

Joint Committee Foreign Affairs Defence and Trade Defence Sub-Committee Inquiry into the Defence Annual Report 2013/14

Submission by Mr. Michael Wunderlich – 08 June 2015

Preliminary

I hope the attached can be accepted as a belated submission to this Inquiry into the Defence Annual Report 2013/14 for no other reason than my last outstanding Defence FOI was released to me on Friday 5th of June 2015, and without it I would be presenting a weakened submission.

Introduction.

My submission goes to the strength, or lack thereof of the Letter of Transmittal attached to each Defence Annual Report including the current one for this inquiry, the Defence Annual Report 2013/14.

What will be covered here will include historical but still current remarks on Defence's detection, investigation, reporting and data collection with regards its responsibilities to the now previous *Financial Management and Accountability Act 1997*.

To do this, it has taken me many years to identify a fraud baseline from which to benchmark Defence.

From what you will see in Appendix A, *there is none!*

One of the last topics mentioned on Friday afternoon, was the '*notion of reputational risk*'.

Here in this submission I would like to raise the discussion and debating point that, **'The processes of the Department of Defence are designed to put the reputation of the ADF first and the taxpayer second.'**

1. Cultural reform and the Pathway to Change - Michael Wunderlich

In the Pathway to Change - Evolving Defence Culture

[Review of the Management of Incidents and Complaints](#) my wanting to report something suspicious is succinctly summarised.

13. A former senior non-commissioned officer claimed that, when in 1995 he became aware of an apparent travel fraud—with Defence-wide accountability ramifications—there was no complaint avenue to report his concerns. His subsequent attempts over the next 16 years to investigate the likely scale of fraud were not supported by his chain of command, by the Service police or in 2010 by the then-Minister for Defence, who the senior non-commissioned officer claimed had been misled by the Department. The senior non-commissioned officer's attempts to have the matter looked into by the Inspector-General Defence, by the Defence Force Ombudsman, and to obtain departmental documents on the issue of fraud using Freedom of Information processes had all met with failure.

The fact that my complaint was reportedly a misuse of \$20m in a \$66m domestic travel contract never even raised a sweat in Defence and created the personal baseline that I have worked from.

2. Reserve Policy

What do a Regular member of the Australian Defence Force and that defence member who is a Reservist who is "purporting to do your duty" have in common.

In practice it is the same, but in administrative policy they are different, as replied to in FADT, Senate Estimates.

Defence Force Discipline Act 1982, Preliminary Part 1, Section 3

- (i) (4) For the purposes of subparagraph (b)(ii) of the definition of *defence member* in subsection (1):
- (a) a member of the Reserves is taken to be on duty from the time appointed for him or her to report to, or to attend at, a specified place for any naval, military or air force service that he or she is required to render by or under the *Defence Act 1903*, the *Naval Defence Act 1910* or the *Air Force Act 1923* until he or she is released or discharged from that service; and
 - (b) a member of the Reserves is taken to be on duty while acting, or purporting to act, in his or her capacity as a member of the Reserves.

- (ii) Senator Xenophon asked about this in Senate supplementary budget estimates hearing, 22 October 2014 in Question on Notice No. 174 - Fraud (see Appendix B) but in part,

"The definition of when a person is a 'defence member' represents the outer limit of when that person is subject to military discipline jurisdiction. The definition is especially important for a defence member in the reserve forces (a reserve member) given the part-time nature of their military service."

- (iii) Senator Xenophon asked a follow up question in Senate additional estimates hearing, 25 February 2015 in Question on Notice No. 23 - Chief of Army's directive 21/13 (see Appendix C) but in part,

"...from the Chief of Army's directive 21/13 dated the 13th June 2013 which includes: "Uphold the standard of behaviour contained in Defence Instructions and orders, on and off duty, when purporting to act as a Defence member and in any capacity with a connection to Defence.""

Response: Chief of Army stands by his directive.

