sup>st</sup> Military Police Battalion has also been a focus. These improvements have allowed Professional Standards to effectively manage a significantly-increased caseload in comparison to previous years.

### **Review of CDF Directive 25/2019**

During the reporting period the Office of the IGADF Military Police Professional Standards cell established and chaired a working group to review and draft the next iteration of CDF Directive 25/2019 - *Military Police Professional Standards Framework: A Military Police Code of Conduct and Management of Military Police Professional Standards Matters*. The working group included representatives from the Services, Joint Military Police Force and the Defence Force School of Policing.

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

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

### **Military justice performance audit program**

Audits are conducted to assess the health of the military justice system, to verify ADF units have the necessary procedures in place to comply with military justice requirements in the delivery and management of personnel discipline and



administration, and to identify shortcomings so corrective measures can be taken to remediate any deficiencies.

The IGADF's military justice audits comply with the relevant Australian Standard on Assurance Engagements 3100 – *Compliance Engagements*.

An audit involves an audit team visiting the ADF unit to assess compliance with military justice law and policy requirements. This is done by conducting a spot check of records and holding discussions with unit ADF personnel.

Audit teams conduct focus group discussions with unit personnel, grouped according to worn rank and, where appropriate, gender. These discussions are designed to elicit participants' knowledge of the military justice system, and how each rank level perceives military justice is being implemented at the unit. Focus groups also provide an opportunity for audit team members to promote military justice values and reinforce some basic education to members on their rights and obligations in the military justice system.

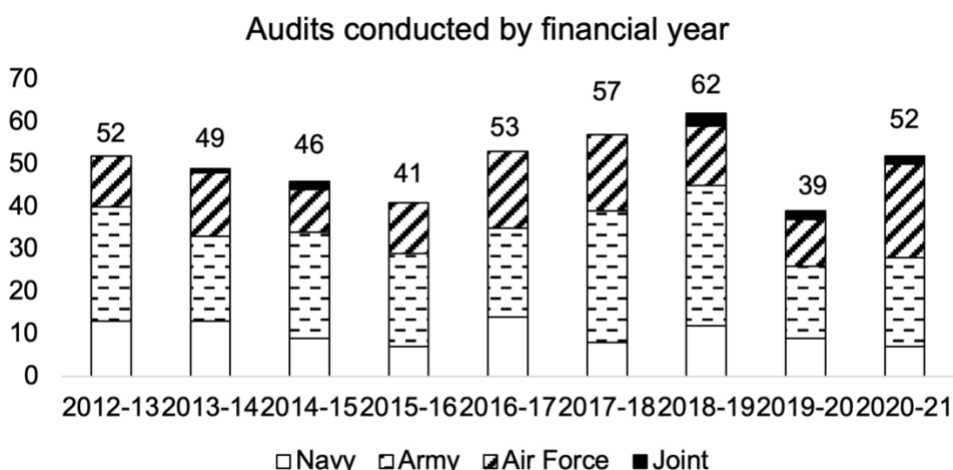
Within two months of the physical visit to the unit, DMJPR sends an audit report to the unit Commanding Officer and chain of command. Where a unit has not complied with law or policy, the report will contain recommended corrective actions for the unit to implement to ensure compliance. The report may also make other suggestions to improve unit practice which the unit may consider implementing. The IGADF requires units to provide feedback on implementation of audit recommendations and suggestions.

## **2020-21 Audits**

COVID-19 travel restrictions continued to interrupt the scheduled audit program for 2020-2021. After postponing the audit program last financial year, audits resumed in September 2020. The program remained flexible to ensure audit teams were able to comply with applicable State or Territory restrictions.

Despite these challenges, 52 military justice performance audits were conducted in 2020-2021 (Navy 7, Army 21, Air Force 22 and Joint 2). This included re-audits of two units from the previous year in which auditors determined the unit had significant or serious compliance breaches of military justice legal or policy requirements. One of these units was found to still have compliance breaches in its discipline processes and will be subject to a further spot check. The number of audits conducted in 2020-21 represents an increase of around 38 per cent compared with the 39 audits conducted in 2019-20.

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



In addition, 12 focus group-only activities were conducted during 2020-21. These were typically held in sub-units whose higher unit headquarters was subject to a full military justice performance audit.

### **Audit feedback**

DMJPR introduced a feedback form inviting unit executive staff to provide comments on the conduct of the audit and the audit team to ensure the program continues to evolve and improve. The feedback indicates that the audits are being conducted professionally and helpfully. Typical feedback is along the following lines:

- *The military justice audit was conducted very efficiently and competently. It was apparent that team members were well practiced and knowledgeable. All team members conducted themselves in a very courteous and respectful manner.*
- *The team was professional. They seemed genuinely interested in working with us to identify where we could make improvements rather than simply identifying errors and laying blame.*

Audit team members wear civilian attire when conducting audits. One unit recognised the reason behind this practice, noting “the use of civilian attire ensured that members of the audit team did not portray an over bearing presence due to rank differences, especially to the junior soldiers during the focus groups.” However, another unit suggested that ‘business suit attire (shirt, jacket and tie) could have the same effect as a uniform. Perhaps to further reduce perceived barriers, your staff could dress smartly, but lose the suit jacket and tie?’ These comments are a sound reminder that audit teams will be more effective when they subtly adjust their approach to the unique culture and structure of each unit they audit.

