



THE HON BRUCE BILLSON MP

Minister for Veterans' Affairs
Minister Assisting the Minister for Defence

09 OCT 2006

Senator David Johnston
Chair
Senate Standing Committee on Foreign Affairs,
Defence and Trade
Parliament House
CANBERRA ACT 2600

Dear ~~Senator~~ *David*,

I write to you concerning your Committee's request for Defence comment on questions raised about the Defence Legislation Amendment Bill 2006 by the Judge Advocate General, the Law Council of Australia and Mr Douglas McDonald.

As you are aware, in response to the 2003 Senate Report into *'The Effectiveness of Australia's Military Justice System'* dated 16 June 2005, the Government announced significant enhancements to the military justice system. As part of these enhancements, the Government agreed to the establishment of a permanent Australian Military Court to replace individually convened trials by Courts Martial and Defence Force Magistrates (recommendations 18 and 19).

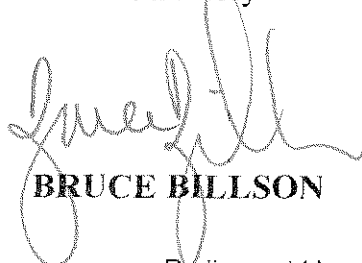
The Defence Legislation Amendment Bill 2006 will give effect to the Government's response to the above recommendations and is intended to provide for the maintenance of effective discipline and the protection of individuals and their rights.

The responses to your Committee's questions are consistent with the Government response to the 2005 Senate Inquiry Report, the Bill and its Explanatory Memorandum. They also amplify the previous Defence submission to the Committee of 22 September 2006.

I am pleased to provide you with the Department of Defence's responses to your Committee's questions.

I trust these responses will provide you with the information required.

Yours sincerely



BRUCE BILLSON

Senate Standing Committee on Foreign Affairs Defence and Trade

Defence Legislation Amendment Bill 2006

Responses to Questions

Jurisdiction of the Australian Military Court

1. The advice in respect of the validity of a military court established outside Chapter III came from the Chief General Counsel, Australian Government Solicitor, Mr Henry Burmester QC. The independent advice of Chief General Counsel was sought in respect of various issues that arose in the course of policy development for the Bill, including the jurisdiction of the Australian Military Court (AMC). The final draft Bill was also made available to the Chief General Counsel for comment. He expressed the view that the provisions for the military judges in the Bill were valid and provided sufficient independence and impartiality, and that the limited role of the Minister in appointment, reappointment and termination does not detract from the independence of the office of the Chief Military Judge or the military judges. The Bill reflects this advice, and related advice from the Attorney General's Department.

2. The AMC will have the same Australian jurisdiction over the members of the ADF outside Australia as does the current system of courts martial and trials by Defence Force magistrates under the *Defence Force Discipline Act 1982* (DFDA). The same jurisdiction was also exercised for decades by the system of courts martial under the authority of the previous single Service Discipline Acts. However, the AMC will not have complete (and exclusive) Australian jurisdiction over members of the ADF outside Australia. The most serious offences committed outside Australia in Australian warships or Defence aircraft might normally be returned to Australia for trial before a civilian court under legislation like the *Crimes at Sea Act 1991* or *Crimes (Aviation) Act 2000*. The Commonwealth Criminal Code, Division 115 may also apply. Similar offences committed on foreign soil might also come under the jurisdiction of the host nation, subject to any status of forces agreements that may be in place.

3. As described in paragraph 16 of the explanatory memorandum for the Bill, it is not intended to increase the jurisdiction of the AMC beyond that of the Service tribunals it will replace. It may deal with the same matters that are specified in current sections 115 (court martial) and 129 (Defence Force magistrate) of the DFDA. Specifically, the consent of the Director of Public Prosecutions for the institution of DFDA proceedings for certain serious offences committed within Australia, such as treason, murder, manslaughter and serious sexual offences for trial under section 63 of the DFDA, will be retained.

4. The AMC will also retain the current jurisdiction to deal with matters that fall outside the Australian civilian jurisdiction, or matters that might otherwise be dealt with by a foreign jurisdiction. Albeit such occurrences are rare, the power ensures that there is a jurisdiction for all circumstances that will provide natural justice and a fair trial. Any trial by Service tribunals (irrespective of location) maintains the safeguards inherent in the current and future expanded appeals systems to the Defence Force Discipline Appeals Tribunal, the Federal Court and ultimately the High Court.

