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DEFENCE AND TRADE

(Defence Subcommittee)

Reference: Examination of the Defence Annual Report/military justice aspects

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JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

Defence Subcommittee

Friday, 6 October 2000

Members: Senator Ferguson (*Chair*), Senators Bourne, Calvert, Chapman, Cook, Gibbs, Harradine, Hutchins, Sandy Macdonald, O'Brien, Payne and Schacht and Fran Bailey, Mr Baird, Mr Brereton, Mrs Crosio, Mr Laurie Ferguson, Mr Hawker, Mr Hollis, Mr Jull, Mrs De-Anne Kelly, Mr Lieberman, Dr Martin, Mrs Moylan, Mr Nugent, Mr O'Keefe, Mr Price, Mr Prosser, Mr Pyne, Mr Snowdon, Dr Southcott and Mr Andrew Thomson

Subcommittee members: Mr Hawker (*Chair*), Mr Price (*Deputy Chair*), Senators Bourne, Calvert, Ferguson, Gibbs, Hutchins, Sandy Macdonald and Schacht and Fran Bailey, Mrs Crosio, Mr Laurie Ferguson, Mr Hollis, Dr Martin, Mr Snowdon, and Dr Southcott

Senators and members in attendance: Senator Gibbs and Mr Laurie Ferguson, Mr Hawker, Dr Martin, Mr Price and Mr Snowdon

Terms of reference for the inquiry:

That the Defence Subcommittee continue its examination of the Annual Reports of the Department of Defence 1998-99, and when tabled, 1999-00 with specific reference to:

- the conduct of military justice and the alleged events in 3RAR;
- equipment fleet management and life cycle costing of equipment;
- personnel issues including Mutual Obligation Agreements upon both the unemployed and Army recruiting, changes to service conditions and superannuation;
- the use of military exercises as a means of assessing military outputs.

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Subcommittee met at 8.33 a.m.

CHAIR—I declare open this public hearing of the Defence Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. This hearing is the first in the series of hearings examining the annual report of the Department of Defence. The first hearing will focus on the issues of equity and justice with specific reference to recent alleged incidents of brutality within the 3rd Battalion, the Royal Australian Regiment. The aim of today's hearings is to understand and make a determination on the adequacy of the policy and procedures reported on by the defence department in relation to providing an equitable, disciplined and just work environment.

Recent events within the 3RAR, in particular, would suggest that there may be serious inadequacies within policy and policy implementation. Today's hearing is structured to systematically examine how military justice and equity policy have been implemented within one unit—3RAR—over recent years. In this sense, today's hearing represents a case study on which the committee intends to report. It is not—and I emphasise this—a court of inquiry to make judgments on individual guilt or blame.

I would like to make all members of the committee and witnesses aware that aspects of today's hearing may touch on incidents that are currently the subject of legal proceedings. I remind both committee members and witnesses of the need to limit discussion to issues of policy and procedure. It may, however, be necessary during the day to examine matters that, if publicised, could impact on the conduct of these legal proceedings. Because of this, some discussion will be held in camera. When a discussion is to be held in camera, I will announce this and would ask that the press and public leave the room quickly and quietly. The committee is mindful of the seriousness of many of the issues before it today and it understands that the public discussion of individuals who are, or who may be, subject to legal proceedings is not in anyone's interest. .

[8.36 a.m.]

BARRIE, Admiral Christopher Alexander, Chief of the Defence Force, Australian Defence Force, Department of Defence

CHAIR—On behalf of the committee, I welcome Admiral Chris Barrie, Chief of the Defence Force. I must advise you that the proceedings here today are legal proceedings of the parliament and warrant the same respect which proceedings in the respective houses of parliament demand. Although the subcommittee does not require you to give evidence on oath you should be aware that this does not alter the importance of the occasion. The deliberate misleading of the subcommittee may be regarded as a contempt of parliament. The subcommittee prefers that all evidence is given in public but should you at any stage wish to give evidence in private you may ask to do so and the subcommittee will give consideration to your request. Again I must emphasise the seriousness of many of the issues before the committee today, and I do again remind both witnesses and members of the committee not to enter into public discussion on individuals who are or may be subject to legal proceedings. Again I say that if it becomes necessary to discuss any individual who may be subject to legal proceedings we will adjourn and take that evidence in camera.

The subcommittee appreciates the time you have set aside to discuss the inquiry topic. Before we commence questions, do you have any issues you would like to raise concerning the adequacy of equity policy and military justice procedures within the ADF and most recently within 3RAR?

Adm. Barrie—Yes. I have a formal statement I would like to make and then would be quite willing to take questions after that.

CHAIR—Please proceed.

Adm. Barrie—Once again I welcome the opportunity to speak formally to the subcommittee. Military justice is fundamental to the professionalism of the Australian Defence Force. Our respect for the rule of law is a key element in the reputation of the Australian Defence Force as a national institution. Our commanders at all levels hold their unique powers only as provided for in our constitution. The legitimate exercise of those powers is the building block upon which the ADF's capacity for operations is based. The concept of being prepared for war and then adapting for peace rather than the other way around is the basic driver of all that we do in the Australian Defence Force. As a consequence military justice procedures are integral to our defence efforts. They must seamlessly support us across the entire spectrum of our defence commitment, from training through to conflict.

In my appearance before the previous inquiry into military justice procedures I noted that there was a fundamental requirement for the Australian Defence Force to have appropriate disciplinary procedures to support command authority in war and peace. I must emphasise that point again today. I also expressed a confidence that the subcommittee would have particular regard to that requirement and would place the needs of the ADF at the centre of its deliberations. I was confident that the breadth of knowledge of defence matters held by subcommittee members would allow them to do that. I believe that was the case as demonstrated in the subcommittee's report tabled on 21 June 1999. The subcommittee's recent

inquiry into military justice procedures was very important. The inquiry was extensive and it provided the Australian Defence Force with the opportunity to demonstrate the considerable strengths of the military justice system on one hand but also provided the opportunity to account for certain evidence shortcomings in the system on the other. The focus of that inquiry was on the procedures utilised in our military justice system. Now our job is to set about implementing the seven out of 59 recommendations which relate directly to military discipline and military justice.

The Defence Force then assisted comprehensively with the work of the subcommittee, and it remains ready to assist comprehensively with this present inquiry. However, while the changes following Mr Justice Abadee's review and those that will follow from the subcommittee's report have been or will be implemented their full effects have yet to be felt and evaluated. I would therefore ask you to bear that in mind during your present inquiry.

I am also aware of the committee's concern that some of the recent allegations which have generated your current inquiry, if proven, could point to condemnation of violent behaviour by some persons in authority. Such allegations are obviously of serious concern to us all. The Chief of Army is in the process of investigating them fully. He will take whatever disciplinary or administrative action is necessary. A number of charges are currently being dealt with and investigations are continuing. Further charges under the Defence Force Discipline Act may eventuate. But as Chief of the Defence Force, I see a deeper set of issues which directly attack my responsibilities for command of the Australian Defence Force. These disturbing issues are generated by the suggestion that there may have been cases in which the existing military justice system has been systematically circumvented. If this is the case, then I must get to the bottom of it.

The Defence Force Discipline Act was introduced into the ADF in 1985 following some 30 years of development. It replaced a number of United Kingdom and Australian acts of parliament and sets of regulations which were applicable to various parts of the ADF. The creation of a single disciplinary code for the first time gave the Australian Defence Force a distinctly Australian military justice system which reflected, as closely as was possible at the time, contemporary Australian legal and social values. Since its introduction over the last 15 years, the DFDA has undergone major and ongoing reviews. Initial annual reports of the Judge Advocate General noted that there was some reluctance to use the provisions of the DFDA because of the adversarial nature of summary trials, although the new procedures were perceived to be fairer to an accused with less chance of an injustice occurring.

Later reports of the Judge Advocate General indicated that the implementation of the DFDA was satisfactory and it was fulfilling the needs of the Australian Defence Force for the enforcement of discipline. The Defence Force Discipline Board of Review found some difficulty with hearings before particular commanding officers, largely because of the perception that the system was far too complex for the handling of minor offences. This led to the introduction of a discipline officer system in 1995. This was an important development because it provided a more expeditious and practical method of dealing with minor breaches of discipline. In brief, a commanding officer may appoint officers or warrant officers to be discipline officers to deal with defence members below non-commissioned rank who have committed disciplinary infringements. The discipline officer may impose a punishment. He may decide that a matter is trivial and not impose a punishment or decline to deal with it if the matter

is serious and hand it on. The Honourable Justice Abadee's report into judicial independence and impartiality of 1997 contained 48 recommendations, of which 37 were accepted and implemented.

Since its introduction, the Defence Force Discipline Act has undergone a number of important reviews—the latest of which was undertaken by this defence subcommittee in its report of June 1999. Seven of the committee's 59 recommendations directly concern military discipline. The committee also accepted that the post-Abadee arrangements would significantly improve the impartiality and the independence of the military justice system. The committee examined the alternative proposal of an independent prosecution authority but concluded that this matter should be re-examined when the impact of the post-Abadee arrangements could be effectively assessed. That was judged to be three years after they had been in operation.

I also observe that in his press conference on the release of the defence subcommittee's report into military justice procedures, the chairman of that committee, Senator David MacGibbon, said the committee felt that 98 per cent of the Defence Force discipline system was working and working very well. He said this was particularly so since the Abadee changes were implemented. He said the committee had just made a few suggestions for finetuning it—and I agree with that view.

Following implementation of the Abadee changes and the changes suggested by the committee in its report on military justice procedures, I believe we will have an even more effective and relevant military discipline system. The Defence Force Discipline Act applies to every member of the Australian Defence Force every day of the year. For instance, in the first 13 years of its operation, there were 273 court martials, 440 Defence Force magistrate trials and 77,420 summary trials. In addition, something in the order of 700 infringement notices are dealt with by discipline officers each year. These statistics would seem to indicate that the DFDA is in regular use and, moreover, that there is every reason to believe it works well in the majority of cases.

So where does the problem lie? If the legislation and the procedures are appropriate to our needs, why do aberrations—and I do think they are aberrations—like the recent allegations and others such as occurred at the Australian Defence Force Academy some time ago arise from time to time? The answer I suspect lies not in any inherent deficiency of the disciplinary system itself, but with those comparatively few individuals who seek to circumvent it and to undermine its effectiveness for whatever reason. It is precisely this issue that is the focus of my concern as the Chief of the Defence Force.

In my own experience, allegations such as those that have arisen recently are rare. This can be for two main reasons. First, instances of such aberrations are truly rare. The second reason is that all instances of such aberrant behaviour are not being brought to the attention of the appropriate authorities, and it is this second possibility that we must resolve. However, while I would agree that any allegation of unlawful behaviour is serious, must be dealt with and demands our swiftest and strongest attention, we should not lose sight of the perspective that such cases are likely to involve but a few of the thousands of men and women who proudly serve their country to the highest standards and traditions of the Australian Defence Force.

It is of course a matter of serious concern to me that these types of allegations, and the attendant publicity they attract, have the potential to taint the hard-won reputation of Australia's service men and women. A respect for the rule of law is a fundamental tenet of our professionalism and we must ensure that that respect is observed scrupulously throughout the force on all occasions. In saying these things I do not mean to downplay the seriousness of the present allegations or any others that have come to light in the past—or indeed that may come to light in the future—rather my comments are intended to place them in a realistic context. As I have indicated, I do not think these allegations demonstrate any inherent inadequacy in the Defence Force Discipline Act. They may, however, demonstrate that from time to time there may have been a failure on the part of some to use the disciplinary system in the manner for which it was properly intended, and that is what we must work on.

It is often said that people are our greatest asset and that is certainly true. Australian Defence Force members are a reflection of Australian society at large and consequently include some people—fortunately relatively few—who appear not to conform to the rules or who are prepared to break the rules to meet otherwise apparently legitimate needs. While I make no comment whatsoever as to the possible outcome of any allegation that is still the subject of proceedings, one alarming aspect of what has been reported so far is the inference that physical violence may have been used in place of proper Defence Force Discipline Act proceedings to maintain discipline and to change unacceptable performance and behaviour. The question of how this could happen—if indeed such things have happened—is a valid one.

While I am satisfied that appropriate necessary action has been taken to deal with the recent allegations, as Chief of the Defence Force I find myself faced with two important issues. I am sure they are also on the minds of members of your subcommittee. First, I must determine whether the practice of circumventing the use of the Defence Force Discipline Act is more widespread within the ADF than we had hitherto believed. If this is the case I need to find out why and what action is needed to eradicate it. Second, I need to identify what longer term steps I can take that will bring this unacceptable behaviour to notice more quickly so that swift and decisive action can be taken to remedy it. Of course I will never be able to guarantee absolutely that unacceptable behaviour will not occur. But some additional method needs to be found to ensure that when it does occur it can be identified early and the appropriate remedy swiftly applied. Therefore, in order to gain an accurate picture of the incidence of unacceptable and violent behaviour across the Australian Defence Force as well as illegal punishments being used instead of the Defence Force Discipline Act, I am appointing a high-level audit team to inquire into and report upon whether or not there exists within the ADF any evidence of a culture of systemic avoidance of due disciplinary processes. The audit will identify any irregularities discovered in the administration of justice. It will be empowered to review existing investigations, to undertake further investigations and thereafter to consider whether or not there are matters that should be referred for prosecution under the Defence Force Discipline Act or by relevant Commonwealth or state authorities.

I am also mindful that there may be possible criticisms about the ADF investigating itself. While I believe it is the responsibility of the Australian Defence Force to take action to correct its own shortcomings, I have invited a senior member of the judiciary who has had virtually no dealings with the Defence Force in the past to lead the audit team. I am pleased to advise the subcommittee that His Honour Justice Burchett, who will shortly be retiring from the Federal Court, has agreed to undertake this role. I will ensure that the audit team is appropriately

resourced to carry out its tasks. I would also hope that the audit team will be able to complete its work and report to me by about March or April next year, although completion of the work will obviously depend on the extent of the matters with which it has to deal. I have already sought and received the concurrence of the Minister Assisting the Minister for Defence to conduct the audit along these lines.

I also acknowledge the possibility that this initiative will need to be complemented by some more permanent arrangement to allow for the early identification of similar problems in the future. There may be a need in my view for a mechanism in addition to those which already exist whereby a wide range of matters broadly involving a chain of command can be reported to a permanent authority for resolution—but an authority which is independent of the normal chain of command and therefore is not in competition with it. Please do not misunderstand me here. I do regard the maintenance of the integrity of the chain of command in the Australian Defence Force to be of the utmost importance. I also recognise, however, that from time to time matters arise which cannot be adequately dealt with by the normal chain of command. Such matters include, for instance, allegations of command influence, matters in the abuse of authority, matters in the avoidance of due process and some forms of harassment and the like which in my view seem to demand a new approach. Accordingly, I foreshadow today the appointment of an independent Inspector General of the Australian Defence Force to carry on after the audit work is complete. I have already received ministerial agreement to this concept. While the precise status and responsibilities of such an appointment are still to be thrashed out, I envisage that an inspector general of the Australian Defence Force would likely be appointed under a fixed term, non-renewable contract. He or she would not be a full-time serving officer and would report directly to me.

