



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

*Report for the period
01 January 2014 to 30 June 2015*



Inspector-General of the Australian Defence Force

Senator the Hon Marise Payne
Minister for Defence
Parliament House
CANBERRA ACT 2600

Dear Minister,

As Inspector-General of the Australian Defence Force I am pleased to submit herewith my Report on the operations of my Office for the period 01 January 2014 to 30 June 2015.

This is the first report to be submitted to you for tabling in Parliament under the provisions of the *Defence Act 1903*, Section 110R, as recently amended by *Defence Legislation Amendment (Military Justice Enhancements—Inspector-General ADF) Act 2015*. It is also the last to be submitted by me during my tenure as the inaugural Inspector-General of the Australian Defence Force.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Geoff Earley'.

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INSPECTOR-GENERAL OF THE AUSTRALIAN DEFENCE FORCE
REPORT FOR THE PERIOD
01 JANUARY 2014 TO 30 JUNE 2015

PREAMBLE

The position of Inspector-General of the Australian Defence Force (IGADF) is established under section 110B of the *Defence Act 1903* (the Act). The appointment of the IGADF is made by the Minister for Defence in accordance with section 110E of the Act.

Mr Geoff Earley, AM was first appointed under contract as the inaugural IGADF on 13 January 2003. In 2005 the position of IGADF became a statutory position and Mr Earley was appointed as the statutory IGADF from 22 December 2005 for a period of five years. He was reappointed for a further five years from 22 December 2010.

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

- 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 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 across the Australian Defence Force (ADF); and
- e. to do anything incidental or conducive to the performance of any of the preceding functions.

From 01 July 2014 a number of additional functions were added administratively to the IGADF role pending the passing of supporting legislative amendment. The *Defence Legislation Amendment (Military Justice Enhancement—Inspector-General ADF) Act 2015*, which commenced on 17 June 2015, gave legislative effect to the changes. These included:

- a. if directed by the Minister or the CDF to do so – to inquire into or investigate a matter concerning the Defence Force;
- b. to review complaints made by members of the Defence Force, where the relevant complaint is about a decision, act or omission in relation to the member's service in the Defence Force;

- c. to inquire into deaths of members 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 ADF; and
- d. to prepare a report at the end of each financial year on the operation of the Office of the IGADF for presentation to the Minister for tabling in Parliament.

It is imperative that the requirements of military justice provide an acceptable and appropriate balance between the need to enforce and maintain a high level of order and discipline in the ADF on the one hand, and to ensure individual rights are protected on the other. A military justice system that is capable of achieving and maintaining this balance will ensure greater operational capability and success for the ADF.

The ADF military justice system has four main components:

- 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 and/or protect the reputation of the ADF;
- c. the conduct of administrative inquiries and investigations to establish the facts of an occurrence and make recommendations to remediate systemic or individual failings to improve and enhance operational effectiveness; and
- d. the handling and management of complaints by Service members to ensure systemic or individual failings are identified and remediated to improve and enhance operational effectiveness.

My appointment as the inaugural Inspector-General of the Australian Defence Force is due to expire on 22 December 2015. This is, therefore, the last annual report of my tenure.

The establishment of the position of IGADF in 2003 was a novel initiative at the time. Prior to that no ongoing means existed to provide an organic, yet independent, capability to monitor and inquire into alleged failures and other matters affecting the ADF military justice system.

Opportunities to establish and develop an entirely new enterprise from scratch are rare. It has been a great privilege to have been offered such an opportunity. While the task has at times been very challenging, it has always been interesting and I have never doubted that it has been, and will remain, an important and worthwhile endeavour.

OVERVIEW

In a departure from the practice of previous years in reporting by calendar year, this report covers a period of 18 months from 01 January 2014 to 30 June 2015. This is necessary to comply with a new legislative requirement to make future annual reports covering the period 01 July to 30 June.

As in previous years, there were significant changes to the military justice system during this reporting period. Of particular note were decisions taken to introduce improvements to the manner in which serious incidents are reported and recorded, the simplification of inquiries into less serious matters, the management of inquiries into the deaths of ADF members where there appears to have been a Service nexus, and the management and simplification of the process for dealing with ADF members' grievances.

The decision to introduce these changes followed a major review of certain military justice arrangements which were regarded as being unnecessarily complex, inefficient and overly legalistic.

The resulting changes had significant implications for the Office of the IGADF in that a number of new responsibilities, together with the transfer of relevant resources, were added to the IGADF role as outlined above.

Apart from formalising the addition of new functions for the IGADF the *Defence Legislation Amendment (Military Justice Enhancement—Inspector-General ADF) Act 2015* also included a number of amendments specifically intended to enhance the independence of the IGADF. Principal among these is a requirement for the IGADF to report on the operations of the office annually to the Minister for tabling in Parliament. I welcome the addition of the new responsibilities which I consider to be consistent with the IGADF operating concept and the original intent in establishing the Office.

The reality and the perception of the independence of the statutory Office of the IGADF from the chain of command is of critical importance to its credibility and successful operation as an impartial monitoring and regulatory agency for the ADF. In this respect it is pleasing to be able to report that since its commencement in 2003 no ADF commander or leader has ever attempted to unduly influence the handling of matters being dealt with by the IGADF or shape a particular outcome.

In addition to the increased responsibilities given to the IGADF, other military justice related reforms introduced for the broader ADF during the reporting period amended a number of long-established policies with a view to simplifying processes and procedures. In particular, arrangements for the conduct of Quick Assessments and Routine Inquiries by ADF Commanders were abolished with Quick Assessments being replaced by a new system of Incident Reporting and Routine Inquiries being replaced by a less formal process of command initiated fact-finding. While the new processes are intended to be expedient and more user-friendly, caution will

be required to ensure that procedural fairness obligations, where relevant, are not inadvertently overlooked.

As indicated above, some of the reforms to IGADF role and functions required legislative amendment to enable full implementation. On 03 December 2014 the Defence Legislation Amendment (Military Justice Enhancements—Inspector-General ADF) Bill 2014 was introduced to Parliament by the Assistant Minister for Social Services on behalf of the Minister for Defence. On 04 December 2014, on the recommendation of the Scrutiny of Bills Committee, the Bill was referred to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 03 March 2015.

On 03 March 2015 the Committee reported that it was broadly supportive of the amendments in the Bill, which it said were an important component in the ongoing reforms to processes for inquiries, complaints and reviews in Australia's military justice system. In particular, the Committee commented that the annual report requirement would provide the Minister, the Parliament and the public with a more direct means of understanding the operations of the Office of the IGADF, enhance the transparency and accountability of the IGADF and would likely increase public confidence in his/her functions.

The Amendment Bill passed through Parliament on 14 May 2015. The Bill gained Assent on 20 May 2015, to commence on 17 June 2015.

While the addition of the new responsibilities for dealing with Service related deaths and final review of military grievances has significantly increased the workload of the Office of the IGADF, the incorporation of these new functions has proceeded smoothly. Both new functions have benefited from the experience and collegiate environment of working within the wider IGADF framework.

Overall, I remain satisfied that the high standards expected of the Office of the IGADF continue to be met. However, three matters that separately and collectively have the potential to impact adversely upon IGADF operations have been slow to progress and remained unresolved at the end of the reporting period. They are:

- a. The lack of Regulations to give effect to changes to the IGADF role introduced by the *Defence Legislation Amendment (Enhancement of Military Justice—Inspector-General ADF) Act 2015*. These include discrete IGADF Regulations to emphasise the independent nature of IGADF inquiries and military justice performance review activities, and new Regulations to address amended procedures and IGADF involvement with military redress of grievance matters.
- b. The lack of suitable office accommodation to co-locate the increased staff numbers resulting from the additional responsibilities.