The answer supplied by different areas within Defence has created an air of command, administrative, judicial and ethical confusion.

Item 1 reflects the writer's experience -

1. Cultural reform and the Pathway to Change - Michael Wunderlich

3a. Military Justice

As a past member of the RACMP, I am told by the Department of Defence, Departmental Media Release that the application of military justice is improving and has improved.

Then when you scrape together titbits of public information you discover that this *is far from true*.

- (i) [01 June, 2015 More than 150 serving Defence staff accused of abuse, but none have faced action yet Sydney Morning Herald, David Wroe, National security correspondent](#)
- (ii) DLA Piper Vol 2. still not released, no transparency here on the workings of Military Justice. Comparative statement: " About two years ago Victoria's then deputy commissioner (and now new Chief Commissioner) Graham Ashton told a state parliamentary inquiry, "The processes of the Catholic Church are designed to put the reputation of the church first and the victims second".
[John Silvester, Crime reporter, The Age. 06 June 2015](#)
- (iii) 05 June 2015 - FOI 363/14/15 release of Chiefs of Service Committee Agendum Paper 60 of 12, Version 2 Inspector General Australian Defence Force Review of the Notifiable Incidents System in Defence (attached)

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~~COMMITTEE IN CONFIDENCE~~



DEPARTMENT OF DEFENCE
Chiefs of Service Committee
AGENDUM PAPER 60 of 12

Version 2

**INSPECTOR GENERAL AUSTRALIAN DEFENCE FORCE REVIEW OF THE
NOTIFIABLE INCIDENTS SYSTEM IN DEFENCE**

SPONSORING MEMBER: VCDF - AIRMSHL Mark Binskin

It appears damning that a requirement for a Universal Incident Reporting system be a key judgment here.

The Defence Policing Security Management System has been in development since 1997 and from the Additional Estimates Hearing of the 26 February 2014, Question on Notice No. 34 "The data in DPSMS is not considered by Defence to be unreliable".

The business units using it are:

- (i) Defence Security Authority;
- (ii) Australian Defence Force Investigative Service;
- (iii) The Army, Navy and Air Force Service Police;
- (iv) Inspector General – Defence;
- (v) Directorate of Conduct, Performance and Probation;
- (vi) The Intelligence security areas;
- (vii) Cryptographic Controlling Agency;
- (viii) Chief Information Officer Group Network Support Agency;
- (ix) Joint Logistics Security;

- (x) Defence Science and Technology Organisation Security; and
- (xi) Sexual Misconduct Prevention and Response Office

Until you read the Report of the Five Year audit of the Australian Defence Force Investigative Service dated November 2011. It was released to me administratively on the 10th March 2015 per an original Defence FOI request. (Appendix D)

TOR(g) - How effective is the Defence Police and Security Management System as a case management system for ADF investigations.

(33) The audit team have been advised that DPSMS is not an approved records management recording system under the Archives Act and may fail to reach the requirements of AGIS.

(34) DPSMS does not cover discipline offences such as assault superior and therefore does not reflect serious DFDA offences.

Do the differences from multiple sources challenge the efficacy of the DPSMS?

What dilution must now be applied to the findings of the Pathways to Change given that a primary management system is deemed to be wanting under audit conditions?

A pseudo baseline can be found in the [JCPAA Audit Report No 22, 2000-2001, Fraud Control in Defence - Department of Defence](#)

From the Report

3.12 The audit also examined Defence's fraud investigation arrangements. There are four separate areas in Defence undertaking fraud investigations, one from the Inspector-General division and three from the military police. The ANAO found that each area used a separate set of investigation guidelines. Furthermore, none of the military police, who investigate approximately 85 per cent of fraud cases, had obtained a *Certificate IV, Fraud Control (Investigations)*. The certificate is considered the minimum industry qualification.¹⁵

