



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

01 July 2017 to 30 June 2018

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Inspector-General of the Australian Defence Force

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

Dear Minister

Under the provisions of the *Defence Act 1903*, section 110R, the Inspector-General of the Australian Defence Force is required to give the Minister an annual report for presentation to the Parliament.

I am therefore pleased to give you a Report on the operations of the Office of the Inspector-General of the Australian Defence Force for the period 01 July 2017 to 30 June 2018.

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

16 August 2019

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INSPECTOR-GENERAL OF THE AUSTRALIAN DEFENCE FORCE
REPORT FOR THE PERIOD
01 JULY 2017 TO 30 JUNE 2018

PREAMBLE

The Office of the Inspector-General of the Australian Defence Force (IGADF) is an important element of the ADF military justice system, a system which provides the ADF with an Australian legal framework that applies to all ADF members in times of peace and war, whether in Australia or overseas. The ADF's operational capability relies heavily on a military justice system that is capable of achieving an appropriate balance between the need to enforce and maintain a high level of order and discipline, while maintaining and protecting the individual rights of ADF members.

The position of the IGADF is established under section 110B of the *Defence Act 1903* (the Act). IGADF's mission is to:

....constantly scrutinise and monitor the military justice system to ensure its health and effectiveness; and to examine and expose situations of military injustice in order to eliminate them.

Mr James Gaynor, CSC was appointed as the IGADF by the Minister for Defence on 01 Dec 2016 in accordance with section 110E of the Act, for a term of five years, and continued as the IGADF during this reporting period.

The functions of the IGADF are prescribed in section 110C of the Act, as follows:

- a. inquiring into or investigating matters concerning the military justice system;
- b. conducting performance reviews of the military justice system, including internal audits, at times and in the manner IGADF considers appropriate;
- c. advising on matters concerning the military justice system, including making recommendations for improvements;
- d. promoting military justice values across the ADF;
- e. if directed by the Minister or the Chief of the Defence Force (CDF) to do so – inquiring into or investigating a matter concerning the ADF; and
- f. doing anything incidental or conducive to the performance of the IGADF's other functions.

The IGADF continues to contribute to a fair and effective military justice system by providing a centralised and dedicated function to oversee military justice and by monitoring and inquiring into military justice related issues and alleged failures within the system.

The ADF military justice system comprises four main components, each of which is intended to promote good order and discipline and thereby enhance operational effectiveness. The four components are:

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

MESSAGE FROM THE INSPECTOR-GENERAL OF THE AUSTRALIAN DEFENCE FORCE

The operating tempo in the Office of the IGADF was higher in 2017–18 than in previous reporting periods. This was driven by increases in the number of submissions received for investigation or inquiry, military justice performance audits conducted and inquiries into deaths in service being completed.

There were 48 open inquiry submissions carried over from 2016–17. In 2017–18, the IGADF received 65 new inquiry submissions, an approximate increase of six per cent over the number submitted in 2016–17. Comparable with previous reporting periods, approximately 30 per cent of those submissions proceeded to inquiry. As at 30 June 2018, 53 submissions had been finalised as a result of IGADF inquiry or assessment and 60 inquiry submissions were ongoing.

IGADF received an additional 35 notifications concerning Service Police professional standards breaches, of which 24 became the subject of IGADF investigations. The remaining 11 notifications were assessed by IGADF as matters that should more appropriately be addressed by another Defence Investigative Authority or the military chain of command.

In 2017–18, the IGADF conducted 57 military justice performance audits (Army 31, Air Force 18 and Navy eight), representing an increase of almost eight per cent over the 53 audits conducted in the previous reporting period.

During the reporting period, three units were identified to have had material deficiencies, or compliance breaches, necessitating a re-audit within 12 months.

During the conduct of the military justice performance audits, 3690 ADF personnel participated in focus group discussions, where rank appropriate discussions were held with regards to ADF member's rights and responsibilities under the DFDA, as well as current key military justice issues affecting the ADF.

Overall, there were 350 (Navy 48, Army 188 and Air Force 114) recommendations and 595 (Navy 92, Army 306 and Air Force 197) suggestions made to units during the conduct of the audit program.

In 2017–18, IGADF received notification of, and initiated inquiries into, 40 deaths in service of ADF members. During the same period, IGADF finalised 69 reviews (24 from deaths that occurred in 2017–18 and 45 in previous reporting periods).

In addition the IGADF commenced and completed an inquiry into a death that occurred during a training exercise.

Of the finalised inquiries, three were conducted under the Defence (Inquiry) Regulations 1985, as they commenced before the commencement of the IGADF Regulation 2016. These were the final inquiries to be conducted under the Defence (Inquiry) Regulations 1985. The remaining 66 inquiries were completed under the IGADF Regulation 2016.

In 2017–18, IGADF received 392 new applications for redress of grievance, a decrease of approximately eight per cent from 2016–17. As at 30 June 2018, 397 applications had been finalised (285 applications received in 2017–18 and 112 in previous reporting periods).

By the end of the reporting period there were 19 ROGs outstanding that were submitted under the Defence Force Regulations 1952, with the majority being progressed. Seven (36 per cent) of those old system ROGs are in relation to the Navy Maritime Technician 2010 career scheme policy. By the end of the reporting period, the IGADF was awaiting a New South Wales Supreme Court decision and finding in relation to this matter before these ROGs could be progressed. This decision and finding should be handed down in early July 2018.

At the request of the Chief of Army, and subsequently under the direction of CDF, in May 2016 IGADF established an inquiry into rumours of breaches of the law of armed conflict in Afghanistan between 2005 and 2016 and associated matters. In 2017–18, the inquiry gained significant momentum after public calls for information were made on 1 September 2017 and concluded on 3 November 2017—and is now pursuing additional lines of inquiry. Over 200 witnesses have been interviewed to date.

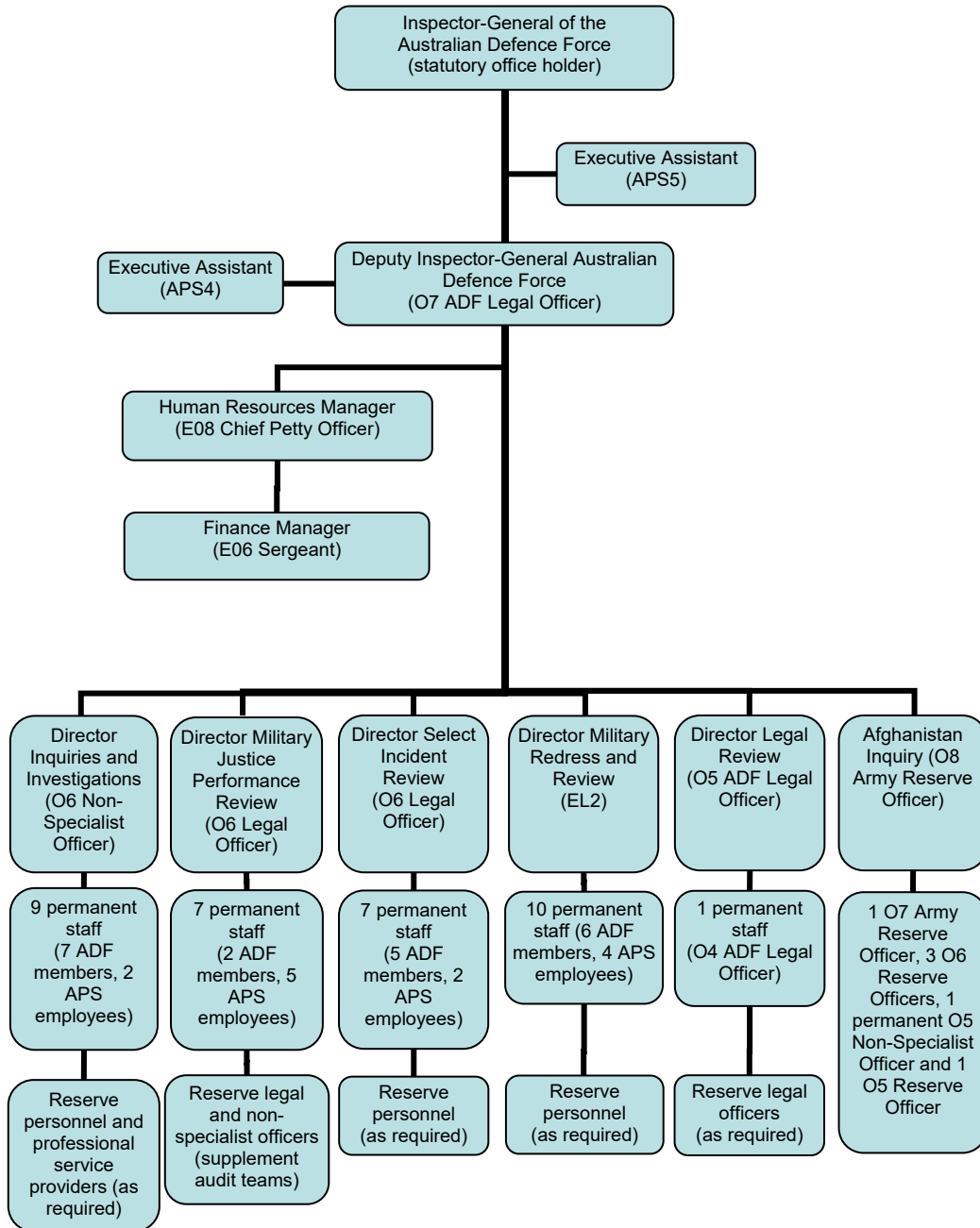
At this stage it is not possible to predict how long it will be before the Afghanistan Inquiry delivers its report, as this will depend on the number of additional lines of inquiry identified as the Inquiry progresses. However, at the conclusion of the Inquiry, its findings and recommendations will be reported to the CDF for consideration and referral to other relevant authorities if necessary.

