

Budget Estimate Questions on Notice May 2006- Commonwealth Ombudsman

Senator Bishop

Covering statement - limits on the role of the Defence Force Ombudsman

The military justice system has two elements - the discipline system and the administrative system. The Ombudsman's office may investigate issues arising from administrative actions taken by Defence. Our role in the discipline system is limited. We may investigate the circumstances leading up to a charge being made under the Defence Force Discipline Act, and administrative actions taken by Defence that may arise directly from military justice issues. However, we are not authorised to investigate action taken in connection with proceedings against a member of the Australian Defence Force (ADF) for an offence arising under any law relating to the discipline of the ADF, or of an arm or part of the ADF.

In addition, the *Ombudsman Act 1976* requires that we delay commencement of an investigation until the Redress of Grievance (RoG) process is completed, unless the Ombudsman forms the opinion that there are special reasons justifying an earlier involvement (for example, in cases where health or safety may be an issue).

Questions on Notice

- Q.1.** *How many Military Justice complaints have been lodged with the Defence Ombudsman in (a) 2004 and (b) 2005.*
- Q.2.** *How many Military Justice complaints have been lodge with the Defence Ombudsman since 1st January 2006 to date.*
- Q.3.** *Under what categories do complaints about Military Justice fall. (e.g. sexual assault, bullying, harassment or complaints about the length of time taken for investigations to be completed).*
- Q.4.** *What percentage of Military Justice complaints in (a) 2004; (b) 2005 and (c) 2006 have been refused investigation by the Defence Ombudsman.*
- Q.5.** *In each instance where the Defence Ombudsman did not pursue complaints, on what grounds were complaints denied investigation.*

Answer to Qs 1-5:

The complaint data classification system used within the Ombudsman's office does not enable extraction of statistics that directly address all issues raised in these questions. **Attachment A** provides 2004-05 statistics that the Ombudsman's office is able to extract from its system. Those statistics show the number of complaints issues against different agencies that fall within the Defence portfolio, and the issues raised in those complaints (eg, FOI; advice given to ADF member; former member; and discharge/termination).

Attachment B provides 2004-05 statistics on the most common reasons for not investigating a matter. They include:

- the complainant has been advised to pursue the complaint with the agency (eg, the internal RoG process has not been finalised and there are no 'special reasons' justifying investigation)
- the complaint is out of jurisdiction (OOJ)

- the matter may more appropriately be dealt with by the Inspector General Australian Defence Force (IG ADF); in that case, a complainant would be referred to the IG ADF in the first instance
- the issues identified were being considered in the context of an Own Motion investigation by the Defence Force Ombudsman.

The Ombudsman has recently initiated an Own Motion investigation into the ADF's handling of complaints of Unacceptable Behaviour, to assess whether the internal investigation and resolution of such complaints is effective.

Q.6. *Of those cases investigated by the Defence Ombudsman over the last two years how many*

- (a) have found fault with ADF processes; and*
- (b) what remedial action has been taken in each case to rectify the processes.*

Answer to Q 6:

Attachment B also provides some information on the “outcome” of defence matters investigated by the Ombudsman’s office in 2004-05. The number of instances in which “agency defect” was recorded is low. In a much higher number of instances a “remedy” was provided by the Ombudsman’s office (eg, a better explanation for a decision; expedited decision; apology; or reconsideration of the original decision).

The statistics also indicate that a large number of complaints could be resolved without the need for a full investigation or formal ruling by the Ombudsman’s office as to whether there was defective administration on the part of the ADF. For example, the ADF may agree either to reconsider an issue without an investigation by the Ombudsman’s office, or to appoint an independent investigator to review the concerns of the complainant.

Issues raised in complaints are also being addressed through the implementation of recommendations from two Own Motion reports of the Defence Force Ombudsman: *ADF: Management of Service Personnel under the Age of 18 Years*, and *Review of the ADF Redress of Grievance Systems 2004* (a joint report with the Department of Defence).

Q.7. *In the complaint of Lieutenant Commander Robin Fahy:*

- (a) On what date was complaint raised with the Defence Ombudsman*
- (b) What was the length of time for the investigation to be concluded*
- (c) What was the outcome of the investigation.*

Q.8. *In the complaint of Ms Susan Campbell on behalf of her daughter Eleanore Tibble*

- (a) On what date was complaint raised with the Defence Ombudsman*
- (b) What was the length of time for the investigation to be concluded*
- (c) What was the outcome of the investigation*

Q.9. *In the complaint of Mr Charles Williams on behalf of his son Pte Jeremy Williams*

- (a) On what date was complaint raised with the Defence Ombudsman*
- (b) What was the length of time for the investigation to be concluded*

(c) *What was the outcome of the investigation*

Q.10 *In the complaint of Air Vice Marshall Peter Criss*

(a) *On what date was complaint raised with the Defence Ombudsman*

(b) *What was the length of time for the investigation to be concluded*

(c) *What was the outcome of the investigation*

Answer to Qs 7-10:

The practice of the Ombudsman's office, guided by legislative secrecy and privacy provisions, has been to avoid public discussion of individual complaints received or investigated by the office. The Ombudsman is concerned that the provision and tabling of a response to Questions 7-10 would breach the privacy of the individuals concerned. This matter can be addressed by the Ombudsman when appearing before the Committee. One option may be for the Ombudsman's office to provide a private briefing upon request to individual members of the Committee.