3.13 The ANAO made six recommendations aimed at improving fraud control in Defence. Defence agreed with five recommendations but disagreed with one regarding the development of a fraud intelligence capacity. Defence stated that the 'cost of establishing an intelligence capacity would...not seem to represent good value-for-money'.¹⁶

However in the recently publicly released 2011 ADFIS Audit Report, it was highlighted that the ADFIC failed AGIS Requirements. (Australian Defence Force Investigator Course)

AGIS Requirements

28. It was identified by the audit team that the ADFIC no longer complies as a qualification under Australian Government Investigation Standards (AGIS). However, the Defence Investigative Standards (DIS) sets a requirement for compliance with the AGIS.

29. However, previous amendments to the TMP have decoupled the AGIS requirements from the ADFIC. Currently the ADFIC only complies with AGIS methodologies, not with the qualification requirement (Certificate IV in Government, Fraud Control Investigation and Diploma of Government Fraud Control Investigation). It appears that the AGIS is considered a generic guide in the conduct of the ADFIC with regard to the evidence matrix and resource spread sheet.

It is worth asking whether this has been rectified, or whether ADFIS investigators are still not at AGIS?

This is a fundamental when considering the Annual Report and accepting its Letter of Transmittal.

This supposed deficiency then leads to how and where the Investigative Service can be of an effective reporting component when preparing briefs for prosecution, either civil or military.

3b. ANAO reports and their reflection in the under-value of fraud detection figures reported in the Defence Annual Report.

On the 5th June 2015 the ANAO released the 'Interim Phase of the Audits of the Financial Statements of Major General Government Sector Entities for the year ending 30 June 2015'

5.61 In light of these characteristics and the ANAO's understanding of the operations of Defence, the ANAO assessed, for the purposes of planning the audit coverage for 2014-15, the risk of material misstatement as high.

5.76 & 5.77 Weaknesses in the management of the financial System (ROMAN)

5.80 During the 2013–14 final audit phase, ongoing issues were identified in relation to the integrity of the fixed asset register ...

5.81 In addition, the ANAO identified errors in the 2013–14 fixed asset valuation process, ...

5.83 & 5.84 Failure to consistently apply ANAO recommendation coupled with insufficient training for Defence staff.

5.86, 5.87 and 5.88 Potential breaches of section 83 of the Constitution

DMO - New Audit Issue

Accuracy and completeness of month and System Project Office information
5.104 and 5.105

5.106 The above issues increase the risk that the 2014–15 financial statements may not accurately reflect all transactions during the financial year.

4. First Principles Review

If the successful reporting and accountability of Fraud, Waste and Abuse cannot be achieved by the Department, then how can First Principles be achieved.

In Defence supplementary questions 2004-05, December 2004, Senator Joseph Ludwig asked two questions (29 & 33) which became paired by Defence in their answer. (Appendix E)

"The current Commonwealth Fraud Control Guidelines define fraud as 'dishonestly obtaining a benefit by deception or by other means' and specifically includes theft as a sub-set of fraud."

This error of only reporting minor unit theft seems to have been carried through by the Department for the last decade and I would strongly speculate, *more!*

On the 18th May 2015, I was administratively released under original Defence FOI (R22150450.pdf) a list of 110 cases referred to the Australian Federal Police between 1995 and 2010 by the Department of Defence, relating to fraud, corruption, procurement.

It is a telling document, more for what it didn't show, than what it did.

However, to support the Senate Estimates process and in particular Standing Order 25(20)

I draw the Committee's attention to

CASE_ID 232400 date 07 July 2003 for \$4.1m which was referred to the AFP as INV-FIR-FIR-32-2003 in the category of corruption.

In the Defence Annual Report for 2002-03 the reported Departmental fraud was \$1.1m and following year it was \$1.2m

With the reported corruption of \$4.1m to the AFP, how and why does the Department not become accountable to the Parliament for it in the respective annual reports?