- c. The lack of agreement to an appropriate solution that would enable the Office of the IGADF to ensure compliance with the obligations of the *Public Interest Disclosure Act 2013* in a manner that is consistent with the independence of its statutory role under the Act.

STAFFING AND ACCOMMODATION

The Office of the IGADF is a joint military justice agency comprising both permanent and reserve military staff, and members of the APS. The majority of staff have considerable knowledge and experience of Service life and the military justice system and by necessity are predominantly of Lieutenant Colonel (O5) rank/Executive Level 1 (EL1) or higher. The Office of the IGADF is structured as follows:

- a. The Executive, including the IGADF (a Statutory Officeholder), the Deputy IGADF (O7 rank), and five administrative support staff.
- b. The Directorate of Inquiries (DI), directed by an O6 General Service Officer who is responsible to the IGADF to inquire into or conduct investigations into military justice incidents or complaints. The DI staff comprises four Permanent, eight part-time Reserve and two APS Assistant IGADF Inquiry Officers. The DI also has three senior Non-Commissioned Officer (E9) Service Police personnel to inquire into or investigate allegations or complaints of breaches of professional standards against Service Police.
- c. The Directorate of Military Justice Performance Review (DMJPR), directed by an O6 legal officer who is responsible to IGADF for the conduct of military justice performance audits, the collection and analysis of military justice statistics from military justice databases and other sources, and the management of IGADF and wider military justice information systems. DMJPR staff comprises two Permanent ADF members, one ADF Reserve member, and four APS officers. DMJPR military justice unit audit teams are supplemented by part time Reservist legal and General Service Officers as required.
- d. The Directorate of Legal Review (DLR), directed by an O5 legal officer, is responsible to IGADF for the conduct of legal reviews of IGADF inquiries and investigations, providing advice on military justice matters, and promoting military justice values across the ADF through the conduct of military justice awareness and familiarisation seminars. The DLR staff comprises one permanent O4 legal officer and a number of Reserve legal officers who are periodically engaged to assist in the legal review of inquiry and investigation reports.
- e. The Directorate of Select Incident Review (DSIR), a newly established directorate within the Office of the IGADF following the transfer of responsibility for inquiring into Service related deaths formerly undertaken by the Chief of the Defence Force (CDF) Commissions of Inquiry Cell. DSIR is directed by an O6 legal officer who is responsible to IGADF for the coordination and management of

inquiries into deaths of ADF members and other serious incidents. DSIR comprises five permanent ADF members, including four legal officers, and an APS officer. The work of the Directorate is supplemented by the use of part time Reserve officers as necessary.

- f. The Directorate of Military Redress and Review (DMRR) is another newly-formed directorate within the Office of the IGADF following the transfer of responsibility for review of ADF members' grievances from the Defence Personnel Group. DMRR is directed by an EL2 APS officer who is responsible to IGADF for the management of the formal grievance and complaint processes and the preparation of review briefs referred for final decision by CDF and Service Chiefs. DMRR comprises four APS officers, including one legal officer and two case officers, and 15 permanent and part-time Reserve ADF members, including seven case officers.

Given the role, functions and responsibilities of the IGADF it is important that mature individuals with broad military backgrounds, a sound knowledge and understanding of the military justice system and experience in dealing with military justice issues, are offered for posting to the Office of the IGADF.

The support provided to Office of the IGADF in terms of Reserve personnel from all three Services improved during the reporting period, with Reserve training day requirements being met directly by the single Services, and supplementation being provided when requested.

The transfer of responsibility for inquiries into deaths in service and the final review of ADF grievances for decision by CDF and Service Chiefs from July 2014 effectively doubled the complement of the Office of the IGADF. This meant that not all staff members allocated to IGADF were able to be co-located at the offices of IGADF at Northbourne Avenue in Turner, Canberra. DMRR staff have therefore had to remain at their former premises at Brindabella Park. Although this has been workable it continues to be administratively cumbersome pending the availability of suitable alternative accommodation capable of housing all IGADF staff. While plans for the provision of such accommodation are in train, approval processes have been slow and it is not anticipated that relocation will be possible before late 2015.

IGADF OPERATIONS

Administration

With continued emphasis on the need to ensure greater efficiency Office of the IGADF implemented and maintained a number of cost saving measures and initiatives foreshadowed in previous reports. While cost saving measures and initiatives have had some impact on office operations this has been absorbed despite the office reaching the limits of workload capacity on a number of occasions.

With the increasing emphasis on individual conduct and behaviour outlined in *Pathway to Change: Evolving Defence Culture* of 2012 and a greater awareness by members of their entitlement and duty to report or take action in relation to notifiable incidents, the need for an organic, yet independent, oversight capability such as the Office of the IGADF to monitor and respond to such matters, when required, will remain a priority.

While current resources and budgetary allocations have been sufficient to sustain current rates of effort across all Office of the IGADF functions a further increase in responsibilities or a requirement to meet significant surge demands may require use of contingency provisions and possibly additional resource supplementation.

DIRECTORATE OF INQUIRIES

IGADF Inquiries and Investigations

One way in which potential deficiencies in the military justice system can be exposed or brought to attention is through the IGADF inquiry or investigation function. These inquiries or investigations are conducted under Section 110C of the Act. The purpose of an IGADF administrative *inquiry* is to determine the facts and circumstances surrounding an incident or situation so an informed recommendation may be made about the action required including, where appropriate, action to avoid a recurrence. The purpose of an IGADF disciplinary *investigation* is to determine whether there has been a breach of the disciplinary system. The inquiry and investigation functions include the responsibilities to:

- a. inquire into or investigate matters concerning the military justice system at the direction of the Minister or CDF;
- b. inquire into or investigate matters concerning the military justice system at the request of a Service Chief;
- c. conduct own motion inquiries or investigations into military justice matters;
- d. provide an avenue for complaint about military justice where chain of command considerations may discourage, or other factors may preclude, recourse to normal avenues of complaint;
- e. act as an appointing officer for Inquiry Officer Inquiries under the Defence (Inquiry) Regulations when it would not be appropriate for someone in the chain of command to be the appointing officer;
- f. maintain a register of persons who have completed IGADF Inquiry Officer training;
- g. inquire into or investigate breaches of the Service Police Code of Conduct by Service Police members;

- h. investigate alleged DFDA offences into breaches of military justice and
- i. where appropriate refer complaints to another authority for action.

The Nature of IGADF Inquiries

Conducting inquiries through Office of the IGADF under the provisions of Part 7 of the Defence (Inquiry) Regulations accrues several benefits over Inquiry Officer Inquiries conducted in Defence. The most significant of these is that such inquiries are conducted independently of the chain of command, therefore reducing the likelihood of allegations of undue command influence over outcomes. As with other formal ADF inquiries, IGADF-specific regulations contained in the Defence (Inquiry) Regulations ensure that IGADF inquiry officers and witnesses are protected against civil suit for actions arising in the course of their inquiry duties.

IGADF inquiries also have recourse to coercive powers to require the cooperation of ADF witnesses (including Reservists on duty) to attend and answer all questions, other than in certain exempted circumstances. Although not a legislative provision *per se*, a consequential benefit arising from service with the Office of the IGADF is that inquiry officers posted for duties with the IGADF are able to develop a greater degree of experience and expertise in this particular area than would be possible in most other areas within Defence.