5. Claims that the present and likely future tempo of operations make it likely that there will be charges of the most serious offences at some stage, are speculative. It is not possible to predict which serious offences might occur at any particular time. However, should one occur, it would not be unusual for a serious offence committed outside Australian jurisdiction to be dealt with by a Service tribunal. This has been the case ever since the Australian Naval and Military Forces were established following Federation. There are many types of tribunal established under

Commonwealth legislation. Service tribunals are established under the DFDA for a specific purpose, that is, to control the forces and thereby maintain discipline. Another tribunal with a particular purpose is the Defence Force Discipline Appeals Tribunal which hears appeals from Service tribunals. Neither of these tribunals are equivalent to the AAT, which has an entirely different purpose.

6. In *Re Tracey* (1998) 166 CLR 518, all seven judges of the High Court accepted that the defence power authorised establishment of (Service) tribunals outside Chapter III of the Constitution. Subsequent High Court challenges have reinforced the jurisdiction of the DFDA by varying majorities. The jurisdiction of Service tribunals has by necessity always extended to Service offences that occur overseas, including those which are also civilian criminal offences. In *Aird* (2004) 199 CLR 308 the High Court required there still to be a Service connection in relation to offences overseas. For operational and discipline reasons, it is necessary to ensure that Service offences can be dealt with when they occur outside Australian civilian jurisdiction, and to provide an alternative to foreign jurisdictions. Given that the AMC will exercise the same jurisdiction as the Service tribunals it will replace, it seems unlikely that the risk of a successful challenge to the AMC would increase on this basis.

7. Service tribunals such as courts martial and the new AMC do not normally exercise jurisdiction over civilian defence personnel. They are covered only to the extent outlined in subsection 3(1) of the DFDA (definition of 'defence civilian'). A 'defence civilian' is a person who accompanies the Defence Force on operations outside Australia and who has consented in writing to be subject to the DFDA and Defence Force discipline.

Fixed and renewable terms

8. The Government agreed that military judges would be appointed for fixed five year terms with a possible renewal of five years. These provisions provide for considerably more independence than the appointment provisions for courts martial panels (the current Service tribunal with the most authority) and the current judge advocates panel from which Defence Force magistrates are selected. Judge advocates will no longer be appointed by CDF or the Service Chiefs, and Defence Force magistrates will no longer be appointed by the same authority (DFDA section 127) that is responsible for reviewing their proceedings (DFDA section 154), removing any perception that they might be beholden to their reviewing authority. Additionally, the five year terms almost double the existing three year terms, and allow for a maximum tenure of ten years if a reappointment is necessary to maintain a level of experience on the AMC. Given this, it would seem unlikely that the new appointments might impede the AMC's ability to develop experience and excellence.

9. Advice to Defence is that a term appointment with the opportunity for reappointment is not incompatible with the necessary independence required of a military tribunal (paragraph 79 of the explanatory memorandum). Security of tenure during an appointment and during any reappointment period is more important. To facilitate this, the use of the reappointment provisions is by exception and will only be used if the failure to reappoint a particular military judge would reduce the level of experience on the court to an extent that could be detrimental to the operation of the AMC given existing and possible future demands. Before making such a reappointment, the Minister must receive a report from the Chief Military Judge on the workload and experience available to the AMC in light of existing or likely judicial vacancies (objective criteria). This significantly reduces any perception that military judges might be beholden to political appointees, and does not involve the military chain of command.

10. The Bill is consistent with advice to Defence that there is nothing incompatible with judicial independence in allowing the reappointment of a judge beyond an initial term, provided the existence of the power to reappoint cannot reasonably be seen to cause the person seeking

reappointment to be beholden to the executive in discharging their judicial duties. In the case of the AMC, there is no general discretion to reappoint. Any reappointment may only occur when the Chief Military Judge identifies the need to maintain a level of experience on the court, and only then can the reappointment be approved by the Minister.