The following year, on the 22nd November 2004, a joint media statement was released by the then Defence Minister and Minister for Finance to report that the Auditor General could not sign off on Defence's accounts as \$8bn in assets and liabilities could not be accounted for.

The previously mentioned document shows no spike in reports to the AFP for investigatory assistance in the years 2005 through 2008 given the size of the audit hole reported.

5. The 2015 White Paper and Force Structure Review

I refer the Committee to my submission to the 2015 White Paper and Force Structure Review.
Link attached: [119 - Wunderlich PDF - 722KB](#)

There are links in my submission to the white paper to support my content in this inquiry.

6. Review of recommendations from previous Review of DAR 2012-13, including transparency of reporting.

The Defence Service Charter was last seen on the internet around 2004 with an electronic connection from the 2002-03 Defence Annual Report.

It not only articulated in plain language what the community could expect but its accountability to the Commonwealth Parliament.

In a 2007 internal pamphlet, Defence stated the following:

WHO WE ARE Defence consists of the Australian Defence Force - members of the Navy, Army and Air Force - and civilians in the Australian Public Service.

OUR MISSION The Defence mission is to defend Australia and its national interests. In fulfilling this mission, we:

- * Serve all Australians; and
- * Are accountable to the Commonwealth Parliament, on behalf of the Australian people, for the efficiency and effectiveness with which we carry out the Government's defence policy.

I ask, have we lost that accountability?

In the Defence Budgets from 1994 through to 2013, Defence has been appropriated in excess of \$300bn!

In the same period it has reported that it has detected less than \$25m of fraud and recovered something less than \$3.5m

Is there some blind logic that I am missing here, or is this a recurring episode of The Hollowmen?

7. Reputational Risk

In Friday the 5th of June morning session, I applaud the interaction of Dr Dennis Jensen MP, Mr Dennis Richardson AO, Vice Admiral Ray Griggs AO CSC and Senator David Fawcett and look forward to retaining the transcript for future reference.

Unfortunately, the notion of reputational risk is deeper and far wider than anyone wants to dare admit.

'The processes of the Department of Defence are designed to put the reputation of the ADF first and the taxpayer second.'

8. Conclusion

I thank you for your consideration, as this submission was only possible through some of the hard work done by some members of the Defence FOI team, and was compiled using the time allowed of the Queen's Birthday long weekend.

If I had had more time, I might have been able to give it better structure and Body.

Michael Wunderlich
Adelaide, South Australia

cc. Senator Nick Xenophon, for his assistance in the Estimates process over the last five years.
Senator Alex Gallacher, for drawing Defence Finance out on the \$585,000 fuel card fraud.

Appendixes

Appendix A - What is the value of Commonwealth Public Fraud.

Australian Institute of Criminology - 2000

from [JCPAA Audit Report No 22, 2000-2001, Fraud Control in Defence - Department of Defence](#)

3.4 The nature of fraud often makes it difficult to detect. There have been several attempts to quantify the value of fraud committed in Australia. The Australian Institute of Criminology has estimated that fraud in the public and private sector 'costs the community between \$3 billion and \$3.5 billion per year. This makes fraud the most expensive category of crime in Australia.'⁵

Attorney General's Department - 2015

<http://www.ag.gov.au/CrimeAndCorruption/FraudControl/Pages/default.aspx>

Fraud control

Fraud against the Commonwealth is a serious matter for all Australian Government departments and agencies, and the community. It prevents taxpayer dollars from reaching intended targets and affects the government's ability to deliver key services. **Estimates of what fraud costs Australians vary, but even conservative estimates put the cost at over \$1 billion a year.**

This department is responsible for coordinating fraud control policy.

Department of Finance - 2014

[From Question on Notice F147 in Budget Estimates 2014-15](#)

Question:

Is the Department of Finance able to give a definitive overview of Australian Government public sector fraud and financial error in 2011-12 and 2012-13? If not, why not?