It is a requirement that IGADF inquiry staff possess extensive general service experience within Defence, either through membership of the ADF or the Defence APS; this has been generally in the order of 20–40 years. As a result, the conduct of inquiries into more serious or complex matters has properly become a specialist skill set within Office of the IGADF, where the technical and legal elements associated with the progression of an inquiry can be matched by a degree of pragmatism and experience.

As part of its functions, the Office of the IGADF is able to maintain an overview of all aspects of the military justice system, which is informed by formal inquiries, unit military justice audits, professional standards investigations, conduct reporting data, and administrative Inquiry tracking data. The Office of the IGADF is therefore able to operate within a synergetic environment that facilitates the drawing together of linked issues and trends that greatly assist in the analysis of complex complaints and emerging trends.

Submissions

The number of inquiry submissions received during the 2014 calendar year was 64, an increase of approximately 4.5 per cent compared with 2013. A further 26 submissions were received during the first six months of 2015. It is not practical, however, to quantify the overall inquiry effort by simply reviewing submission numbers.

The size and duration of an inquiry can be influenced by many factors, including, but not limited to, the complexity of the complaint, time elapsed since the alleged incident, number of personnel involved, amount and availability of evidence, witness deployment, and external influences. During this 18 month reporting period, there was a trend toward an increase in the number of these factors in complaints being made, making inquiries significantly more complex and lengthy.

This complexity was reflected through an increase in the referral by the Services of certain matters, including referrals passed to Defence from the Defence Abuse Response Task Force (DART).

In addition to these requests, IGADF responded to requests from the Commonwealth Ombudsman and through the Freedom of Information process. IGADF was also consulted on a number of matters requiring Ministerial advice. The IGADF training regime during this reporting period, combined with the military justice performance audit program conveys greater visibility of the IGADF complaint regime, as well as the types of issues that characterise military justice, allowing both easier access to IGADF and a greater understanding of its specific roles and functions.

The Defence workforce includes ADF Permanent and Reserve forces, Defence APS employees and civilian contractors. Given the greater integration of the Defence workforce in certain areas, complaints involving workplace friction between different elements of the workforce, which give rise to additional legal and administrative complexity, although not frequent, are not unusual. As a result there were a greater number of requests from Defence functional areas for advice on dealing with complex workplace complaints, and, as mentioned previously, for IGADF to conduct independent inquiries into such complaints. Sensitive operational concerns continued to feature in respect of certain matters referred to IGADF during the reporting period.

To the end of the reporting period 752 submissions have been received since the Office of the IGADF was first established in 2003.

Service Police Professional Standards

In order to provide independence from the ordinary chain of command IGADF also inquires into or investigates breaches of the Service Police Code of Conduct by Service police members. CDF Directive 14/2014, *Service Police Professional Standards: A Code of Conduct and Management of Complaints Against Service Police* of 05 November 2014, provides that the reporting of all complaints regarding Service Police must be referred to IGADF in the first instance. This directive replaced the previous code of conduct Directive CDF 15/2008, and continued the implementation of key recommendations of the 2005 Senate Foreign Affairs Defence and Trade References Committee's report on *The effectiveness of Australia's military justice system* to develop a common professional standard for Service police for the performance of duty and personal behaviour.

The professional standards investigations capability is located within IGADF, enabling the conduct of investigations into allegations of serious breaches of the Service Police *Code of Conduct* to be undertaken independently of the Australian Defence Force Investigative Service (ADFIS) and Service Police functions.

Over the reporting period IGADF received 56 complaints against Service police, of which 40 became the subject of further IGADF investigation or investigation.

DIRECTORATE OF MILITARY JUSTICE PERFORMANCE REVIEW

Audit Function

The military justice audit function was a key recommendation of the Burchett inquiry into military justice in the ADF. In his report, Mr Burchett argued that there was an ongoing need to monitor the military justice system at unit level by way of ongoing audit aimed at exposing military justice issues before they escalated into significant problems. CDF agreed the recommendation and the Office of the IGADF was established with the following audit function, which can be found in section 110C of the Act:

to conduct performance reviews of the military justice system, including internal audits, at the times and in the manner the Inspector-General ADF considers appropriate and to advise on matters concerning the military justice system, including making recommendations for improvements.

DMJPR conducts military justice audits of about 50 ADF units annually, which represents approximately 10 per cent of all auditable ADF units per calendar year. The aims of the audit program are to confirm that relevant personnel in ADF units are aware of and apply extant laws and policies pertaining to the administration of military justice and that ADF units have in place the necessary arrangements for effective delivery of military justice. In this context, military justice is to be construed as including all matters concerning the enforcement and maintenance of Service discipline, the conduct of administrative inquiries, the imposition of administrative sanctions, and the management and handling of complaints. Units are encouraged to conduct self-analysis and to remedy or rectify identified deficiencies or shortcomings prior to scheduled audits.

The underlying audit philosophy is to examine a sample of available records in order to verify and confirm good practice, identify lapses and failures in the delivery and administration of military justice at unit level, and to offer remedial assistance, recommendations and suggestions to the command team where and when appropriate. An overall assessment is provided following the audit which may identify material deficiencies, compliance breaches or areas for improvement in the military justice arrangements within the unit.

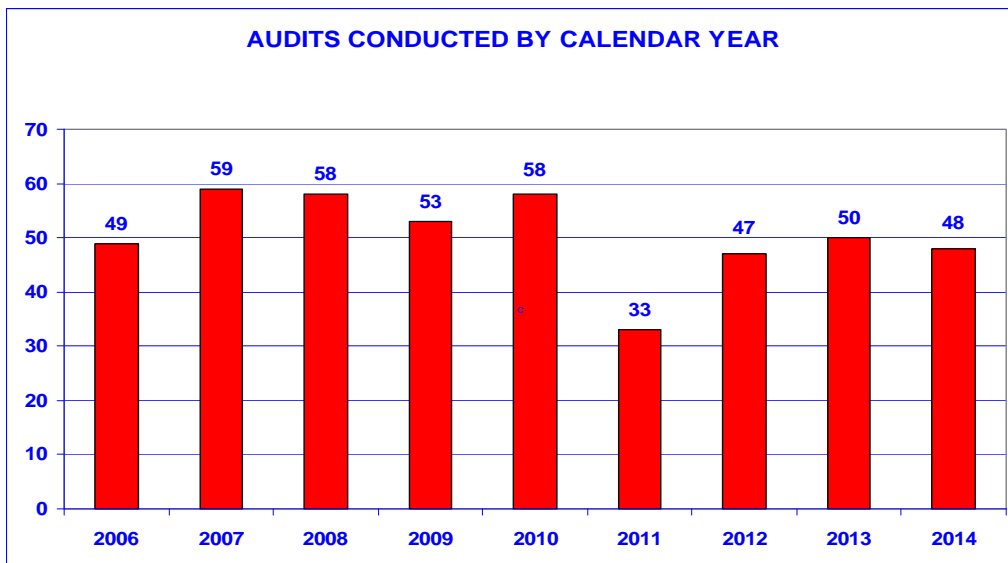
Material deficiencies are those shortcomings that involve serious non-compliance with military justice legal and policy requirements, while compliance breaches involve non-compliance with legal procedural requirements or non-compliance with military justice procedural policy requirements.

