

Background – the 3 RAR Allegations

Introduction

1.1 This chapter explains the background to the committee’s inquiry into allegations of brutality within 3 RAR. It also outlines the structure of the report and the nature of the evidence received by the committee. These issues will be dealt with under the following headings:

- Background to the inquiry
- The allegations
- The evidence
- Report structure and constraints

Background to the inquiry

1.2 On 28th August 2000 a decision was made by the Joint Standing Committee to examine a range of issues arising out of the Annual Reports of the Department of Defence. Among these was a specific reference to the conduct of military justice and alleged events which occurred in 3rd Battalion, Royal Australian Regiment (3 RAR) during the period 1996–1999. These events had come to public attention as a result of media¹ exposure following complaints by ex-soldiers and their families. In

1 Ware, M, 'Behind Closed Doors: Australia’s Army covers up brutality in an elite unit – and undermines the military justice system' *Time*, 21 August 2000, pp. 52-54.

addition, there were other allegations, including a report in the Canberra Times,² regarding incidents in 3 RAR prior to 1996.

- 1.3 The allegations made within the media were diverse and serious. They could be summarised as follows:
- Extra-judicial procedures and illegal punishments were being applied within the Army's parachute battalion over an extended period of time.
 - The time taken to detect, investigate and act on these allegations indicates that the ADF inquiry system was not working and lacked necessary transparency and independence.
- 1.4 These allegations, while disturbing in themselves, had a heightened significance for the committee. In June 1999, the committee had tabled a report on military justice.³ This report examined the issues of both military justice procedures, and the military inquiry and investigative process. The committee made its recommendations without knowledge of the alleged criminal behaviour occurring within 3 RAR. The committee was concerned that information may have been withheld that may have materially affected the recommendations.

The Allegations

- 1.5 As indicated above, the allegations surrounding 3 RAR were serious. Because of their seriousness, they have spawned a raft of other allegations. These allegations centre on the military justice system and inquiry process, and include the fact that a Minister was advised of a potential problem in 3 RAR well before the issue came to light. Table 1.1 lists the full range of allegations that have arisen in the course of the inquiry. These allegations form the basis for, and provide the structure to, the remainder of this report.

2 Sunday Canberra Times, *I was told to bash others: ex-Army private*, 26 November 2000, p. 3.

3 *Military Justice Procedures in the Australian Defence Force*, Report of the Joint Standing Committee on Foreign Affairs, Defence and Trade, June 1999, AGPS, Canberra.

Table 1.1 List of Allegations Arising from the 3 RAR Incidents

Number	Allegation
(a)	(b)
3 RAR	
1	Soldiers would be assumed to be guilty of a crime or misdemeanour, based on accusations
2	Illegal punishments were devised to 'correct' the behaviour of offenders
3	Some punishments were administered as bashings
4	Other punishments involved putting 'offenders' through activities which, by their nature, were designed to punish
5	Key appointments ⁴ condoned the activity
6	The system was widely employed
7	There was a system of intimidation ⁵ within the battalion which prevented soldiers speaking out
The ADF Inquiry process	
8	Obfuscation by the Department of Defence, including the misleading of a committee
9	The army had kept its knowledge of these incidents confidential for almost two years
10	The ADF failed to act when first made aware of the alleged behaviour.
The ADF Justice System	
11	The system had arisen because of frustration with the bureaucracy within the existing discipline system
12	Senior officers interfered in the military discipline process.
13	There are excessive delays in the military justice system ⁶

The Evidence

1.6 The committee advertised the intent to investigate the military justice and equity system in both national and armed service newspapers. The inquiry also received widespread coverage in newspapers and on television. At the time of tabling this report fifty submissions have been received. Of these, only two were provided by soldiers who had served within 3 RAR during the period of the alleged assaults. However, in

4 Key appointments refer to the senior hierarchy of a unit responsible for command and discipline. In this context it refers to the Commanding Officer, Regimental Sergeant Major, Adjutant, Company Commanders and Company Sergeant Majors.

5 Sometimes soldiers' reluctance to speak out may have been through a misplaced sense of loyalty to the battalion/company.

6 See, for one example of this accusation, *Townsville Bulletin*, 'Cosgrove defends slow-paced army justice', 29 August 2000, p. 9.

public and private hearings, the committee took evidence from fifteen current, and past serving members of 3 RAR. In addition, the committee received twelve submissions from various elements within the Department of Defence, as part of the defence response. These included the results of ADF investigations.

The Report Structure and Constraints

- 1.7 The remaining chapters in this report are sequenced to answer the following questions:
- What evidence exists to support or refute the allegations?
 - To what extent does the evidence identify weaknesses within the ADF justice and inquiry system?
 - What conclusions and recommendations can be made about the ADF justice and inquiry system?
- 1.8 While investigating the allegations within 3 RAR the committee was constrained by concurrent legal proceedings. Consequently the committee did not have the benefit of legal determinations on what did, or did not, happen within 3 RAR. Moreover, the committee could not conduct hearings in public where evidence might impinge on individual cases being dealt with before the courts. This has meant that this report's discussion of some evidence is necessarily constrained and, at times, equivocal. Notwithstanding this limitation, the committee's focus has been the issues of systemic concern – including the law, regulation, policy and training systems that may have contributed to the alleged events. The issues of individual guilt and innocence will, using due process, be resolved by the proper authorities.
- 1.9 Before discussing evidence relating to 3 RAR, it is necessary to understand how:
- army units are organised,
 - military justice is administered at the unit level, and
 - equity policy is applied.

These issues are dealt with in the next chapter, Chapter 2. A knowledge of these unit level processes is necessary to an understanding of both the evidence on 3 RAR and the committee's subsequent analysis and recommendations.