The Inspector General of the Australian Defence Force would complement but not duplicate or impinge upon the work of existing appointments and agencies, such as the Inspector-General, the Complaint Resolution Agency, the Defence Equity Organisation and the Defence Force Ombudsman, although I think there might be scope to incorporate the work of some of these in-house functions into the Inspector General of the ADF structure in due course.

The broad role of an inspector general of the Australian Defence Force would be to review existing forms of investigation and inquiry, to be a point of reference to receive information and complaints of the type that I have referred to and, in addition, to have the power to investigate such matters by his own reference if necessary. I would envisage a mechanism by which members of the Australian Defence Force could refer matters to an inspector general of the Australian Defence Force in circumstances where reports of these matters through the chain of command have not resulted in appropriate action or it is perceived that reporting through the chain of command would not be welcomed. While I would not wish to take the analogy too far, in some respects an inspector general of the Australian Defence Force could be regarded as having a role similar to that of internal affairs sections of our civil police authorities. I believe that an inspector general of the Australian Defence Force would fill a gap in the present ADF organisation. It would assist me and the service chiefs to be better informed when circumstances arise that ought to be reported and rectified by the existing organisation but, for whatever reason, are not.

Mr Chairman, my intention to appoint a high-level audit team and to follow on with the creation of a permanent Inspector General of the Australian Defence Force is not intended to cut

across the work of your subcommittee. It is intended to provide me, as Chief of the Defence Force, holding the ultimate command responsibility for the Australian Defence Force, and the service chiefs with appropriate and independent mechanisms to better lead and manage the Defence Force in the future. In so doing, I anticipate that it would be instrumental in enhancing the confidence of your committee, our ministers, the parliament and the Australian community in the leadership and management of the Australian Defence Force. This is a goal we are all striving to achieve and it is a goal which is consistent with the high standards and traditions of the Australian Defence Force. Thank you.

CHAIR—Thank you very much, Admiral. I am sure the committee will be very encouraged by the announcement of a high-level audit team and also an inspector general. I dare say that members of the committee may even take some presumption that this inquiry might have helped bring that forward if it had been in the pipeline anyway.

In the course of your opening remarks you talked about the question of whether or not the practice of circumventing the normal means of discipline might be more widespread than you had previously thought. I would presume that you would already be aware of that, and I was just wondering whether you could comment further. Notwithstanding that you are talking about setting up an audit team, you must be aware how big the problem is. Could you give us an overview on that?

Adm. Barrie—As I said in my remarks, there are two reasons that attach to how we get to know about such aberrant behaviour. You would hope that we would have a complete knowledge of when that occurs; indeed, the recent allegations are part of such a process. On the other hand, it is a bit risky to be confident that you are hearing everything that is going on. In my mind, if it is occurring in isolated instances from time to time it is absolutely essential that the CDF and the service chiefs have in place a mechanism for finding out. I am very conscious that, in some cases, unacceptable behaviour may have occurred and we may not have heard of it. So, in my mind, this audit team provides an opportunity to hear about that across the whole of the ADF.

I would be extremely pleased if Justice Burchett's report early next year indicated to me that we were hearing about most of those cases, and that would then give me the confidence that our system was working pretty well. On the other hand, if Justice Burchett's report highlights a number of other allegations that we have not heard about before, clearly that is an issue which needs ongoing attention. Of course, that is the issue that leads me to foreshadow the establishment of the Inspector General of the Australian Defence Force. It is that issue of not hearing about those unacceptable behaviours that we need to focus on.

Mr PRICE—Thank you, Admiral Barrie. I want to ask some dorothy dixers to get your comments on the record. You are, of course, against bastardisation and a culture of violence in any unit?

Adm. Barrie—Mr Chairman, one of the early points I made for my leadership of the Australian Defence Force was to ensure that our Defence Force and our community understands that, in my view, the observance of the rule of law is a fundamental tenet of our professionalism. There are defence forces in this world that have no respect for the rule of law, but it is my belief that our Defence Force does have a very strong belief in those things. The disturbing element of

allegations of bastardisation and inappropriate behaviour is that we may have some people who think obeying the rule of law in operational service is fine, but in other cases we do not have to worry about that. That is simply not on. The observance of the rule of law is the fundamental tenet on which we build the professionalism of the ADF.

Mr PRICE—Admiral Barrie, you would encourage all victims in 3RAR or in any other part of the Army or ADF to come forward with their story to the committee?

Adm. Barrie—I would encourage any person in the ADF, across the ADF, who thinks he has been the victim of unacceptable behaviour or the abuse of authority to bring that to our attention as expeditiously as possible.

Mr PRICE—It was claimed during the last military justice inquiry that coming forward was not a career enhancing move. Can you assure members of the ADF who may wish to come forward that they would not be victimised as a result of their coming forward to the committee?

Adm. Barrie—Mr Chairman, it is a matter of Australian law that victimisation of people who come forward in these circumstances is in itself unlawful behaviour. As CDF, I will certainly do everything in my power to make sure that does not happen. I know the service chiefs are committed to the same thing. It is unlawful behaviour to victimise people who bring these allegations forward and we must do everything we can to make sure that does not occur.

Mr PRICE—Admiral Barrie, do you have confidence in your full-time legal officers in the ADF?

Adm. Barrie—I have a great deal of confidence in my legal system. I think it works pretty well—that is not to say it works perfectly. Of course, particular confidence in a particular legal officer varies from time to time, but on the whole I think the ADF and the single services are well served by their legal system.

Mr PRICE—In relation to the full-time legal officers, just like the medicos that went to Rwanda, are you satisfied that they actually have sufficient trial experience to be able to make the contribution you envisage that they would to the ADF?

Adm. Barrie—I think this was a matter, Mr Chairman, taken up in the last military justice procedures inquiry. There is, of course, an ongoing challenge about the training of our legal officers and the people administering the justice system. So there is clearly an ongoing need for that sort of training to give them the necessary experience to administer the system correctly. In reviewing the administration of the Defence Force Discipline Act, in his annual report, Judge Advocate General, whose responsibility it is to report on the administration of the system, declared himself pretty satisfied with the way it works.

Mr PRICE—Do you have a superior form of legal officer working full time in the ADF who can be removed from legal practice for whole years and then seamlessly come back and not miss a beat in terms of their expertise—unlike civvy street?

Adm. Barrie—We have had officers trained in the law who have been in our legal system and who have moved on and taken up line and command appointments to get experience in that

matter. For example, our present Director-General of the Defence Legal Office is an officer with those sorts of qualifications. Because they are legal professionals, I see no reason to think that that line and command experience diminishes in any way their capacity for the law.

Mr PRICE—Admiral Barrie, returning now to 3RAR, in fact it is not the case that senior ADF personnel did not know about it. Isn't it true to say that the junior minister, on 29 March, in response to an answer to a question, must have been aware of the investigations that were going on in 3RAR and that earlier than that Minister Bishop had received approaches on two occasions directly from the mother of one of the victims and would have been briefed by the ADF about the matters?

CHAIR—Would you like General Cosgrove to join you at this stage?

Adm. Barrie—No, I think you might talk to General Cosgrove separately. I cannot speak for ministers. It is clearly inappropriate to do that. I do not know what allegations ministers may have heard about or how ministers may have disposed of that. Certainly, I think the legal system in the ADF knew about those allegations and was taking some action on them.

Mr PRICE—I am making the point that a brief must have gone across to Minister Scott to have provided him with the information to answer the question. The relevant answer on 29 May 1999 states:

The only other claims of inappropriate disciplinary action involve another Army unit at Holsworthy. The Military Police have been investigating these claims since September 1998.

He was referring to 3RAR. What I am saying is that, at the top level of the ADF, people knew what was happening in 3RAR at a very early time, and I can give you Mrs Nishimura's letters to Bronwyn Bishop dated 6 May 1998. Under the normal system, this goes across to DMPLS for a response.

Adm. Barrie—I would have to say that not all letters that go to ministers come across to DMPLS.

Mr PRICE—There is a cover sheet which is a standard DMPLS cover sheet, I would have thought.

Adm. Barrie—Yes, I accept that, but I am making the point that not all correspondence received by ministers—and even about matters like this—will necessarily be made available to the department. That is, of course, a very important reason why I could not speak for ministers.

Mr PRICE—Could you tell me about you and your predecessor. On what dates and occasions were briefings provided to either Minister Bishop or Minister Scott about 3RAR matters?

Adm. Barrie—I will provide that on notice.

Mr MARTIN—Admiral Barrie, could you comment briefly on the timeliness in dealing with any allegations that arise within the military generally and the process that takes place from the

time an allegation is made through to a possible court martial or other disciplinary process—to finality?

Adm. Barrie—Yes. The timeliness issue is always one that we need to keep under management review. There are occasions when it takes far too long, it seems to me, to deal with particular cases. I would simply say that, if you think about the 77,000-odd summary trials that I talked to in my evidence, most of those cases are dealt with quite expeditiously and quite quickly. I would also say that, from a command perspective, every commanding officer is quite anxious to get cases dealt with expeditiously. It is not a good command practice to have cases awaiting trial hanging around for a long period of time. As a general rule, one focuses on trying to get them dealt with.

Some cases are not amenable to a quick resolution. Cases involving criminal behaviour, for example, go through extended investigation and trial proceedings. We are not always fortunate in bringing those to resolution early. We have also had administrative issues. I would cite the Butterworth inquiry of some years ago, which seemed to drag on and on for whatever reason. One of the problems we confront there is simply that observing due process in the administration of justice takes us a very long time. Whilst we try our best to make an early resolution, some cases are simply not amenable to them.

Mr MARTIN—Are there any statistics which you could make available to the committee that give some sort of an average time, depending on the issues that you have raised—due process and the severity of the charge that has been laid and so on?

Adm. Barrie—Those statistics can be made available. I should also add, of course, that these are issues which the Judge Advocate General remains concerned about—the timeliness and the resolution of the case.

Mr PRICE—I had occasion to review the transcript of evidence that you gave in the previous inquiry. You said:

There are two tests, in my view. Firstly, is this a fair system to all of those people involved and, secondly, is it a useful system?

Do you feel it is reasonable that a military police investigation should take seven months? Is it fair that the issue of people not being charged, or having charges pending and dragging on for so long, meets your test of fairness?

Adm. Barrie—That is a follow-on set of issues. It is always in our interests to get these matters dealt with as quickly as possible. There are times when they simply do not appear amenable to that. It is not fair on people against whom allegations have been made, and it is not fair on commanding officers, who have to look after those sorts of people, to let things drag on. We do need to focus attention on getting expeditious resolution of cases like these.

Mr PRICE—Could you confirm that not yesterday but the previous Thursday a QC was flown up from Melbourne to appear as a prosecutor before the CO and sought again to have the charge removed to a higher authority? Is it normal to hire QCs to appear before COs? Aren't they normally reserved for judges?

Adm. Barrie—I am not going to comment on any particular case. It will be quite improper for me to do so. In terms of who appears before a commanding officer, each case is dealt with on its merits. I have no knowledge, and am not interested in from an administration of justice perspective, of the appearance of particular people at particular trials. I would say that if an accused wants highly professional, competent representation at such a trial—

Mr PRICE—This is a prosecution.

Adm. Barrie—The same may also be true.

Mr PRICE—It is surely extraordinary to have—

Adm. Barrie—I do not know the particulars of the case.

Mr PRICE—You are happy to look into it?

Adm. Barrie—No, I am not, because that is due process of justice.

Mr PRICE—What I am trying to say to you is the very thing that caused the aborting of the trials before the magistrate was attempted for a second time last Thursday. Thankfully the CO, to his great credit, was not going to be bounced.

Adm. Barrie—Again, that is getting into particulars of cases, and I am not going to comment on particulars of cases.

Mr PRICE—With great respect, that is actually getting into methodology. Can I also refresh your memory and read back what you said at a previous committee hearing. You said:

I happen to believe firmly that it is the minister and the parliament that are ultimately responsible and that is why we have the process we have.

You would stand by those remarks?

Adm. Barrie—I agree—parliamentary democracy.

Mr PRICE—Given the severity of the issues surrounding 3RAR, does it surprise you that the minister has yet to make a complete statement, either outside or inside the House?

Adm. Barrie—I am not going to comment on what the minister may or may not do. I think that would be quite inappropriate.

Mr PRICE—There are a couple of other issues. Do you still maintain the practice of exit interviews? Aren't they a reasonably good way of trying to pinpoint whether there are problems in the system? What is the current status of exit interviews and the analysis of those exit interviews?

Adm. Barrie—Exit interviews are conducted. Of course, a whole range of issues come up at exit interviews as to the reasons why ADF members are moving on to seek other careers. It is a

source of advice, but I have to say that it is not complete in any sense. As I said in my statement, I think we have to get to the bottom of any aberrant behaviour. We cannot let it wait for an exit interview to find that something has gone wrong. We need to bring those matters for attention and resolution as expeditiously as possible.

Mr PRICE—I understand that the practice of analysing those exit interviews has now ceased but that some were revealing an extraordinarily high level of people who were: one, fearful in their workplace; or, two, concerned about issues of harassment and victimisation. Would you be able to look into that also?

Adm. Barrie—Yes, certainly.

Mr PRICE—What attitude surveys of ADF personnel are conducted and, again, aren't they a useful basis for pinpointing that there could be some problems?

Adm. Barrie—Yes, attitude surveys are conducted from time to time. We recently had the results of the most recent ADF attitude workplace survey. Of course, surveys like that encompass a whole range of matters. In my recollection, nothing sprang out of that which would attach to this particular inquiry.

Mr PRICE—Could the committee have a look at any summaries of that?

Adm. Barrie—Certainly.

Mr MARTIN—Returning to your last comment, given that separation rates in the ADF are certainly a lot higher than we would want and that there are difficulties in recruitment, are you saying to the committee that, in the attitudinal surveys you have seen, issues such as questions of discipline, brutality and so on are not showing up as potential reasons for people either not signing up for the ADF or exiting?

Adm. Barrie—My recollection—I do not have the material here—is that that is not a particular feature of the service. They certainly encompass a whole range of other matters that are of concern to our people, but that was not one that sprang to mind.

CHAIR—Admiral, to clarify that point, are you saying that questions of discipline and so on are not major factors?

Adm. Barrie—I would have to look again and focus particularly on that question to be sure, but I have read them and that did not spring off them to me.