Recommendations are made where a unit is not complying with military justice legal or policy requirements. Unless compelling reasons exist not to do so, it is mandatory for units to implement recommendations, because units are required to comply with military justice law and policy. Suggestions, on the other hand, are not mandated by military justice law or policy, but represent good practice drawn from IGADF experience. As a consequence, units have discretion to implement suggestions.

IGADF military justice audits are conducted as closely as possible in accordance with *Australian Standards on Assurance Engagements (ASAE)*, as promulgated in the following series of documents:

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

Since the military justice audit program was first introduced in 2004, a total of 507 (Army 249, Navy 114, Air Force 130, Joint Services 14) audits have been conducted to end 30 June 2015. This figure includes units that have been audited more than once. The graph below illustrates audits conducted since 2006. An additional 21 have been completed between 01 January 2015 and 30 June 2015.

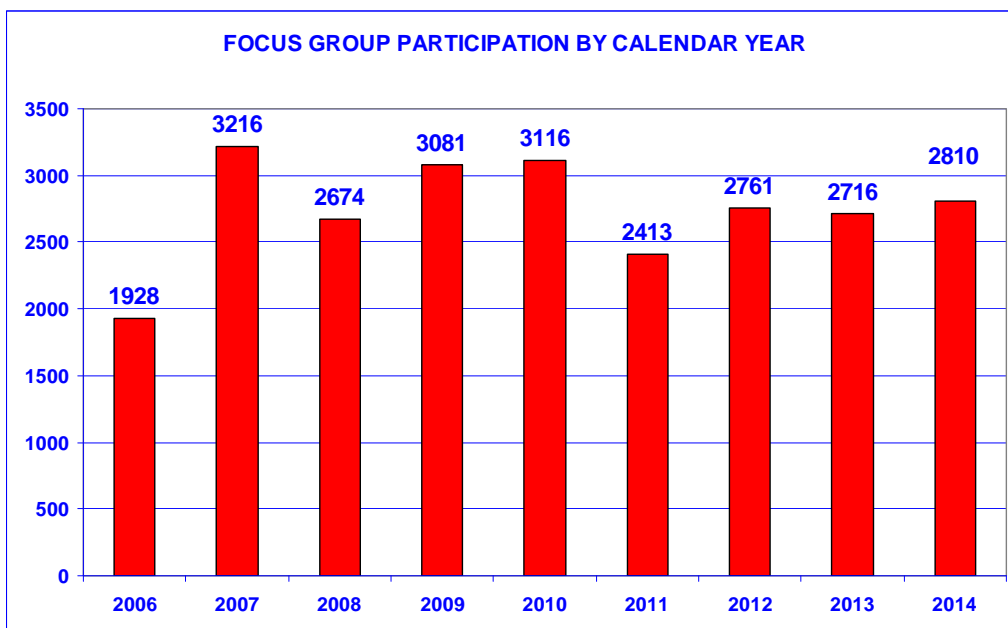


Military Justice Performance Audit Program

In 2014 DMJPR audited 48 ADF units with a further 21 ADF units audited between 01 January 2015 and 30 June 2015. In three of those units (or four per cent of audited units) potential material deficiencies were identified. The result of all audits was that units were provided with a number of recommendations and suggestions to enhance and improve military justice arrangements and procedures. Those units in which material deficiencies were identified will be re-audited within 12 months to re-check compliance with military justice law and policy.

A total of 612 recommendations and 724 suggestions to improve military justice arrangements, practices and procedures were made in 2014. The overwhelming majority of the recommendations and suggestions related to minor compliance or procedural issues in audited units' military justice arrangements and practices. A breakdown by Service of units audited in CY2014 is provided below. A further 11 Army, five Navy and five Air Force units were audited during the first six months of 2015.

In 2014, 2810 ADF personnel, or approximately five per cent of permanent ADF personnel, participated in focus group discussions raising the total number of focus group participants to 26 154 (Army 14 287, Navy 5204, Air Force 5589 and Joint Service 1074) since the pilot program first commenced in 2004. Between 01 January 2015 and 30 June 2015 a further 1133 ADF personnel participated in an IGADF focus group. Army accounted for 576, Navy 361 and Air Force 196.



Military Justice Survey Outcomes

The military justice survey was designed primarily as a management tool for IGADF to assess, over time, emerging changes in perceptions aggregated by Service. At individual unit level survey results can only be interpreted as diagnostic information deserving further study wherever response rates diverge significantly from Service averages.

In 2012, the focus group survey questions were reviewed and amended to better reflect the issues identified in *Pathway to Change: Evolving Defence Culture*, including in particular, the introduction of the Sexual Misconduct Prevention and Response Office (SeMPRO), the focus on sexual misconduct including sexual offences, issues dealing with workplace bullying and harassment, equity and diversity and the introduction of the Public Interest Disclosure Scheme for 2014. The new survey questions showed:

- a. 73 per cent of participants were aware of their rights and obligations under the discipline system;
- b. 78 per cent of participants believed their unit would treat them fairly and impartially if they were the subject of an administrative inquiry;
- c. 73 per cent of participants believed the unit would fairly consider any response made by the member before imposing an administrative sanction against them;
- d. 80 per cent of participants had confidence in their chain of command to resolve complaints;
- e. 66 per cent of participants believed the unit maintained a balance between the rights of complainants and the rights of respondents;
- f. 20 per cent of participants believed they had experienced unacceptable behaviour at their unit. In 2014 the survey question concerning whether individuals had witnessed or experienced work-related bullying or harassment was amended to include all types of unacceptable behaviour including work-related bullying and harassment, sexual harassment, discrimination, abuse or power, inappropriate workplace relationships and conflicts of interest. This has led to an increase in the reporting figure in 2014 of five per cent. Additionally, the question whether individuals had witnessed work-related bullying and harassment was removed because of the potential for one incident to be reported a number of times, leading to inflation of reporting figures. The survey result may also indicate that more individuals are willing to report perceived incidents of unacceptable behaviour due to cultural change and the belief that they will not be the subject of retaliation or retribution for doing so;
- g. 89 per cent of participants know where to obtain advice or information on unacceptable behaviour;

- h. 71 per cent of participants believed individuals were not ostracised, segregated or otherwise not included because of perceived differences;
- i. 93 per cent of participants believed the unit would take appropriate action if they became aware of an incident or complaint of sexual misconduct, including sexual offence;
- j. 71 per cent of participants believed the unit provided appropriate opportunities to access flexible working arrangements;
- k. 96 per cent of participants are aware of their responsibilities concerning the use of social media; and
- l. 11 per cent of participants believed there was a culture of anti social behaviour in their unit.

Survey outcomes for 2014 again indicate endorsement and confidence in the military justice system and the chain of command to take action to resolve military justice problems. There is also strong evidence to indicate that incremental cultural change is continuing across the ADF. Care will be required on an ongoing basis to avoid perceptions developing of undue preferential treatment towards certain workforce elements.

In addition to audits DMJPR also monitors the health and effectiveness of the entire ADF military justice system by collecting military justice data and information from multiple sources both internal and external to IGADF (eg, IGADF audit information, IGADF military justice information systems, IGADF online surveys; and other military justice entities); by conducting analysis of the data and information collected; and by reporting on and highlighting trends concerning the military justice system in the IGADF annual report, compiling military justice statistics or by bringing matters to attention directly to the CDF or the single Services when appropriate.

IGADF sponsors two information tracking systems. The first is the ADF Administrative Inquiries Tracking System (ADFAITS) which is the primary ADF-wide management tool for the capture of information concerning administrative inquiries. IGADF continues to monitor and develop ADFAITS to ensure that the system satisfies user requirements and provides a repository of information regarding administrative inquiries conducted across the ADF.