11. The issue of compulsory retirement age was considered in deciding on the term of appointment. The Government has agreed that military judges will be appointed for a fixed term to provide security of tenure. Fixed terms also allow for factors peculiar to the Defence Force, such as the hardship of the job in operations and the physical demands of constant travel and stress. Fixed terms are also consistent with other statutory appointments in Defence, and allow for matters of military purpose, such as the career development of officers. In particular, fixed terms allow for each generation of officers to aspire to the position of military judge, rather than being denied the opportunity because previous appointments have been made until retirement age. They also ensure that the members of a Service tribunal, who have the authority to impose a punishment such as dismissal, are not seen to be subject to entirely different conditions of service than the members over whom they exercise this authority.

12. It is not practical to limit appointments to a fixed term (of any length) and still afford protection of an appointment until retiring age. This would require the selection committee (provided for in the Bill) to discriminate by age to ensure that the term completed when the military judge reached retiring age. The ADF would prefer that any qualified officers voluntarily make themselves available for fixed term appointment at a time in their career that suits the individual, and in the full knowledge that it will be a terminal appointment. In the normal course, this would be expected to result in the most qualified legal officers becoming military judges, irrespective of age.

13. Speculation about the ADF's ability to support the flow-through of officers to be military judges needs to be considered in the context of expected workloads, rather than the maximum number of military judges that may be appointed. One permanent judge advocate and a few of the part time judge advocates conduct most of the current Defence Force magistrate trials and are the judge advocates in courts martial (about 50 to 60 cases per year). Even if this workload was to triple with the introduction of a new right of appeal and a revised right to elect trial, three permanent military judges ought to have the capacity to meet most of the requirement, with occasional support from the part time panel. Indeed, three permanent military judges may not always be required, nor might it be necessary to appoint all of the full time or part time judges at the same time. If so, this simple administrative action will create a natural stagger in the replacement process that would overcome the perception of waves of reappointments every five years.

14. Should one of the military judges go on to become the Chief Military Judge, this would naturally contribute to the maintenance of a level of experience on the AMC. The requirement to subsequently appoint two new permanent military judges at any time, might also be reduced, if it were necessary to maintain a level of experience on the AMC by using the reappointment provision. And, while there is provision for up to eight part time military judges, it is not clear at this stage whether they will all be required or need to be appointed at any one time.

15. Five year terms also recognise that the new offices of the Director of Military Prosecutions, the Registrar of the AMC (five year terms) and the Directorate of Defence Counsel Services should increase the pool of qualified officers for appointment as military judges. The expectation is that there will be an increasing number of available qualified officers over the period of every five year term. This pool will be further augmented by qualified Reservists who might be attracted to becoming either full time or part time military judges for five years on the basis of the new statutory arrangements. While it is too early to make a judgement either way, in practical terms, five year

fixed terms in these circumstances are unlikely to have an effect on the level of experience in the AMC.

Termination of appointment

16. One of the criteria for appointment as a military judge is that a member is deployable, in the sense of meeting his or her operational readiness, military skills and training, medical and physical fitness requirements. This is essential as the AMC will be a fully deployable court, comprised of members who must meet all their individual Service deployment requirements. These are the same objective standards that apply to all the members of the ADF. In having military judges meet these common standards, it also establishes the credibility and acceptance of the AMC within the Defence Force and is consistent with the recurrent theme of the Bill, that the AMC is a Service tribunal comprised of military judges who are serving ADF members.

17. Advice to Defence is that termination for misbehaviour and physical and mental incapacity are seen to provide for the necessary independence of the AMC, subject to there being a proper evidentiary basis and natural justice afforded. Any other grounds for removal or termination are generally expressed to operate automatically removing any perception of executive discretion, e.g., becomes bankrupt. In specifying the failure to meet individual Service deployment requirements as grounds for termination, it has been made clear that there is no residual discretion to terminate on other unspecified grounds, removing the perception of 'collateral attack' on this basis.

18. Advice from many sources was received in respect of various issues in the development of the Government response and the Bill, including the views of the JAG. All the advice received was considered and reflected in the Bill where appropriate. Indeed, it was agreed to change the name of the original judge advocates to military judges, based on the views of the JAG. Where there were disparate opinions, independent legal advice was obtained. The Government agreed that the appointment (and hence the termination) of military judges was to be by the Minister. Advice to Defence was to the effect that provided a proper evidentiary basis and natural justice were accorded, this should suffice to establish the necessary independence of the AMC, without the need to involve Parliament as is required for Chapter III judges. Defence also received advice that it is not essential for the integrity of the process to confer responsibility on the Governor General rather than the Minister.