### **Audit outcomes**

In total, audit reports recommended 347 corrective actions (Navy 26, Army 178, Air Force 136 and Joint 7) during the course of the military justice audit program in 2020–21. In addition, reports provided 402 suggestions (Navy 36, Army 178, Air Force 169 and Joint 19) to ADF units.

The most common findings from the audits conducted during 2020-2021 were:

- 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.

### **Performance**

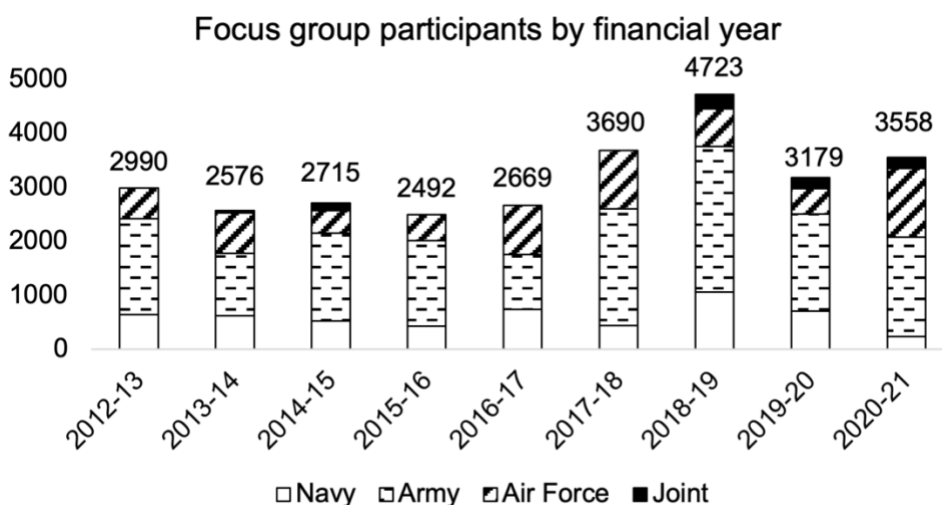
ADF units reported they agreed with 95 per cent of all suggestions made to change unit processes to align with IGADF's considered best practice (units are expected to implement all recommended corrective actions identified in audit reports in order to ensure compliance with military justice law and policy).

One hundred per cent of all audit reports were completed within the benchmark timeframe of 60 days.

### **Focus group outcomes**

During the conduct of military justice performance audits in this reporting period, 3558 ADF members (Navy 240, Army 1844, Air Force 1272 and Joint 202) participated in focus group discussions.

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



A military justice survey is administered to each participant at the conclusion of a focus group, 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 2020–21 showed:

- a. 75 per cent of participants believed the discipline process is fairly and consistently applied
- b. 84 per cent of participants believed the DFDA is an effective tool for the maintenance of discipline
- c. 53 per cent of participants believed they receive adequate discipline training to allow the member to discharge their DFDA responsibilities
- d. 65 per cent of participants believed complaints made to their chain of command were dealt with fairly, promptly and impartially
- e. 79 per cent of participants believed their unit would treat them fairly and impartially if they were the subject of an administrative inquiry
- f. 89 per cent of respondents understood the concept of the 'right to be heard' or the 'right of reply', otherwise known as procedural fairness
- g. 23 per cent of participants believed adverse administrative action procedures take too long

- h. 77 per cent of participants had confidence in their chain of command to resolve complaints
- i. 62 per cent of participants believed their unit maintained a balance between the rights of complainants and the rights of respondents
- j. 25 per cent of participants believed they had experienced unacceptable behaviour at their unit
- k. 82 per cent of participants believed appropriate action would be taken if they reported an incident of unacceptable behaviour
- l. 88 per cent of participants knew where to obtain advice or information on unacceptable behaviour
- m. 69 per cent of participants believed all ranks would be treated equally under the military justice system
- n. 78 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. 91 per cent of participants believed appropriate action would be taken against an incident or complaint of sexual misconduct, including sexual assault, and
- q. 64 per cent of respondents believed morale was good.

The survey also provides an insight into participants' confidence in their Chain of Command.

Confidence in ADF Officers averaged 80 per cent (Navy 77 per cent, Army 79 per cent and Air Force 83 per cent), confidence in ADF Warrant Officers and Senior Non-Commissioned Officers averaged 84 per cent (Navy 82 per cent, Army 84 per cent and Air Force 83 per cent) and confidence in the Junior Non-Commissioned Officers averaged 85 per cent (Navy 85 per cent, Army 86 per cent and Air Force 84 per cent).

Noting the majority of focus group participants are at the 'Private' or Junior Non-Commissioned Officer rank, it is not surprising to see the confidence levels weighted towards their immediate supervisors (Junior Non-Commissioned Officers and Senior Non-Commissioned Officers) than their higher Chain of Command (Officers). However, over the past five years, these relative measures of confidence in the military Chain of Command – both non-commissioned officers and commissioned officers – have remained fairly consistent.