The second is the PMKeyS Conduct Recording and Tracking System (CRTS) which tracks all Service members' conduct records. The timely and accurate recording of this information allows IGADF to provide statistical data and analysis to command about discipline trends, including recommendations to enhance or improve the discipline system or to respond to media enquiries. IGADF continues to observe improvements in the quality of discipline data being reported

DIRECTORATE OF SELECT INCIDENT REVIEW

On 01 July 2014, the Office of the IGADF assumed responsibility for the conduct of reviews of deaths (which includes suicides and combat-related deaths), of ADF members. DSIR has been established in the Office of the IGADF to conduct these reviews and also to conduct or coordinate inquiries on behalf of the IGADF, into the death of ADF members and any other select incidents, when directed to do so by IGADF.

CDF Directive No 16/2014 *Chief of the Defence Force Directive on Reporting of Deaths of ADF Members and Support to IGADF and CDF-Appointed Inquiries* requires the Service Chiefs and the Chief of Joint Operations to report the details of the death of an ADF member promptly to the IGADF and to provide information to the IGADF to assist in the review.

DSIR receives these and other reports and provides expert technical advice to the IGADF in formulating recommendations to CDF on what, if any, further inquiry is required by law or is otherwise warranted. In particular, DSIR assists the IGADF in advising the CDF as to whether a member's death appears to have arisen out of, or in the course of, the member's service and whether, therefore, the CDF is required in accordance with the Defence (Inquiry) Regulations 1985, to recommend the appointment of a Commission of Inquiry (COI) to inquire further and more formally into the circumstances of that death (unless the Minister directs otherwise).

The CDF did not establish any COIs during the reporting period, although the IGADF conducted a number of formal inquiries under the Regulations.

If, after preliminary assessment of the death occurs, a further and more formal inquiry is warranted, DSIR provides advice as to the type of inquiry and assists, in consultation with the relevant Service/s and the Chief of Joint Operations, in establishing and managing the conduct of that inquiry. Any report provided to the IGADF or CDF is closely scrutinised to ensure that all evidence which is reasonably practicable to obtain has been obtained, that procedural fairness has been provided to those adversely affected and that recommendations made in the report are appropriate for implementation.

Inquiries are intended to provide CDF with accurate information as a basis for internal decision making and usually include recommendations intended to prevent a recurrence of incidents.

DSIR liaises closely with the ADFIS and through ADFIS with the State, Territory and Federal Police and respective Coroners. DSIR also liaises with other Defence stakeholders including Joint Health Command, the Service Headquarters, the Defence Community Organisation, and in the case of operational matters, Headquarters Joint Operations Command.

Six IGADF inquiries were appointed or completed into suicides or suspected suicides. Many more reviews of deaths were conducted and advice was routinely provided to CDF, often leading to improvements to

Defence policy and practice. Improvements arising, in whole or in part, from implementation of recommendations made in IGADF reviews include revision of the ADF Health Manual to clarify the scheduling of periodic health examinations, enhancement of the management of some ammunition holdings, revision of base emergency control plans and the conduct of physical fitness tests in Air Force and improved guidance to Army personnel planning and conducting mountain and cold weather training.

While the purpose of IGADF reviews of, and inquiries into, deaths in service is largely to determine the facts and circumstances surrounding a member's death and to gauge the extent to which the death arises out of or in the course of the member's service, the conduct of the reviews and inquiries bring a range of other and less tangible benefits to the workmates, friends and families of deceased members.

ADF members routinely comment that they are glad that an incident they are trying to put behind them is being independently examined so as to highlight available lessons. IGADF staff have, in consultation with representatives of the Service Chiefs, further developed the practice of engaging with families, before, during and after inquiries into the death of ADF members.

DIRECTORATE OF MILITARY REDRESS AND REVIEW

The Redress of Grievance (ROG) process is the formal process through which Defence members can raise grievances that relate to their Service, including career-related decisions (including termination of Service), and decisions about entitlements. The ROG system should normally be used after other processes for having decisions or actions reviewed or reconsidered have taken place.

IGADF is responsible for formal grievance policy and the review of first-level ROG decisions independently of the chain of command and line management before submission for final decision by the CDF or the Service Chiefs

Responsibility for reviewing first-level ROG decisions transferred to IGADF on 01 July 2014. Since taking on that responsibility, IGADF staff has implemented new systems aimed at reducing the time taken to process ROG applications and to improve the quality of ROG decision-making. Those systems include:

- a. A new, focused program delivering greater support and procedural guidance to unit commanders to improve the quality of first-level decision-making.
- b. Increased collaboration and cooperation to resolve ROGs utilising consultation with the applicant and relevant stakeholders to achieve, where possible, a more timely and mutually satisfactory outcome; and

- c. An increased pool of case officers, provided with the support of the Services, available to process IGADF reviews of ROGs.

Since the ROG function transferred to IGADF, data integrity shortfalls have been detected in COMTRACK. This has included fields missing data and typographic errors in dates which have negatively impacted accuracy of historical COMTRACK reporting. Data remediation is ongoing and expected to be completed by 30 June 2016. Statistical data below will not necessarily be consistent with other reports due to the remediation which increases accuracy of reports generated from COMTRACK data.

Unit Level ROGs. During 2014, 470 ROGs were lodged by ADF members. In keeping with the trend of the past four years, the main subjects of complaint in 2014 were career (38 per cent), termination of service (30 per cent), and entitlements which declined slightly (19 per cent). A further 159 applications were received between 01 January 2015 and 30 June 2015.

Referral of ROGs. During 2014, 140 ROGs were referred to Service Chiefs and 7 to CDF. Between 1 January 2015 and 30 June 2015, 53 were referred to Service Chiefs and 1 was referred to CDF.

Overall for 2014 there was a 51 per cent increase in the number of complaints received and a 7.9 per cent increase in the number of ROGs finalised compared to 2013. There is evidence that the new measures to increase first instance support to unit Commanders adopted by DMRR has reduced the rate at which ROGs are being referred to Service Chiefs and CDF.

DIRECTORATE OF LEGAL REVIEW

A primary function of IGADF is to advise on matters concerning the military justice system, including making recommendations for enhancements and improvements. IGADF fulfils this function in the following ways:

- a. IGADF will often identify systemic weaknesses, flaws or defects in Defence practices, policies and procedures that come to attention as a result of inquiries or military justice audits. These may form the subject of recommendations for improvement to the CDF, Service Chiefs and other appropriate organisations, agencies and authorities within Defence.
- b. By providing input on current or proposed policies, practices or procedures concerning military justice or the operation of the military justice system.
- c. By providing advice on how best to deal with incidents involving military justice or the operation of the military justice system.
- d. By providing advice on the procedures involved in or the appropriate way to deal with investigations, prosecutions, summary proceedings, inquiries, sanctions, redresses of grievance and other complaints.

- e. By participating as a member on a number of advisory boards, committees and working groups concerning military justice and the operation of the military justice system, including the Military Justice Coordination Committee and the Australian Defence Force Investigative Service Governance Board.
- f. By acting as a conduit for submissions on means to enhance and improve military justice or the operation of the military justice system.

Specific matters on which IGADF provided advice or opinion in 2014 included the Re-thinking Systems Review, SeMPRO, Complaints and Alternative Resolutions Manual, alcohol testing and the review of a number of Defence Instructions. IGADF also provided a review of the intended changes to the Act and the Defence (Inquiry) Regulations 1985. Finally, IGADF provided input into the proposed IGADF Regulations which will be required for the conduct of inquiries into Service-related deaths, military justice and other inquiries, audits and redresses of grievance.