As noted in the previous IGADF Annual Report, the interim legislative arrangements for the superior service tribunal system, which sits at the apex of the disciplinary component of the ADF's military justice system, effectively ceased on 21 September 2017 following the retirement from permanent service of Major General Ian Westwood, AO. While there has been no clear legislative action to affirm the current arrangements, the net effect is that the current superior service tribunal system continues to function largely unchanged and without incident since its reinstatement following the High Court decision in *Lane v Morrison* in 2009.

Furthermore, I endorse the remarks of the Judge Advocate General (JAG), Rear Admiral the Honourable Justice Michael Slattery, RANR, in his report for 2017 which identified a range of legislative reform proposals to superior service tribunals, including those relating to mentally impaired ADF members appearing before service tribunals, improving superior service tribunal procedures to civilian best practice, strengthening the independence of judge advocates, improving courts martial sentencing transparency and effectiveness, and modernising ADF investigative powers. The JAG incorporated an Annex to his report that summarised recommendations from previous reports that have been identified as requiring further action, but the aforementioned proposals are the most pressing. These legislative reform proposals, combined with those improvements that will be pursued as a consequence of the Summary Discipline System Review, will only enhance and promote the military discipline system as a fair, efficient and functional tool in support of command.

STAFFING AND RESOURCES

Staff at the Office of the IGADF consists of both permanent and Reserve military personnel, as well as Australian Public Service (APS) employees. All employees have a demonstrated knowledge and experience of Service life and the military justice system, which contributes to the way in which they support the IGADF. The Office of the IGADF is therefore structured in the following way:



Staffing outlook

Appropriate resourcing is paramount in meeting the capability output and strategic directions of the Office of the IGADF.

The Office of the IGADF continues to work within its budget allocation; however, there is growing pressure on resources as the IGADF is asked to respond to and investigate increasingly complex and highly sensitive matters. While the IGADF has managed the short-term needs of these inquiries through careful management of staffing resources, it is unsustainable for long-term strategic output.

Compounding these budgetary pressures is the IGADF's ability to maintain the critical Reserve support capability required to sustain operational tempo.

Single Service and non-Service groups provide Reserve support to the Office of the IGADF. Currently, there is a disconnect in the administrative process in the submission of reserve versus unit operating bids. This results in funding uncertainty, particularly where self-funded reserve resources are required to meet the shortfall from single service allocation.

Without a long-term funding plan, the IGADF is likely to lose skilled and experienced reserve members who seek assurances in work allocation. As a result, there may be an increasing reliance on external service providers to meet strategic responses.

Between 2010 and 2017, each of the Services established its own specialist inquiry cell. While IGADF supports initiatives to enhance professionalism in the conduct of inquiries, an unfortunate result is the greater competition for a limited pool of persons with the knowledge, skills and inherent ability to conduct inquiries.

Professional Service Providers

The Office of the IGADF engages professional service providers during temporary peaks in service demand, and in circumstances when particular expertise is not available within the Office of the IGADF.

During this reporting period five professional service providers were engaged by the Office of the IGADF.

Professional service providers are engaged using procurement practices that are consistent with Defence procurement rules and all engagements in excess of \$10,000 are published on the AusTender website as soon as practicable.

IGADF Afghanistan Inquiry

In May 2016, the IGADF established an Inquiry to determine whether there is any substance to rumours and allegations, including potential breaches of the Law of Armed Conflict relating to Special Operations Task Group (SOTG) deployments in Afghanistan during the period 2005 to 2016.

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

As CDF directed IGADF to conduct the Inquiry, the Inquiry has powers to compel the production of evidence similar to those of a Royal Commission.

Staffing

The IGADF Afghanistan Inquiry is led by an O8 Army Reserve Officer, and comprises one O7 Army Reserve Officer, three O6 Officers (two RAN and one Army) and two O5 Officers (one RAN and one Air Force).

Conduct of the Inquiry

The Inquiry is being conducted in five phases:

Phase 1 – Familiarisation. Initially, the Inquiry team sought to identify and gain a detailed understanding of the operational, structural, cultural and historical environment that existed during the period under inquiry and which potentially contributed to the occurrence of the rumoured and alleged incidents—the *cause and effect* aspects of each factor. Factors considered include:

- a. the organisational structure of Special Operations Command (SOCOMD), including the organisational structures within the units that comprise SOCOMD;
- b. operational procedures within SOCOMD and within its constituent units;
- c. the operational environment in Afghanistan including, but not limited to:
 - (1) nature of the conflict — for example counter-insurgent operations;
 - (2) applicable Rules of Engagement;
 - (3) Special Forces tactics, techniques and procedures (TTPs);
 - (4) the operational tempo of the Special Forces;
 - (5) Coalition operating environment;
 - (6) Afghan cultural aspects and implications for operations; and
 - (7) the enemy, their equipment and capabilities, including TTPs.

As at the end of the reporting period, the familiarisation phase of the Inquiry was essentially complete.

Phase 2 – Evidence and information gathering. During this phase details of specific rumours or allegations (including dates, times and locations of incidents of interest), and surrounding and associated information and evidence was identified. This involved extensive documentary searches, including within Defence and other international agencies and organisations involved in the conflict in Afghanistan. By the end of the reporting period, information and evidence gathering has also involved the conduct of over 220 witness interviews.

This phase of the Inquiry is well advanced; however, as a result of interviews conducted up to the end of the reporting period and responses received during the public call for information conducted between 01 September and 03 November 2017, further lines of inquiry have emerged.

Phase 3 – Consideration of alleged incident(s). This phase is the current focus of the Inquiry. It involves inquiring into each of the rumours and allegations in order to establish their veracity or otherwise. This phase continues to evolve as new lines of inquiry emerge.

The Inquiry is being conducted in private, because it has implications for operational security and persons with protected identities are involved. Other reasons for private proceedings are to protect the confidentiality of witnesses and to protect the reputations of persons whose reputations might unfairly be affected by unsubstantiated rumours.

Throughout this phase, the Inquiry team has ensured that any persons who might be adversely affected by the Inquiry's findings and recommendations are afforded procedural fairness — the right of reply.

Phase 4 – Consideration of cultural, psychological, operational and organisational factors. Cultural, psychological, operational and organisational factors are being considered concurrently with the evidence-gathering and incident-consideration phases. The aim is to determine if and how any of these factors may have contributed to the rumoured and alleged conduct, and/or to the proliferation of the rumours and how these issues may be addressed for the future.

Phase 5 – Report preparation and finalisation. At this stage, it is not possible to predict precisely how long it will be before the Afghanistan Inquiry delivers its report, as this will depend on the number of additional lines of inquiry that emerge as the Inquiry progresses. While the Inquiry's focus remains on phases two, three and four, some preliminary aspects of report preparation are in train.

Findings and recommendations

At the conclusion of the Inquiry, its findings and recommendations will be reported to the CDF for consideration and referral to other relevant authorities if necessary.

Secure and classified working office

During the reporting period, refurbishment works were carried out within the Office of IGADF to enhance information security in connection with the Inquiry.

Given the range of statutory inquiry functions performed, and the prospect that IGADF will be required to undertake similarly sensitive inquiry and review work in future, it was considered that the modifications required to facilities would have longer term benefit to the IGADF.

DIRECTORATE OF INQUIRIES AND INVESTIGATIONS

The IGADF provides an avenue for complaints relating to military justice issues where chain of command considerations or other factors may preclude recourse to normal avenues of complaint.

The IGADF's inquiry and investigation functions, other than Select Incident Review which is dealt with below, include the following responsibilities:

- a. at the direction of the Minister for Defence or CDF, to inquire into or investigate matters concerning the ADF;
- b. otherwise, to inquire into or investigate matters concerning the military justice system as directed by the IGADF; and
- c. to inquire into or investigate alleged breaches of the Service Police Code of Conduct by Military Police members.¹

An IGADF inquiry into aspects of the military justice system can make findings and recommendations in relation to whether an alleged injustice has been substantiated. The scope of IGADF recommendations can include suggested improvements to the military justice system.

Inquiries undertaken by the IGADF are conducted under the provisions of the IGADF Regulation 2016. A small number (five) of legacy Inquiries, which commenced prior to the commencement of the IGADF Regulation 2016, are being conducted under transitional provisions of Part 7 of the Defence (Inquiry) Regulations 1985. These legacy Inquiries are likely to be completed within the next reporting period.

Inquiries conducted by the IGADF are independent of the chain of command, reducing the likelihood that allegations of undue command influence over outcomes could be made by the complainant.

As part of the provisions in the Regulations, IGADF has coercive powers to compel the cooperation of Reservists not on duty and, for a small number of inquiries directed by CDF, civilian personnel. As with other formal ADF inquiries, IGADF inquiry staff and witnesses are protected against civil suit for actions conducted in good faith in the course of an inquiry.

Staffing

The Directorate of Inquiries and Investigations is led by an O6 General Service Officer, responsible to the IGADF for the conduct of inquiries, and investigations, into military justice incidents or complaints and inquiry into matters effecting the ADF. The Directorate comprises eight permanent ADF members, five Reserve personnel and two APS members, one of which is an Executive Level 1 (EL1) legal officer. Of the permanent ADF members, three are (E09) Service Police members

¹ Following a decision on 29 November 2017 by the Chiefs of Service Committee (COSC), the term 'Military Police' has replaced the term 'Service Police' when referring in the Tri-Service context to the Naval Police Coxswains, Military Police and Air Force Police.

who inquire into, or investigate, allegations or complaints of breaches of professional standards by other Service Police members. The workload of DII is supplemented by Reserve officers and contractors, as required.