## **Statistical analysis of unacceptable behaviour**

At IGADF's request, Defence's Directorate of People Intelligence and Research conducted a multi-variate analysis of IGADF military justice performance audit survey data relating to ADF members' experience of unacceptable behaviour for fiscal years 2015-16 to 2018-19. The data was collected anonymously from 13 574 ADF members from 213 units.

The analysis considered the correlation between certain independent variables — morale, knowledge of complaint avenues to report unacceptable behaviour, confidence in the chain of command to act on reports of unacceptable behaviour and excessive workload — on the dependent variable of reported experience of unacceptable behaviour.

The analysis found a statistically significant negative correlation between confidence in the chain of command taking action and rates of unacceptable behaviour. In other words, as confidence that the chain of command will take action increases, unacceptable behaviour falls. Excessive workload was shown to have a positive correlation with unacceptable behaviour. There is also a correlation between individuals' knowledge of available avenues of complaint and rates of unacceptable behaviour, but it is less strong.

These findings aligned with the results from a previous analysis of IGADF anonymous survey data between 2011 and 2014. That analysis also showed a statistically significant negative correlation between unacceptable behaviour and confidence in command to take action.

The combined analyses of almost a decade's worth of military justice survey data are instructive. They demonstrate that the incidence of unacceptable behaviour is likely to be lower in a unit if members are confident their command will take action to address unacceptable behaviour.

This is likely because potential complainants feel empowered to complain about unacceptable behaviour, and because potential perpetrators believe they will face consequences for their action. Both these factors would drive the number of unacceptable behaviour incidents down.

Accordingly, it is important the ADF continue to emphasise the importance of commanders and managers acting on every unacceptable behaviour incident, and for all personnel to continue to receive adequate training and support to know how to identify and take appropriate action in response to unacceptable behaviour.

The IGADF communicated the results and implications of the multivariate regression analysis to the Chief of the Defence Force who directed that the outcomes be disseminated as widely as possible to ADF leaders.

## **Support to Summary Discipline Implementation Team**

DMJPR continued to support the Summary Discipline Implementation Team by providing statistical data on the timeliness of key steps in summary and superior trial

processes. DMJPR was also consulted on policy considerations in recording discipline officer infringements.

### **Enterprise Resource Planning (Case) project**

During the reporting period, IGADF staff continued to work with Audit and Fraud Control Branch on the new Enterprise Resource Planning (Case) project (previously reported as Case Management System (CMS) project.). The Case project's aim is to design and build a single enterprise solution 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.

A DMJPR staff member was seconded part-time to the Case project during the reporting period, primarily to assist in the understanding of the business requirements to ensure the new system will be fit for purpose.

In addition, IGADF staff provided advice on reporting requirements to ensure the Case system can provide statistics to allow for detailed analysis of trends across a range of discipline and administrative matters. As a key stakeholder and end user of the Case project, IGADF staff will continue to support Defence's Audit and Fraud Control Branch throughout the life of the project.

## **DIRECTORATE OF SELECT INCIDENT REVIEW**

The Directorate of Select Incident Review (DSIR) is a team within the Office of IGADF who undertake inquiries into the deaths of members of the ADF. Section 5(a) of the *Inspector General of the Australian Defence Force Regulation 2016*, provides that the IGADF has a function to inquire into the death of a member of the Defence Force, where the relevant death appears to have arisen out of, or in the course of, the member's service in the Defence Force.

### **Death inquiry process**

The purpose of an IGADF inquiry into the death of member of the Defence Force is to gather evidence about the circumstances of the member's death. Once enough evidence has been collected, it is then examined to identify whether there is any connection between the member's death and their service in the Defence Force.

This process includes evaluating Defence policies and procedures to identify whether or not they have been followed and if they are suitable and fit for purpose. This evaluation may also identify areas of policy and procedure which could be improved. At the conclusion of this process a report is provided to the CDF, identifying if there is a connection between the member's death and their service and whether there are any recommendations about how policy and procedure could be improved.

During the assessment or inquiry process, DSIR engages with a variety of organisations to collect evidence concerning the ADF member's death. These can include: the deceased ADF member's family and next of kin; Defence Member and Family Support; military and civilian police organisations; Joint Health Command; Australian Defence Records; Defence Counsel Services; Service Headquarters; State and Territory coroners; State and Territory Registries of Births, Deaths and

Marriages; the Department of Veterans' Affairs; and other subject matter experts when required.

Throughout 2020-21, the Office of IGADF continued to develop and refine its engagement with these stakeholders. One such example is engagement with Defence Counsel Services for the appointment of a Defence Force Reserve Legal officer to act for the interests of the deceased Defence Member in complex death inquiries. They perform this role independently of IGADF and of the deceased's chain of command. Through engagement with the deceased's family and next of kin they are able to represent the interests of the deceased ADF member in a robust and thorough manner while the inquiry is underway, while at the same time explaining the inquiry process to the family.

### **Service death inquiries**

In 2020-21, the Office of IGADF received notification of and commenced inquiries into 45 deaths of members of the Defence Force. These notifications include the deaths of Defence Force members of all Service Categories (i.e. fulltime, part time, paid/unpaid leave or inactive).