VISITS AND BRIEFINGS

Meetings with International Counterparts

In May 2014 IGADF visited counterpart appointments and agencies concerned with military justice in the United Kingdom, Canada and the United States of America. Such visits have in the past provided excellent opportunities to liaise with other agencies and authorities with oversight responsibilities for military justice arrangements in Armed Services with similar traditions and personnel issues to those of the ADF.

Exchange of approaches to contemporary military justice matters is appreciated by all concerned, enables the identification of best practice to assist in the ongoing refinement of military justice related policy including that concerned with discipline, sanctions, inquiries, investigations and complaint handling systems. In this respect it was reassuring to note that ADF practices in each of these areas compared very favourably with those in use by our coalition allies and in some cases were at the forefront of innovative thinking in addressing areas of common concern.

Attendance at Conferences

In October 2014 IGADF accepted an invitation to attend and present at the *Sixth International Conference of Ombuds Institutions for the Armed Forces* held in Geneva. This was the first occasion Australia had participated in these proceedings and offered a welcome opportunity to inform the many representatives from Armed Forces around the world of the Australian perspective in dealing with contemporary military justice issues of common concern.

In November 2014 the IGADF agreed to participate as a panel member at the *10th National Investigations Symposium* in Sydney. The occasion,

which was attended by a large number of legal, academic, police service and media representatives provided a useful opportunity to correct some of the commonly cited, but often inaccurate, representations concerning the ADF military justice system.

Military Justice Briefings

Throughout the reporting period the IGADF and members of his staff responded to numerous requests to present on the role of the Office of the IGADF and current military justice topics to various, legal, command course, academic, and external groups. Further information on the IGADF role and functions is available to ADF members on the Defence Restricted Network website.

Parliamentary Submissions

During the reporting period IGADF was invited to make two written submissions to the Senate Foreign Affairs, Defence and Trade References Committee. The first concerned the Committee's inquiry into the accessibility and adequacy of current mechanisms and processes to provide support to victims of sexual and other abuse in Defence, and the second concerned the Committee's inquiry into the mental health of ADF personnel.

Senate Foreign Affairs, Defence and Trade References Committee Inquiry into Mechanisms to Support Victims of Abuse in Defence

This submission addressed issues relevant to two initiatives to provide more support to victims of sexual and other abuse, these being the SeMPRO and the DART.

The submission highlighted the ability for Defence personnel who contact SeMPRO to make a 'restricted disclosure' which enables them to access support, including medical support, without having to disclose details of their alleged abuse and without their complaint being reported to the chain of command. This is a somewhat similar scheme used by the United States Armed Forces by which allegations of sexual assault may be the subject of a restricted report.

The submission pointed out some concerns with the scheme associated with jurisdictional differences between Australia and the United States, and because of the potential for workplace safety issues to arise in circumstances where commanders had no visibility of offenders in their ADF units following a known incident.

Notwithstanding IGADF was, and remains strongly supportive of SeMPRO and its efforts to better support victims and to take positive measures to improve what is generally believed to be the under-reporting of incidents of sexual misconduct.

In relation to the DART process there is no doubt that very many victims of abuse have been able to find satisfactory closure. IGADF observed however that one consequence of claims being assessed on the basis of 'plausibility', which is a relatively low threshold, is that such outcomes could give some victims an unrealistic expectation about their likely success in seeking further relief or recompense. There will inevitably be some cases where allegations which have been assessed as plausible cannot be proved to the standard required to support further legal or administrative action, particularly compensatory action. The impact on the health and wellbeing of a potentially vulnerable complainant of such an outcome may be ongoing.

A further potential consequence noted in relation to the DART process relating to the nature and age of the allegations, is that some persons named or identified as a respondent to such unproven allegations may therefore be left in the invidious position of either not knowing that such allegations have been made about them or not being given the opportunity to contest the allegations in cases where further inquiry or investigation is not pursued.

IGADF also observed that the current complaint avenues available to ADF members to bring alleged abuse to attention, and to gain the appropriate support, appear to be adequate. However the greater difficulty would likely remain in persuading members who believe they have suffered abuse to report it. The establishment of SeMPRO and initiatives being implemented in Defence's *Pathway to Change* document should assist in this regard.

Senate Foreign Affairs, Defence and Trade References Committee Inquiry into Mental Health of ADF Personnel

This submission drew attention to two recurring themes concerning mental health issues involving ADF members. The first relates to difficulties arising from compliance with *Privacy Act* requirements and the confidentiality obligations of members of the medical profession. These difficulties are not unique to Defence or the ADF but in combination, can sometimes impede the reasonable sharing of medical and psychological information concerning a member that may be important for their better management by the chain of command or other Defence agencies with responsibilities for member's welfare and safety.

The second matter to which this submission drew attention concerned the reluctance of some members to report medical or mental health problems to their chain of command, or to seek help from Service health authorities for fear of putting their career, job categorisation, or development opportunities in jeopardy. A workable solution to this issue remains difficult. For example, if patient confidentiality requirements with Defence were relaxed, members may unintentionally be encouraged to seek assistance from outside private sources and circumnavigate around the Service system to preserve the confidentiality of their condition.

MILITARY JUSTICE SEMINARS AND TRAINING

The Office of the IGADF continues to support military justice promotion and development. Responsibility for the Advanced Inquiry Officer course and the E-learning familiarisation course transferred to the Military Law Centre (MLC) as of 01 of July 2015. However, demand for IGADF military justice seminars remains high. IGADF sponsored seminars on administrative sanctions and complaint handling have proved popular at the unit level. The Office of the IGADF continues to support the Inquiry Officer training by providing Office of the IGADF staff members with up-to-date knowledge and practical experience in this area to the MLC.

In 2014, the Office of the IGADF conducted numerous training courses and forums at locations around Australia. Many members sought to improve their knowledge through E-learning which gives greater flexibility. The table below captures both formal instruction and E-learning numbers.

IGADF Courses and Instruction provided in 2014			
Name of course	Number attending	Means of training	Comment
Advanced Inquiry Officer	25	Face to face	This training will now move to the Military Law Centre for delivery
Inquiry Officer	1694	Face to face and E-learning	
Complaints Handling Instruction	616	Face to face	An E-learning package is nearing completion
Quick Assessment Instruction	415	Face to face	
Administrative Sanctions Instruction	152	Face to face	This instruction is now available in an E-learning package

In addition to the courses and seminars outlined above, IGADF and Office of the IGADF staff also presented at pre-command courses, Reserve Legal Panel training nights, Graduate Development Programs and legal officer Legal Training Module (LTM)1, LTM2 and LTM3 courses for tertiary level competencies. There were also several Quick Assessment seminars conducted by IGADF staff across several sites.

CONCLUSION

The work of the Office of the IGADF provides a unique vantage point from which the operation of each of the elements of the ADF military justice system may be observed, not only in their discrete applications but also in the way they interrelate and impact upon each other. The ability to retain this independent overview capacity from which objective and informed assessments can be made about the overall health and effectiveness of the military justice system cannot be overstated.

The effectiveness of the ADF military justice system has traditionally attracted a great deal of public interest and commentary. While interest in the system is welcomed, it is unfortunate that commentary about it can often be poorly informed or sensationalised. The empirical evidence about the operation of the military justice system routinely collected by the Office of the IGADF in the course of its statutory role can provide useful balance in such circumstances.