The structure of the Directorate ensures expansive knowledge and expertise in key focus areas including:

- Defence administration;
- ADF human resource management;
- command and control processes;
- deployed warlike, non-warlike and humanitarian operations;
- the military discipline system;
- ADF training;
- Defence financial management;
- Defence equity and diversity;
- complaint management;
- Service Policing; and
- administrative and discipline law.

During the reporting period, the Directorate recruited a small team of qualified and experienced part-time ADF members to undertake final editorial reviews of draft inquiry reports.

Submissions

Current serving members, former serving members, families of members or former members, and other persons concerned about potential failures of military justice can make a submission to the IGADF. They can be relatively simple contemporaneous single issue complaints through to highly complex complaints raising multiple issues stretching over years or decades.

The decision on what action is to be taken in relation to a submission is made at the Office of the IGADF, except in those cases where the Minister or CDF has directed that an inquiry will be undertaken into specific matters. Each of the Services or other Defence Groups may request that IGADF conduct an inquiry, independent of the ordinary chain of command, into matters affecting the military justice system.

For a fourth consecutive reporting period, submissions were regularly characterised by the complexity and multiplicity of issues raised, frequently needing legal interpretation and consultation with other Defence authorities.

In 2017–18, the IGADF received 65 inquiry submissions, an increase of approximately six per cent from 2016–17. Comparable with previous reporting periods, almost 30 per cent of these submissions proceeded to inquiry.

Similar to previous reporting periods, the main categories of complaints received related to:

- abuse of authority;
- abuse of process;
- avoidance of due process;
- failure to act;
- bullying; harassment; and inappropriate behaviour.

Approximately 22 per cent of submissions resulted in referral for further consideration by other Defence authorities. Referrals can occur for a number of reasons, including:

- following the preliminary assessment by the Office of the IGADF, when issues of concern lay within the remit of the single Service environment, and where the complainant retained faith in their higher Service chain of command, complaints were generally referred to single Service authorities to take appropriate action;
- submissions which raised complaints about issues that were either unrelated to military justice or did not fall within the jurisdiction of the IGADF to address were referred directly to the relevant jurisdictional authority if appropriate; and
- assessments of submissions which did not warrant an inquiry, but identified discrepancies or a lack of clarity in Defence policies or processes, the IGADF would request the policy sponsor to consider further review.

Inquiry caseload

During 2017–18, the IGADF assessed 113 matters, including 48 matters carried over from the previous reporting period. A number of new and continuing submissions were of a highly complex nature, which required significant cross-Group and/or inter-Departmental liaison and coordination.

The time taken to complete an inquiry can be influenced by many factors, including:

- complexity of the complaint;
- time elapsed since the alleged incident;
- number and location of personnel involved (complainants, respondents and witnesses);
- amount and availability of witness statements and evidence;
- involvement of other functional areas; and
- number of inquiries subject to review and clearance at a particular time.

By the end of the reporting period, 53 submissions had been finalised as a result of IGADF inquiry or assessment. About 10 per cent (five) of the submissions received were found by IGADF to have the allegations wholly or partially substantiated.

Inquiry aftercare duties

The IGADF continued to provide provisions of aftercare duties for inquiries, investigations and complaints during the reporting period. These aftercare requirements included:

- a. requests for reconsideration of decisions not to inquire into matters or to reopen completed inquiries;
- b. requests for access to inquiry material either via administrative release or under the provisions of the *Freedom of Information Act 1982*; and
- c. complaints submitted across multiple external avenues or agencies, such as:
 - (1) Minister for Defence or other parliamentarians;
 - (2) Commonwealth and Defence Force Ombudsman;
 - (3) Australian Human Rights Commissioner; and
 - (4) Office of the Australian Information Commissioner.

A small number of cases involved unusually persistent complainants who continued to seek satisfaction through the reiteration of issues previously addressed both within Defence and through external review agencies, up to and including the Federal Court.

There is a continuing trend for complainants to exercise all complaint avenues available to them, either sequentially or simultaneously, and it is not unusual for IGADF to encounter a 'scattergun' approach where multiple Commonwealth and

State/Territory agencies are dealing with effectively the same complaint or elements thereof.

Managing the expectations and frustrations of such complainants can be challenging for IGADF inquiry and investigation staff. A particular area of disappointment for complainants is in the reporting of allegations of historical war crimes or offences under superseded military discipline law related to the Vietnam era, where IGADF does not have jurisdiction over such matters, either because of their potentially criminal nature or because they significantly predate the current military justice system.

Critical Lessons Learned Regarding Defence Inquiries

In 2017–18, IGADF identified a number of critical lessons to support the conduct of and minimise the likelihood of flaws arising in future Defence inquiries.

The lessons were drawn from an examination of a range of IGADF inquiries, including a long running inquiry officer inquiry (IOI) initiated by an ADF headquarters under the authority of Part VI of the Defence (Inquiry) Regulations 1985. While the IOI obtained and analysed a great deal of evidence, a number of critical flaws resulted in a determination not to rely on the lengthy and complex report for subsequent decision-making; the evidence obtained by the IOI and elements of the analysis were confirmed as reliable and available to decision-makers.

Timeliness. The purpose of a Defence inquiry is to provide commanders with information in a timely fashion on the basis of which properly formed decisions for further action may be made.

In certain instances, IGADF inquiries found that by the time the IOI report was submitted, action was already well in progress to remediate key systemic matters subject to recommendations in the report. As a result, while some findings were of potential use to decision-makers, others had been overtaken by events, as a result of which the inquiry on the whole did not represent a good use of Defence resources.

Definition of terms. It is not unusual for complainants to allege that they have been disadvantaged or mistreated due to a particular dysfunctional ADF workplace 'culture'. In examining attempts to address cultural issues, the IGADF experience has been that the term 'workplace culture' is so ill-defined, the extent to which culture contributes to an individual's decisions so subjective, and the expertise of inquiry officers in sociocultural concepts so limited, that it is too difficult to be adequately captured through the administrative inquiry process.

Inquiries that focus on examining identifiable factors underpinning specific actions and incidents, to provide information on which commanders can base decisions, are more effective than those attempting to delineate intangibles.

Methodology. In attempting to address complex allegations it is important that the appropriate methodology is selected. Proper scoping of an inquiry before its commencement is essential in determining the boundaries and ascertaining the

correct methodology for addressing the situation for which the need for inquiry has been identified.

Terms of Reference should not be too broad, or be allowed to expand during the course of evidence gathering to where the type of inquiry originally selected is not the best fit.

Furthermore, where an Inquiry is broad and complex, consideration should be given to establishing a Commission of Inquiry (COI). A COI provides for coercive powers beyond those of an IOI, such as the ability to summons any person to appear as a witness and answer questions, rather than just a member of the Defence Force. An alternative in such situations is to split the matter up into smaller, discrete inquiries into particular events or thematic groups of events, rather than stacking multiple related issues into an unwieldy omnibus inquiry.

Staffing. Having selected the inquiry methodology, the correct selection of inquiry staff is fundamental to success. An Inquiry Officer with the appropriate level of experience for the complexity of the matter should be selected, and then provided with the suitable level of staff resources to complete the Inquiry. Delays in the completion of inquiries often arise from key inquiry personnel having to split their time between the inquiry and other assigned duties. Likewise, the quality of some inquiries has been affected by single inquiry officers rushing to meet a deadline, leading to a failure to obtain all reasonably available and relevant evidence.

Legal Review. The legal review conducted before an inquiry report is submitted a decision-maker is critical to identifying flaws and faults that might impact on the reliability of the report and its underlying evidence. A number of instances were encountered by IGADF where the legal review of an inquiry report had not been sufficiently robust, leading to subsequent requirements for decision-makers to undertake further inquiry or direct fresh assessments of evidence gathered by inquiry officers.

Allegations of Historical War Crimes

During the course of the reporting period, IGADF received a small number of submissions that included allegations of historical war crimes (generally during the Vietnam War) or breaches of military law preceding the introduction of the *Defence Force Discipline Act 1982*.

War crimes are offences under the provisions of the *Crimes Act 1900* and are thus matters falling within the jurisdiction of the Australian Federal Police (AFP). IGADF has sought AFP advice on the processes for referring historical war crimes allegations. The AFP employs a Case Categorisation and Prioritisation Model (CCPM) to determine how to allocate its limited available investigative resources. Key factors in the CCPM include the alleged crime type, the potential impact on Australian society, the importance of the matter to the AFP, and the resources required to undertake an investigation.

Alleged offences under previous Defence military justice legislation, such as the falsification of gallantry or distinguished service award nominations, do not usually

have a connection with contemporary military justice arrangements in the ADF. Accordingly, unless the identification of historical irregularities exposes failures or flaws in current military justice processes, which could then be remedied by recommendations the IGADF might make to relevant authorities, they do not warrant the conduct of an IGADF military justice inquiry.

Military Police Professional Standards

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

The Directive requires that the reporting of all complaints regarding Military Police must be referred to the IGADF. The IGADF's Professional Standards investigative capability enables the review of such allegations of serious breaches of the Service Police Code of Conduct to be conducted independently of the Joint Military Police Unit² and, in particular, the ADF Investigative Service (ADFIS) and other Military Police authorities.

In 2017–18, IGADF received 35 complaints against Military Police, of which 24 became the subject of further IGADF inquiry or investigation. A further eight cases were carried forward from the previous reporting period, resulting in investigation activity on 32 matters during the reporting period.