Answer:

Agencies reported 12,798 instances of non-compliance with the financial management framework in 2011-12 and 14,027 instances in 2012-13. **This aggregate number includes serious issues such as fraud, financial errors and minor technical breaches. The nature of the information collected does not enable an overall figure for fraud to be determined.** Further information is contained in the 2012-13 Certificate of Compliance Report to the Parliament.

Australian National Audit Office - 2014

[The Auditor-General, ANAO Report No. 3 2014-15, Performance Audit
Fraud Control Arrangements - Across Entities
30 October 2014](#)

3. Fraud threats are ongoing and can affect any Australian Government entity. In 2010–11, external and internal fraud losses against the Commonwealth were estimated at \$119 million.² Approximately \$116 million of these estimated losses related to external fraud, while some \$3 million related to internal fraud.

Ministry of Defence Police UK - 2012

<https://www.youtube.com/watch?v=q7MXxE7PjrY>



Appendix B:

Department of Defence

Supplementary Budget Estimates Hearing – 22 October 2014

Question on Notice No. 174 - Fraud

Senator Xenophon provided in writing:

(1) I refer to Q66 from Budget Estimates, 02 June 2014. It was understood by the individual referred to in this question, that Defence ceased any investigative capability in this matter when the then Minister in person, advised the individual in 2010 that his file had been read, he had been to everyone (in Defence) and that there was nothing that the Minister could do. The then Secretary was with him at the time.

- (a) Defence have previously given explanation to the term 'suspend' and 'terminate' with regard to Australian Defence Force discipline. Could Defence now advise an explanation on the sub-paragraph of the definition of defence member relating to the service and ethics requirements of Reserve Defence members: '4(b) a member of the Reserves is taken to be on duty while acting, or purporting to act, in his or her capacity as a member of the Reserves.'

Response:

(1) (a) The definition of a 'defence member' is contained in sub-sections 3(1) and 3(4) of the *Defence Force Discipline Act 1982* (Cth).

The definition of when a person is a 'defence member' represents the outer limit of when that person is subject to military discipline jurisdiction. The definition is especially important for a person who is a defence member in the reserve forces (a reserve member) given the part-time nature of their military service.

According to paragraph 157 of the Explanatory Memorandum to the Defence Force Discipline Bill 1982, the reasons for the extended definition of 'on duty' in sub-section 3(4) are to potentially bring reserve members within the jurisdiction of the *Defence Force Discipline Act 1982* in two types of situations. The first is where a reserve member is required to attend for duty to perform service but fails to do so.

The second is where a reserve member is acting, or purporting to act, in their capacity as a reserve member. In either situation, the person could not be charged under the *Defence Force Discipline Act 1982* without the extended definition of 'on duty' for the purposes of being a 'defence member'.

Whether a person is acting or purporting to act in their capacity as a reserve member, such that the person is subject to military discipline jurisdiction, will depend upon the factual situation in each case. The Explanatory Memorandum provided the example of where a person who is a reserve member is making out a report at home.

Appendix C:

Department of Defence

Additional Estimates Hearing – 25 February 2015

Question on Notice No. 23 - Chief of Army's directive 21/13

Senator Xenophon provided in writing:

In the Supplementary Estimates in October, 2014, Defence in response to QoN #174 gave a defining answer to the Senate on the term 'purporting to act'. Can the Chief of Army explain why is so confusingly different from the Chief of Army's directive 21/13 dated the 13th June 2013 which includes: "*Uphold the standard of behaviour contained in Defence Instructions and orders, on and off duty, when purporting to act as a Defence member and in any activity with a connection to Defence.*" Does the Chief of Army and the Army's command officers stand by this directive to the troops, or must the Army now apply the much narrower explanation provided by the Department of Defence to the Senate in 2014?

Response:

Chief of Army stands by this directive.