An effective and fair military justice system is a vital element of ADF operational effectiveness. The results of IGADF monitoring activities and military justice information analysis are pleasing and there is empirical evidence to suggest that the cultural change program which was introduced through *Pathway to Change* in 2012 is making a difference.

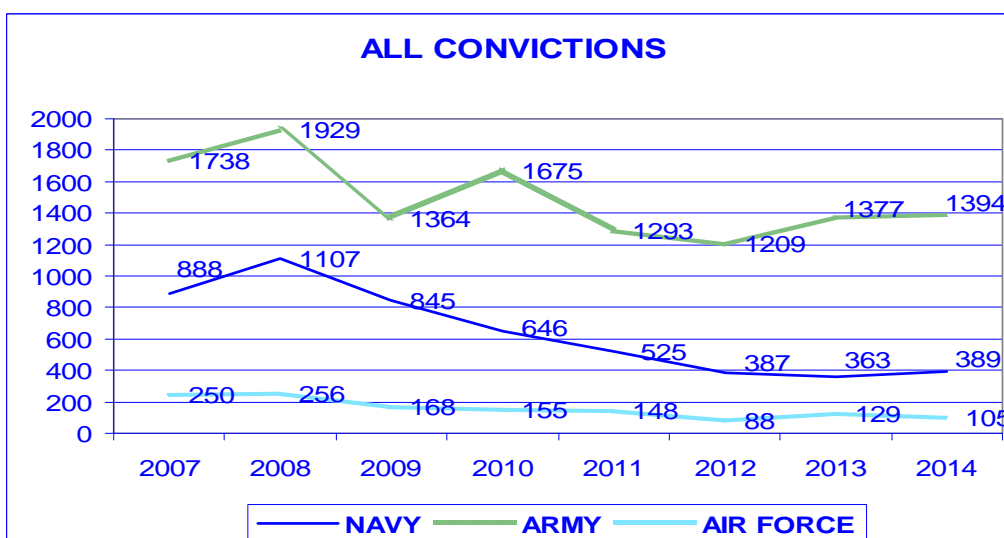
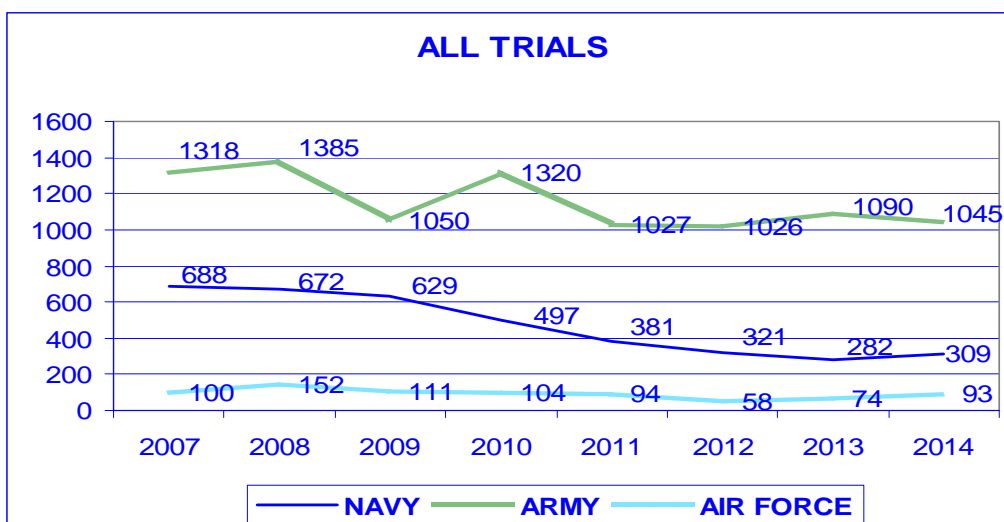
Based on all the available evidence considered during the reporting period, I remain satisfied with the overall health and effectiveness of the ADF's military justice system. However, like most complex systems or structures, the military justice system will continue to require regular maintenance and periodic amendment to ensure it continues to function effectively. In this respect continuous improvement is best achieved through evolutionary rather than revolutionary change.

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
Defence Abuse Response Taskforce	DART
<i>Defence Force Discipline Act 1982</i>	DFDA
Defence Force Magistrate	DFM
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
Inspector-General of the Australian Defence Force	IGADF
Legal Training Module	LTM
Military Justice Coordination Committee	MJCC
Military Law Centre	MLC
Non Commissioned Officer	NCO
Officer Level 5 (referring to a LTCOL or equivalent)	05
Officer Level 6 (referring to a COL or equivalent)	06
Redress of Grievance	ROG
Sexual Misconduct Prevention and Reporting Office	SeMPRO
The <i>Defence Act 1903</i>	the Act

Discipline Statistics

The trend of low offending rates witnessed over the past three years continued in 2014. Trials (courts martial, Defence Force magistrates and summary trials) for all three Services have remained relatively steady over the last four years with 1502 in 2011, 1405 in 2012, 1446 in 2013 and 1447 in 2014. The number of convictions across the three Services has followed a somewhat similar trend over the four years with 1966 in 2011, 1684 in 2012, 1869 in 2013 and 1888 in 2014. Overall the number of trials increased by less than one per cent, while the number of convictions increased by just over one per cent. Recent trial and conviction trends are illustrated below.



The number of Defence Force Magistrate (DFM) trials and courts martial increased by almost 12 per cent from 42 in 2013 to 47 in 2014. During the period 01 January 2015 to 30 June 2015 there were a further 19 higher tribunal trials.

2014 followed a very similar trend to 2013 with summary trials and convictions, decreasing by less than one per cent and one per cent respectively. The number of summary trials decreased from 1403 to 1400 (Navy 292, Army 1020 and Air Force 88), while the number of convictions decreased from 1794 to 1775 (Navy 364, Army 1312 and Air Force 99). Combined summary trials continues the recent trends of gradually declining and still remains well below the all time highs of 3 406 and 4 161, recorded in 2001 and 2002 respectively.

These recent trends are continuing in 2015 with a total of 551 summary trials (Navy 98, Army 420 and Air Force 33) being recorded for the period 01 January 2015 to 30 June 2015. The 551 summary trials resulted in 662 convictions (Navy 138, Army 420 and Air Force 33).

As in previous years, absence offences (331), insubordinate conduct, disobeying a lawful command (271), failing to comply with a general order (514), assault and acts of indecency (55), weapon offences (210) and prejudicial conduct (282) formed the majority of convictions in 2014.

Alcohol Conviction Statistics

Disciplinary convictions where the misuse of alcohol was a contributing factor (excluding alcohol misuse on deployment) increased to 208 from 190. The three Services increased by; Navy by 13 per cent, Army six per cent and Air Force 23 per cent, which has continued the fluctuating trend witnessed over the past five years. This coincided with a three per cent increase in administrative sanctions for misuse of alcohol.

Eighty nine convictions (Navy 30, Army 51 and Air Force 8) have been recorded for the period 01 January 2015 to 30 June 2015.

Disciplinary convictions for alcohol related offences committed on deployment have progressively decreased over the past four years. Again this trend is likely to have been influenced by the reduction in operational tempo during 2014.

A further 23 convictions (Navy 6, Army 16 and Air Force 1) have been recorded in relation to alcohol related offences committed on deployment during the period 01 January 2015 to 30 June 2015.