A particular feature during the reporting period was the increasing provision of notification to commanders where negative behavioural trends were identified by the IGADF Professional Standards section that may not have been apparent at unit level. The section provided advice to unit commands on potential avenues to address individual or group behaviours that do not accord with the expected standards of a Military Police member, either through training, counselling, formal administrative sanctions or disciplinary action.

Own initiative inquiry

As reported in 2016–17, on 22 May 2017 the IGADF directed the undertaking of an own initiative inquiry into the ADF Service Police Code of Conduct and Professional Standards system by Group Captain Philip Moss, AM. The aim of the IGADF inquiry was to identify potential improvements to the current Military Police Code of Conduct and Professional Standards system.

The report of the own initiative inquiry was submitted prior to the end of the reporting period. Key recommendations of the inquiry report included the need to retain a Professional Standards system and Code of Conduct for Military Police, with an enhanced focus on whether an individual is a fit and proper person to perform Military Police duties. The approval and implementation phases of the inquiry are currently in progress.

² On 01 March 2018 the Joint Service Police Group, established in January 2017, was renamed the Joint Military Police Unit.

DIRECTORATE OF MILITARY JUSTICE PERFORMANCE REVIEW

The Directorate of Military Justice Performance Review is responsible for the annual military justice audit program. This function is specified in Section 110C of the Act and provides an ongoing mechanism for the conduct of internal audits and a review of the military justice system.

The IGADF audit program contributes significantly to the monitoring of the health and effectiveness of the military justice system within the ADF. Approximately 50 military justice performance audits are undertaken by the IGADF during each reporting period. This figure represents approximately 10 per cent of all auditable ADF units.

The audits focus on disciplinary and administrative components of the military justice system and how each component is administered at unit level, and allows for the assessment of how appropriately military justice law and policies are being complied with, and implemented. In addition, and where appropriate, an audit draws the attention of the unit to areas where the delivery of military justice can be improved.

To ensure that the IGADF's military justice audit program is conducted professionally and with credibility, audit procedures and practices have been aligned as closely as practicable with the relevant Australian Standards on Assurance Engagements (ASAE):

- a. *ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information,*
- b. *ASAE 3100 Compliance Engagements, and*
- c. *ASAE 3500 Performance Engagements.*

The audit process is to undertake spot-checks of available records to determine the appropriateness of the military justice practices being employed, and where possible, identify lapses or failures in administering military justice at the unit level. An overall assessment, inclusive of recommendations to address any breaches of law or policy, and suggestions for better work practices for the implementation of military justice, is provided to unit's Command team on completion of the audit.

Focus group discussions are held with representative groups of unit personnel, based on worn rank and, where appropriate, according to gender. These discussions allow the audit team to gauge each participant's appreciation of the military justice system, and to gain an understanding of how military justice is implemented across each of the rank levels at the unit being audited.

Each element of the audit contributes to the compilation of an overall military justice performance report, assessing the quality of military justice delivered at the relevant unit.

Minor policy breaches are the most common findings from the audits; however, on occasions, audit teams have identified more significant breaches of military justice law and policies. Where such circumstances prevail, the identified unit will be required to undertake a re-audit within a 12 month period, to ensure all breaches of military justice laws and policies have been addressed.

The IGADF audit program provides numerous benefits for the ADF, including:

- a. unit-initiated rectification of military justice processes and practices which the prospect of an IGADF audit may encourage;
- b. improvements to unit military justice delivery implemented during audits or as a result of audit recommendations or suggestions;
- c. the possibility that an audit might provide early warning of unit-specific issues with potential military justice impacts;
- d. the promotion of military justice values among unit commanders and staff who are accountable for military justice in their unit and among unit personnel who take part in focus group discussions; and
- e. mitigation of strategic risk by means of an assurance process in which units are audited on a periodic basis.

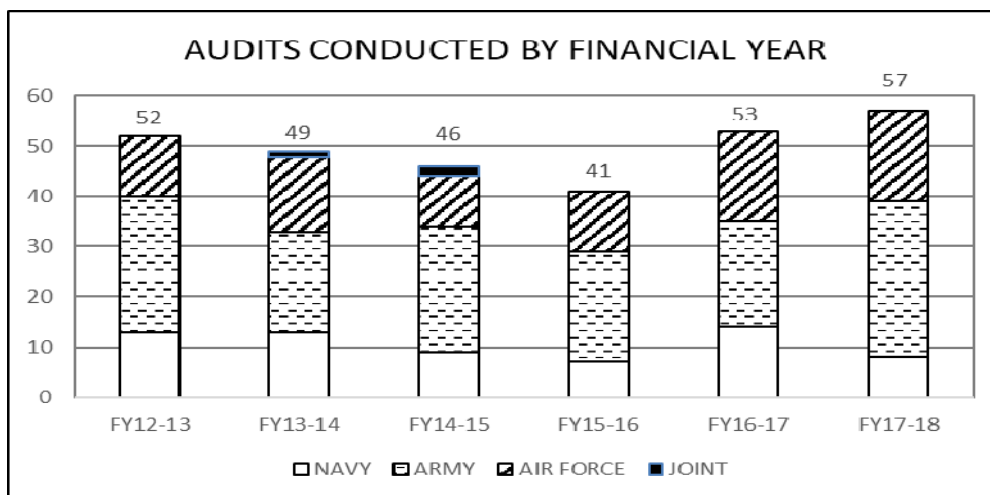
Staffing

The Directorate of Military Justice Performance Review is led by an O6 Legal Officer and comprises two permanent ADF members and five APS employees. In association with permanent staff, Reserve legal and non-specialist officers supplement the military justice unit audit teams.

Military justice performance audit program

In 2017–18, the IGADF conducted 57 military justice performance audits (Army 31, Air Force 18 and Navy eight), representing an increase of almost eight per cent over the 53 audits conducted in the previous reporting period.

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



During the reporting period, three units were identified to have had material deficiencies, or compliance breaches, necessitating a re-audit within 12 months.

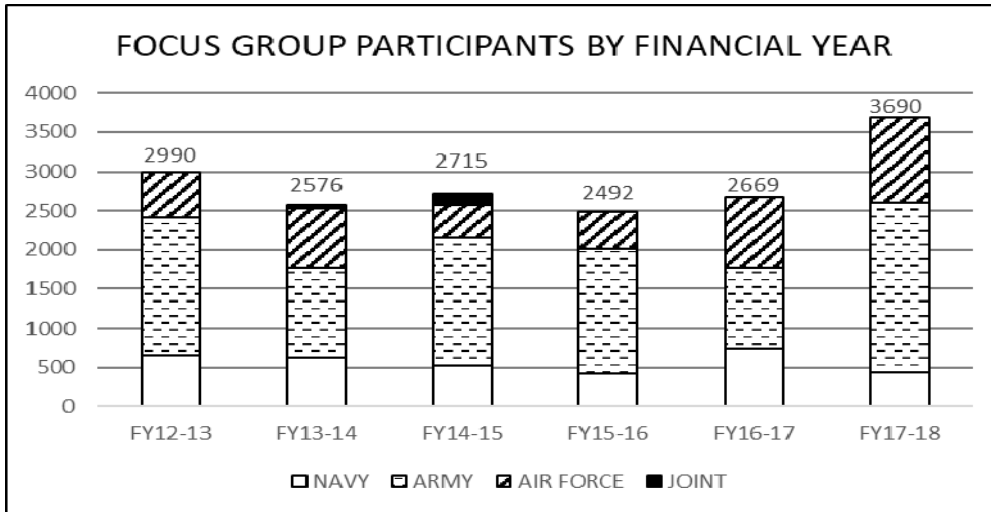
Overall, there were 350 (Navy 48, Army 188 and Air Force 114) recommendations and 595 (Navy 92, Army 306 and Air Force 197) suggestions made to the unit during the conduct of the audit program. Common shortfalls or areas for improvement for units with compliance breaches include:

- a. the unit's inadequate awareness of military justice procedures;
- b. a lack of appropriate disciplinary appointments;
- c. incomplete or out of date DFDA delegations;
- d. an absence of suitable registers for notifiable incidents, fact finding and administrative inquiries;
- e. limited record keeping and absence of corporate files; and
- f. a failure to enter military justice data (investigations, DFDA offences, administrative sanctions, civil convictions, administrative inquiries and involuntary termination) onto relevant ADF information tracking systems.

Common suggestions made by the IGADF audit teams during the conduct of military justice performance audits include the conduct of regular DFDA training to inform all personnel of their basic rights and responsibilities under the DFDA, and to conduct more specialised training to enable relevant personnel to perform their DFDA roles, functions and responsibilities.

During the reporting period, 3690 ADF personnel (Army 2162, Navy 444 and Air Force 1084) participated in a focus group discussion during the course of the audit program.

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



Focus group survey outcomes

Focus group discussions, along with an analysis of the survey responses, continue to provide a useful indication of the effectiveness of the ADF's military justice system administered at the unit level. Responses to the focus group survey during the reporting period show:

- a. 55 per cent of participants believe they receive adequate discipline training to allow the member to discharge their DFDA responsibilities;
- b. 72 per cent of participants were aware of their rights and obligations under the discipline system;
- c. 77 per cent of participants believed their unit would treat them fairly and impartially if they were the subject of an administrative inquiry;
- d. 86 per cent of respondents understand the concept of the 'right to be heard' of the 'right of reply', otherwise known as procedural fairness;
- e. 30 per cent of participants believed adverse administrative action procedures take too long;
- f. 79 per cent of participants had confidence in their chain of command to resolve complaints;
- g. 61 per cent of participants believed their unit maintained a balance between the rights of complainants and the rights of respondents;
- h. 20 per cent of participants believed they had experienced unacceptable behaviour at their unit;

- i. 85 per cent of participants knew where to obtain advice or information on unacceptable behaviour;
- j. 44 per cent of participants believed the military justice system provides sufficient feedback to complainants and respondents;
- k. 68 per cent of participants believed all ranks are treated equitably under the military justice system; and
- l. 68 per cent of respondents believe morale was good.