[CA Directive 21/13](#)

[Army Values and the Standard of Behaviour required of Army Personnel](#)



AUSTRALIAN ARMY
ARMY HEADQUARTERS

R1-4-B003, Russell Offices, CANBERRA ACT 2600

R14870848

See distribution

CA DIRECTIVE 21/13

ARMY VALUES AND THE STANDARD OF BEHAVIOUR REQUIRED OF ARMY PERSONNEL

1. Our people, be they Australian Regular or Reserve (Active and Standby) Army personnel or members of the Australian Public Service, are the most valuable asset within Army. Our success as an organisation depends upon the bonds of trust and respect between highly competent professionals within a team environment.

Appendix D:



OFFICE OF THE
CHIEF OF
THE DEFENCE FORCE

CDF/OUT/2014/741

Mr M Wunderlich

Dear Mr Wunderlich,

**REQUEST FOR THE REPORT OF THE FIVE YEAR AUDIT OF THE
AUSTRALIAN DEFENCE FORCE INVESTIGATIVE SERVICE**

I refer to your correspondence of 15 January 2015 in which you made a request for *The Report of the Five Year Audit of the Australian Defence Force Investigative Service* of November 2011.

I enclose a copy of this report and am pleased to inform you that of its sixty-eight recommendations, forty-four have been dealt with and are completed. An additional fourteen are due to be presented to a Defence senior committee for consideration in March 2015 and the remaining continue to be progressed and are expected to be dealt with in 2015.

Yours sincerely,

M Holmes MVO
Brigadier
Director General Select Strategic Issues Management
Australian Defence Headquarters
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Tel:

10 March 2015

R14-ADDF
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Appendix E:

Senate Foreign Affairs, Defence and Trade Legislation Committee
Budget supplementary questions 2004-05, December 2004
Answers to questions on notice from Department of Defence

QUESTION 29

Incidents of theft

Senator Ludwig

How many thefts of departmental property occurred in 2000-01, 2001-02, 2002-03, 2003-04?

For each incident:

- a) what was stolen in each instance?
- b) what was the value of the stolen item/s?
- c) where was it stolen from?
- d) was anyone charged with the theft (specify if they were employed by the Department)?
- e) was anyone convicted of the theft (specify if they were employed by the Department)?
- f) were any of the items recovered?

RESPONSE

a) – f) The current *Commonwealth Fraud Control Guidelines* define fraud as ‘dishonestly obtaining a benefit by deception or other means’ and specifically include theft as a sub-set of fraud.

Therefore, for details, see the response to question 33.

QUESTION 33

Incidents of fraud

Senator Ludwig

How many incidents of fraud were detected against the department in 2000-01, 2001-02, 2002-03, 2003-04? For each incident:

- a) what was the subject of the fraud in each instance?
- b) what was the value of the fraud?
- c) which administrative unit was the subject of the fraud?
- d) was anyone charged with the fraud (specify if they were employed by the Department)?
- e) was anyone convicted of the fraud (specify if they were employed by the Department)?
- f) were any of the defrauded items or was any of the defrauded money recovered?

RESPONSE

The number of incidents of fraud⁽¹⁾⁽²⁾ detected against the department were:

2000-01	2001-02	2002-03	2003-04
393	494	399	475

1. The current *Commonwealth Fraud Control Guidelines* define fraud as 'dishonestly obtaining a benefit by deception or by other means' and specifically includes theft as a sub-set of fraud.
2. Based on the number of closed fraud investigations.

a)

Property Involved ⁽¹⁾	2000-01	2001-02	2002-03	2003-04
Computer Hardware	104	160	96	66
Vehicles	37	116	14	8
Tooling	43	64	29	11
Facilities	15	58	3	13
Allowances	27	55	20	40
Accommodation	21	49	14	22
Food/Beverages	8	45	15	15
White Goods	17	41	5	1
Military Kit	19	35	26	33
Telecommunications Equipment	27	33	22	14

There is more of this answer to Q33 on the Senate Estimates page.