Mr LAURIE FERGUSON—You have suggested welcome initiatives in regard to a high-level audit team and inspectors-general et cetera and you said that you would not want see that circumventing the committee's activity. What finally ignited this initiative, given the fact that on 4 May 1998 Mrs Nishimura could speak about discussions with Major General Keating? Medicos are saying that a few too many people are walking into doors and sustaining black eyes, and the report says that these things might go back as far as 1996. I am interested in what actually precipitated the final decision? At what stage in this whole process did that occur?

Adm. Barrie—It is not true to say that this initiative was brought about by the creation of this inquiry. It is a matter that I have had under review for two years and it was a matter that was certainly of interest to my predecessor as the Chief of the Defence Force. But the issue for us was simply: what is the nature of the work for an inspector general like this? How would it complement all the other things that we have got in place and how would we resource such a new agency? I think it is fair to say that the particular allegations that we are now looking at—or that the subcommittee is looking at—provide a very clear focus for what an inspector general of the Australian Defence Force might look at. But those particulars attach to what I call an audit of the ADF command system, which was where we were going with the thinking about a military inspector general.

Mr LAURIE FERGUSON—With respect, you said it has been under consideration for two years and it was announced here today. When did it finally reach crunch time? What precipitated the final decision—anything in particular?

Adm. Barrie—I think there is concern that there may be more information and more allegations out there about which I have no knowledge. I need to get to the bottom of that. That is a particular responsibility I hold as the Chief of the Defence Force.

Mr PRICE—Can I make this point about the 3RAR issue? My concern is that the ADF knows about it and that the system is not working. If I could make this observation. I thank the ADF for all the paper we got. It was released to us only late Wednesday night by the minister's office, so it has been very difficult to go through it. If there is a culture of institutional violence in 3RAR, the investigation appears to be focused on individual incidents, not on determining how this culture was able to flourish. I find that very disappointing. I do not think your inspector general or audit is going to assist you. It really requires making the current system work, and frankly it ain't working.

Adm. Barrie—I cannot agree with that entirely. One of the references for Justice Burchett is to look at that cultural issue. If there are individual cases of particular aberrant behaviour—and that is the nature of some of the allegations we know about—and if that is all we have to deal with, that is one set of issues. If, on the other hand, there are units, subunits or groups of individuals in which there is a culture of avoiding the Defence Force Discipline Act, that is a problem we have got to eradicate. That is where the audit must go: that is what I am charging the audit team with reporting back on.

Mr PRICE—Admiral Barrie, can you share with the subcommittee your view about this? When will all your investigations into 3RAR be completed—they have been going on for some time now—and when will those who are to be charged, be charged? That these matters are not being resolved is unfair not only to the victims but to those who may be charged.

Adm. Barrie—I reiterate: bringing these matters to a resolution as expeditiously as possible is the fair way of dealing with them and it is what management needs to be concerned about. On the other hand, the due process of justice must of course be observed. I cannot sit here and say that these matters will be resolved by Christmas time or by March next year—indeed, there may be other matters that we have yet to find out about. So it is simply not possible to give an answer like that.

Mr PRICE—All right. Would you encourage the possible 30 victims in 3RAR—and any others who have not been identified today—to come forward to the committee?

Adm. Barrie—Absolutely. Anyone who thinks they have been a victim of this sort of behaviour should come forward as quickly as possible.

Mr PRICE—Thanks.

Senator GIBBS—A certain person fears for his life in actually giving evidence to this committee. If this violence is obviously not condoned by those higher up, why would a person serving in the Defence Force be in fear of his life?

Adm. Barrie—I do not think I am in a position to answer that question: it goes to the particulars of a case and I have no knowledge of the person who has that perception. I would be very disturbed if there were substantive perceptions that this is a practice that is condoned in any way in the Australian Defence Force.

Senator GIBBS—All right. It just seems strange to me that this has been going on now for 2½ years and there doesn't seem to be any end in sight and that certain reports were not handed over to the MPs at the start of the investigation. Why would that be?

Adm. Barrie—Again, I think that is going to the particulars of the case. We do have to resolve these things as quickly as possible. The processes of justice do not always allow a timely, expeditious resolution. We do try to get on with them as quickly as possible, but I know we are not always good at that. That has got to be a management focus, but I cannot give you an assurance that we know all the cases that we are trying to deal with right now. All I can say is: we must try to get to the bottom of it; we must make our judgments about what needs to be done. That is what I think we have got to work on.

Senator GIBBS—It seems to me, reading through most of the papers that we were given, that certain officers knew what was going on. Nothing seems to have been done or proceeded with in that way.

Adm. Barrie—Can I just reiterate what I said about the role and function of the auditor: to look at those areas where the command chain is not acting properly on allegations that have been brought forward and so on. I think these are matters for concern and there does need to be a mechanism for dealing with them. Again, I could not comment on particular cases.

Mr SNOWDON—You would see then the possibility that there may be a grave systemic problem in the administration of justice.

Adm. Barrie—I think the previous subcommittee's inquiry was into the military justice procedures. What I tried to indicate is that I think the system itself, which has been under constant review from all perspectives, seems pretty good. I think what we are dealing with are some people who, for whatever reason, are not utilising the system in the right way or are seeking to circumvent it or undermine it. That is the issue we are trying to deal with. I think the system itself—which we have had under pretty constant review—is Australian. It meets our needs and is a pretty good system.

Mr SNOWDON—Has the concern, which has been expressed previously, been reflected in changes to training manuals and the training of officers and NCOs in relation to these issues?

Adm. Barrie—I think the recommendations of the previous inquiry are being picked up, and that is all in process. As I think we said, ‘Let’s look at it in three years time, after we have implemented Justice Abadee’s recommendations and the findings of the subcommittee, and then see if we want to make further adjustments.’ That is certainly in hand and my belief is that the majority of that has been put in place.

CHAIR—With the implementation of your inspector general, can you be confident that you are going to have faster legal action where someone does appear to have a case to answer? Do you feel that this will preclude allegations, of the nature that we are dealing with, in the future to the same extent and severity?

Adm. Barrie—Of course I cannot give any absolute guarantees—and it would be improper to do so—but I do think it would fill a very important gap in the current administration system. I think an inspector general of the ADF would be focusing on managing those things that he gets to hear about. He has the power, I hope, to make his own investigations. So if he or she becomes concerned about a unit, or a formation, or an area where there seems to be an incidence of unlawful behaviour, an own motion may result. I do not think I can go further than that today, but I think it is a major advance in getting to the bottom of these sorts of cases.

Mr MARTIN—The attitudinal survey—how quickly would that information be made available to the committee?

Adm. Barrie—It has been done, so it can be done within a week.

Mr PRICE—It is getting it out of the minister’s office that is the problem. I do not expect you to comment on that.

CHAIR—By the next annual report, Admiral, do you feel you will be able to give us some sort of assessment of the performance?

Adm. Barrie—I would be pleased to report back on both the report of the audit team and also that audit team’s recommendations as to the role and function of the Inspector General of the Australian Defence Force.

CHAIR—Thank you very much for your attendance here today. If there are any matters that we might need additional information on, I am sure you would be happy to take those on notice.

[9.31 a.m.]

COSGROVE, Lieutenant General Peter John, Chief of Army, Australian Defence Force

CHAIR—Welcome. I must advise you that proceedings here today are legal proceedings of the parliament and warrant the same respect that proceedings in the respective houses of parliament demand. Although the subcommittee does not require you to give evidence on oath, you should be aware that this does not alter the importance of the occasion and that the deliberate misleading of the subcommittee may be regarded as a contempt of parliament.

The subcommittee prefers that all evidence is given in public but should you at any stage wish to give any evidence in private, you may ask to do so and the subcommittee will give consideration to your request. I refer again to the seriousness of the many issues before the subcommittee today and remind everyone not to enter into public discussion on individuals who are or may be subject to legal proceedings. If it does become necessary to discuss any individual who may be the subject of such proceedings, we will adjourn and take the evidence in camera. General, do you wish to make an opening statement?

Lt Gen. Cosgrove—Yes, I would like to. I welcome this opportunity to again appear before your subcommittee and to assist you to uncover the circumstances of the unfortunate incidents that occurred in 3RAR during 1997-98. I am confident that we share the same objective—we want to understand what went wrong in 3RAR that allowed these incidents to occur and we want to ensure that events of this type cannot reoccur in 3RAR or any other unit.

I assure the subcommittee that I, and the rest of the Army, find the sort of events alleged to have occurred in 3RAR to be abhorrent and deplorable. These alleged events relate to the core values of the Army—they involve the trust between commanders and their subordinates. This relationship lies at the heart of good soldiering. Unfortunately, a small number of Army's people may have abused that trust. That this may have occurred concerns me greatly. I am also deeply concerned about the delays in dealing with the complaints and allegations arising out of 3RAR. Some of these delays relate to individuals, others to our organisation and processes. As Chief of Army, I of course accept responsibility for both the shortcomings of individual soldiers and officers and any shortfalls in our organisation and processes.

What do I want out this? I want to see the disciplinary proceedings against all alleged offenders carried through as quickly as possible. I want to reassure Army and the wider Australian community that this type of 'rough justice' behaviour has no place in the Australian Army. And I want to ensure that, should events like this happen again, Army will respond much more quickly and comprehensively.

How, then, do we intend to fix this? Disciplinary action has started; Army will see each case through to just conclusion. Mindful of this, I do not want to inadvertently disclose details or make comments that might put at risk an impartial hearing of these issues. I want both the accused and the victims in the process to get a fair go. CDF has announced an audit of the ADF discipline system. I fully support this initiative. CDF has also announced the appointment of a military inspector general. I also fully support this move.

I have drafted out new rules to Army that clearly define how equity principles apply to good soldiering. I call these 'rules for a fair go'. They will clearly and simply define what is expected of soldiers of all ranks and what they should expect in return. The rules convert existing Commonwealth and Defence equity policy into easy to understand principles that are applicable to all soldiers of all ranks. These rules for a fair go will give us uniformity of conduct across the entire Army and will enhance Army's existing equity initiatives. The bottom line is that soldiers have the right to feel safe and valued in their work environment and to have confidence in their leaders.

To help you understand what is alleged to have happened in 3RAR, I want to broadly summarise the nature of the incidents we are talking about. 3RAR is a parachute infantry battalion of about 600 soldiers located at Holsworthy, Sydney. These incidents are alleged to have occurred over a two-year period between 1996 and 1998, but mostly in late 1997 and early 1998. The initial incidents, which were the subject of a major military police investigation, involved eight allegations of assault by private soldiers against private soldiers. In addition, there were four allegations of assault by a junior NCO against a private. There was one allegation of assault of an officer by another officer. A separate review of unit detention records showed that, over a period of two years, on five occasions soldiers spent up to 12½ hours longer in detention than they should have. Finally, the investigation revealed that some of the matters I have described above may have been condoned by a small number of NCOs, warrant officers or officers. I will not be more specific at this stage. These are serious allegations and were the subject of two unit level investigations, followed by a major military police investigation lasting eight months. Disciplinary proceedings are continuing.

The investigation and disciplinary proceedings arising from these incidents have taken a long time. In early 1998, two parents and a soldier made complaints about the treatment of soldiers in 3RAR. These were initially investigated as separate incidents. It was not until August 1998 that the apparent 'pattern' of behaviour came to light and a wider military police investigation commenced. This investigation started in September and led to 11 soldiers being charged. In June 1999 draft charge sheets and witness lists were prepared and in July 1999 four personnel were referred to a higher authority and one charge was dealt with at unit level.

In September 1999, 3RAR and the unit's superior headquarters deployed to East Timor for six months. The disciplinary process was put on hold during this time and restarted in March 2000. Between April and July 2000 the remaining accused had charges referred to a higher authority, and a Defence Force magistrates trial commenced for two of the accused. In July the trial was stopped because of a problem about the way I had referred that matter to a higher disciplinary authority. Last week disciplinary matters recommenced at the unit level. Other disciplinary proceedings arising from the military police report are continuing.

Why did things take so long? It has taken some 2½ years to investigate and bring this matter to disciplinary hearings. This is too long. With hindsight, the eight-month military police investigation might have been shortened by one month—that is an estimate—by knowing at the start that other allegations would be found and by using more people for the task. However, at the time, the task appeared straightforward, if serious, and the number of investigators assigned to it initially seemed appropriate. With hindsight, the way in which I referred proceedings to a higher disciplinary authority delayed the process. I have already stated that the decision to direct

referral from the unit was based on incorrect legal advice, for which I accept responsibility. While I would always encourage justice to be swift and sure, it must first be sure.

What is the ADF doing for the pain and suffering of those affected? I regret that the time taken to deal with these matters has caused anguish to the possible victims, the accused and their respective families. There are nine possible victims in this matter. We have written to each of these people and have told them of the avenues by which they can seek compensation and legal advice. If the possible victims believe they have suffered an injury or illness—either physical or psychological—as a result of an alleged assault, they are entitled to submit a claim under the Safety, Rehabilitation and Compensation Act. As a result of a claim, they may be entitled to reimbursement of medical and dental expenses, compensation or a lump sum payment. Alternatively, they may sue the Commonwealth. Both serving and non-serving victims have been advised in writing how they might submit such a claim. They have also been advised of their eligibility for claiming criminal compensation and how this may be done through, in the case of New South Wales, the Victims Compensation Tribunal. They have been advised of the retention of their rights to litigate under civil law and their entitlements to legal advice. They have been advised of their eligibility for counselling and how that may be delivered.

In conclusion, my goal is that soldiers of all ranks feel safe and valued and that they have confidence that their leaders will give them support when and where it is needed. All ranks must clearly see and understand what is required to give and get a fair go. The message that helps them to see this must be direct, simple and so fundamental that right and wrong stand out without qualification or hesitation. It is a message based on Army's values and what constitutes good soldiering.

All of these allegations are serious. The most serious for the Army, as an organisation, is that such activity may have been condoned. Rough justice or unlawful punishment is not acceptable in the Army. It is behaviour which is both errant and abhorrent, and it is deplored by the vast majority of soldiers and officers. Did the policy, procedure or people fail? It is a reasonable question to ask: whether it was policy or process or people that failed in this matter. My view is that it is a combination of all these things.

My reaction to these events in 3RAR is to quickly do what I can about preventing this from occurring again. In addition to the initiatives announced by the CDF and subject to any that this committee might recommend, I intend to focus Army's prevention strategy on leadership and training. This is about educating all our people to make sure we reach the small number who may act wrongly from time to time. It is about shaping Army's culture and addressing the behaviour of those who misread what I require of soldiers of all ranks.