Discipline Infringement Statistics

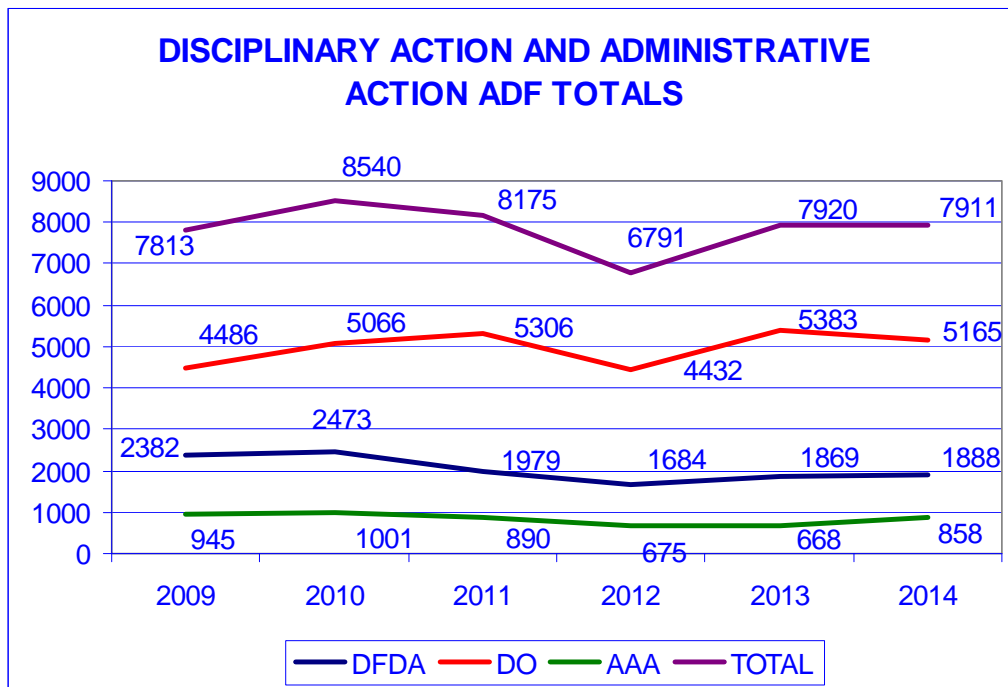
The 22 per cent increase in disciplinary infringements witnessed in 2013 was reversed in 2014 with a decrease of almost four per cent. Air Force led the swing with 15 per cent, followed by Navy with four per cent and then

Army with three per cent. Infringements totalled 5 165 in 2014, down from an all time high of 5 383 in 2013. The minor decrease in infringement numbers is offset by a small increase in the use of administrative action.

For the period 01 January 2015 to 30 June 2015 an additional 2 381 discipline officer infringements have been recorded. Navy accounts for 914, Army 1 293 and Air Force 174.

Discipline and Administrative Action Statistics

The number of summary convictions, discipline officer infringements and administrative sanctions is illustrated below.



The fairness and transparency of the discipline system was evident in 2014 with 94 charges resulting in a not guilty finding at the summary level and a further 30 being quashed on review. At the higher tribunal level, 47 trials were conducted and 20 accused persons pleaded not guilty to some or all of the charges against them. Of those persons who pleaded not guilty nine were subsequently found not guilty for all or some of the charges against them, or had the charges against them dismissed.

For the first six months of 2015, a further 21 charges resulted in a not guilty finding at the summary level while another 15 charges were quashed on review.

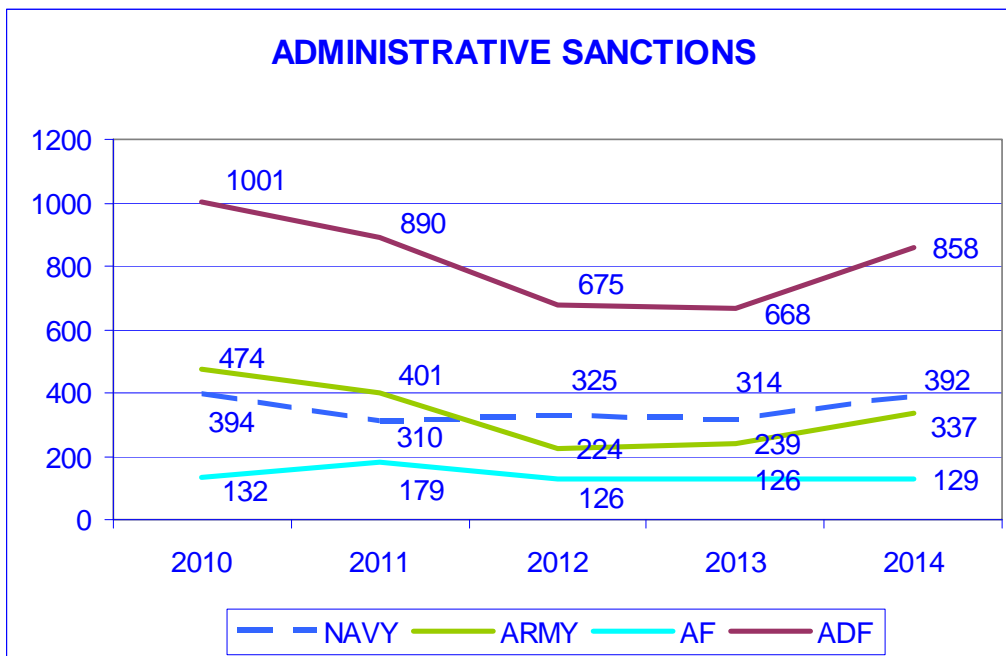
Administrative Sanctions Statistics

While formal disciplinary action is the usual means whereby alleged offences in contravention of the DFDA are investigated and tried, adverse administrative action is designed to correct inappropriate or unacceptable

behaviour, performance or standards or to protect the reputation of the ADF by terminating the services of a member who has behaved in such a way that their retention is no longer in the interests of the ADF.

Adverse administrative action includes, but is 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 reduction in the use of adverse administrative action witnessed since 2010 did not continue in 2014, with an overall increase of 28 per cent (Army 41 per cent, Navy 25 per cent and Air Force two per cent). This upward trend continued during the first half of 2015.



Of the 858 sanctions imposed in 2014, formal warnings 446 (52 per cent), counselling 196 (23 per cent) and terminations 85 (10 per cent) continue to be the most common. It should be noted that records of conversation are not formally classified as an administrative sanction and are therefore not included in the statistics. A further 394 sanctions were recorded for the period 01 January 2015 and 30 June 2015.

The main reasons for the imposition of administrative sanctions continue to be for unsatisfactory conduct (28 per cent) and the misuse of alcohol (24 per cent). The use of administrative sanctions for the misuse of alcohol increased approximately three per cent, which coincided with the increase in disciplinary action taken for the misuse of alcohol.

Administrative Inquiries Statistics

ADFAITS is currently tracking data of varying quality and completeness associated with inquiries entered since its inception, as shown in the table below.

	CDF and Joint units/commands	Navy	Army	Air Force
Inquiry Officer Inquiry	86	190	213	71
Board of Inquiry	9	3	-	-
Commission of Inquiry	29	-	1	-
Total	124	193	214	71

Civil Conviction Statistics

Civil conviction rates have been declining over the past five years with a high of 326 in 2010 to 105 in 2014. Of the 136 punishments imposed by a civil authority, fines 68 (50 per cent) and loss/suspension of drivers licence 46 (34 per cent) remained the most common. A further 35 civil convictions have been recorded for the period 01 January 2015 to 30 June 2015.