

Government Response

to the Report

On

***ROUGH JUSTICE? An Investigation
into
Allegations of Brutality in the
Army's Parachute Battalion***

By

The Joint Standing Committee on
Foreign Affairs, Defence and Trade.

March 2002

PART 1

EXECUTIVE SUMMARY

BACKGROUND

On 28 August 2000 a decision was made by the Joint Standing Committee on Foreign Affairs, Defence and Trade that the Committee examine the 1998-1999, and, on its release, the 1999-2000 Annual Reports of the Department of Defence and referred this matter to the Defence Sub Committee.

Following this referral, the Committee agreed that it continue its examination of the Annual Reports of the Department of Defence 1998-99, and when tabled, 1999-2000, with specific reference to, inter alia, the conduct of Military Justice and the alleged events in 3rd Battalion, Royal Australian Regiment (3RAR) concerning brutality and extra judicial procedures and illegal punishments.

CONDUCT OF THE INVESTIGATION

The Committee advertised its intent to investigate the Australian Defence Force (ADF) Military Justice and equity systems in both national and Service newspapers. Public and private hearings were conducted between 6 October 2000 and 2 March 2001. Fifty submissions were received by the Committee, with only two submissions from soldiers who had served within 3 RAR during the period of the alleged assaults. Defence witnesses included the Chief of the Defence Force and the Chief of Army, as well as fifteen current and past serving members of 3 RAR.

INVESTIGATION REPORT

The committee released its report on 11 April 2001- '*ROUGH JUSTICE? An Investigation into Allegations of Brutality in the Army's Parachute Battalion*'. It contains eight majority recommendations (and one minority recommendation) to be the subject of this response by Government.

The Committee observed, as follows:

“ In the course of this investigation, Committee members were made aware of activities in 3 RAR that reflected no credit on the individuals involved, and sullied the reputation of an outstanding and highly decorated Army unit. There were failures of character, command and process. In its entirety the episode was poorly handled. We are now relatively comfortable, however, that pressure by this committee and subsequent action by the Chief of the Defence Force and Chief of Army have put a process in place to correct the situation.

Those specifically responsible for the incidents have been identified, and legal processes instituted where possible. While not all cases have been finalised, closure on this specific incident is in sight.

Additionally, the ADF is looking at how this type of incident was allowed to happen. The Burchett Audit and the investigation into the issue of command responsibility and the climate that allowed this type of incident to occur will allow lessons to be learned and identify if there are further issues to be addressed. Investigative and justice

processes have already been amended as a result of lessons learned, and more reform is needed.

Finally, the action taken by the senior leadership of Defence to raise the profile of justice and harassment combined with the intense media scrutiny should ensure that Defence personnel are aware of their rights. This will go a long way to ensuring that this type of incident does not occur again." (Report, paras 6.37-6.40)

THE GOVERNMENT'S RESPONSE

Significant contribution by Committee to Military Justice

The Government considers that the Committee has played a very significant role in advancing the cause of Military Justice through its investigation of events and circumstances in 3 RAR. The Committee's conclusion is a timely reminder of the need to be vigilant in respect to Military Justice issues. The Government notes the key finding of the Committee that the allegations were confined to A Company within 3 RAR; and the Committee had no evidence that the alleged incidents within 3 RAR were common within the ADF.

Transparency within Defence of Military Justice Issues

The Government wishes to reassure the Committee that information concerning the situation in 3 RAR that may have materially affected the recommendations of its 1999 Report into Military Justice Procedures was not knowingly withheld from the Committee. It is regretted that the Committee may have been concerned in this regard. The relevant information did not emerge during 1998 from within 3 RAR and become known to those responsible for managing Defence participation in the Committee's first inquiry into Military Justice. Nor did the situation in 3 RAR come to notice in the compilation of the Defence Annual Report. However, it is anticipated that the imminent appointment of an Inspector General of the Australian Defence Force in the first quarter of 2002 will greatly reduce the possibility of this situation from happening in the future.

Director of Military Prosecutions

The Government notes that the Committee was substantially divided on the matter of the appointment of a Director of Military Prosecutions (DMP), with a dissenting report appended to the main report recommending the establishment of a statutory office of the DMP. In announcing publicly the outcome of the Burchett Audit of Military Justice, on 16 August 2001 the Chief of Defence Force indicated that a DMP would be appointed. Legislation to amend the *Defence Force Discipline Act* will be proposed once the Chiefs of Staff Committee has considered how the DMP is to be appointed and function.