I intend to use Army's values and defence equity policy to put in place a set of principles that soldiers can understand. Sometimes we unintentionally complicate our message with the use of lofty phrases and detailed instructions. I have distilled from this message a set of principles expressed in simple language suitable for soldiers of all ranks. I have advised all my subordinate commanders of the need for vigilance, monitoring and speedy reaction to any perceived problems of this nature. I have also directed my training commander to review and sharpen the equity message in our individual training. I have visited the 3rd Battalion of the Royal Australian Regiment and reassured them that I think they are a very fine battalion full of

very good people. However, I made it very plain that these sorts of behaviours will be investigated and eradicated.

The quality of our soldiers and the individual training that develops their skills is considered to be among the best in the world. It is this system which we will use to shape our attitudes and future leaders. I hope I have made it clear to you, Mr Chairman, that these incidents are abhorrent to me, to all in the Army and to our culture. We will do all we can to prevent it. We will weed out discrimination and harassment wherever we find it. We will punish those who harass and support the victims of it. That is my statement.

CHAIR—Thank you very much, General Cosgrove. I think the committee would be very heartened by what you have said and would also commend you on what you have said. Obviously we have tended to focus on 3RAR, but do you have any feeling that this circumventing of the procedures is occurring in a more widespread manner, or are you confident that it has mainly been isolated to that one unit?

Lt Gen. Cosgrove—I have a feeling that it is not widespread, but I cannot be fully confident. That is why I think the CDF initiatives of doing an audit which will have rigour and a bit of horsepower to it is a very good idea. From my point of view, a feeling is not good enough. I would have said before these allegations came to light that it was very rare. Perhaps once in my 35 years did I see a retribution assault—it was not condoned; it was picked up and prosecuted immediately—and I would have said, therefore, that that is probably the norm. I very much welcome an audit which will reveal the extent of any problem.

Mr PRICE—I would like to raise a couple of issues with you. Like the chairman, I welcome your statement. You talk about nine possible victims. That figure has thrown me. I thought the number of possible victims was much higher than that.

Lt Gen. Cosgrove—There has been some anecdotal reference in some of the statements but, as a result of the investigations to hand, we have nine people who seem to have been the subject of some assault or harassment. If there are others, we need to identify them, probably from either allegations or out of process, springing from process, whereupon they would be added to the list of those who would need the support that a victim gets.

Mr PRICE—I apologise, I am still a bit thrown. I understood that the number of possible victims was now over 30.

Lt Gen. Cosgrove—Not in terms of the proceedings presently to hand.

Mr PRICE—You mean: about which charges are about to be laid?

Lt Gen. Cosgrove—Yes.

Mr PRICE—I see—I am sorry I did not understand that point. Can I also clarify the issue of detention. Is it correct that people were not detained for a matter of a few hours but that in fact it was a whole day they were overdetained, after the audit of the regimental post?

Lt Gen. Cosgrove—The maximum time the audit of the detention processes showed us, out of the investigations that we are dealing with now, was 12½ hours. Twelve and a half minutes is too long, but 12½ hours was the maximum amount of extra time.

Mr PRICE—If my understanding is correct—and I apologise for my ignorance—a unit post can only detain people for seven days. If they have tripped over, there is not only an issue of overdetention; there is a whole set of other illegalities because the post is not qualified to keep them beyond the seven days.

Lt Gen. Cosgrove—This is not to move past the issue that you have just mentioned, but, to me, the primary problem is that a soldier should not spend one second longer.

Mr PRICE—I agree.

Lt Gen. Cosgrove—The other thing is technical, and that is that it is wrong having them in a unit establishment rather than the corrective establishment, but the real issue is any detention past the due moment of release.

Mr PRICE—The last time we met we talked about whether there had been a number of majors recommended for charges. From my reading now, it appears that it was not two, it was three.

Lt Gen. Cosgrove—I will try to be careful here in terms of the disciplinary outcomes that are in train. There was one officer who was separate in the series of events, and that officer has been referred for a charge. With the other two, the option was there for a charge or administrative action. Administrative action was selected. Without going into the event—and I think you know the two—

Mr PRICE—I just want to be clear that it was a total of three and not two, as we left it on our last meeting.

Lt Gen. Cosgrove—I should clear this up so that you understand I was not looking to mislead you. The issue at that stage was, unequivocally, that one officer was to answer a charge. With the other two, the option was given: you may charge these two or you may wish to take administrative action.

Mr PRICE—Okay. General, I hear what you said in your opening statement. Where I am getting a bit confused is that in 3RAR it appears we are not dealing with a number of incidents, although that has been relatively thoroughly investigated by the military police, but we appear to be dealing with something that was institutionalised and appears to have been condoned. Yet there does not seem to be any investigation of how this became embedded and was allowed to flourish for the period of time that it did.

Lt Gen. Cosgrove—I understand your concern. The issue for the investigation was that it needed focus, and the strongest, clearest point of focus was those extant complaints. It is, of course, possible to infer that there was perhaps some predisposition for this to occur. I just note—and you would note too, Mr Chairman—that the investigation took a long time—eight months—on a series of specific allegations. To use that same investigative method or resources

to widen would have probably lost the focus on the fact that there were people who appeared to have had offences committed against them who were requiring some kind of resolution. But I again rather hope that the institution of an audit, which will have a powerful remit, will allow people, perhaps as well as looking at this incident, to look beyond.

Mr PRICE—I am sorry, but you have shocked me. Are you saying that the audit is going to go through the 3RAR?

Lt Gen. Cosgrove—The audit would respond to any suggestion of an offence.

CHAIR—Are you suggesting that this would look back to Mr Price's earlier—

Lt Gen. Cosgrove—It is available for anybody to bring forward information if they feel that they have been offended against.

Mr PRICE—May I apologise for my directness? When are you going to finish the investigations that will satisfy you or the Army that you understand exactly what happened, what the culture was and how it was permitted to flourish in such a dramatic way and then deal not only with the individual instances—which seem to be very much oriented, I might say, to the paratroopers—but with the issue of institutionalised violence?

Lt Gen. Cosgrove—Can I say that we are making those holistic responses now. We have plainly been doing that. We are instituting ADF-wide and Army-wide procedures which, plainly, rest not on the assumption that this was confined just to one unit but which work on the assumption that it might be more widely spread. Therefore, it has to be brought to the entire force.

Mr PRICE—I accept that and I welcome that, but I am asking: when are we going to clean up the mess in 3RAR? When can you appear before the committee and say, 'I am satisfied that everything that needs to be done has been done. Everyone that needs to be charged has been charged and matters are proceeding in an appropriate way before relevant judicial authorities'?

CHAIR—Mr Price, I would just like to clarify a point: you are talking about the past allegations.

Mr PRICE—In 3RAR.

CHAIR—Not current?

Mr PRICE—What do you mean, not current?

CHAIR—The time frame.

Mr PRICE—I am talking about the period from 1996 to the middle of 1998 when these events were alleged to have occurred. I have spoken to a possible witness who alleges that, in fact, it goes back a lot earlier, but I will not raise that.

Lt Gen. Cosgrove—I would like to be able to give you a timetable. You would also be keenly aware, as I am regrettably, that my attempt to provide some level of closure bumped into process. I was wrong and I am now more convinced than ever that if it is a question of speed or process, process must win. My fond hope is that we would be able to dispose of these charges within the next few months. Again, you yourself in a dialogue with an earlier witness mentioned the issue of the rights of the accused and the issue of process. I would be delighted to report back to you to say that this issue, to the extent that we are able to do it, is finalised.

Mr PRICE—I apologise for interrupting, but I want to be sure I understand what you are saying. In relation to the possible nine victims whom charges may arise for, you are in a sense in the process of finalising that, but there are current investigations going on as we speak about the institutionalised nature of what occurred in 3RAR. Those investigations are not finished and charges have not been made. Am I understanding you correctly?

Lt Gen. Cosgrove—You are understanding correctly that there are one or two issues arising from this overall matter which are still being investigated.

Mr SNOWDON—Except that there is now sufficient evidence to suggest that there have been endemic systemic problems in the chain of command and the communications within the chain of command in the 3RAR.

Lt Gen. Cosgrove—It is certainly unsatisfactory that there appears to be that sort of behaviour which is not immediately drawn to the attention of somebody who sets it right. I think we will have a better picture of that after these trials have been conducted, but certainly the indications are not good and, therefore, justify some of these responses.

Mr SNOWDON—What administrative action can you take to ensure that they do not repeat immediately?

Lt Gen. Cosgrove—In relation to that unit, close monitoring and supervision. There is an opportunity for all soldiers to be reminded vigorously of their rights and obligations, but in conjunction with an Army-wide program, not just focusing on 3RAR.

Mr SNOWDON—I appreciate that. But you would accept that there may be a real problem with general policy and procedures across the ADF in relation to these issues?

Lt Gen. Cosgrove—The problem is not so much that we lack the guidance. We have got to digest it and believe it. Step one is example and leadership to show that we will not tolerate people who offend in this way. But, more than the punitive side, there has got to be encouragement; a reminder of the fact that an assault in the Army is the same as an assault in the suburban street. There are no differences. If we can inculcate that culture and if people believe that then that will be a good step forward. I think 99.9 per cent of people in the Army already believe that but we have got to reach through them to the 0.1 per cent who have difficulty with it.

Mr PRICE—When did the investigation of the institutionalised nature of violence in 3RAR commence—you say that, hopefully, this will be wound up shortly and all charges will be laid within three months—and by whom?

Lt Gen. Cosgrove—Our suspicion that there was an aggravated climate of violence there, which may have had an institutionalised nature to it, came about in August and then the major military police investigation was launched in September 1998.

Mr PRICE—Military police started in September 1998 and took seven months?

Lt Gen. Cosgrove—That was the major investigation. There were two preceding investigations.

Mr PRICE—I am aware of those. The military police investigation is distinguished by its individual incident nature. In other words, a whole series of incidents are thoroughly investigated as well as the detention problem we talked about. I am talking about the fact that, within Army, although they talk about a culture of violence, I cannot find any reference to how it was established or how they pursued that in the military police reports. When was the lever pulled in Army and by whom that started them saying, ‘We have an institutional problem here. Who is responsible? How could this happen in an elite unit in the Army?’

Lt Gen. Cosgrove—It is sequential. In September 1998, we appeared to have a problem in part of one unit. From that, you grow the understanding that it is first of all to be shown and proved and, if it turned out to be other than isolated, you move forward. We are still operating on the possibility, the potential or the chance that there is a culture elsewhere.

Mr PRICE—I understand that and I commend you for that, but I am talking about 3RAR.

Lt Gen. Cosgrove—In September 1998, when I ordered that military police investigation, at that point we plainly had a problem in a corner of a unit in the Army.

Mr PRICE—I apologise; you are leaving me totally confused. Thank you for your indulgence. There are several incidents that are investigated by the military police. Even in the report, they talk about a culture of violence or an apparent culture of violence. But there is nothing in that report that runs down the rat hole of: how could this occur? Who is responsible. Who had to know about it? Who had to approve of it or who had the perception that they approved? I accept that you are doing all you can now about any individual instances. What I am interested in is: when is Army going to tackle within 3RAR this issue of how could it become, as it apparently appears to be, institutionalised in the unit?

Lt Gen. Cosgrove—In a way of managing it in a hands-on and immediate manner, obviously from the moment I became aware of it, I had discussions with the commanding officer concerning these sorts of issues to the degree of seeking his reassurance and giving him my support for measures to ensure that this was not seen as an alternative, not an option to operate in this way. Events subsequent to about September seem to show that it did not occur after that time. I hope I am not proved wrong. In terms of applying a remedy, immediately we were aware we had a problem, then, in the ordinary command relationship between me as the superior to CO 3RAR through him to his unit, these sorts of guidances and corrections were applied.

Mr PRICE—I recently visited 13 Brigade—a wonderful group of people, fine officers, ably led. Let us say that in a hypothetical situation—and I want to stress it is hypothetical—we found

a culture of violence in 13 Brigade. Wouldn't you agree that someone in the leadership position has to stand up and accept accountability and responsibility?

Lt Gen. Cosgrove—Yes. You have heard me say that I take responsibility for the actions of everybody in the Army.

Mr PRICE—I accept that.

Lt Gen. Cosgrove—I would expect people to take responsibility for the actions of those in their units.

Mr PRICE—Or brigades.

Lt Gen. Cosgrove—Or brigades.

CHAIR—As there are no further questions, General, thank you very much for that. Again, I commend you for those very thorough introductory remarks and the way you have been prepared to answer the questions as well. If there are any matters that we might need any further information on, I am sure you will be happy to accept a request from the secretary. You will get a copy of the transcript. If there are any corrections you need to make, we would expect you to do so.

Mr PRICE—Do I get a copy of the fair go information?

Lt Gen. Cosgrove—We are going through the grammaticals on that at the moment. We have them in draft copy, and I am inviting my senior commanders to work them to make sure that we do not have to change them after they are issued. I can tell you they revolve around the essence of a fair go. They will be short—one page.

CHAIR—Excellent. Thank you very much.

[10.12 a.m.]

GATES, Commodore Raydon William, Director General, Career Management Planning, Australian Defence Force

MARKS, Captain Helen Elizabeth, Director of Discipline Law, Defence Legal Office, Australian Defence Force

PORTEOUS, Mr Jim, Deputy Director, Policy, Defence Equity Organisation, Department of Defence

CHAIR—Welcome. Proceedings here today are legal proceedings of the parliament and warrant the same respect that proceedings in the respective houses of parliament demand. Although the subcommittee does not require you to give evidence on oath, you should be aware that this does not alter the importance of the occasion and that the deliberate misleading of the subcommittee may be regarded as a contempt of the parliament. The subcommittee prefers that all evidence is given in public but should you at any stage wish to give any evidence in private, you may ask to do so and the subcommittee will give consideration to your request. I must emphasise the seriousness of many of the issues before the subcommittee today and remind everyone not to enter into public discussion on individuals who are or may be subject to legal proceedings. If it becomes necessary to discuss any individual who may be subject to legal proceedings, we will adjourn and take the evidence in camera. Do any of you have any comments to make on the capacity in which you appear?

Cdre Gates—Yes. I would point out that the Defence Equity Organisation resides within my branch.

CHAIR—Do you wish to make a short opening statement before we proceed to questions?

Cdre Gates—Yes, I would. I thank the chairman and members of the subcommittee for the opportunity to make an opening statement in relation to equity policy and also the function of the Defence Equity Organisation, which was formed in mid-1997 as an outcome of the Defence Efficiency Review. There has been a policy on unacceptable behaviour since 1986. The 1986 policy focused on the elimination of sexual harassment. An updated policy document in 1992 covered unacceptable sexual behaviour and concentrated primarily on sexual harassment and sexual offences. There was a major review of the policy following the Senate inquiry into unacceptable sexual behaviour in 1994 and again in 1996.