Compulsory retirement

19. The provisions for a military judge to cease being a member of the ADF when he or she ceases to hold office as a military judge reflects previous advice from the JAG and others that these should be terminal appointments. The effect of the provision is to avoid any perception that military judges might be beholden to the executive for subsequent employment. Additionally, the provision overcomes the possibility of having to reduce a military judges' remuneration from a statutory level to a standard military salary, should they continue in the Service. This is similar to the contract terms in place for other statutory appointments in the ADF.

20. Given that the remuneration for military judges will be determined by the Remuneration Tribunal (Commonwealth), it is likely to be significantly more than the standard military salary for the same rank. As an example, the remuneration for the Chief Judge Advocate is about double the standard one star salary. Given this financial incentive, it is likely that there will be increased interest in these duties, both from full time and part time legal officers. This has been previously reflected in the number of applications submitted for the statutory appointments of Director of Military Prosecutions and Registrar of Military Justice. The former position was filled by a Reserve legal officer with coronial and Crown Prosecutor experience.

21. The development of the Government response to the 2005 Senate report and the legal and policy development of the Bill were subject to extensive internal and external consultation.

Internally, the requirements of the Services for the maintenance of effective discipline were clearly very important. External consultation included the Office of Parliamentary Counsel, the Attorney General's Department and the Australian Government Solicitor. Overseas jurisdictions (such as Canada, Britain, New Zealand and the United States) were also considered and reflected in the Bill where appropriate.

The rank of military judges

22. The status, authority or independence of the position of a military judge will in no way be compromised by their minimum rank being at the Commander (E) level. A military judge is so appointed pursuant to the Bill and it is by virtue of that appointment and the swearing an oath or making an affirmation of office that gives the authority to the position. It should also be noted that the provision specifies that the rank be not lower than Commander (E) which in effect means that a judge may be at a higher rank.

23. In Service tribunals, it is a matter of fact that prosecuting officers, defending officers, and judge advocates may from time to time be senior in military rank to members of a court martial panel, the accused and witnesses. Provided there is a fair trial and natural justice is accorded, the matter of relative rank is not relevant. The High Court also found that there is no substance in this point in *The King v Bevan and others* (1942) 66 CLR 452 (ex parte Elias and Gordon).

24. The rationale for the minimum rank of a military judge being Commander (E) was to ensure that the largest pool of qualified available officers was considered in the selection process. This arrangement ensures that all officers who are capable of being promoted to this rank will be considered. It also caters for the existing rank levels of many Reserve legal officers who may be potential candidates for a military judge position.

25. The suggestion proposed by the Law Council that there be no formal rank other than the title of 'military judge' with one star privileges, does not meet military purposes. Military judges require military rank for the performance of their non-judicial duties, such as training. Military rank is a reflection of judges' military credibility, not their status as a military judge. Such a move would also be inconsistent with the intent of the Bill, that the AMC is a Service tribunal, comprised of serving ADF members with military rank.

Qualification of military judges

26. As advised in the Government Response to Senate recommendation 18, a military court is not an exercise of the ordinary criminal law. It is a military discipline system, the object of which is to maintain military discipline within the ADF. This requires more than being able to understand specialist military evidence in a civilian criminal trial. There is a need to understand the military operational and administrative environment and the unique needs for the maintenance of discipline of a military force both in Australia and on operations and exercises overseas. The court must be able to sit in theatre and on operations. It must be deployable and have credibility with, and acceptance of, the Defence Force.

27. The principal factor peculiar to the Defence Force is the military preparedness requirements and the physical demands of sitting in an operational environment. The appointment of civilian judges and senior counsel as military judges, without military service and training, would not satisfy the operational requirements of the AMC. Further, it impacts on the credibility of the AMC, where punishments such as dismissal from the service or reduction in seniority or rank may be imposed, if the judges are not members of the ADF subject to the same standards of discipline or operational expectations.

Class of Offences

28. There is no option for the Director of Military Prosecutions to refer class three offences for trial by military judge and jury. As a matter of fairness, this option has been provided to the accused. This ensures consistency by providing that the option remains with the accused to choose either trial by military judge or by military judge and jury. Administrative convenience was not seen to be a compelling argument in establishing this provision, and given that there is no option for the Director of Military Prosecutions, it is not necessary to provide for a reduction in the maximum sentence available.