Actions Taken by Chief of Army

The events and circumstances revealed in 3 RAR led to the Chief of Army taking a range of measures to avoid any repetition, or other occurrence of avoidance of due process in military justice procedures.

Chief of Army's *Plan for a Fair Go*. In order to strengthen the equity and fairness environment within the Army, the Chief of Army issued his *Plan for a Fair Go*. A key element of the plan was the promulgation across the Army of his strong and clear expectations of the required

standards of behaviour in the form of "Fair Go" rules. These have been supported by the establishment within Army of an additional hotline to those normally operating within Defence, for individuals to confidentially seek assistance outside of the normal command chain, if necessary. Additionally, the *Plan for a Fair Go* included a review of equity training, the redevelopment of equity training packages, the conduct of a baseline equity audit and two follow-up equity audits.

Legal Proceedings. A range of legal proceedings under the *Defence Force Discipline Act* have been conducted. The outcome of these proceedings are found at Annex A to this Government Response.

Study of Command Aspects. As foreshadowed to the Committee, a study of the command climate and related aspects into the events in 3 RAR has been undertaken. The study was undertaken by Major General Powell, an experienced operational commander. The Report was submitted to the Deputy Chief of Army in December 2001 and its outcome is anticipated in the first quarter of 2002. The Deputy Chief of Army intends to personally brief the Committee on this report.

Actions taken by the Chief of the Defence Force

Military Justice Stand-Down. This unprecedented measure was held on 5 February 2001 in the midst of the Committee's concern with 3 RAR matters. Its purpose was to demonstrate to the Parliament, the public, and across the ADF that the highest standards of Military Justice and behaviour were expected. It also served to assure all members of the ADF that the law is there for their protection, and that they should respect its procedures and come forward with any personal concerns.

Audit of Military Justice by Mr Burchett, QC. This was a major and unprecedented undertaking within the ADF between January – July 2001. Mr Burchett was appointed as an investigating officer under the *Defence (Inquiry) Regulations*. His terms of reference were essentially to determine whether there existed in the ADF a culture of systemic avoidance of Military Justice processes. The Burchett Report was released publicly on 16 August 2001 and the Defence Sub Committee was briefed on 23 August 2001. On the basis of his extensive interviews and audit of processes, and consideration of some 500 submissions, Mr Burchett reported that there was not a systemic culture of avoidance of Military Justice processes in the ADF. The Government notes that this crucial finding aligns with the prior assessment by the Committee in its Report. Mr Burchett identified a number of matters requiring follow-up investigation and appropriate action has been initiated.

Mr Burchett made an extensive range of recommendations to improve the overall operation of the Military Justice system. The Chief of the Defence Force has decided that all of these recommendations will be implemented as a discrete project, including the appointment of an Inspector General of the Australian Defence Force early in 2002 and the establishment of an Office of a Director of Military Prosecutions, once legislation has been passed. Any model for a DMP will necessarily have to be adaptable to the command environment of the Defence Force, and be viable in the context of operations. Noting these requirements, the desired outcome is an appropriate system of Military Justice, with optimal degrees of transparency and impartiality.

Details of the Government's response to each of the Committee's recommendations follow, including a range of Military Justice initiatives pertinent to those recommendations.

PART 2**RESPONSES TO THE COMMITTEE RECOMMENDATIONS*****RECOMMENDATION 1***

The Committee recommends that educating Defence personnel of their rights and responsibilities be part of an ongoing program, commencing at recruit training.

RESPONSE

Defence provides extensive equity and diversity training, from recruit training to Commanding Officer Designate courses. Additionally, all ADF members and Departmental staff are required to undergo annual equity and diversity refresher training. The equity and diversity workplace competencies are currently being introduced into all through-career training.

Army has completed a major review of its equity and diversity training. This review has led to the integration of equity and diversity competencies into training packages to be delivered to officers and soldiers on their career courses. This action will be completed by August 2002. As an interim measure, equity and diversity training is to be delivered to unit commanders and Regimental Sergeant Majors for them to deliver, in turn, to officers and soldiers under their command.