Military Justice Online Survey

A supplement of military justice questions is administered annually with the online *YourSay Organisational Climate* survey. The survey was conducted in September 2017, with a total of 10,734 ADF members completing the military justice supplement survey.

While it is not possible to explain definitively the differences between the *YourSay* survey responses and the IGADF focus group survey responses, such differences may be attributed to the following:

- a. The IGADF focus group survey expressly limits responses to the respondent's experience in the preceding 12 months at the unit being audited; the *YourSay* survey does not include this posting limitation.
- b. The difference in the samples for each research activity. The IGADF survey is completed by all participants in organised focus groups. The *YourSay* survey is completed voluntarily by ADF members from a 100 per cent sample (minus very senior officers) email list, who self-select to undertake the survey. Results of the *YourSay* survey may, therefore, be affected by non-response bias. The demographics of respondents must be considered in analysing the results.
- c. The IGADF focus group survey is completed in the context of a military justice performance audit focus group, during which respondents' attention is specifically drawn to key elements of the military justice system, while the *YourSay* survey is completed in isolation, focused on organisational climate, and is completed online.
- d. Junior personnel (junior officers and enlisted personnel) represented a high proportion (58 per cent) of respondents in the *YourSay* survey; while IGADF focus group survey results are derived from a more even distribution across the range of ADF ranks.

Results from the online survey, as well as corresponding results to the IGADF focus group survey for 2017–18, are detailed below.

Respondents who...	YourSay Survey Results	IGADF Focus Group Survey Results
believe the discipline system is fairly and consistently applied.	47%	74%
believe the DFDA is an effective tool for the maintenance of discipline.	59%	80%
believe the complexity of the DFDA discourages the laying of charges.	45%	33%
believe members found guilty of DFDA offences are in fact guilty.	47%	45%
believe members subject to adverse administrative actions are treated fairly.	53%	65%
Believe adverse administrative action responses are fairly considered being the imposition of a sanction.	59%	73%
are aware of their avenues of complaint under the military justice system.	69%	69%
know how to lodge a Redress of Grievance.	63%	56%
believe complaints made to the chain of command are dealt with fairly and resolved promptly.	58%	68%
believe all genders are treated equitably under the military justice system.	57%	70%
believe the chain of command would take appropriate action if they became aware of an incident or complaint of sexual misconduct.	87%	93%
believe the alcohol testing program is effective at reducing alcohol abuse/misuse in the ADF.	45%	68%
believe the drug testing program is an effective deterrent to drug use/abuse in the ADF.	51%	70%

Survey results allow for the benchmarking of a unit's ability to deliver a healthy, effective and efficient military justice system, in comparison to their Service's average for the previous period. This assists the chain of command to identify possible issues where response rates for individual units diverge significantly from the service average.

Information Tracking Systems

The IGADF currently sponsors two information tracking systems: the ADF Administrative Inquiries Tracking System (ADFAITS); and Defence One—Conduct Reporting and Tracking System (CRTS).

ADFAITS is the primary, ADF-wide, information system for the capture and tracking of administrative inquiries, and provides a repository of information regarding these inquiries. Data is added and maintained by the units and formation level. In 2017–18, 47 inquiry officer inquiries were entered in ADFAITS. Navy accounted for eight, Army 27, Air Force 11 and CDF/Joint command units one.

During the reporting period, the review of the governing policy for the ADFAITS system, Defence Instruction (General) Administrative 65-1 *Administrative Inquiry Tracking* was finalised. The review concluded that the policy governing the capture and tracking of administrative inquiries be relocated to the Administrative Inquiries Manual, at which time the Defence Instruction can be cancelled.

The CRTS system was designed to track an ADF member's entire conduct record and is an integral tool for effective career management and discipline maintenance. Through timely and accurate data entry by the unit, the CRTS system allows the IGADF to provide military justice statistical data and analysis to command, identifying discipline trends, as well as responding to media enquiries.

During the reporting period, IGADF staff worked with the Directorate of Military Personnel Policy to successfully transition the policy governing the CRTS system from Defence Instruction (General) Administrative 10-8 *Conduct Reporting and Tracking System* to the Military Personnel Policy Manual, Part 9, Chapter 8.

In addition, IGADF, as a key stakeholder, provided input for the establishment of the new Defence-wide Case Management System (CMS). It is anticipated that the new CMS system will adopt all the characteristics of both the ADFAITS and CRTS systems, as well as other Defence data bases.

Requests for information

The IGADF continues to see a high demand for military justice statistics and analysis. The Office of the IGADF responded to requests for information from the CDF, VCDF, Chief of Air Force, Chief of Army, the Office of the Judge Advocate General, the Registrar of Military Justice, Provost Marshal ADF and the Summary Discipline System Review Team. Additionally, the Office of the IGADF responded to Freedom of Information requests relating to military justice data. A synopsis of some of the key military justice statistical information generated during the reporting period is contained in the Annex to this report.

DIRECTORATE OF SELECT INCIDENT REVIEW

The IGADF has the responsibility to inquire into the death of a member of the Defence Force—where the death appears to have arisen out of or in the course of the member's service in the Defence Force—and provide assurance to CDF, Government and the public that Defence is responding appropriately to service related deaths. These inquiries are conducted independently of the chain of command.

Staffing

DSIR is led by an O6 Legal Officer and supported by four permanent ADF personnel and two APS employees. Specialist Reserve Officers support the workload of DSIR, as required.

Death inquiry process

An IGADF death inquiry gathers information and provides a report to CDF, which explains the circumstances of the death of the ADF member and specifically any connection between the member's service in the ADF and their death. The report identifies whether or not Defence policies and procedures have been followed and evaluates whether or not Defence policies and procedures are suitable and makes recommendations about how they might be improved. The IGADF has flexibility in how information is obtained about a service death, including conducting a desk-top review or inquiring in private or in public.

Through the inquiry process, IGADF consults with the Defence Community Organisation (DCO) and the relevant Service Headquarters to ensure that care is taken when engaging with the deceased ADF members family in an effort to reduce ongoing grief and minimise harm.

Throughout the inquiry process, IGADF engages with a variety of internal and external organisations, including State and Territory police and coroners, Department of Veterans' Affairs, Veterans and Veterans Families Counselling Service, Comcare, State and Territory Registries of Births, Deaths and Marriages and other subject matter experts. Throughout 2017–18, IGADF continued to develop and refine its engagement with these stakeholders.

Where required, IGADF uses coercive powers to obtain information. External agencies have been receptive to requests under compulsion, as it provides them with the legal authority and protection for the release of information.

Inquiries

In 2017–18, IGADF received notification of and commenced inquiries into 40 deaths of ADF members.

In 2017–18, IGADF finalised 69 inquiries into deaths in service; 45 related to deaths that occurred in previous years and 24 were from deaths in this reporting period. Of those 69 deaths, the broad causes of death were:

- 35 (51 per cent) medical;
- 15 (22 per cent) suicide;
- 13 (19 per cent) accident;
- 4 (5 per cent) drug toxicity; and
- 2 (3 per cent) misadventure.

In addition the IGADF commenced and completed an inquiry into a death that occurred during a training exercise.

Of the finalised inquiries, three were conducted under the Defence (Inquiry) Regulations 1985, as they commenced before the commencement of the IGADF Regulation 2016. These were the final inquiries to be conducted under the Defence (Inquiry) Regulations 1985.

During the reporting period, the CDF terminated a CDF Commission of Inquiry (COI) and referred the matter to IGADF for inquiry. The CDF COI had previously been suspended during civilian criminal proceedings; however, on recommencement, issues relating to the conduct of the proceedings arose. In order to avoid the risk of further delay, the COI was terminated and CDF referred the matter to IGADF. Assistants IGADF were directed to use the material previously gathered by the COI and in any other relevant proceedings, to the greatest extent consistent with law and fair process, to assist with the findings. This Inquiry was ongoing at the end of the reporting period.

DIRECTORATE OF MILITARY REDRESS AND REVIEW

The Directorate of Military Redress and Review (DMRR) considers complaints submitted by ADF members through the Redress of Grievance (ROG) process.

Under Part 7 of the *Defence Regulation 2016* grievances are submitted for consideration, by their chain of command and now the IGADF. DR16 commenced on 01 October 2016 and provides a consolidated and more flexible ROG process with a single layer of review in whatever manner the IGADF considers to be appropriate to the circumstances.

This reporting period was the first Financial Year all ROGs were submitted under the DR16 system. Overall, the new system has been of considerable benefit with improved analysis and management of risk and accountability.

Defence policy states that complaints should be dealt with at the lowest possible level, so members are still required to submit their ROG to their Commanding Officer (CO). The CO is required to refer the complaint to the IGADF within 14 days. IGADF works closely with COs to determine the most appropriate way of dealing with the ROG. In the majority of cases, the ROG is substantively dealt with by the CO with subsequent review by the IGADF.

This arrangement positions the ROG as another function of command and removes the perception that ROGs are an onerous or burdensome task. Furthermore, it instils confidence within COs and promotes their ability to address ROGs 'in-house' in the first instance, thereby better enabling COs to focus on commanding their units and, in so doing, creating an important nexus between this regulatory requirement and Defence capability.