In 1999, a considerably expanded policy of extremely detailed guidance was produced by the Defence Equity Organisation. This document listed workplace and personal harassment as being prohibited. However, both the 1996 and the 1999 policies stated that the misuse of authority and the abuse of power were prohibited. Both the 1996 and the 1999 policies state that all personnel have a right to work in an environment free from harassment and discrimination and to pursue the policy of zero tolerance of unacceptable sexual behaviour.

The policy outlines support mechanisms available to complainants of unacceptable behaviour. In 1996, this included harassment contact officers or equal employment contact officers and a harassment hotline. In 1999, there was a much more sophisticated support system, comprising

the Defence Equity Organisation adviser network and the Defence Equity Organisation adviser lines, which I will address later. In addition, methods of support to be provided to complainants are clearly set out. More detailed guidance is also provided on the management of incidents. In both policies, there was a requirement for commanding officers to prevent and eliminate unacceptable behaviour through the implementation of equity training while maintaining an environment where complainants and witnesses are confident that they will receive support from their superiors who will respond promptly, seriously and sensitively to complaints. In 1999, there were additional requirements of ensuring that all personnel in their commands were aware of the policy and promoting the equity adviser network.

In the 1999 policy, a caution for unacceptable behaviour was developed. This is a new type of formal administrative action. The caution acts as a formal finding that the respondent acted in an unacceptable manner and is a warning that the behaviour must not be repeated. Reporting of formal complaints of sexual harassment and allegations of sexual assault to the then headquarters of the Australian Defence Force was a requirement of the 1996 policy. The 1999 policy mandates the reporting of all formal complaints of all forms of harassment, discrimination and fraternisation, as well as allegations of sexual offences, to the Defence Equity Organisation. These reports are kept on a database which details the type of incident, the location of incident and the duty status and rank of complainants and respondents. This database does not contain names. A review of the statistics is conducted annually.

In 1999, as a result of the review into policies and practices to deal with sexual harassment and sexual offences at the Australian Defence Force Academy, a second database was established. This one lists the names of members who have been found to have behaved unacceptably. Members whose names appear three times are required to show cause why their employment in the Australian Defence Force should not be terminated. Obviously members can be issued with a show cause after only one or two incidents of unacceptable behaviour, if warranted.

Before the establishment of the Defence Equity Organisation, all programs had their own individual equal opportunity employment implementation plans, with a focus on equal employment opportunities for minority groups. Since 1998, there has been an emphasis on equity and diversity—that is, fairness and inclusiveness. A more comprehensive workplace equity and diversity plan for the whole organisation was produced in 1998. Since then, a disability action plan and an indigenous staff recruitment and career development action plan have been disseminated. This demonstrates that, while the original focus of Defence was unacceptable sexual behaviour, there is a much broader and sophisticated area of attention in relation to equity and diversity.

I mentioned earlier the Defence Equity Organisation adviser network. This is a 2000-strong Australia-wide network of Defence equity coordinators, senior equity advisers and equity advisers. The network is maintained in all Defence units and establishments. The role of the network is to support commanders and managers in implementing equity and diversity initiatives. It also provides all personnel with confidential support, information and options for the resolution of workplace equity and diversity issues.

Full-time Defence equity coordinators cover all states and territories. Their roles are to maintain the network; to ensure that all members of the network are kept up to date on equity

and diversity issues; to conduct equity adviser training; and to provide high-level advice to senior commanders and managers in their regions on a range of equity and diversity initiatives, including unacceptable behaviour. They are not responsible for an equitable and diverse workplace. That is the role of commanders, managers and supervisors. The Defence equity coordinators provide guidance, advice and assistance. There is at least one senior equity adviser at each Defence site. Senior equity advisers provide advice to middle and senior commanders on relevant policy and they mentor equity advisers within their site. Equity advisers are critical to the success of the network. Trained equity advisers provide confidential support, information and advice and resolution options on matters relating to all forms of discrimination and harassment.

A policy document was produced in 1999 outlining the role of the network and its members. The policy states that commanders and managers are required to support the network. It states that equity advisers must be trained and that equity advisers should not perform disciplinary functions. While the network may be seen as outside the chain of command, it encourages members to address matters through the chain of command.

As I mentioned earlier, the Defence equity advice lines, formerly known as harassment hotlines, were integrated when the Defence Equity Organisation was established. Advisers provide a way for callers to talk about their concerns in relation to equity and diversity issues and to discuss options for future action. Callers do not have to give their name or location. The advice line operators are not directive and do not provide the answer to the callers' problems. The operators help callers identify and work through possible options. The caller then has the responsibility of choosing his or her own option. The advice lines are available to complainants, respondents, commanders, managers, supervisors, equity advisers and family members of personnel. They are available seven days a week from 0830 to 2100.

The Defence Equity Organisation provides equity adviser training and equity adversity awareness training packages. During 1998, the Defence Equity Organisation, in conjunction with the services, developed workplace equity and diversity competencies for inclusion in all career development courses. The training commands will implement those competencies. During 1998 and 1999, the Defence Equity Organisation organised a taxing schedule of visits to the majority of areas of Defence around Australia. The aim of the visits was to brief commanding officers and managers on the role of the Defence Equity Organisation and changes to policy and to make them aware of the resources available to them.

Since 1998, the Defence Equity Organisation has produced an ever-increasing number of publications. Of particular note is the *Guide to fair leadership and discipline in the Australian Defence Force*. This was developed to provide plain English and basic answers to frequently asked equity and diversity questions.

The Human Rights and Equal Opportunity Commission has provided a list of recommended preventive and remedial measures to deal with discrimination and harassment in the workplace. That is to be adopted by organisations. Defence has compared its actions taken to this external guidance and, barring some long-term assessment measures, I am pleased to report that it has met all of those recommendations.

The Defence Equity Organisation has a commitment to equity and diversity in the workplace and in its management practices. Equity and diversity has evolved from equal employment opportunity, with the aim of enhancing operational capability and effectiveness to achieve the Defence mission. Thank you, Mr Chairman. I hope this has given you a satisfactory outline of the Defence's equity and diversity initiatives.

CHAIR—Thank you very much. First of all, under the current policy, who is responsible for supervising the correct implementation of military law procedures within a unit?

Cdre Gates—Military law procedures?

CHAIR—Yes.

Capt. Marks—The responsibility for enforcing the maintenance of discipline in units comes, again, to the commanding officer and to the officers and the senior NCOs serving under him. Again, it is a chain of command responsibility.

CHAIR—And who is responsible for the correct implementation of equity policy within the unit?

Cdre Gates—The same again. We are there to assist and support, but the commanding officer bears that responsibility.

CHAIR—In your experience, how does the reporting of unacceptable behaviour incidents within Defence compare with the norms, first of all, within other departments and, secondly, within society?

Mr Porteous—We have found that most organisations do not collect the same depth of statistics that we do. We are still trying to make useable comparisons with other defence forces and with society. We believe that we compare quite well, but we could not give you that evidence.

Cdre Gates—We have recently received awards from the Public Service Merit Protection Commission for our network, for the DEALs, the Defence equity advice lines, and for the way that we have put together our policy. So, as a measure for our own evaluation, we are taking those as positive signs.

Mr SNOWDON—You said that there were a couple of thousand Defence equity advisers?

Cdre Gates—A network of about 2,000 equity advisers, yes.

Mr SNOWDON—What ranks are they?

Cdre Gates—They are all ranks—the majority are volunteers, some are detailed off, and we are also talking about our civilian compatriots here as well.

Mr SNOWDON—What access do serving personnel have to these advisers and how do they get access to them?

Cdre Gates—It is well publicised. They just make an appointment to go and see them. The fact that they exist and how to do that is advertised in service newspapers—it is stressed through the personnel paper, *The Key*, for example. We are available on the Net—both Intranet and Internet—and we take advantage of things like occasionally through scuttlebutt video type areas that we push out from those as well, plus the hotlines are also advertised. So anyone can walk to a telephone and talk to one of our advisers here in Russell.

Mr PRICE—Why did the hotline not work in 3RAR? We know it was used.

Cdre Gates—You know it was used?

Mr PRICE—Yes.

Cdre Gates—We do not. We do not have a record—it is a confidential line. We stress that, and if the people stress where they are from and what their case is, only then do we ask for that information because we are stressing the confidentiality and the fact that we are not directed but only options. So we do not actually have any records of calls from 3RAR. We would hope that if we received those calls then the options that our advisers gave to those people would have been taken up.

Mr PRICE—Can you tell the committee whether the equity policy worked in the case of 3RAR? Are you happy that it worked smoothly in 3RAR and that the hotline worked smoothly?

Cdre Gates—I cannot tell you. Overall, I say it does work very smoothly.

Mr PRICE—No, I am talking about 3RAR.

Cdre Gates—I cannot say that because we do not know where these calls are coming from in the defence equity adviser line. We have had no formal reporting in recent times. On my database I have only two formal reports from 3RAR dating back to 1996 and 1998, so in respect to meeting policy and reporting they are the only two instances we have.

Mr SNOWDON—If there was a complaint within a unit, how would that complaint be dealt with immediately? Say, for example, I was a private soldier—

Cdre Gates—Sorry, I just missed the beginning of the question.

Mr SNOWDON—Say I was a private soldier in a unit and I had a complaint to make about harassment, how would I go about making that complaint and what would the process be once I had made the complaint?

Cdre Gates—There are a number of avenues open for someone to make a complaint. First of all, you make the complaint to the chain of command, and the policy actually states that if you are complaining about the person above you, for example, you are entitled to go above that

again and keep working up the chain to make that complaint. That is to make a formal complaint, and that is what we are encouraging. If you are seeking advice on how to do that you then approach your equity adviser and advise him of it and ask about what the options are, or come through the hotline again and ask what the options are, or go onto the web and seek guidance through there as well.

Mr SNOWDON—I am interested in this issue because it seems to me that we may identify a potential problem with the chain of command because presumably a private soldier is going to feel reluctant to go over the head of his corporal or his sergeant —

Mr PRICE—Or his RSM.

Mr SNOWDON—so that there might actually be a glass ceiling operating here, so that when people are harassed they are unable to go outside the chain of command because they are not confident that the chain of command will deal with it. When they do go to the chain of command, they may well be victimised—yes or no? It seems to me we have got a real problem. You are in a catch-22 situation here. You set up a process where you say the equity coordinators have no role; they provide advice, assistance, et cetera, to the chain of command. If I am a private soldier with a problem with the chain of command, how do I deal with it?

Cdre Gates—They also provide advice and options to the individual. We cover everybody and we will also provide advice and options on what to do to the parents in a case, or a spouse or whoever.

Mr SNOWDON—I understand that. I am not asserting that what you are saying is inappropriate. I am trying to put myself in the position of having a problem which I want dealt with. Let us say I am a private soldier who is used to discipline and the hierarchy that the discipline imposes and I have got a problem. I say, ‘Well, how am I going to deal with this?’ I go to the equity officer and the equity officer says, ‘Well, you can go and talk to the sergeant.’ I say, ‘All right, I will go and talk to the sergeant.’ The sergeant is in cahoots with the corporal so the sergeant says, ‘Fine, I will deal with that for you, son.’ End of story. And presumably there is a culture where I am scared shitless, to put it mildly—

CHAIR—Choose your words carefully.

Mr SNOWDON—With great deference—you know what I am saying. The private says, ‘I don’t have a university degree. I don’t have the self-confidence to be able to assert myself in front of a sergeant and say, “Listen pal, let’s do it again.” I go to the RSM or the CSM and I then go to a CO.’ That requires a lot of guts.

Cdre Gates—It does, and that is appreciated. I can only speak from my personal experience of command with the equity adviser on board. If an incident like that came up, under the relationship I had established with the equity adviser he would come to me and say, ‘We may have an incident,’ and then we would talk. The support that I, as CO, got from my equity adviser—on my ship that was a petty officer—was: ‘Something is happening here’, or ‘You have three or four cases’ or ‘A trend is certainly developing, sir, and you need to do something about this.’ If I had not received a formal complaint—we would then come back to the due process that CDF and CA were talking about—I would have to say, ‘Okay, something is

definitely happening here; the equity adviser is advising me in command.' I would then go and again push equity and awareness. There are ways that command can suddenly pull a division of sailors or a troop of soldiers together and start talking about a number of issues. That relies very much on the relationship between the equity adviser and the command.

Mr SNOWDON—That assumes that the command is getting information.

Cdre Gates—From the equity adviser?

Mr SNOWDON—Yes.

Cdre Gates—Yes, it does.

Mr SNOWDON—It may not get that information if it is confidential.

Cdre Gates—They will not give you confidential information. For example, in my case, he would come to me—the equity advisers are not to breach the confidentiality of the person who is bringing something to them unless they have the direct permission of that person, but there are other ways of doing it; for example, by saying, 'I don't think the forward mess deck is as happy as it could be'—and you would read those messages.

Mr SNOWDON—Put yourself in the position of these soldiers in 3RAR: how would they deal with harassment complaints? How would an individual soldier deal with harassment in that situation?

Cdre Gates—I am not confident that I can answer that question—I am not completely across what happened in 3RAR; it has not come to me—apart from repeating what I have said: using us to keep getting options and to keep coming back to us that these are not one-off calls.

Mr SNOWDON—Perhaps Captain Marks can help me. I am trying to get at a failure within the chain of command.

Mr PRICE—Or why the equity officer did not assist 3RAR.

Mr SNOWDON—That is right. The supposition is that I am trying to develop the hypothesis that the commanding officers may not have been aware of the problem because it was not reported to them.

Cdre Gates—That is a possibility.

Capt. Marks—There are a number of options. In a previous job I was the director of naval personal services and established the sexual harassment hotline—to use an old term—for the Navy following the Swan inquiry, et cetera. I had occasion to set up protocols with respect to that hotline, so this is one of the options. When an individual would ring in and there was fear about this chain of command and the complaint was in fact about harassment in the workplace, options were usually put to those individuals to assist them: they could take action themselves

or choose other options. An additional option was always put to them: 'If you are afraid, I could intervene on your behalf with the commanding officer.'

I understand that the current director of equity in Canberra and her advisers do, on occasion, ring the commanding officers direct to bring it to their attention, so you can actually go around the blockage in the chain of command. That is one way. There are other options, of course, which include access to chaplains, social workers and other support persons within the network—including legal officers on occasion.

Mr PRICE—But nothing seemed to work, Captain Marks. We are talking about, shall we say, an established 31 victims—the military police are not confident that that is the total—and institutionalised violence. Where is your equity officer policy? Why isn't that working? Why did it not come through there, through the hotline or through the padres?

Capt. Marks—I cannot speculate on that.

Mr PRICE—It must be a worry for you that it did not work.