Formal equity and diversity courses have been part of Navy training since 1999. All Navy personnel must undergo such training on joining and annually thereafter. In 2001 an interim, tailored, course was introduced for senior officers. In addition, it is now mandatory that prior to consideration for appointment as Commanding Officers and Executive Officers and to most instructional appointments, Navy personnel have undergone equity training in the previous 12 months.

Air Force conducts equity and diversity training at all levels of its leadership and management continuum, from initial entry training to senior appointments. This training is fully integrated into broad competencies.

A major portfolio evaluation report of Equity and Diversity in Defence will shortly be tendered to the Departmental Inspector-General. In due course once senior Defence managers have considered the evaluation report; the Committee may consider a briefing on the outcomes of this comprehensive evaluation.

RECOMMENDATION 2

The Committee recommends that officers in the direct chain of command and SNCOs responsible for the discipline system in units not be appointed as Equity Officers. The two roles cannot be adequately reconciled.

RESPONSE

This recommendation is broadly supported. Equity Advisers are responsible for providing support, information, advice and options for resolution to ADF members who are complainants or respondents, and management on matters relating to all forms of unacceptable behaviour.

As far as practicable, those holding command appointments are not appointed as Equity Advisers, however, the vast majority of personnel holding rank are in the direct chain of command or are responsible for discipline. The Government believes that the intention of the Committee's recommendation can be accommodated if sufficient, appropriately trained, Equity Advisers are appointed to enable all members of a unit or ship access to an Equity Adviser outside of their own direct chain of command. Army's Land Command has established, as a benchmark, a ratio of one Equity Adviser to every 50 personnel, to accommodate the number of sources of equity advice to those involved in unacceptable behaviour issues.

RECOMMENDATION 3

The Committee recommends that Army establish a pool of investigators held centrally for the conduct of larger investigations. These investigators should not be routinely drawn from outlying areas.

RESPONSE

The Government does not support the recommendation that a pool of investigators be established and held centrally for the conduct of larger investigations. Whilst the number and complexity of major investigations conducted over the previous year would warrant serious consideration being given to the establishment of a central pool of investigators, this need has not been evident in previous years. Prior to FY 2000/2001 there was an average of only two Major Investigations Teams (MIT) formed per year for investigations in excess of several months. The composition of a MIT is dependent on the type, sensitivity and complexity of the investigation. As required, Army has drawn on the investigative effort from Navy and Air Force to form a MIT, and on occasions, sought the technical assistance and advice of the Australian Federal Police. The Government believes that the current arrangement is more flexible in the use of these scarce and valuable resources.

The role and establishment of the 5th Military Police Company (SIB), headquartered in Canberra was examined in late 2001. At this point in time Army's preferred approach is to increase the number of more senior investigators on the staff of the 5th Military Police Company (SIB) which should enable better co-ordination and management of investigations and continue to draw more junior and specialist investigators from regional areas as required. Action is subsequently in hand to increase the number of more senior investigators of Headquarters 5th Military Police Company (SIB).

RECOMMENDATION 4

The Committee recommends that Army investigate the feasibility of placing MPs with Federal, State and Territory Police Forces as part of their training.

RESPONSE

The Government supports this recommendation. A Memorandum of Understanding has already been signed by Army and the Victoria Police. It is planned to enter similar agreements with other police services including the Australian Federal Police. Additionally, Army is looking to extending the range of civil police and tertiary training courses currently attended by Military Police (MP) personnel.

RECOMMENDATION 5

The Committee further recommends that Army review the conditions for reserve Military Police, with the view to better utilising the investigative skills in the Military Police Reserve units, especially for major cases.

RESPONSE

The Government agrees the Committee's recommendation. The Government values the contribution of Army Reserve MP's, many of whom have acquired specialist investigation skills in their civilian employment. Army is currently developing a Trade Management Plan for the Corps of Military Police, which will outline a framework for the employment of Reservists. In developing the Plan, Army will examine means to better utilise the investigative skills in MP Reserve and integrated units, especially for major cases. The Plan is due for completion in June 2002.

RECOMMENDATION 6

The Committee recommends there be a formal review of the Defence Legal Office, with terms of reference and timetable for completion, and that the review be made public.

RESPONSE

This recommendation by the Committee arose in the context whether the Military Justice System is too slow. At issue are the formal processes which comprise the Military Justice System; and the organisational arrangements for the in house delivery of legal services.