The benefits from this process are already being realised, with the majority of ROGs being substantively dealt with by the CO with subsequent review by the IGADF. The overall effect is a more user-friendly, timely and efficient ROG process; with COs considering the new ROG system to be easier to understand and administer.

In addition to this interaction with COs at the unit level, IGADF continues to interact with all three Services through their career management agencies. Without reducing the independence of those statutory functions associated with the Office of the IGADF, the prudent liaison with these agencies for those more sensitive and, potentially, pressing matters, enables a better shared understanding of the issues at hand. It also often leads to important time-gains, which assist in the overall efficient processing of ROGs under this new legislative arrangement.

IGADF also actively engages in outreach strategies, aimed at delivering a broader corporate awareness of the ROG process. These strategies include active engagement with command teams and administrative staff about considerations attached to the regulations, as well as the nature of the shared responsibilities between commands and IGADF. These strategies also target pre-command seminars, to educate attendees on the regulations ahead of them on assuming their command responsibilities.

It is important to note, IGADF considers every complaint, but has the discretion to not consider any complaint in detail, or to stop considering any complaint for a variety of reasons.

Staffing

DMRR is led by an Executive Level 2 (EL2) APS employee and comprises six ADF members and four APS employees, including one EL1 legal officer. Suitably experienced and qualified Reserve members supplement the staffing levels to assist with the ROG workload.

In 2017–18, approximately 2000 Reserve days were allocated for reserve case officers. Reserve usage across the three Services was Navy 7 per cent, Army 43 per cent and Air Force 50 per cent. In contrast, Army personnel accounted for 48 per cent of all ROGs submitted during the reporting period, while Navy and Air Force personnel accounted for 29 per cent and 23 per cent respectively.

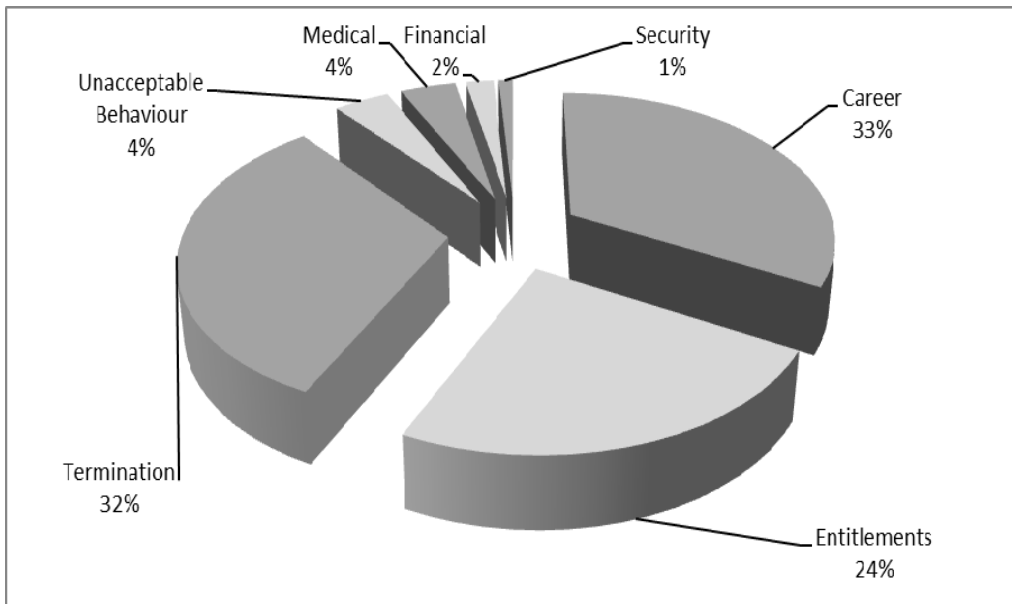
Historical ROGs

As at 30 June 2018, 19 ROGs submitted under the old ROG system (Part 15 of the Defence Force Regulations 1952) were ongoing. Seven (36 per cent) of those old system ROGs are in relation to the Navy Maritime Technician 2010 career scheme policy. At the end of the reporting period, the IGADF was awaiting a decision and findings by the New South Wales Supreme Court in relation to this matter, before these ROGs could be progressed.

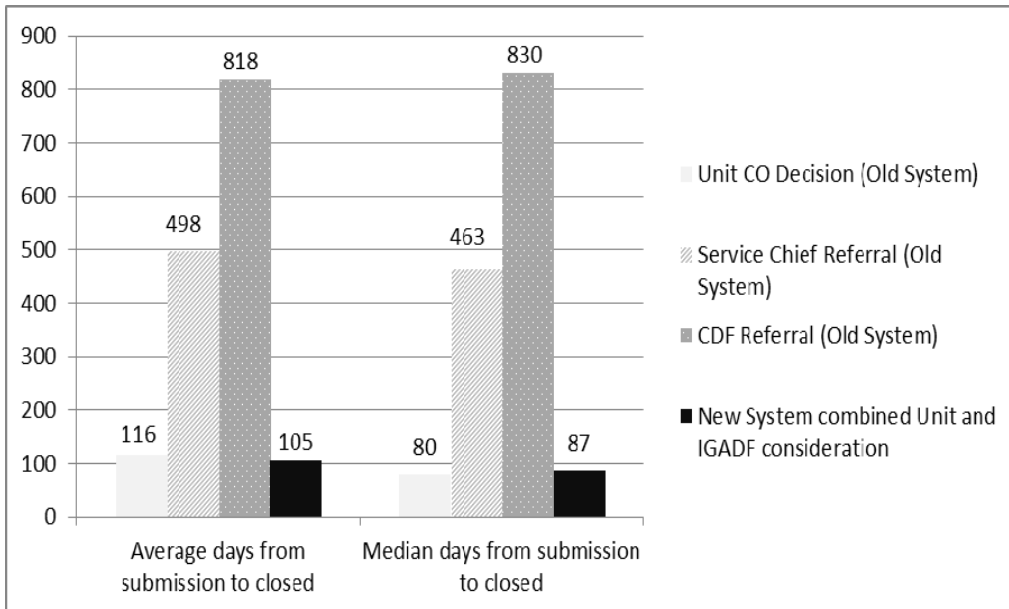
ROGs submitted

In 2017–18, 392 ROGs were submitted, which represents about an eight per cent decrease on the previous reporting period (423). Despite the minor decrease in ROGs submitted during this reporting period, the figure is comparable to the average number (400) of ROGs submitted each year over the past five financial years to IGADF.

In line with recent trends, in 2017–18 the main subjects of complaint concerned career (33 per cent), termination of service (32 per cent), and entitlements (24 per cent). In the reporting period, subjects of complaint were:



Since the introduction of Part 7 of the *Defence Regulation 2016*, the length of time between the submission of the ROG and its completion has significantly reduced. Under the old ROG system, average completion time was 498 days, while under the new ROG system, in 2017–18, the average time had reduced to 102 days, with a median time of 87 days. Delays in finalising ROG applications under the old ROG system were the basis of the majority of complaints about Defence to the Defence Force Ombudsman. These delays were not attributable to the CDF or Service Chiefs, but rather reflected the structural impediments to speedy resolution of complaints that were inherent in the old ROG system.



Decisions and outcomes

ROG decision outcomes are categorised under six headings:

- complaint not reviewable;
- withdrawn by member;
- administrative resolution;
- no merit;
- some merit (partially upheld); and
- has merit (fully upheld).

Overall, 12 per cent of complaints that proceeded to a decision were substantiated either in whole or in part. While 10 per cent were withdrawn by the applicant prior to substantive consideration as a ROG. Some of these withdrawals likely occurred for reasons of recognised merit and subsequent resolution.

ROGs finalised at unit level

During the reporting period, 347 ROGs (Navy 82, Army 169 and Air Force 96) were finalised at unit level:

- 187 were found to have no merit;
- 44 were withdrawn by the applicants;
- 46 were not reviewable;
- 20 were partially upheld;
- 42 were fully upheld;
- 7 were resolved administratively outside the ROG process; and
- one was automatically referred to the Service Chief for consideration (under Regulation 77 of the Defence Force Regulations 1952).

ROGs finalised at Service Chief and CDF Level

During the reporting period, 10 ROGs (Army eight and Air Force two) were finalised at the CDF level. All of these ROGs were found to have no merit.

A further 40 ROGs (Navy 7, Army 22 and Air Force 11) were decided at the Service Chief level:

- 19 were found to have no merit;
- 11 were fully upheld;
- three were withdrawn by the applicants;
- three were not reviewable;
- one was partially upheld; and
- two were resolved administratively outside of the ROG process.

One other ROG is being considered as part of an IGADF Inquiry.

Complaints to the Defence Force Ombudsman (DFO)

Under the old ROG system, complaints about delays in ROG handling used to account for the highest proportion of complaints to the DFO. The number of complaints to the DFO about ROG handling has significantly reduced since commencement of Part 7 of the *Defence Regulation 2016*.

DIRECTORATE OF LEGAL REVIEW

The Directorate of Legal Review (DLR) provides legal advice to IGADF concerning the conduct of military justice inquiries and investigations, military justice performance reviews and audits, military justice advisings and the promotion of military justice. DLR fulfils this role by:

- a. providing legal advice to IGADF;
- b. conducting legal reviews of IGADF inquiry reports;
- c. conducting inquiries as an Assistant IGADF;
- d. commenting on legislative and policy changes to improve and enhance the military justice system;
- e. providing legal advice in relation to investigations, inquiries, sanctions, redress of grievance and other complaints;
- f. designing and developing awareness training to promote military justice; and
- g. providing awareness training on military justice courses.

Staffing

DLR is led by an O5 ADF Legal Officer and comprises two permanent ADF legal officers and, similar to other Directorates within the Office of the IGADF, is supplemented by specialist Reserve legal officers.