29. The limitation on the maximum sentence that may be imposed for class 3 offences is 5 years imprisonment. DLAB 06, section 7 (new definition - *class 3 offence*) refers. Territory offences are catered for as a group, rather than them all being listed individually in the DFDA, as is the current case.

Trial by judge and military jury

30. Since 1985, the DFDA has provided for a trial by General Court Martial with a panel of five ADF officers. For a Restricted Court Martial, the panel comprises three ADF officers. In both cases, a majority decision is required. The proposed military jury is similar but not identical to the function of court martial panels or to a civilian jury. Unlike a court martial panel, a military jury will only determine if an offence has been committed. Also, the military judge, not the jury, will determine punishment. A military jury will comprise six ADF members, and a majority of four is necessary for a conviction to be imposed.

31. This matter has been the subject of advice along the following lines:

- There do not appear to be any major legal policy concerns with instituting majority verdicts for a military jury. Although the High Court has held that unanimous verdicts are required for federal criminal matters (*Cheatle v The Queen* (1993) 177 CLR 541), majority decisions are allowed in civil trials and this is also the trend for most States and Territories in relation to criminal trials. Given the specific requirement for the composition of military juries, which necessitates drawing from a smaller pool of potential candidates, smaller numbers of jurors may be appropriate.
- The proposal does not involve juries in the usual sense – they are a military jury with their own features. The perception of fairness may be strengthened if a special majority, say three quarters or two thirds, was required.

32. Additionally, the accused will have increased levels of protection with an expanded right of appeal on both conviction and punishment to the Defence Force Discipline Appeals Tribunal.

Court of Record

33. Similar to courts martial and trials by Defence Force magistrates, it is not necessary for the functioning of the AMC for it to be a court of record. However, section 148 of the DFDA currently requires that courts martial and trials by Defence Force magistrate shall keep records of their proceedings. This provision will also apply to the AMC on the commencement of the DLAB 06.

34. Separately, advice to Defence was that it would be inappropriate to provide that the AMC is a court of record. The concept has meaning in connection with the civilian court system. The AMC is not part of that system and should not be conferred with a status that might be taken to suggest that it is (or that it has a similar jurisdiction). There is no reason to expand the use of the concept in relation to the AMC, which is a unique statutory creature. Its powers should generally be set out in its enabling legislation and not determined by reference to powers exercised by courts in the civilian system. The statutory status of the proposed AMC and its judicial authority is clear. The status of

'court of record' is also not required to establish the independence or impartiality of the proposed AMC.

Transitional arrangements

35. The matters that were raised by the JAG and the Law Council were considered in developing the Bill. The issue of five year terms has been addressed previously in this submission. The issue of whether a failure to appoint all existing members of the judge advocates panel could affect the perception of independence of the current members in the interim period was the subject of separate advice to Defence.

36. In that advice, it was considered that there is no substance in that claim if an appointment process for the AMC is adopted that involves merit selection and an opportunity for all those on the panel, as well as other eligible persons, to be considered. Additionally, it was not considered that the possibility that not all or any of the existing members of the panel may be appointed to the AMC prevents them having the independence they currently have to discharge their functions in the meantime.

37. As mentioned above, there are currently ten part time judge advocate appointments which cannot automatically transition to fill eight part time military judge appointments, even if the AMC needed all eight positions filled. In any event, the Bill makes no provision for automatic transition to the first AMC. The Bill provides an opportunity for all qualified available officers to be considered in an independent merit selection process, which is consistent with natural justice principles. In a practical sense this also means that the military judges for the first AMC, and thereafter, may be fairly selected from the largest pool of qualified available officers.

Staffing

38. The Government has not agreed that the AMC would have the same status as the Federal Magistrates Court. Indeed, such a status might infer a change of jurisdiction that could place the validity of the AMC at risk. The Government response to Senate recommendations 20 and 21 states that the appointments to the AMC should have appropriate experience and that they should be based on the same professional qualifications and experience that apply to other judicial appointments, such as those applicable to a Federal Magistrate.

39. Proposed section 121 of the Bill provides for *necessary* staffing to the AMC. This legislative requirement gives effect to recommendation 18 of the Government response to provide the AMC with appropriate para-legal support for it to function independent of the chain of command. The purpose of the Bill is to create a permanent military court under Defence legislation that is independent of the chain of command in its judicial duties, with appropriate support staff, not to confer on it the status of a civilian court.