Capt. Marks—It is a great concern, certainly from a discipline point of view.

Cdre Gates—Also, it is away from the development of the policy. We have laid out the policy but we still require, as I said in my opening statement, that the commanding officers, all the way through—I am talking about all commanding officers—adopt this policy and then bring it into their workplace.

Mr SNOWDON—I understand that. But isn't it possible that someone—not the commanding officer, although it may be, but let us assume for the moment that it is not—down the chain of command has historically, over a period of years, built up in that position certain practices which may not be reported up the chain of command? My colleague is pointing to what I think is an identifiable problem with the policy. How do you actually get the chain of command to react in a way which is responsive to the needs of individuals when the chain of command itself may be denied access to the information because of this culture which builds up within the chain of command?

Mr PRICE—Or the chain of command condoned what was going on.

Cdre Gates—We can have as much policy in Canberra as we like, but that would be a major concern. Our policy is such that, certainly, if the chain of command condoned what was going on, we would be looking for other ways for that to be picked up by people—for example, with parents calling us and that sort of thing. That will again make us aware.

Mr PRICE—Two parents did take action.

Cdre Gates—And rang the secretary of Defence?

Mr PRICE—One parent wrote to the minister twice and that did not trigger anything. Another parent also made a written complaint. That still did not do anything. As my colleague

is saying, why should ordinary soldiers have confidence in your system for which you have won awards?

Cdre Gates—Across the whole of the ADF, I believe that the system is working. I personally have confidence in what we have laid down here.

Mr PRICE—Commodore, we have a witness—who, no doubt, we will produce at a later date—who was a victim of harassment, who undertook one of your equity officer courses and who identified three other female participants in that equity officer course who were victims. Is the system being strengthened by having victims who have not had their matters dealt with satisfactorily volunteering to become equity officers?

Cdre Gates—Let me understand this. They have been harassed?

Mr PRICE—Yes.

Cdre Gates—They put in formal complaints and these were not addressed?

Mr PRICE—They were not addressed to their satisfaction and they have stepped forward to undertake these equity courses. Four people in one course were victims.

Cdre Gates—So they could then use their experiences to—

Mr PRICE—Certainly, I concede that it is a great benefit, but I did not think that this would be the way the system operated.

Cdre Gates—I think that was to our advantage. Firstly, it should not have happened that they were harassed. That is what we are certainly trying to eradicate through these policies. But to have someone who has had the experience come forward and be able to put forward that experience and say, ‘This is how I dealt with it, this is how I complained and this is the process I used,’ I would see as an advantage.

Mr PRICE—And they did not get anywhere.

Cdre Gates—That is the disappointing part, if that is the case. We have to keep improving it. Certainly, we are not sitting back on our record here.

Mr LAURIE FERGUSON—Given the role that you have outlined today and the importance of it in regard to these problems, before the announcements made today by Admiral Barrie, has your organisation been formally consulted about the possible ways of tackling these problems?

Cdre Gates—About his audit?

Mr LAURIE FERGUSON—Yes.

Cdre Gates—No, not from Admiral Barrie.

Mr LAURIE FERGUSON—Not him specifically. Have you been consulted about the process that led to today's announcement? Has anyone talked to your organisation?

Cdre Gates—We have an ongoing liaison with all three services and ADO. We have been speaking to Army, particularly on the development of competencies. We are assisting with their *Rules for a fair go*, for example, and with our constant training of the equity advisers. In relation to 3RAR, no.

Mr LAURIE FERGUSON—I am not speaking about what you do day to day; I think you outlined that earlier. There have been some significant changes and statements about how this thing is going to be tackled, supposedly, today. What has been the degree of consultation with your organisation specifically about 3RAR and the process that led to today's announcements.

Cdre Gates—Within the actual Defence Equity Organisation we have not been consulted directly on the announcements today or 3RAR.

Mr SNOWDON—So was your advice not sought about what might go into those announcements?

Cdre Gates—Our advice is understood through the policy and the publications that we put out.

Mr SNOWDON—Forgive me, but I would have thought that some advice would have been sought from you when there is a major announcement about a tribunal and then about an Inspector General which emanate from issues to do with discipline and the legal process within the defence forces. Have they sought that advice?

Cdre Gates—I am answering from the equity side. I will hand over to Captain Marks on the legal side.

Capt. Marks—The Defence Legal Office has been having comprehensive discussions with the Chief of Defence Force and the Chief of Army and his staff about possible ways to overcome the difficulties that you have clearly outlined. I have been speaking with Bronwen Grey, who is the director of that organisation. Colonel Davie, who is in Personnel in Army, has been speaking in detail with Bronwen Grey. We have also been speaking with the head of Personnel Executive about these matters that have been ongoing. In fact, the head of Personnel Executive appeared before you last time and is unable to be here today because he is in Timor. So there have been a lot of communications, particularly about the new initiatives with *Rules for a fair go*.

Mr LAURIE FERGUSON—You used the expression 'difficulties'—you said they had talked to you about difficulties. What has been the degree of consultation about the 3RAR situation? What has been its contribution to today's announcements?

Capt. Marks—I am obviously not Bronwen Grey so I cannot say specifically what her communication has been with the Chief of Army's office. But I know that all meetings to do with 3RAR in relation to discussions about the way ahead, et cetera, have had present a staff member of the chief executive officer from the head of Personnel Executive—

Mr PRICE—You are head of military discipline, aren't you?

Capt. Marks—I am.

Mr PRICE—Isn't it military discipline that has failed in 3RAR? What input have you had into the initiatives announced by the Chief of the Defence Force today?

Capt. Marks—I am sorry, I thought I had explained. My superior officer is the Director General of the Defence Legal Office, Commodore Earley. He has been working very closely with the Chief of Army and the Chief of the Defence Force, as have I. There have been comprehensive consultations about this. I am sorry if you misunderstood.

Mr LAURIE FERGUSON—Commodore Gates, with regard to the specific investigations by the military police about 3RAR, you said you have no record of any complaints and you have talked about the anonymous nature of many of them. To what degree have you been consulted and there has been written correspondence to your organisation about 3RAR?

Cdre Gates—Can I sort out a confusion here? I am responsible within my branch for the Defence Equity Organisation, not on the legal side at all. That does not sit within HDPE, so that is why I could not address your previous question. HDPE, General Willis—who is not here, as has been stated—has been speaking to CDF on 3RAR since he took up that position, of Head of Defence Personnel Executive, on 1 June. I have not been privy to those conversations, but I am certainly aware of the close liaison between DEO and Army in developing the fair go process and trying to put into place processes to overcome what has, based on allegations, been occurring in 3RAR.

Mr LAURIE FERGUSON—I assume that earlier, when this whole issue started to emerge, there were investigations with your organisation as to what you knew.

Cdre Gates—Because we keep the statistics, as soon as it emerged that we were asked to go through our database and chase up stuff on 3RAR, that is when we pulled out those two formal complaints.

Mr PRICE—Were you satisfied that the complaints were dealt with appropriately?

Cdre Gates—We have a monitoring process that has a look at a complaint, makes sure that the action is taken and then follows up on follow-up action as well.

Mr PRICE—Would it be possible for you to provide us with the detail of that on a confidential basis?

Cdre Gates—Yes, we can do that.

Mr PRICE—Captain Marks, you are the key legal figure in military discipline.

Capt. Marks—Mr Chair, I was going to make a short opening statement, but I am happy to answer the question.

CHAIR—I am sorry, I thought—

Cdre Gates—We are a team effort, but we come from separate areas. I am sorry for the confusion.

CHAIR—Proceed with your statement now, Captain Marks.

Capt. Marks—I am responsible for discipline policy in the Australian Defence Force. I understand that you have requested my attendance at this inquiry so that I can assist the committee with issues of discipline policy for the Australian Defence Force. By way of background: when the committee was conducting its inquiry into military justice procedures in the ADF, a preliminary briefing was given in April 1988 on discipline process and policy. That was provided by the then Director General of the Defence Legal Office, me and other legal staff. During that appearance, I referred to the Abadee report and decisions by the Chiefs of Staff Committee to improve the level of judicial independence and impartiality under the Defence Force Discipline Act. Most of the changes I highlighted at that time have been or are being implemented, either administratively or via proposed legislative changes which are being developed. Those legislative changes were approved by the minister on 4 September this year and are being staffed for the delivery to the Office of Parliamentary Counsel as we speak.

At my most recent appearance before this committee on 28 August this year, I drew the committee's attention to the existence after a range of ADF publications and defence instructions relating to appropriate standards of behaviour. To assist the committee, I have compiled the most relevant legal policy documents into a folder which I have here today. I would like to refer to the list of instructions at the front of this folder—I have a copy of that list for everyone here—and draw your attention in particular to the defence instructions relating to legal discipline and to the new instruction on ADF prosecution policy, which was issued on 29 August this year and was considered by the military justice inquiry as a worthwhile initiative to go forward with.

There are some future initiatives, and I would like to draw your committee's attention to those: work is currently being undertaken—and I have listed a copy what some of those current initiatives are for your consideration. I obviously consider that it is probably not appropriate for me to address many of these issues today. I am happy to do so at some later date. There is mention in that list of a 'defence instruction administration Army 23 TAC 2' on the topic of the reporting and investigation of incidents. It relates only to Army, but you will note in one of the future initiatives that I have drawn your attention to investigation of criminal offences in the Australian defence organisation—we are developing a tri-service policy and procedure to apply to the wider defence organisation. This is a collaborative project which is headed up by the Inspector General. We are working with the three single-service police organisations and, of course, the defence legal office.

There are some other issues I would like to raise with the committee which relate to the current disciplinary proceedings arising in 3RAR. However, due to the sensitive nature of these proceedings and the potentially prejudicial nature of the information, I request that I be able to address those matters at some time in camera. Before I do that, I am happy to answer your or your colleagues' questions on any matter.

CHAIR—Thank you, Captain. If you want to submit that list of instructions, we will authorise it as an exhibit.

Mr PRICE—It may be difficult, given the time constraints, to go in camera today. Perhaps we might be able to arrange something for next week that would afford Captain Marks the opportunity to go in camera.

Capt. Marks—The one matter that I raised relates to proceedings today before this committee. I do need to draw some matters to your attention of particular sensitivity and it does relate to the conduct of these proceedings today. They are matters which I want to put before you to consider.

CHAIR—We would be happy to accommodate that. We will do the public part first and then go in camera.

Mr PRICE—For the record, how many court martials have you participated in, either as a prosecutor or a defender?

Capt. Marks—I was the first naval prosecutor established many years ago. I set up what is called the Legal Officer Advocacy and Counselling position. I spent some months with the New South Wales police prosecution service. I then spent some time with the Australian Government Solicitor's office before we established that position. I then had occasion—

Mr PRICE—When was that?

Capt. Marks—It was some years ago, obviously. It was under the old Naval Discipline Act, ostensibly, and I did prosecute at many courts martial and I then did do one defence. You will see that one of the future initiatives, Mr Price, that I have highlighted there is the development of a prosecution team. In my capacity as the Director of Discipline Law, I have decided to allocate four officers—three from each of the single services and one tri-service rotational position—to establish a prosecution team. It will be residing in the court martial centre at Garden Island in Sydney. One of my duties at the moment is to ensure that the persons who are a part of that team are properly trained and skilled, that they have appropriate protocols and that they are also then in a position to develop what we call prosecution guidelines which reflect the same sorts of guidelines—

Mr PRICE—There is a real problem with full-time legal officers not having a degree of courtroom experience, isn't there?

Capt. Marks—Certainly, in terms of setting up a prosecution team, I was very mindful of the fact that our lawyers needed to have a body of experience with a director of public prosecution in a state. The naval prosecutor who comes off line shortly has spent three months with the New South Wales police prosecution service actually on his feet prosecuting. He has then spent some weeks with one of our Deputy Judge Advocate Generals in court observing. He has now spent over four months with the Director of Public Prosecutions in New South Wales. The army prosecutor, who is due to come off line, will go to the Director of Public Prosecutions in October. I then have the air force officer coming in in January and the head of that prosecution

team comes on line then as well. I am endeavouring to ensure that they have professional experience.

To support that team, we have a network of reserve lawyers all around Australia—Army, Navy and Air Force—who are professional members of the directors of public prosecution around Australia. It is my view, in the management of that team, that those prosecutors will be attached to that unit. They will do their reserve training days with that unit and will bolster them in terms of professional expertise and experience. So I do recognise that.

Mr PRICE—I apologise—there are quite a number of other questions I would like to have asked you, but I will put them on notice and forward them to you.

CHAIR—We will now go in camera.

Evidence was then taken in camera, but was later resumed in public—

[11.03 a.m.]

SMITH, Corporal Craig Stephen, Australian Army

CHAIR—Welcome. I advise you that the proceedings today are legal proceedings of the parliament and warrant the same respect as proceedings in the respective houses of parliament. Although the subcommittee does not require you to give evidence on oath, you should be aware that this does not alter the importance of the occasion and that the deliberate misleading of the subcommittee may be regarded as a contempt of the parliament. The subcommittee prefers that all evidence be given in public; however, we are mindful that much of what you have to say cannot be said in public without potential prejudice to ongoing legal action. Because of this, I would like both you and the committee members to avoid the mention of specific names and persons. For the moment, we will confine the discussions of your experience within 3RAR to generic appointments, not to individuals. For instance, I would ask you not to mention the name of a specific person—‘Sergeant Jones’, or whatever—but simply say ‘a sergeant’ or ‘a captain’. If you find it difficult to properly answer a question under these constraints, please let me know and we will defer discussion until we meet in private. Is that okay?

Corporal Smith—Yes, I understand.

CHAIR—Did you want to make a short opening statement?

Corporal Smith—No, I don’t.

CHAIR—Okay. We will go straight to questions.

Mr PRICE—Thank you for coming forward, Corporal Smith; the committee very much appreciates it. You are a loyal Army man, aren’t you—dedicated?

Corporal Smith—That is correct.

Mr PRICE—Did you enjoy being in 3RAR?

Corporal Smith—I did in 1997, but from then on no, not really.

Mr PRICE—You ran into some problems. You were a defender of someone who ended up being a victim, weren’t you?

Corporal Smith—That is correct.

Mr PRICE—Are you able to tell the committee anything about what you observed as a member of 3RAR? I have in mind—without wanting to lead you—how people were allegedly disciplined in 3RAR.

Corporal Smith—Previously, before being posted to 3RAR, I was in the 2nd Battalion of the Royal Australian Regiment in Townsville. On my posting to the 3rd Battalion, I was posted to a company and, within the eight months or nine months of being in that company, I did not

witness, but I heard of, soldiers who were being disciplined by being taken up the back and harshly beaten and then charged afterwards. This was the first time I had ever heard of this in my Army career and I had never heard of it before in Townsville.