During 2020-21, DSIR finalised 17 inquiries into the deaths of Defence Force members.

Of these deaths, the causes were:

- 12 (71 per cent) illness
- 1 (six per cent) suicide
- 3 (18 per cent) accidents
- 1 (six per cent) homicide

### **Interim National Commissioner for Defence and Veteran Suicide Prevention**

Following the creation of the interim National Commissioner for Defence and Veteran Suicide Prevention (interim National Commissioner), DSIR responded to a number of requests for information from the interim National Commissioner. These requests concerned the provision of IGADF reports into suicide inquiries which were competed from October 2016 onwards. A total of 35 completed suicide reports, redacted to comply with privacy law, was provided to the interim National Commissioner. Additionally, the IGADF wrote to the nominated next-of-kin of the 35 deceased ADF members to inform them this had occurred.

### **Royal Commission into Defence and Veteran Suicide**

On 19 April 2021, the Prime Minister announced the Government's intention to create a Royal Commission to examine Defence and Veterans Suicide. Following that announcement Office of the IGADF commenced preparing to support the Royal Commission which was formally established on 8 July 2021.

### **Performance**

Given their inevitably tragic subject matter, inquiries into service deaths need to be conducted with the utmost sensitivity. IGADF's preference is that witness interviews



in death inquiries be conducted in person rather than virtually. For this reason, travel restrictions associated with the global pandemic resulted in the postponement of some interviews and this meant the Directorate was not able to achieve some tasks within desired timeframes.

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

Under the statutory Redress of Grievance complaints scheme established by *Defence Regulation 2016*, an ADF member may complain to their Commanding Officer if they consider that a decision, act or omission is adverse or detrimental to them and the adverse or detrimental effect is capable of being redressed by a Defence official.

The grievance process provides flexibility for each complaint to be considered in the way that is most appropriate for that specific complaint. The hierarchical nature of military service is that in the vast majority of cases, complaints are most appropriately dealt with by the member's chain of command in the first instance.

The IGADF Directorate of Military Redress and Review (DMRR) performs two discrete functions: First, it records and oversees progression of ADF members' complaints lodged under the Scheme to ensure complaints are actioned. DMRR has a dedicated liaison officer for each of the Services, who primarily provides procedural information to Commanding Officers or their nominated points of contact. Secondly, DMRR independently considers complaints on behalf of the IGADF. A combination of APS and ADF staff perform this role.

In 2020-21, DMRR delivered complaint-handling awareness presentations to Navy and Air Force Commanding Officers and supporting staff. Due to ongoing COVID-19 restrictions, these were delivered both in person and remotely.

### **Redress of Grievance statistics**

As at 1 July 2020, there were 70 open complaints under the *Defence Regulation 2016*. ADF members submitted 269 new complaints during 2020-21. This represents an approximate decrease of 15 per cent over the 318 complaints submitted in 2019-20.

In comparison with the previous year, complaints to commanding officers lodged under the Redress of Grievance scheme from each service declined:

- Navy decreased by nine per cent—from 70 to 61
- Army decreased by 23 percent from 158 to 122
- Air Force decreased by 5 per cent from 90 to 86

By 30 June 2021, 60 complaints remained open.

The decline in numbers of Redress of Grievance complaints has followed Defence efforts to improve administrative decision-making and complaint handling by updating policies and education. Examples include the *Complaints and Alternative Resolutions Manual* as well as the *Good Decision-Making in Defence: A Guide for Decision-Makers and Those Who Brief Them*. Over the same period, there has been an increase in the complexity of complaints submitted under the Redress of Grievance scheme. It appears that the quality of administrative decision-making

in Defence is improving, resulting in only those more technically complex or contentious decisions being the subject of a Redress of Grievance complaint.

During the reporting period, 288 complaints (Navy 66, Army 131 and Air Force 91) were finalised.

In 2020-21, 29 per cent of complaints related to a members' termination of service, 32 per cent related to a members' career (postings, training progression) and 26 per cent were about members' entitlements (salary, allowances and other benefits).

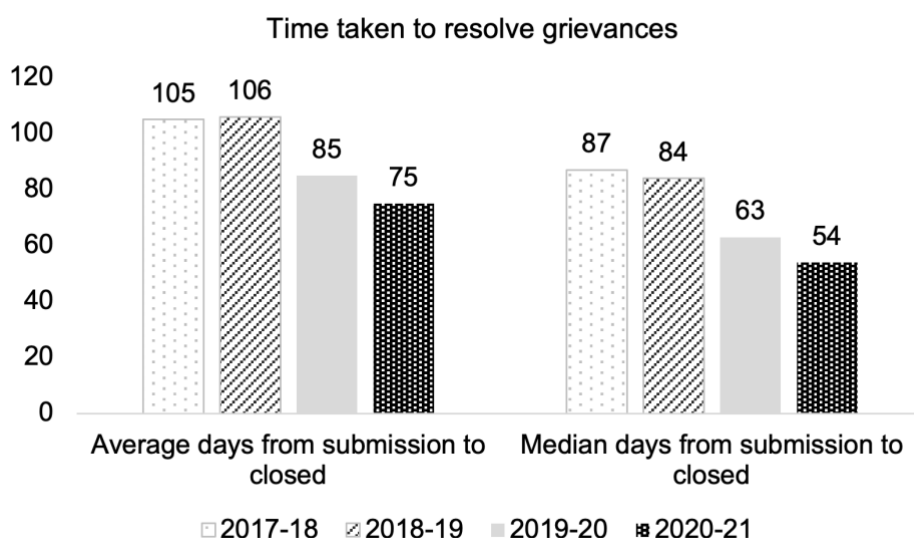
These complaint category proportions have been relatively consistent over the last five years.