Chief of the Defence Force Commission of Inquiry

40. The Government's response to the Senate Inquiry into the Effectiveness of Australia's Military Justice System stated that CDF shall appoint a mandatory Commission of Inquiry (COI) into suicides by ADF members and deaths in service. In the response to Senate recommendation 34 it said that the Commission may consist of one or more persons, with one being a civilian with judicial experience, who will also be the President of the Commission. There is no requirement for the civilian with judicial experience to be a serving judicial officer. However, should serving judicial officers make themselves available for a CDF Commission of Inquiry, they will do so of their own volition and with the leave of their court.

41. The procedures governing the conduct of a CDF Commission of Inquiry will be provided for in the *Defence (Inquiry) Regulations 1985* which are the most appropriate means to provide for the establishment of, and procedures for, CDF Commissions of Inquiry. As an interim measure,

pending the permanent arrangements for CDF Commissions of Inquiry, all ADF suicides and deaths in service are subject to a CDF Board of Inquiry presided over by a civilian and established under the *Defence (Inquiry) Regulations 1985*. The Regulations will address the matter of deaths unrelated to Defence service.

42. CDF Commissions of Inquiry will not arrogate the responsibilities of State and Territory Coroners. The ADF and the various State/Territory coroners have been negotiating a form of understanding governing the relationship and operating procedures between the various parties concerning deaths of Service personnel and coronial jurisdiction. It was agreed that each coroner would write separately to the CDF outlining the protocols to be observed between the two parties, in regard to that particular coronial jurisdiction. To date both Victoria and Tasmania have provided such a protocol (copies attached). The remaining coroners are engaged with Defence with a view to agreeing similar protocols.

43. It is unclear what the 'perceived flaws' identified by the Law Council are, concerning the proposed procedures for terminating CDF Commissions of Inquiry, the failure to deal satisfactorily with vacancies in the membership of Commissions of Inquiry, proposed practice and procedure of Commissions of Inquiry and appearances. The current Bill simply adds a CDF Commission of Inquiry to the range of existing types of inquiries that may be conducted under the *Defence (Inquiry) Regulations 1985*. Details such as those raised by the Law Council are being considered separately in proposed amendments to the *Defence (Inquiry) Regulations 1985*.

Questions from Mr Douglas McDonald

44. The criteria for military juries have been based on the existing model of a court martial panel. Paragraphs 24 to 27 of the explanatory memorandum explain the proposed constitution of, and eligibility for, a military jury. The introduction of non-commissioned officers (NCOs) reflects the responsibilities and status of senior NCOs and a desire to broaden the eligibility of potential jurors in deference to the rank of the accused. It also alleviates previous difficulties in securing only officers to serve on court martial panels. Warrant Officers Class Two were not included because the rank is only particular to the Army.

45. Other than for exigencies of the Service precluding the availability of members on certain occasions, there will be no command involvement in the operation of military juries.

46. The independence of military jurors will be established similar to the rules for a court martial panel. Currently, the members of a court martial panel vote in reverse order of seniority. Along with other safeguards, this measure ensures that the voting is not influenced by the senior officers. The Bill provides for AMC rules to be made, which includes rules for polling of a military jury. It is proposed that these Rules will be legislative instruments for the purposes of the *Legislative Instruments Act 2003*, which will ensure that they are subject to tabling and disallowance requirements under that Act.

47. At the commencement of trials by military judge and jury, the military judge would address members of the jury on all aspects of the decisions they have to make and the process of how they determine a defendant's guilt or innocence. This is consistent with civilian practice. Additionally, the ADF intends to include training in the general duties of military jurors in the career courses for officers and warrant officers.



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16 August 2006

Air Chief Marshal Angus Houston,
Chief of Defence Force,
R1-5-B CDF Suite
Department of Defence
CANBERRA ACT 2600

Dear Air Chief Marshal Houston,

**Re: Protocol for investigating deaths of ADF members: Magistrates Court of
Tasmania (Coronial Division)**

I am writing to advise the relevant sections of the Australian Defence Force (ADF) of the protocols to be adopted between the ADF and the Magistrates Court of Tasmania (Coronial Division) in the event of the death of an ADF member arising in the course of the member's service which is being investigated by a Tasmanian coroner.