Military Justice System

The Government fully agrees that the entire legal process surrounding the incidents at 3 RAR took far too long. A much more efficient system is required to centrally track and monitor the progress of all matters dealt with in the Military Justice System. The most efficient way to achieve this is through the establishment of a *Registrar of Military Justice*. This has been implemented within the office of the Judge Advocate General, whose statutory responsibility it is to report annually to Parliament on the implementation of *Defence Force Discipline Act*. The *Registrar of Military Justice* is implementing a case management system (with requisite Information Technology support) to capture all ADF inquiries and matters of Defence Force discipline. This information also will be available to the Inspector General of the ADF to support that office in ensuring compliance with due processes, timeliness, transparency and standards in military justice.

In addition, the Judge Advocate General has implemented a standard step in the conduct of more complex disciplinary proceedings in the form of *Directions Hearings*. All those responsible for bringing matters to trial will be required to appear before a judicial officer for the purpose of explaining what is involved, and how long it should take to conclude. This will provide an additional process stimulus to expedite all disciplinary proceedings.

Coupled with strong recommendations by Mr Burchett for much enhanced training in military procedures (presently in the design phase through the Military Law Centre), these measures, when fully effective, should make for the more timely, streamlined and controlled administration of military justice.

Review of The Defence Legal Service

The Defence Legal Service has been undergoing a continuous program of integration and reform since the amalgamation of all in-house legal services in 1997.

In 1997 a military Director General was appointed to lead and manage the national in-house provision of legal services across Defence. A civilian General Counsel was appointed within The Defence Legal Service to provide high level legal advice across the Defence Organisation.

Studies were conducted into the provision of legal services to all bases, commands and regions in 1997. The central office in Canberra was fundamentally reviewed in 1998-99. The roles of Reserve Legal Officers were reviewed in 2001. This important review will result in a much closer relationship between the permanent and reserve officers of The Defence Legal Service. Moreover, the Reserve officers will be more closely integrated with their respective services, ideally through appointments within major formations and force element groups. The relevant Papers from each of these studies can be made available to the Committee, should this be required.

Finally, the incoming Director General undertook a national field survey of the entire organisation in 2001 and has made substantial internal organisational changes aimed at uniting all the legal resources available to the Defence Organisation into arguably the largest national in-house law firm in Australia. The shaping vision is set at "professional excellence", in all aspects of performance. The Defence Legal Office was renamed *The Defence Legal Service* in March 2001.

The demand for in-house legal services seems to be outstripping available resources. Significantly, the Burchett Audit of Military Justice observed:

"It was frequently suggested that the Defence Force should have more lawyers because there are not enough in-house resources to meet the demand (para 180)."

Burchett recommended that the total number of legal officers and their location and organisation required in the modern Defence Force be reviewed. This recommendation will be actioned as part of the general implementation of all the Burchett recommendations in 2002, with special emphasis accorded to the geographical placement of ADF legal officers to ensure that it reflects sufficiently the demands on The Defence Legal Service nationally.

Should the Committee require, an extensive briefing on the reform of the Defence Legal Service can readily be provided. The Government considers that these changes need to be given further time to take effect, before any further formal review is considered.

RECOMMENDATION 7

The Committee recommends that officers transferring to the Defence legal specialisation on completion of a law degree necessitate relinquishment of rank commensurate with their legal expertise and experience.

RESPONSE

This recommendation is broadly supported. The remuneration and professional development of the legal specialisation within the ADF elements of The Defence Legal Service is based on legal competencies. Clients are entitled to expect that rank and legal skills are reflective of actual experience. The most usual form of entry to the legal specialisation will remain through undergraduate and graduate recruitment to the most junior officer ranks.

Transfer to the legal specialisation as late as the rank of Major (or equivalent rank) would only be in exceptional circumstances. There will be some officers at this level whose command and management experience has required them to deal extensively with legal issues as a matter of course. This experience, coupled with legal training, will enhance their capacity to contribute effectively to The Defence Legal Service. It may be necessary for certain of these officers to be held longer at the Major (or equivalent rank) level to enable them to consolidate their legal experience before they are eligible for promotion. All of these considerations would be taken into account by the Career and Professional Development Committee, which has been established to regulate the professional management of officers in the Defence Legal Service.