Of the 288 complaints closed in 2020-21:

- 48 (18 per cent) were fully or partially upheld
- 33 (11 per cent) were withdrawn by complainants, most often because the complaint was able to be immediately remedied
- 13 (5 per cent) were within jurisdiction but addressed administratively outside the Redress of Grievance scheme
- 135 (46 per cent) were found not to be substantiated
- 59 (20 per cent) were complaints about matters excluded from the Redress of Grievance scheme jurisdiction.

The average time taken to finalise complaints during this reporting period was 75 days (reduced from 85 days in 2019-20), with a median time of 54 days (reduced from 63 days in 2019-20).

The graph below shows the average and median times to resolve grievances over the last four reporting periods.



## **Significant observations**

During 2020-21, DMRR investigated the rate of acceptance by Defence (including the individual Services) of IGADF findings, and whether appropriate action was taken as recommended. The review examined findings of merit (including partial merit) made between January 2019 and September 2020.

The review found Defence accepted all findings in favour of complainants and granted appropriate redress on all recommendations.

This does not mean that complainants necessarily received the redress they originally sought. Where a finding of merit related to a procedural error in a decision process, the recommendation would have been to set the decision aside. This would not prevent the decision process recommencing (without the error), possibly resulting in the same outcome.

An example of this is where a member was not provided the required time to respond to a notice to show cause as to why their service should not be terminated. As a result of a finding to that effect, the decision may be revoked. That does not prevent the relevant Service from commencing a new process with new decision makers, affording the member the required time to respond, and then considering the response. That second process may legitimately result in termination of the member's service.

Findings and recommendations have resulted in actions including:

- overturning of decisions to terminate complainants' ADF service
- reversal of debts for overpayments (where the member was found to be entitled to the benefit), and
- back-payment of entitlements or benefits which were incorrectly denied.

## **Performance**

During the reporting period commanding officers referred 88 per cent of Redress of Grievance complaints to IGADF within 14 days of the complaint's being lodged; 97 per cent were referred within 21 days. Approximately half of the remaining 3 per cent were complaints lodged during the Christmas/New Year stand down which resulted in delayed referrals.

This reflects that Commanding Officers are generally complying with legislation, and IGADF staff are diligent in following up matters to avoid delays in complaint handling.

Improving timeliness of complaint consideration has been a significant focus since IGADF became responsible for oversight of ROGs in 2014. However, care is taken to ensure timeliness is not prioritised over proper, thorough consideration.

- 73 per cent of ROGs were closed within 90 days.
- 77 per cent of ROGs were closed within 100 days
- 82 per cent of ROGs were closed within 120 days

As noted above, the median time to consider and close complaints during the reporting period was 54 days.

## **DIRECTORATE OF LEGAL REVIEW**

The Directorate of Legal Review (DLR) is responsible for the provision of legal advice to the Office of the IGADF to assist the IGADF in fulfilling his statutory function. The DLR performs this role through:

- a. reviewing and advising on proposed changes to legislation and policy that affect military justice or relate to the functions of the IGADF
- b. engaging external legal support to protect the interests of the IGADF, and
- c. providing legal advice to the IGADF Executive and Directorates to assist them in their respective functions.

### **Defence integrity framework**

Defence is working through the process of establishing an independent integrity function to provide assurance over ADF, APS and Defence contractor integrity and anti-corruption related matters. The IGADF, who has an assurance, integrity and inquiry function over matters concerning the Defence Force, has been working with Defence in the development of integrity framework options throughout this reporting period.

### **Roberts-Smith v Fairfax Media Publications Pty Ltd, The Age Company Pty Ltd and The Federal Capital Press of Australia Pty Ltd defamation proceedings**

Former soldier, Mr Ben Roberts-Smith VC MG commenced proceedings in the Federal Court of Australia in August 2018 seeking damages for alleged defamatory publications by Fairfax Media Publications Pty Limited, The Age Company Pty Limited, The Federal Capital Press of Australia Pty Limited and certain journalists. The publications are alleged to have carried imputations about Mr Roberts-Smith's conduct while serving on operations in Afghanistan. The imputations concerning Mr Roberts-Smith are alleged to have occurred during a period of time that overlapped with the timeframe which was the subject of the IGADF Afghanistan Inquiry.

The IGADF is not a party to the proceedings. The IGADF has intervened in the proceedings in order generally to preserve the integrity of IGADF inquiry processes and particularly to protect information from public disclosure that was created or obtained by the IGADF Afghanistan Inquiry. The IGADF has also been required to produce documents to the Court in response to subpoenas issued on behalf of the parties.