This protocol is subject to the discretion of an individual Coroner who is conducting an investigation or inquest under the *Coroners Act* 1995 (Tas) and may be treated as a general guide only.

In Tasmania, the obligations of a Coroner investigating a death are set out in the *Coroners Act* 1995 (Tas) section 28,

28. Findings, &c., of coroner investigating a death

(1) A coroner investigating a death must find, if possible –

- (a) the identity of the deceased; and
- (b) how death occurred; and
- (c) the cause of death; and
- (d) when and where death occurred; and

(e) the particulars needed to register the death under the *Births, Deaths and Marriages Registration Act 1999*, and

(f) the identity of any person who contributed to the cause of death.

(2) A coroner must, whenever appropriate, make recommendations with respect to ways of preventing further deaths and on any other matter that the coroner considers appropriate.

(3) A coroner may comment on any matter connected with the death including public health or safety or the administration of justice.

(4) A coroner must not include in a finding or comment any statement that a person is or may be guilty of an offence.

(5) If a coroner holds an inquest into the death of a person who died whilst that person was a person held in custody or a person held in care or whilst that person was escaping or attempting to escape from prison, a secure mental health unit, a detention centre or police custody, the coroner must report on the care, supervision or treatment of that person while that person was a person held in custody or a person held in care.

In order to undertake this process the Coroner is assisted by a range of agencies (including Tasmania Police) and, in appropriate cases, experts may be used.

During an investigation or inquest there may be many issues that require the decision of a Coroner including: the application of privacy legislation; confidentiality of issues associated with National Security; investigation management. In some instances these issues may need to be raised with all of the Parties who have a sufficient interest in the death investigation for comment or submissions before a decision is made by the investigating Coroner.

General introduction and the intention of this protocol

This protocol should be regarded as a document that may be subject to review. Although it will generally apply as a guide to the conduct of most Coronial death investigations in this State, as the circumstances surrounding an incident may differ, from time to time there may be a requirement to alter or add to the processes under this protocol. The proposed alteration/addition will be notified to the ADF Liaison Officer for Defence's consideration and an opportunity provided for comment.

As there is a range of Parties and circumstances involved in an incident where a Coronial investigation is required to be conducted definitions may be useful for interpreting this document and these are attached and marked *Attachment A*.

A function of the Chief Magistrate of Tasmania is to oversee and coordinate Coronial services within this State and this may include the holding of an inquest where any death or suspected death has occurred. The jurisdiction may extend offshore. Attached to this document is a statement of what constitutes a 'reportable death' for the purposes of the law of Tasmania. See *Attachment B*.

A Tasmanian Coroner may investigate the scene of death and assume responsibility for the body, the holding of a post-mortem and the disposal of a body, taking into account the wishes of the next of kin. I understand that while *Defence Force Regulations 1952* permit the ADF to appoint a medical officer to conduct a post-mortem, if requested by a Coroner, the practice will be that a Tasmanian Coroner will arrange the post-mortem examination to be conducted by a forensic pathologist. However, a Coroner may also permit an ADF appointed medical officer and/or dental officer to be present at the post-mortem.

I understand that the ADF has certain statutory powers in relation to the deaths of ADF members occurring while on Service under Part VI of the *Defence Force Regulations 1952*. In certain circumstances the Regulations enable a commissioned officer of the ADF to issue directions for the disposal of the body of a member of the ADF who has died on Service thereby excluding this Court's jurisdiction. However, I understand that the Minister has issued a Direction under the *Defence Force Regulations 1952* which limits the circumstances whereby a commissioned officer can issue a direction concerning the disposal of a body to those in which there is armed conflict within Australia, or where the death occurs outside Australia, including on a ship at sea outside Australian coastal waters. I also understand that the ADF is able to issue a Death Certificate noting the cause of death of its personnel under the *Defence (Certification of Deaths) Regulations 1953*.

In certain circumstances I understand that Military Inquiries may be initiated by the ADF under the *Defence (Inquiry) Regulations 1985*. My belief is that the purpose of such inquiries is to investigate matters that have the potential to detract from the operational capability of the ADF. Also my understanding is that these inquiries are primarily concerned with determining facts and are not employed to investigate disciplinary or criminal matters nor empowered to impose punishment.