Activities

Specific matters on which IGADF provided advice or opinion in 2017–18 included comments on the Administrative Inquiries Manual, Incident Reporting and Management Manual, Use of Recording Devices in the ADF, and the review of a number of agenda items as part of the Military Justice Coordination Committee. IGADF also provided a review of the *Defence (Inquiry) Regulations 2018* and amendments to the *IGADF Regulation 2016*.

SUMMARY DISCIPLINE SYSTEM REVIEW

As noted in the previous IGADF Annual Report, the Office of the IGADF was consulted on numerous occasions throughout the conduct of the Review into the Summary Discipline System, commissioned by the CDF on 23 November 2016. The Review was in response to concerns that the existing system is overly complex, difficult to use, unresponsive and characterised, because of its complexity, by excessive delay. The Review was tasked to recommend a specific model of summary discipline that is easy to use, timely and responsive, fair and just for all personnel and trusted by the ADF and the wider community.

On 29 November 2017, the Chiefs of Service Committee (COSC) endorsed the findings and recommendations of the Review.

A Summary Discipline Implementation Team has been appointed reporting directly to the Vice Chief of the Defence Force who, as the accountable officer for military justice, is responsible to CDF for ensuring that the recommendations and outcomes of the Review are implemented.

Internal changes, in accordance with the Review recommendations have commenced with the publication in March 2018 of a *Commanders' Guide to Discipline* and a *Commanders' Guide to Punishment*. Other improvements to policy, training and education, and simplification of procedures and improved oversight of the summary discipline system are being progressed.

To achieve a more efficient summary discipline system, that is easier to use and less complex, amendment of the DFDA will be required. The ADF seeks to simplify discipline proceedings consistent with Parliament's direction in 2008 following the enactment of section 146A of the DFDA pertaining to the evidence framework in a summary trial.

In addition, the report places significant emphasis on the potential benefit of discipline data in terms of trend analysis as an accountability tool and as a potential early-warning indicator.

Some of the report recommendations focus on making more data accessible by command to improve command oversight and management. As a result, IGADF has held discussions with Environmental Commanders–Forces Command, Air Commander and Fleet Commander–to assist in providing a better perspective on the summary discipline system and the military justice system in general, within each of the Services.

Ultimately, the outcome of the review has been the adoption of a new summary discipline model that will be easier to use, and more timely and responsive, while still providing procedural fairness to ADF members.

VISITS AND OTHER ACTIVITIES

Engagement with international counterparts is critical in providing insight into alternative approaches to contemporary military justice matters, and allows for the identification of better practices to assist in the ongoing refinement of military justice related policies and processes.

Visit by the New Zealand Ministry of Defence Deputy Secretary Independent Review

The Office of the IGADF had the pleasure of hosting a small delegation from the New Zealand Ministry of Defence in March 2018. The primary focus of the visit was on the similarities between the ADF military justice system and the New Zealand Defence Force military justice processes.

The visit allowed the delegation to gain a better appreciation of the complexities of the ADF military justice system through discussions with the key ADF military justice entities including, DFO, Head Defence Legal (HDL), Registrar of Military Justice, Defence Counsel Service, Director Military Prosecutions, the Joint Military Police Unit and the Summary Discipline Review Team.

Visit by the South Korean High Military Court

On 15 March 2018, the Office of the IGADF was visited by a delegation from the South Korean High Military Court, who were being hosted by HDL. The visit enabled the South Korean delegation to gain an understanding and appreciation of the ADF's military justice practices and procedures, as well as strengthen relationships between the ADF's key military justice appointments and the South Korean delegation.

Discussions during the delegation's visit to the Office of the IGADF focused primarily on Service discipline, and the ROG and inquiry process. Similarities between the legal frameworks in which the two military justice systems operate was also discussed.

Attendance at conferences

Throughout 2017–18, the IGADF attended and presented at a number of military justice related conferences.

In November 2017, IGADF travelled to Wellington, New Zealand to present at the New Zealand Defence Force *Transparency and Accountability in Modern Military Operations* workshop. The IGADF presentation reported on the functions, roles and responsibilities of the Office of the IGADF, current military justice issues and a brief analysis of military justice statistics.

The IGADF and Deputy IGADF convened the inaugural meeting of Inspectors-General (IG) on 29 March 2018, which was attended by other Commonwealth IGs and Deputy IGs from the Inspector-General of Intelligence and Security, Inspector-General of Taxation, Inspector-General of Biosecurity and Inspector-General of Bankruptcy. The purpose of the meeting was to discuss and share ideas on

alternative regulatory practices, and learn about the ways in which each IG operates within their respective jurisdiction. The meeting also provided an excellent opportunity for the IGADF to establish integral relationships with other agencies who share similar oversight functions. It is intended that future meetings be held on a bi-annual basis.

The IGADF attended the 9th International Conference of Ombuds Institutions for Armed Forces (ICOIAF) from 8-10 October 2017. The ICOIAF was set up to promote the important roles that institutions like ombudsman, Inspectors-General, commissioners and people advocacy groups play in protecting human rights and the prevention of maladministration within international armed forces, characterised by their independence and impartiality from the chain of command they are tasked to oversee. The conference is designed to enhance the institutions' effectiveness and capability in carry out their respective roles.

Military justice seminars, training and forums

As in previous years, the IGADF engaged with stakeholders at a variety of seminars and forums across Australia, presenting on the role of the Office of the IGADF and current military justice topics. These courses included the Legal Training Modules, which provide specialist professional training for ADF legal Officer's, Command Courses and Reserve Legal Officer training activities.

Internally, IGADF staff undertook professional development training on a range of topics including guidance on assessing witnesses and making adverse credit findings, reviewing and discussing lengthy inquiry processes and discussing transition issues relevant to ROGs and complaints.

CONCLUSION

The operating tempo in the Office of the IGADF was higher in 2017–18 than in previous reporting periods. This was driven by an increase in the numbers of submissions received for investigation or inquiry, military justice performance audits conducted and inquiries into deaths in service being completed.

Contributing to the higher than usual operating tempo was the continued high demand for IGADF-produced military justice statistics and analysis, as well as responding to Freedom of Information requests.

In 2017–18, the IGADF inquiry into the rumoured allegations of breaches of the law of armed conflict in Afghanistan between 2005 and 2016 (and associated matters) gained significant momentum, expending considerable IGADF resources. By the end of the reporting period, over 200 witnesses had been interviewed and additional lines of inquiry had been identified.

A fair and effective military justice system is necessary for the ADF's overall operational effectiveness. Based on the information available to the IGADF, the standard of discipline and appropriate support for individual rights across the ADF has remained strong overall. While challenges within in the military justice remain, there has been no indication of any reluctance to deal with them, or implement reform where necessary to reduce the complexity of those challenges.

Overall, the Office of the IGADF continues to display high standards expected of a Statutory Appointed office and achieve an operational capacity that exceeds previous years, while doing so within similar resource allocations.

GLOSSARY OF ACRONYMS AND ABBREVIATIONS

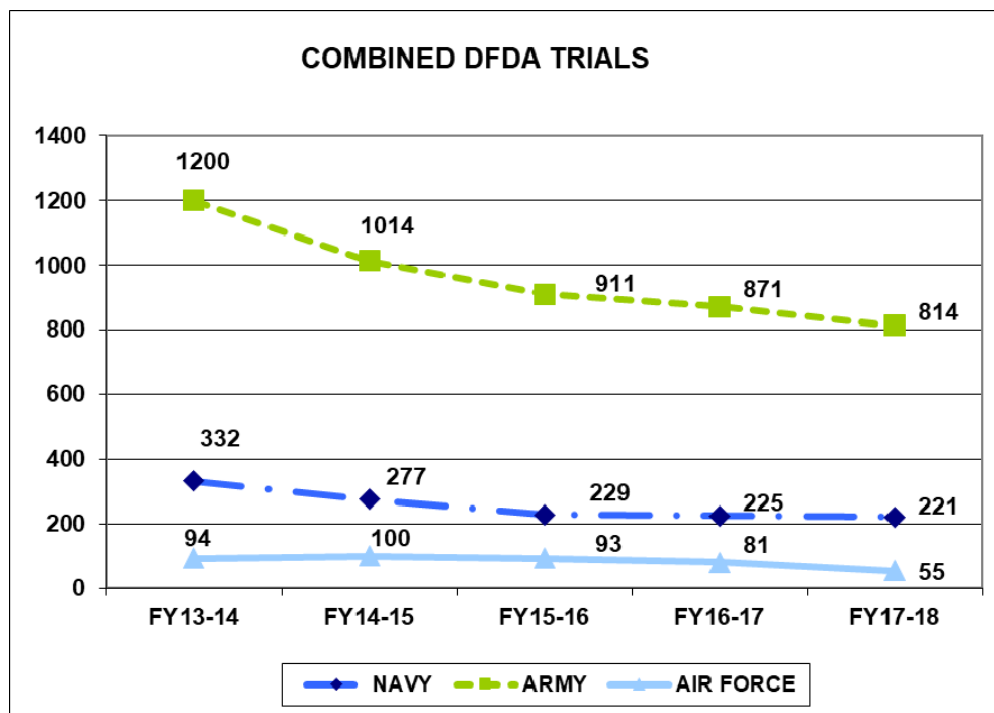
Australian Defence Force	ADF
ADF Administrative Inquiry Tracking System	ADFAITS
ADF Investigative Service	ADFIS
Australian Public Service	APS
Australian Standards on Assurance Engagements	ASAE
Chief of the Defence Force	CDF
Commission of Inquiry	COI
Conduct Reporting and Tracking System	CRTS
<i>Defence 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
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
<i>Defence Act 1903</i>	the Act