### **Inspector-General of the Australian Defence Force Amendment Regulations 2021**

On 19 May 2021 the *Inspector-General of the Australian Defence Force Regulation 2016* (the IGADF Regulation) was amended by the *Inspector-General of the Australian Defence Force Amendment Regulations 2021*. These amendments allow the IGADF to disclose information relating to the conduct of an inquiry to law enforcement agencies and other agencies such as regulatory bodies and State and Territory courts, including coroners' offices.

The amendments also enhanced IGADF's independence by empowering IGADF to disclose any IGADF inquiry report, including Minister- and CDF-directed inquiries after consultation.

## **INFORMATION TRACKING SYSTEMS**

The IGADF continues to sponsor the *ADF Administrative Inquiries Tracking System* (ADFAITS) and *Defence One – Conduct Reporting and Tracking System* (CRTS), which are both crucial in providing and tracking data for analysis of the health and effectiveness of the military justice system.

ADFAITS was established to track and report on the conduct of administrative inquiries in Defence, and currently tracks data of varying quality of completeness of 790 inquiries. Twenty-five of those inquiries were conducted and recorded during 2020-21.

During the reporting period, considerable progress was made towards incorporating ADFAITS into the new Enterprise Resource Planning (Case) system.

CRTS has become an integral tool that contributes towards effective career management and the maintenance of discipline throughout the ADF, by tracking and recording ADF disciplinary convictions, administrative sanctions, civil convictions and protection orders.

Considerable improvements to the CRTS system were undertaken by IGADF staff, in consultation with Service representatives, during the reporting period. Improvements include adding processes to ensure non-imposed administrative sanctions are recorded, amending data steps for the recording of protection orders, clarifying the reporting of civil convictions and updating scenarios on the PMKeyS online library. These improvements ensure ADF units more accurately and consistently capture data in line with policy reporting requirements, and simplifies functionality for users.

## **CONFERENCES AND OTHER ACTIVITIES**

### **Commonwealth Government Inspectors-General annual meeting**

The IGADF hosted the fourth annual meeting of the Commonwealth Government Inspectors-General in Canberra, on 17 May 2021. This meeting was attended by the Inspector-General in Bankruptcy, Inspector-General of Taxation and Taxation Ombudsman, Inspector-General of Biosecurity, Inspector-General of Live Animal Exports, Inspector-General of Intelligence and Security and Deputy Chief Executive Australia Financial Security Authority.

Although functions and responsibilities differ considerably between each Inspector-General, previous meetings have proven useful to identify common issues across the agencies including managing independence, innovation and complainant expectations.

These meetings allow the participating Inspector-General institutions to provide their experiences and insights relating to common challenges, to assist in enhancing better governance overall.

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

The International Conference of Ombuds Institutions for the Armed Forces (ICOAF) is an annual event, co-hosted by the Geneva Centre for Security Sector Governance (DCAF) and a foreign ombuds institution. The 12<sup>th</sup> annual conference was scheduled to be held in Vienna, Austria from 7-9 June 2020.

Due to COVID-19 travel restrictions, the Vienna conference was ultimately cancelled. The conference was later held virtually via Zoom from 26-28 October 2020 and was attended by the IGADF and staff.

Suitably, 12ICOAF was devoted to discussing the impact of COVID-19. More specifically the conference focused on impacts of COVID-19 on armed forces, including impacts on freedoms and rights, and the effects of COVID-19 on complaints and complaint-handling processes.

Similar to previous conferences, 12ICOAF provided participating ombuds institutions with a platform to share information, new practices and recent experiences.

During the reporting period Office of the IGADF, with support from the Commonwealth Ombudsman's office, engaged in planning activities for IGADF to co-host 13ICOAF in October 2021. That conference was planned and ultimately presented from Canberra using a hybrid – in person as well as online – format.

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

The IGADF attended, and presented to, numerous military justice seminars, forums and ADF training courses throughout the reporting period. Presentations generally included detail on the role of the Office of the IGADF, and specific military justice topics including current administrative and discipline arrangements, and the conduct of administrative inquiries. Due to the current operating environment, most of these seminars, forums and training courses were conducted in virtual formats.

## **CONCLUSION**

The operating tempo in the Office of IGADF was higher during 2020-21 than that experienced in 2019–20, despite the ongoing uncertainty of the global pandemic.

The office's caseload was characterised by an unprecedented increase in the number of submissions (including referrals) to IGADF. The Office received 116 submissions, approximately 81 per cent higher than the longer term average of 64. This increase occurred across all complaint and complainant categories. Added to this there was an increase of 120 per cent (from 25 to 55) in the number of complaints submitted relating to possible breaches of Military Police professional standards. These increases demonstrate confidence in IGADF complaint handling.

Processes for inquiring into Service deaths continued to be improved.

There was a 33 per cent increase in the number of military justice performance audits, despite a further 24 audits being postponed due to COVID-19 restrictions.

Redress of Grievance complaint handling processes continued to be refined, resulting in more timely resolution, on average, of complaints.