Mr PRICE—What about during company parades—was there ever advice given that two soldiers were to be reported, bashed and bruised?

Corporal Smith—On one occasion in late 1997, the senior non-commissioned officer stated to the whole company of 100 blokes—there were no senior officers in the area—that the two soldiers he had standing in front of the company were to be dealt with by the members of the company and they were to be outside his office the next morning ‘bashed, bleeding and bruised’.

Mr PRICE—And, to the best of your knowledge, what happened?

Corporal Smith—I heard later on the next morning that those two soldiers had been bashed and were hospitalised.

Mr PRICE—In words of one syllable, would it be fair enough to say that that CSM encouraged—

CHAIR—I think this is going into a bit too much detail.

Mr PRICE—All right. Okay, we have got that on the record, that will do. You defended one of the privates, didn't you?

Corporal Smith—Yes, in Malaysia in 1998, I defended a soldier.

Mr PRICE—In defending the soldier, you thought you were doing the right thing.

Corporal Smith—Yes, as a defending officer, it is my job to ensure that the soldier is treated fairly and that there is no set-up evidence. I am not there to get him off the charge; I am there to ensure that he gets a fair trial.

Mr PRICE—In defending that soldier, was your career in any way threatened?

Corporal Smith—At that stage, no. But after I spoke with senior NCOs and officers within that company overseas, I realised that my Army career had come to a screaming halt.

Mr PRICE—And is it fair to say that prior to that point your personal record showed you as being a very competent person, a contributor to the battalion?

Corporal Smith—Up to that point, yes. I spent most of 1997 as the Acting Platoon Sergeant in one of the platoons in that company.

Mr PRICE—But then things seemed to take a turn for the worse, as far as your own assessments were concerned.

Corporal Smith—That is correct. The minute I defended that soldier it was a case of I wasn't one of the boys anymore; I just wasn't part of the company or the battalion.

Mr PRICE—Did you get moved out of the battalion?

Corporal Smith—Not at that time; I was removed from the company when it returned to Australia and given administrative jobs—things I was not qualified to do—and placed in areas where I had no contact with other soldiers within that unit.

Mr PRICE—And eventually you were taken out of the unit.

Corporal Smith—Yes, I was removed from the unit, whilst it was on deployment in East Timor last year, to a posting to Canberra—which I never requested—and I had not done my three years in that battalion, which my posting order stated.

Mr PRICE—You would have loved to have continued your career in the battalion, wouldn't you?

Corporal Smith—That is correct. I felt really bad about leaving my blokes over there; they were my soldiers. I took them over there and I thought it was my responsibility to bring them back but, being brought back early for incidents that had happened previously—which I was later found not guilty for—I felt was a bit harsh and that the system was not working.

Mr PRICE—Just a couple more questions: you feel that the job you have got in Canberra is a pretty dead-end job, don't you?

Corporal Smith—Out of the 20-odd soldiers who were posted to that unit at RMC, there are only three other soldiers who have been posted there who did not request the posting, and they came straight from Singleton. I am the only person there who was posted to that unit without requesting it.

Mr PRICE—And you have recently been advised, haven't you, that you have reached what they call a 'career ceiling'.

Corporal Smith—I have reached my ceiling rank in my current position. I was informed of this earlier by certain people.

Mr PRICE—Knowing what has happened to you, would you have changed your decision to defend that soldier?

Corporal Smith—No. I work it this way: if a soldier does not trust you in peacetime, he is not going to trust you overseas on operational active service. I am the first point of contact; they trust me and I trust them. You cannot work together as a unit or a team if there is no trust.

Mr PRICE—I can only commend you for what you have done Corporal Smith.

Mr SNOWDON—How long were you in East Timor for before you were sent back?

Corporal Smith—Just on three months.

Mr SNOWDON—You were there for a three-month period?

Corporal Smith—Yes.

Mr SNOWDON—Were you given any prior warning of the impending transfer?

Corporal Smith—I had about four to five weeks notice.

Mr SNOWDON—But there was no discussion with you or counselling of you prior to that period that your life in 3RAR was to be terminated?

Corporal Smith—None at all. I actually spoke to one of the senior NCOs there and he stated that it was a posting order. People were being posted out of the unit, and I was to go along with it.

Mr LAURIE FERGUSON—You said that it became clear in conversations that your career had fallen in a screaming heap. How blatantly were those points made to you and in what style were they made to you?

Corporal Smith—Three weeks after I took on the job of the defending officer for that solider in Malaysia, the most senior non-commissioned officer came over to Malaysia. I was the acting platoon sergeant of the third platoon on exercise. He came up, spoke very loudly so everyone heard—including the other non-commissioned officers in my platoon—and stated that, when I got back to Australia, he would remove my beret, which is a maroon parachute beret, my wings and my stripes and have me out of the unit; and that would be it: I would be gone out of the battalion on a number of charges that I would receive. He also stated the same thing again but said that he was going to have my wings, my beret and kick me out of the Army. Prior to that person leaving the battalion—he went down to the head of my corps as in promotions, postings and that sort of stuff—he stated to me that he was going down there and that he would ensure that my career was killed and I would never receive a promotion course. This year I received the letter stating that my promotion courses had been canned and that I had reached my ceiling rank.

Mr LAURIE FERGUSON—Mr Price characterised your current employment as a ‘dead-end job’. Do you want to describe what you do at the moment and why it is the kind of area you would not request a move to?

Corporal Smith—Corporals in RMC Duntroon do not operate in a section, platoon, company or battalion: you operate as individuals or two-man groups. My job down there is to sometimes put on demonstrations for the staff cadets—the officer cadets who are in training—or to organise activities for the enemy side of things. That is all we do: we go out and play enemy for the staff cadets, get shot at, roll over and play dead. I have been in the Army for 15 years and I have done a lot of things. I have been overseas twice: one operational service and one active. To me, this is a dead-end job.

Mr LAURIE FERGUSON—I did not quite catch the phraseology you used in regard to the other two people that were there who had not requested a move there. Should we know why they are there?

Corporal Smith—There are three people. It was a matter of manning at the time. They came straight from initial army training for infantry at Singleton. They were posted straight to the training support platoon and they will leave at the end of this year to go to the 4th Battalion of the Royal Australian Regiment, and to East Timor next year.

Mr LAURIE FERGUSON—How long had they been in the force?

Corporal Smith—They had only been in the Army for probably up to 12 weeks, but there was a lack of people down there and they were moved straight there. When they have done a year and a half or nearly two years, they will be posted straight to an infantry battalion.

Mr LAURIE FERGUSON—To give us a better idea of the situation, you said that the others had volunteered or sought that move. In general, how long had they been in the forces?

Corporal Smith—They ranged from three or four years up to eight and nine years. It is usually a posting for people who are burned out, injured or who have a compassionate reason to be posted to the RMC training support platoon. Moving down there is not a career move; it is a dead-end job. You move down there and the boys do not get any courses because of the training put on us to go with the staff cadets. You really do not have a career while you are at RMC.

Mr LAURIE FERGUSON—So, to your knowledge, to put someone there after 15 years service is quite questionable.

Corporal Smith—It is.

CHAIR—Thank you for your attendance today. If there are any matters that we might need additional applications about, the secretary will write to you. The copy of the transcript will be sent to you so you may check it for matters of fact or grammar. The next hearing will be conducted in camera and it is suggested that we now move to room 2R2. The public hearing will resume this afternoon in this room.

Evidence was then taken in camera, but later resumed in public—

[1.13 p.m.]

LALIC, Mr Nikola Robert, ex Major, Operations Officer, 3rd Battalion, Royal Australian Regiment

ORCHARD, Major Bradley Noel, ex Operations Officer, 3rd Battalion, Royal Australian Regiment

CHAIR—Welcome. I must advise you that the proceedings here today are legal proceedings of the parliament and warrant the same respect which proceedings in the respective houses of parliament demand. Although the subcommittee does not require you to give evidence on oath, you should be aware that this does not alter the importance of the occasion. The deliberate misleading of the subcommittee may be regarded as a contempt of parliament. The subcommittee prefers that all evidence be given in public, but should you at any stage wish to give any evidence in private, you may ask to do so and the subcommittee will give consideration to your request. I must emphasise the seriousness of many of the issues before the committee today and I remind everyone not to enter into public discussion on individuals who are or may be subject to legal proceedings. If it becomes necessary to discuss any individual who may be subject to such legal proceedings, we will adjourn and take the evidence in camera.

The subcommittee appreciates the time that you have set aside to discuss this inquiry topic and the committee is aware that both of you were at one point designated as the 3RAR equity officer. We heard this morning from Commodore Gates and Mr Jim Porteous about how equity policy is meant to operate at the unit level. Given the events within 3RAR we are particularly keen on your views about the adequacy or otherwise of equity procedures within the workplace. Before we commence questions, would either of you like to make any opening statement?

Mr Lalic—No.

Major Orchard—No.

CHAIR—This question is addressed to either of you. We have heard a number of allegations in relation to 3RAR. Are you confident that the procedures are in place and have been in place to ensure that these sorts of incidents are unlikely to happen again?

Major Orchard—My personal opinion is that the procedures are in place and that the procedures generally were followed within the battalion. I think that what has taken place took place illegally and without the consent of the leadership in the unit. As good as the procedures might be and as well as they may be implemented within the unit, it is difficult or impossible to prevent people choosing to go without those guidelines.

CHAIR—Mr Lalic, I think you referred to this earlier. Would you have the same opinion, particularly that the commanding officers were not aware of this?

Mr Lalic—Just before I answer that question—certainly I was there earlier with our opening statements—I should say that Major Orchard was the adjutant in 1997. I came in in 1998 as the adjutant. Yes, I agree with Brad. I believe the policies and equity procedures were in place and I would see the incidents that have been alleged as isolated incidents in the battalion. I also offer

my experience as a professional infantry officer for 10 years, and also from being overseas, when I saw other countries operating in a similar fashion and I also saw other units in our armed forces. I saw 3RAR being no different from any other unit that I have served in over the last 12 years.

CHAIR—Any other unit in the Australian Army?

Mr Lalic—That is correct.

CHAIR—Do you want to name the other units you have served in?

Mr Lalic—They are 6RAR, Headquarters 8 Brigade and two stints at 3RAR.

CHAIR—Right.

Mr PRICE—If I understood you correctly, you were saying you saw what has occurred as isolated incidents within 3RAR. Did I understand you correctly?

Mr Lalic—I see what has been alleged as isolated incidents in the Australian Army, across my career, through my experience.

Mr PRICE—As equity officers, did you ever get approached about things that were happening in 3RAR?

Major Orchard—I was on one occasion. As a parachute battalion, we have the unfortunate occurrence that a lot of soldiers are injured parachuting and on some occasions it will take quite a considerable period of time for them to be rehabilitated. So the procedure in the battalion was to post them to a holding platoon until they were fully fit again to resume their duties as soldiers.

I think it was towards the middle of 1997 that I was approached by two soldiers who were undergoing rehabilitation and had been for some time who claimed that they had been harassed by a junior NCO because they were unable to fulfil normal soldierly duties because of their injuries. We investigated that within the unit, found that the junior NCO—and, I believe, one other, from my recollection—had been harassing those two soldiers. That was resolved by virtue of the two junior NCOs being counselled and apologising to the two soldiers, who accepted their apology. That was the only occasion I had experience in the battalion with an equity issue.

Mr PRICE—I guess, even though you are sort of equity officers, it is really the CO's responsibility to ensure that soldiers are aware of equity policy and avenues of redress. Is that fair—it is certainly not your responsibility as equity officers?

Major Orchard—To the extent that the commanding officer is responsible for everything that happens in his unit, yes, but obviously he discharges that responsibility for a great many functions to individuals who act on his behalf.

Mr PRICE—Sure, but he does not delegate that to you; it is a line management responsibility?

Major Orchard—One of my responsibilities as equity officer was to brief the leadership of the battalion on equity issues, but certainly the day-to-day management of equity issues was the responsibility of the line leadership of the company staff.

Mr PRICE—What level did you get down to in the leadership of the battalion?

Major Orchard—Right at the start of 1997, I briefed the battalion's officers and senior NCOs on Defence policy.

Mr PRICE—Would that get down to sergeants?

Major Orchard—Sergeant was the lowest rank that was present for that, yes.

Mr PRICE—Was there one session?

Major Orchard—It was done in one session but broken into two parts—this is my recollection—one on equity policy within the Defence Force and one on harassment and discrimination.

Mr PRICE—Did you cop a lot of questions during the briefing?

Major Orchard—I really cannot remember—not an enormous number. That briefing should have been taking place every year—as a result of Defence policy—so I believe everyone in that room had had that brief or a similar brief at least once before.

Mr Lalic—I can certainly support that issue. As you know, I briefed the battalion in my capacity at the beginning of 1998 on similar issues.

Mr PRICE—Were there a lot of questions?

Mr Lalic—I cannot recall. I do not think there were too many.

CHAIR—Would either or both of you like to talk about the work you were doing as equity officers and expand a little on it? Did you have assistants, and what roles did they play?

Major Orchard—Certainly, my experience was that the great majority of the responsibility was devolved to line staff and that, after I had briefed the leadership of the battalion, the company staff each briefed their soldiers on equity issues and on discrimination and harassment policy. The management of that policy is intimately connected with the day-to-day supervision and management of soldiers, so it is best left—and was left—with the junior leaders to look after.

CHAIR—When you said 'line staff', who exactly were you referring to?

Mr Lalic—In this case, I would say the company commander, his second in command, his company sergeant major, and then the platoon commanders and platoon sergeants.

CHAIR—In view of what has come forward now—that is, the reason why we are having this inquiry—when you look back were you aware there was something not right?

Mr Lalic—The experience that I believe we are talking about came to light essentially from discussions in the officers' mess on one of the alleged incidents. As a result of that, as equity officer and in my capacity as the adjutant of the unit at that particular time, I requested to see the particular person and discuss the issues. He was not terribly forthcoming at the time, and the relevant personnel in the organisation were then informed that there may be some issues. Subsequently, as a result of that and some other issues that occurred later in that particular year, the investigation on that particular issue commenced—and is still ongoing, I believe.

CHAIR—This was in 19—

Mr Lalic—It was 1999. Sorry, I will correct that: it was at the beginning of 1998—I would say May 1998—that that occurred.

Major Orchard—I certainly had no suspicion during my time that there was any issue with the administration of discipline in the battalion beyond what is normally the case. I was not aware of any abnormalities or anything that was out of the ordinary as far as the way that discipline was administered. Certainly if there was an issue, no-one was forthcoming, either through their normal chain of command or directly to me as the equity officer, the RSM or one of the other people in the unit who might have been in a position to take some action. So I was not aware that there was anything wrong. I do not know for a fact that there was anything wrong and certainly, if there was, that was never brought to the surface.