MILITARY JUSTICE STATISTICS

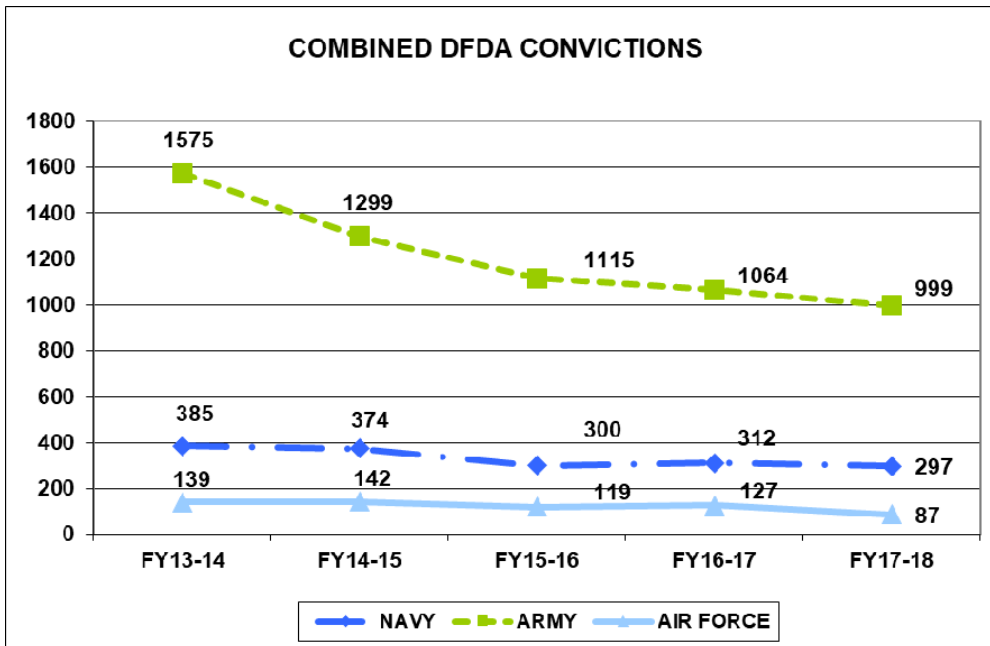
Discipline statistics

The overall offending rate continued its steady decline in each Service, a trend observed since financial year (FY) 2013-14. The total number of trials (courts martial, Defence Force magistrate trials and summary trials) has decreased by almost eight percent, from 1177 (Navy 225, Army 871 and Air Force 81) in FY2016-17 to 1090 (Navy 221, Army 814 and Air Force 55) in FY2017-18.

Similarly, the total number of convictions recorded across the three Services has followed an almost identical trend, decreasing from 1503 in FY2016-17 to 1383 in FY2017-18³. Recent trial and conviction trends are illustrated in the below graphs.



³ Discipline convictions usually outnumber trials due to some ADF members being tried for multiple discipline offences from a single discipline trial.



Superior trials (Courts martial and DFM trials) continued to decrease during the reporting period, a trend that has been observed over the past four financial years. In FY2017–18 there were 32 superior trials recorded equating to a decrease of approximately six per cent, from the 34 trials recorded in FY2016–17.

The offending rate at summary trial level continued to decrease during the reporting period. Overall there was a seven per cent decline in summary trials from 1142 (Navy 218, Army 854 and Air Force 70) in FY 2016–17 to 1058 (Navy 206, Army 803 and Air Force 49) in FY2017-18, continuing recent trends experienced over the past four reporting periods.

During the same period, the number of convictions across the three Services decreased by eight per cent from 1391 (Navy 288, Army 1014 and Air Force 89) in FY2016–17 to 1283 (Navy 236, Army 970 and Air Force 77) in FY2017–18.

Highlighting fairness and transparency within the summary discipline system, there was a total of 60 (Navy 34, Army 23 and Air Force three) not guilty verdicts awarded, while a further 37 (Navy 7, Army 29 and Air Force 1) convictions were quashed on review. In addition, a further 12 accused persons pleaded not guilty to some or all of the charges against them, with four subsequently being found not guilty of some or all of those charges against them at the superior trial level.

Alcohol conviction statistics

During FY2017-18, there were 185 disciplinary convictions recorded where the misuse of alcohol was a contributing factor (excluding alcohol misuse while on deployment), equating to an increase of 38 per cent from the 134 recorded in

FY2016–17. Navy accounted for 59 (32 per cent), Army 116 (63 per cent) and Air Force 10 (5 per cent).

There were a further 35 disciplinary convictions for alcohol related offences committed on deployment during the same period. Navy accounted for 19 (54 per cent), Army 15 (43 per cent) and Air force one (three per cent).

Discipline infringement statistics

In FY2017–18, there were 5047 disciplinary officer infringements recorded. This represents an overall increase of around seven per cent over the 4743 infringements recorded in FY2016–17. Navy recorded an increase of 22 per cent from 1540 in FY2016–17 to 1981 in FY2017–18, while Air Force increased by 15 per cent from 374 to 440 over the same period. Army recorded a slight decrease of almost eight per cent from 2829 in FY2016–17 to 2626 in FY2017–18.

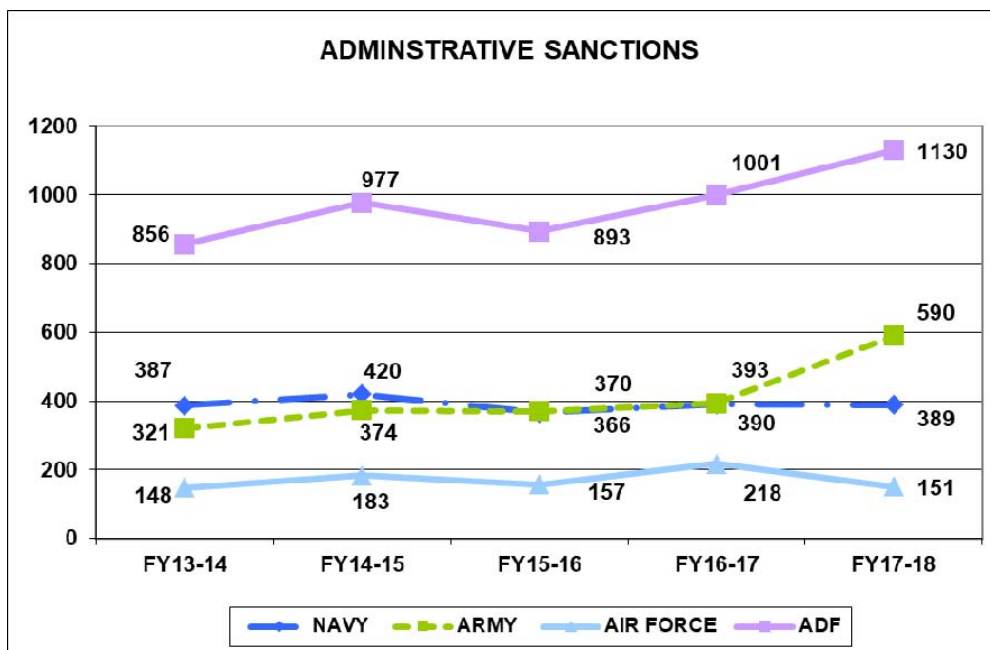
Administrative sanctions statistics

The administrative sanctions system is designed to protect the reputation of the ADF through targeting and correcting shortfalls in appropriate or acceptable behaviour, and in a member's performance and standards. Administrative sanctions include, but are not limited to, formal warnings, censures, termination of service, reduction in rank, removal from an appointment or locality, denial or delay of promotion or revocation of provisional promotion, loss of security clearance and change of employment category.

The main reasons an administrative sanction were imposed during the reporting period include misuse of alcohol (253), civil offences (204), fitness test failure (319), personal qualities (209) and unsatisfactory conduct (692).

The imposition of administrative sanctions experienced an increase of approximately 13 per cent during the reporting period, from 1001 in FY2016–17 (Navy 390, Army 393 and Air Force 218) to 1130 in FY2017-18 (Navy 389, Army 590 and Air Force 151).

As indicated in the below graph, since FY2015–16 the use of administrative sanctions has increased by (by almost 27 per cent), most likely offsetting the gradual decline in the use of the DFDA.



Army again recorded the highest use of administrative sanctions since FY2015–16; historically Navy has used administrative sanctions more than the Army or Air Force. During FY2017-18, Army accounted for 52 per cent of all administrative sanctions, while Navy accounted for 35 per cent and Air Force 13 per cent.

Of the 1130 sanctions imposed, formal warnings (405), counselling (313), termination of service (216), censures (67) and suspension from duty (69) account for 95 per cent of all sanctions imposed, and remain the most common form of administrative sanction imposed. The remaining 60 (five per cent) of the sanctions imposed include reduction in rank, administrative posting and administrative warning.

Protection Orders

The requirement to report and record protection orders issued against ADF members was introduced on 01 May 2017. During FY2017-18, 48 protection orders were recorded. Of those, 41 (85 per cent) were issued against Army members, six (13 per cent) against Navy members and one (two per cent) against an Air Force member. In addition, 20 (Army 17, Navy one and Air Force two) protection orders were extended during the reporting period.

Civil conviction statistics

The civil conviction of ADF members increased by 27 per cent from 124 to 158 between FY2016-17 and FY2017-18. The most common form of punishment imposed by a civilian authority continues to be monetary fines (84) and the loss or suspension of motor vehicle licence (60), which together account for 89 per cent of all punishments imposed by a civilian authority.