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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
Case Management System	CMS
Chief of the Defence Force	CDF
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
Enterprise Resource Planning (Case) project	Case
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
Redress of Grievance	ROG

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# ANNEX A TO IGADF ANNUAL REPORT

01 JULY 2020 TO 30 JUNE 2021

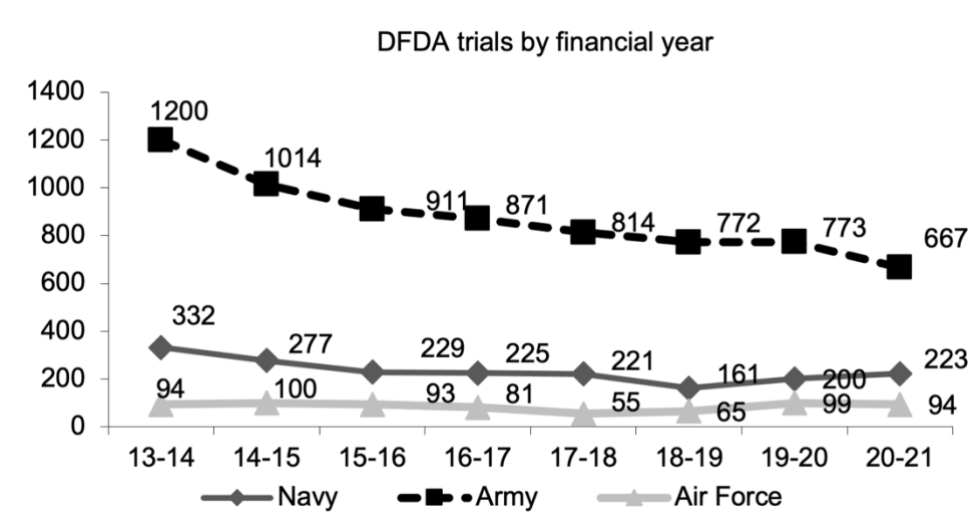
## MILITARY JUSTICE STATISTICS

### Discipline statistics

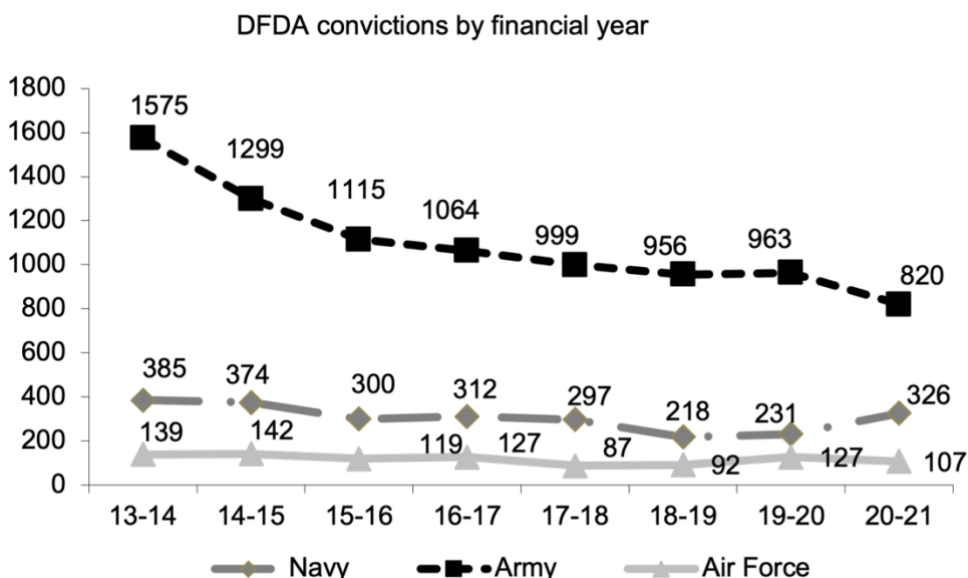
The overall number of disciplinary trials (courts martial, Defence Force magistrate trials and summary trials) recorded during the reporting period decreased by eight percent from the previous year.

There were a total of 984 trials (Navy 223, Army 667 and Air Force 94) recorded in 2020-21, compared to 1072 trials (Navy 200, Army 773 and Air Force 99) recorded in 2019-20.

Similarly, there was a five per cent decrease in the total number of convictions recorded across the ADF. In 2020-21, there were 1253<sup>1</sup> (Navy 326, Army 820 and Air Force 107) convictions recorded. Recent trial and conviction trends are illustrated in the below graphs.



<sup>1</sup> Discipline convictions usually outnumber trials because charge sheets often include more than one charge.



Court martial and Defence Force magistrate trials increased again during this reporting period, following considerable increases in 2019-20. In 2020-21 these trials increased by a further 18 per cent from 44 in 2019-20 to 52.

During the same period, discipline trials at the summary level decreased by nine per cent, from 1028 (Navy 182, Army 752 and Air Force 94) in 2019-20 to 932 (Navy 211, Army 631 and Air Force 90). Although summary discipline trials decreased in Army and Air Force, Navy experienced an increase in summary discipline.

Similarly, convictions resulting from summary level trials decreased by almost eight per cent from 1262 (Navy 211, Army 930 and Air Force 121) in 2019-2020 to 1164 (Navy 288, Army 773 and Air Force 103).