RECOMMENDATION 8

The Committee further recommends that legal officers' selection boards have a legal officer on the panel.

RESPONSE

This is fully endorsed.

DISSENTING REPORT RECOMMENDATION

In light of the recurrence of issues relating to brutality and Military Justice, and noting the recommendations of the committee's previous report into Military Justice procedures in the ADF, those dissenting members now strongly recommend that the ADF establish a statutory office of the Director of Military Prosecutions, for Defence Force Magistrate trials and Courts-Martial (for criminal and quasi criminal matters).

As has been announced and advised to the Committee previously, a DMP will be established after selection of an appropriate model suitable to the ADF needs, and when the necessary legislation is in place.

OUTCOMES OF TRIALS CONCERNING THE THIRD BATTALION ROYAL AUSTRALIA REGIMENT (3 RAR)

Fourteen members and former members of 3 RAR were charged following investigations into allegations made. The results of the proceedings are as follows:

1. A Private (formerly Corporal)
 - a. (incident with/against another Private) – tried by Commanding Officer (CO) 3 RAR (1999) - Not Guilty.
 - b. (Assault on another Private) – tried by CO 3 RAR found guilty on 2 Feb 01 and ordered reduction in rank to Private and fine equivalent to 14 days pay suspended.
2. A Private (aid and abet assault on another Private) - dealt with by CO Parachute Training School on 31 Oct 00. Directed that the charge not be proceeded with as there was insufficient evidence; however at law, that decision not available to CO. Director of Discipline Law reviews evidence and directs that no further action to be taken against the Private.
3. A Private (assault against another Private) - tried by CO 3 RAR on 30 Oct 00. Not guilty as there was a reasonable doubt about events, the complainant could not identify his attacker.
4. A Corporal (ill treat a Private) - tried by CO 3 Brigade Administrative Support Battalion (3 BASB) heard 14 Nov 01. Not guilty 1st charge (ill-treat inferior) but guilty of alternative (negligent performance of duty). Convicted and fined equivalent of 7 days pay suspended.
5. A Corporal:
 - a. (assault on a Private) – dealt with by CO Dismounted Combat division (DCD) on 16 Nov 01 - directed not to proceed with the charge as there was insufficient evidence. (Complainant did not want matter to proceed and provided a statement to that effect).
 - b. (assault on a Private and prejudicial behaviour) - convicted by CO 4th Battalion Royal Australian Regiment (4 RAR) on 4 Apr 01. Fined \$1423.00.
6. A Corporal (assault on a Private) - matter heard by CO 4 RAR on 14 Dec 00. He directed that charge not be proceeded with. (Complainant did not want matter to proceed and provided a statement to that effect.)
7. A Private (assault on another Private) – matter heard by CO 3 RAR on 5 Dec 00. Convicted and fined equivalent of 28 days pay.
8. A Private (assault on another Private) – Defence Force Magistrate (DFM) trial on 6 Apr 01. Not guilty. Magistrate had doubts about the complainant's credibility.
9. A Warrant Officer Class One (prejudicial behaviour) - matter heard by General Court Martial. After lengthy trial, on 21 Jun 01 was found not guilty.
10. A Major (assault on a Lieutenant) - found guilty by DFM on 23 Mar 01. \$2000 fine imposed. Appeal to the Defence Force Discipline Appeals Tribunal (DFDAT) quashed the conviction and punishment.

11. A Lieutenant Colonel (prejudicial behaviour) - pleaded guilty before DFM on 6 Jul 01. Reduced in rank to Major with seniority to date from 1991. Petition filed. On petition and review, the sentence set aside and substituted for a fine of \$1500.00 and loss of 1 years seniority at rank of Lieutenant Colonel.
12. A Sergeant (prejudicial behaviour by making an Ex Private do push-ups in dress uniform) – Heard by CO 4/3 Royal New South Wales Regiment on 7 Sep 01. Ex Private failed to attend trial to give evidence and consequently the member was found not guilty.
13. A Sergeant (assault on inferior – pushing an Ex Private) – Heard by CO School of Infantry on 5 Oct 01. Ex Private failed to attend trial to give evidence and consequently the member was found not guilty.
14. A Private was discharged Jun 00 with a charge pending (assault on another Private). Ex member resides in USA. Reason for discharge investigated. Matter referred to NSW police.