Mr SNOWDON—What would happen if, say, I were a soldier and someone smacked me around and I came to you and said, 'Look, I've got a problem'? What would the process be? What would you expect I would be thinking?

Major Orchard—I would expect that you would feel quite intimidated that you had to come to me in the first instance. If medical attention were warranted, we would sort that out first. I would then listen to the complaint and make an initial assessment of its veracity or lack thereof, probably take that to the commanding officer and the RSM and inform them of what has been alleged and, depending on the nature of it, it would either be formally investigated with the terms of reference given or it would be initially informally investigated. I would expect that, at some point, if the complaint was warranted, there would be disciplinary action against the person who committed the assault.

Mr SNOWDON—Are you aware of people, historically, being drummed out of 3RAR?

Major Orchard—From the eighties, I am, yes.

Mr SNOWDON—I am trying to put myself in the position of someone who is intimidated. There are 600 hundred people and I am the person intimidated. I have been belted up by a couple of privates—perhaps with a corporal standing outside the door—and I am worried about

how I deal with this issue. I go to an equity officer who is inside the battalion; the information gets passed into the battalion, into the chain of command. Do you think I might be concerned about where that information might end up?

Major Orchard—I think that to someone without experience of the way a unit operates in the Army, it is possible to look at a battalion as a block, as a single unified whole. In fact, within the organisation there is a vast range of people that perform a number of different functions, both within and outside a soldier's normal chain of command, that he can have access to. I firmly believe that all soldiers in the battalion knew they could access that if they wanted to. There was me as the equity officer. I shall take a step backwards: in the first instance, a soldier should go through his chain of command. In the situation you described, if he believes that someone in his chain of command was involved in that assault, then he may be reluctant to do that. If he cannot go through his immediate chain of command, he can go to his company sergeant major or directly to his company commander. He can go to someone in the battalion headquarters: the equity officer who is the adjutant, the padre—we had a padre full time within the battalion—or the medical officer.

Soldiers are also briefed, during their briefings on defence equity policy, on the existence of the Defence Equity Organisation, Army Community Services or the Defence Force Ombudsman. So if they were not willing to go through their chain of command, certainly they should have been aware of the whole range of people that they could speak to—people who were outside their chain of command who they should expect would discharge the duties of taking their complaint seriously.

Mr PRICE—The whole system is dependent on people doing the right thing, isn't it? You have a presumption that, if someone went to a padre, the padre would respond appropriately or, if he went to his NCO or the CSM he would respond appropriately.

Major Orchard—That is the case, yes—to the same extent that any system ultimately relies on people within it discharging their duties properly. Certainly, my experience in the Army has been that things like the hypothetical issue that we are discussing are not covered up. The padre has no vested interest in covering up an assault made by a soldier on another soldier. Certainly, as adjutant, I had no vested interest in covering up an assault made on another soldier. My duty and my personal opinion is that, if that takes place, the soldier that conducted the assault should face normal disciplinary proceedings, as for any civilian or military member that assaults another person.

Mr PRICE—But as the equity officer, you were dependent on sergeants ensuring that soldiers knew about the system.

Major Orchard—I was dependent in actual fact on the company commanders and the company 2ICs ensuring that the soldiers knew about the system.

Mr PRICE—So they were your brother majors, weren't they?

Major Orchard—At that stage I was a captain. But the companies are responsible for briefing their soldiers. Ultimately, that responsibility lies with the company commander, who is a major.

Mr PRICE—The company majors?

Major Orchard—Yes. I believe that took place in 1997, and that should be able to be checked because, as each soldier was briefed, that should have been entered into the personnel records system. I am confident, with the exception of soldiers who were absent on that day and who were not picked up at some later date, that all soldiers in the battalion in 1997 were briefed on equity policy.

Mr Lalic—Certainly the presumption that people must do the right thing may well apply in the chain of command issue, but we must understand that the padre sits outside of the chain of command, essentially, and in my view most, if not all, soldiers are aware that they can approach the padre in any capacity and that that information will get to the correct channels and be dealt with accordingly. Certainly on the chain of command issue you are quite right, but the padre sits way outside the chain of command, essentially, and will deal with things appropriately. I reiterate the point that soldiers are aware that he is easily accessible and will deal with things.

Mr PRICE—I agree. But you are making an assumption that the padre was not approached, and that may not be true.

Mr Lalic—I am making the assumption that the padre was available.

Mr SNOWDON—Can I go a little further with this scenario. We have established that I have gone to you with a complaint and that it has got into the chain of command. Bearing in mind that we do not know where in the chain of command the knowledge of this incident is, because you are as ignorant of it as I am, it transpires that I am ostracised and threatened as a result of my telling you and your passing that information on innocently but knowingly—innocently in the sense of not expecting any outcome other than what you mentioned. I am told that I will have my stripes taken off and my beret removed and that my career in the Army is finished. How would I deal with that?

Major Orchard—I think the unit itself and the Army are bigger than one, two, three or four people who might seek to intimidate one soldier. I certainly would have sympathy for the position of the soldier who was in that situation, because there might be an uncomfortable period for him, but certainly I would expect that, by coming forward, the issue would be dealt with fairly and that those people who were responsible for those offences would face normal proceedings.

Mr SNOWDON—What would you think if I said that I had a couple of mates who had suffered the same indignity but that they had not gone to you because they were concerned about letting the cat out of the bag, that they were actually intimidated by the process?

Major Orchard—My reaction would be the same, except that I would be surprised that it could take place on that scale without someone coming forward and indicating that there was a problem.

Mr SNOWDON—We are in a position in this particular instance—forget the scenario case—where we have had people come forward and the intimidation I have talked about has taken place. What is clear—and bear in mind I am making no judgment about the allegations—is that

it seems that there is a real problem with the implementation of the equity policy and its dissemblance into the organisational structure so that it is understood right through the hierarchy and the responsibilities of individuals through the hierarchy is properly understood.

Mr PRICE—That is not a reflection on you.

Mr SNOWDON—No, this is by no means a reflection on you.

Major Orchard—I appreciate that.

Mr SNOWDON—We are not judge and jury, but we are trying to establish the merits or otherwise of processes which have been put in place to safeguard the interests of individual personnel. The scenarios I have put to you are real; they have been put to us as actually having happened. In the context of your position existing and, thus, the Chairman's question before about how many people would come to see you, in view of the fact that they did not see you, I think we have to ask why. If we assume that they did not see you because one or two of them might have been absolutely intimidated by the process and by the possibility of what might happen to them, given the nature and the importance of the hierarchy in Defence, how do we accomplish equity in the treatment of personnel?

CHAIR—That is a fairly lengthy question.

Mr SNOWDON—I know, but it is where we are coming from.

Mr Lalic—I can try to answer that. Essentially, I would be surprised to understand and hear that members who feel that intimidated, and feel intimidated by approaching through the chain of command, would not use the method that we described before—the padre and so on. Then that would go outside of the chain of command and, essentially, be dealt with appropriately. I think there is a mechanism there for those members who feel intimidated or harassed to approach outside the chain of command—and I think that is a very important point. There is a mechanism there, within a battalion at least, to approach the problem and deal with the issue.

Mr PRICE—But, as I was trying to point out before, you are making an assumption that it was not used, which may or may not be true.

Mr Lalic—Yes.

CHAIR—As there are no further questions, Mr Lalic and Major Orchard, thank you very much for coming before the committee today. If there are any matters on which we need additional information, the secretary will write to you. You will get a copy of the transcript of your evidence to which you can make any corrections of grammar or fact. Again, thank you very much for coming before the subcommittee.

[1.41 p.m.]

BRANIFF, Dr Vincent (Private capacity)

GRAVES, Captain Martin William, Regimental Medical Officer, 3rd Battalion, Royal Australian Regiment

CHAIR—Welcome. Do either of you have any comments to make about the capacity in which you appear?

Dr Braniff—I was the regimental medical officer at 3 Battalion, RAR from 1995 until early 1997.

Capt. Graves—I am currently the RMO at 3 Battalion, RAR and I started in that position in January 1999.

CHAIR—I must advise you that proceedings here today are legal proceedings of the parliament and warrant the same respect which proceedings in the respective houses of parliament demand. Although the subcommittee does not require you to give evidence on oath, you should be aware that this does not alter the importance of the occasion. The deliberate misleading of the subcommittee may be regarded as a contempt of the parliament. The subcommittee prefers that all evidence be given in public, but should you at any stage wish to give evidence in private, you may ask the subcommittee and it will give consideration to your request. I must again emphasise the seriousness of the many issues before the subcommittee today and remind everyone not to enter into public discussion on individuals who are, or may be, subject to legal proceedings. If it becomes necessary to discuss any individual who may be subject to such legal proceedings, then we will adjourn and take the evidence in camera.

The subcommittee appreciates the time you have set aside to discuss the inquiry topic and the subcommittee is aware that you have both served as the regimental medical officer within 3 Battalion, RAR. The subcommittee believes that you, as doctors, hold a unique position within 3 Battalion, RAR. You may have had to deal with possible victims of condoned violence but you may also have been in a position to observe events more dispassionately than officers within other areas of the battalion. Before we commence questions, do you wish to make any opening comments?

Capt. Graves—No, thank you.

CHAIR—I want to follow up a question that came from the previous witnesses. Being a parachute battalion, apparently injuries are more prevalent than they might be in other units. That, presumably, was your experience. Were there times when some of those injuries did not seem to quite tally with the supposed experience someone had had in the unit?

Capt. Graves—Whenever I see any injuries that are of a traumatic nature, I always ask the person how that has occurred—whether it is a sports related injury, which is generally fairly common in the Army, a parachuting injury, a training injury or whether the patient says that they have been beaten up down at the pub or the local hotel at Liverpool or at The Rocks. I

always note down what they have told me, what I have found and whether or not I believe the injuries are consistent with that story. But, of course, that is going on what the patient says.

CHAIR—In your experience, are there other occasions when you wonder or question whether or not you are being told the true story? Are there occasions when you feel that the facts do not seem to fit the story?

Capt. Graves—None that comes to mind. I would have to look through my notes.

CHAIR—Dr Braniff, have you had some such experience?

Dr Braniff—I would concur with what Captain Graves has said. I was never suspicious of anything untoward. Based on what soldiers told me, injuries usually fitted the causal factors.

Mr PRICE—You are both RMOs. Were there other doctors there as well as yourselves or were you the sole doctor?

Capt. Graves—Occasionally, and on weekends obviously when I would not be on sick parade, the patients from the battalion might attend the hospital. If I was away on holiday, generally another doctor would come through. However, we hold the patients' med docs, so I would still see their med docs even though they might have gone to another military doctor. The med docs come back to me and I would see them anyway.

Mr PRICE—You would be the one person who would be seeing soldiers day in and day out.

Capt. Graves—The other thing is, for minor complaints, they would go through one of my medics. I have full confidence in all of my medics that, if they were suspicious of an injury, they would notify me. In some situations, if a soldier was concerned, they might go to a medic before they would see me, the medic being of closer rank to them.

CHAIR—Dr Braniff, did you have occasions when you suspected that people might have been bashed within the unit?

Dr Braniff—I cannot say that I did.

CHAIR—Or even down in the pub on Saturday night?

Dr Braniff—Sometimes soldiers would come, usually with fist injuries. They would say they had got into a fight on the weekend in Liverpool or wherever. Things were usually consistent with that story. Even that did not happen on a repeated basis or more than I thought was to be expected.

CHAIR—You are saying that you never had occasions to suspect that someone's injuries were being caused through brutality or whatever?

Dr Braniff—No.

Mr PRICE—Now that we know that there were 31 victims of bashings in the unit—over a period of time, I admit—have you had an opportunity to reflect whether we need to change some procedures or whether RMOs may need to be extra vigilant?

Capt. Graves—Can I just answer that question? I have taken a bit of time over the last couple of months to go back through them because of the media hype that has been around about this. Going back through them, this year I have seen 10 people who have been involved in fights and so forth. Of those 10 people this year, there have been assaults at The Rocks, countless times at Liverpool Hotel—assaults by bouncers. That is 10 people in the year. Generally, I would see at sick parade approximately 40 people per day. You are looking at about 200 people per week. You are seeing a fair few patients and, out of those, it is quite a small number that have been involved in fights. From my notes, that has been outside of the unit.

We obviously have equity officers in place but, outside that forum, if a soldier is concerned, they could come and see me or the padre. If a soldier were to come and see me and say that he had been bashed by a member of the unit or beaten up by a corporal because he had not been doing his duty properly or for some other reason, first of all, I would suggest that he go and see his platoon staff or his CSM—his company sergeant major—but if for some reason I did not think that that was likely to occur or I did not feel that it was appropriate for him to go through his platoon staff, I would suggest that I go and speak on his behalf. I have not had to do that in the last two years.

Mr PRICE—But you would be prepared to do that?

Capt. Graves—Of course I would be prepared to—as I know the padre would.

CHAIR—Do either of you know where Captain Smith is?

Capt. Graves—I saw him last night, but I have not seen him today.

Mr SNOWDON—Have you seen many people assert that they have fallen off their bike?

Capt. Graves—I have seen plenty of people who have fallen off bikes, yes; none that I suspected of being beaten up. Certainly if I did suspect that someone's injuries had occurred differently from the way they told me, I would put it in my notes.

Mr SNOWDON—Dr Braniff, have you ever had any suspicions about people falling off their bikes?

Dr Braniff—No, I cannot say from my recollection of the period when I was there that I saw any serious injuries or anything that made me think something might be happening.

Mr LAURIE FERGUSON—What has been the length of your involvement?

Capt. Graves—I am the current RMO. I was the RMO last year and now this year.

Mr LAURIE FERGUSON—How early last year?

Capt. Graves—I began in January—so from the beginning of last year.

Mr PRICE—Are you aware of when Captain Smith was the RMO?

Capt. Graves—He was RMO from mid 1997 to 1998. Is that correct?

Dr Braniff—That is correct.

Mr PRICE—So you are in 1999?

Dr Braniff—I was 1995 to early to mid 1997. I would like to add to my testimony that I worked with two padres at 3RAR and we had a close and very good working relationship, dealing with many delicate issues regarding soldiers in 3RAR between 1995 and mid 1997. At no stage were I, or the padres to my knowledge, aware of individual or institutionalised cases of physical abuse as has been the subject of your inquiry. If any such cases occurred without our knowledge I regret the missed opportunity to intervene.

CHAIR—I think committee members have asked the questions they wanted to ask. Thank you very much for coming here today. If there are any matters about which we might need additional information, the secretary will write to you. You will be sent a copy of the transcript and, if there are any corrections you would like to make to grammar or facts, please do so.

Evidence was then taken in camera—

Subcommittee adjourned at 5.16 p.m.