Not guilty findings, and convictions quashed on automatic review or through petition, for both summary and superior level trials decreased considerably during this reporting period. In total, 71 (Navy 23, Army 41 and Air Force 7) not guilty verdicts were recorded. In addition there were 33 quashed convictions recorded. In contrast 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 2019-20.

These results continue to indicate a strong level of procedural fairness, and maintaining member's rights, within the ADF discipline system.

### **Alcohol conviction statistics**

The number of convictions recorded where the misuse of alcohol was a contributing factor (excluding alcohol misuse while on deployment), decreased by 22 per cent from 170 in 2019-20 to 133 in 2020-21. This is a reversal of the increase previously reported between 2018-19 and 2019-20.

Navy accounted for 54 (41 per cent), Army 73 (55 per cent) and Air Force six (four per cent) of convictions where the misuse of alcohol was a contributing factor.

In addition, a further 24 (Navy 6 and Army 18) disciplinary convictions for alcohol-related offending on deployment were recorded for the same period, a slight increase over the 19 convictions recorded in 2019-20.

### **Discipline infringement statistics**

Recent trends have shown disciplinary officer infringements have gradually decreased in each reporting period since 2017-18. This trend continued in 2020-21 with a further reduction of six per cent. Overall there were 3956 (Navy 1546, Army 1958 and Air Force 452) discipline officer infringements recorded in 2020-21, compared to 4195 (Navy 1649, Army 2149 and Air Force 397) in 2019-20.

### **Administrative sanctions statistics**

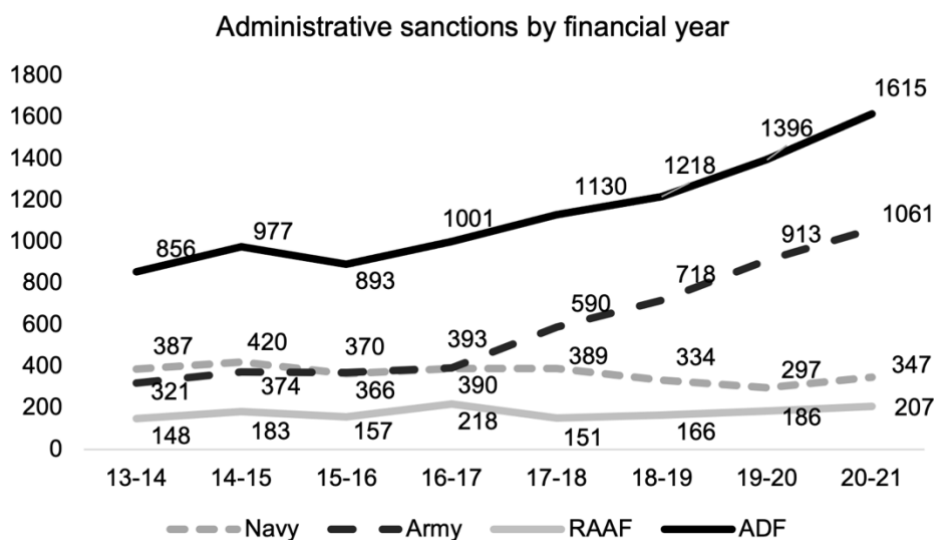
Shortfalls in professional or acceptable behaviour, and in ADF members' performance and standards can be targeted and corrected through the use of the administrative sanctions system.

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, and
- change of employment category.

During the reporting period a total of 1615 (Navy 347, Army 1061 and Air Force 207) administrative sanctions were recorded. The overall use of administrative sanctions increased by 16 per cent from the 1396 (Navy 297, Army 913 and Air Force 186) sanctions that were recorded in 2019-20.

Following recent trends, Army continues to use administrative sanctions considerably more than Navy and Air Force. In 2021-21, Army accounted for 66 per cent of administrative sanctions recorded, while Navy accounted for 21 per cent and Air Force 13 per cent. This is comparable to the same results in the previous reporting period. The following graph highlights the trends in the use of administrative sanctions over the past seven financial years.



The main reasons for the imposition of an administrative sanction in 2020-21 were: misuse of alcohol (152), civil offences (192), fitness test failure (495), personal qualities (165) and unsatisfactory conduct (858).

Warnings (813), counselling (481), termination of service (241) and reduction in rank (57) account for 98 per cent of the 1615 sanctions imposed.

The remaining 23 (two per cent) of the sanctions imposed include probation, administrative posting, delay of promotion and removal from appointment.

### Protection orders

ADF members are required to report the issuing of protection orders. In 2020-21, 93 protection orders recorded against, or for the protection of, ADF members were reported. Of those, 24 (26 per cent) related to Navy members, 60 (65 per cent) related to Army members, and nine (10 per cent) related to Air Force members.

In addition, 39 (Navy two, Army 35 and Air Force two) protection orders were extended during the same period.

### Civil convictions

Civil convictions related to ADF members increased by 95 per cent, with 183 civil convictions recorded in 2020-21 compared with 94 in 2020-21. Fines (97) and loss of licence/suspension (84), account for 93 per cent of all civil conviction sentences.