The intention of this Coroner's protocol is to facilitate the efficient management and clarify the requirements of this Court in conduct of the Coroner's powers of inquest and investigation involving the death of ADF members while on Service (which includes any case in which the remains of the deceased ADF Member is repatriated to Australia). It is understood that it will apply to the death of an ADF member on Service whether occurring either within or outside Australia.

My understanding is that the ADF is proposing to establish an ADF Liaison Officer to more efficiently deal with Coronial investigations in Tasmania.¹ On the death of an ADF member occurring (if reportable to the Coroner) the ADF Liaison Officer will be notified and will act as the primary point of contact between the relevant Coroner's Office of this Court, the forensic pathologist and the ADF.

¹ The role of the ADF Liaison Officer is further discussed in this protocol under the sub-heading "The ADF Liaison Officer and role"

I understand that the ADF has implemented a five step process to manage a sudden death situation when it arises in the course of an individual's military duties within Australia, except in the event of armed conflict. Following the initial site management and assessment, the Base/Unit Liaison Officer will advise Military Police, Tasmania Police and the relevant Coroner's Office of this Court to enable an investigation to begin.

I understand that the ADF will provide access for the Coroner and Tasmania Police to the incident scene and will cooperate where possible in the forensic investigation subject to any Security concerns of the relevant Commanding Officer. In most cases, this will amount to securing any weapons or ordnances and to provide for the dignity of the body to be preserved with the least disturbance to the scene of death.

I understand that the ADF agrees generally to assist the investigations of this Court. Also where possible, the ADF will provide assistance of a technical nature to assist in investigations by a Tasmanian Coroner.

Participation – the ousting of the jurisdiction of the Coroner

I understand that under regulation 27 of the *Defence Force Regulations* 1952 it is possible for a commissioned officer to oust the jurisdiction of the Coroner where an ADF member dies while on Service. This occurs when the officer issues a direction concerning the disposal of the body. I also understand that the Minister has issued a direction under the *Defence Force Regulations* 1952 which limits the circumstances where a commissioned officer can issue a direction concerning the disposal of a body to where there is armed conflict within Australia, or where the death occurs outside Australia, including on a ship at sea outside Australian coastal waters. In these circumstances the ADF Liaison Officer will advise my office as soon as practicable after such a direction has been issued.

The ADF Liaison Officer and role

The ADF Liaison Officer will be the person occupying from time to time the position of Head Defence Personnel Executive, or delegate.

The ADF Liaison Officer will be provided with contact details for the Magistrates Court of Tasmania (Coronial Division) and the Tasmanian State Forensic Pathologist.

I understand that, for the purpose of the Coroner's investigation, the ADF Liaison Officer will deal with issues such as, but not limited to: coordinating information requests; requests to de-classify information; assistance with requests to the Minister to release information; publicity; decision-making processes; and secondment of ADF personnel to aid in an investigation.

In addition, as mentioned elsewhere in this protocol, the ADF Liaison Officer has the role to inform the Coroner when there has been a decision to oust the jurisdiction of the Coroner in relation to a particular death and notify the Coroners in respective jurisdictions where the place of ordinary residence applies or the body of the deceased ADF member arrives.

A Military Inquiry

Even if the ADF decides to hold a Military Inquiry, a Tasmanian Coroner is not precluded from conducting his/her own inquiries and investigating the death. A Coroner retains the

discretion whether to include any findings made as a result of a Military Inquiry into his/her final report.

It is also understood that where the ADF has conducted a Military Inquiry into the circumstances of a death, it will provide such report to the Coroner as has been publicly released to assist the Coroner in the investigation.

Death occurring outside Australia

I understand that where a death occurs outside Australia, other than on board a ship, usual practice is that as part of operational orders, every ADF mortuary plan will include contract mortuary services to repatriate the remains to Australia.

I understand that in the event that an ADF member dies outside Australia (where the circumstances of the death indicate that the death may be reportable to a State or Territory Coroner), the ADF Liaison Officer will notify both the Coroner of the State or Territory that is receiving the body of the deceased ADF member and the Coroner of the deceased member's last place of residence. If this occurs, and either of these options applies to Tasmania, then the Chief Magistrate (or the Chief Magistrate's delegate or nominee) will consult with the head of the other Coroner's jurisdiction and the ADF Liaison Officer will be informed as to which Coroner's office will accept jurisdiction to conduct the investigation. The ADF may raise matters for consideration by the Coroners in this process.

I understand that the ADF may ask that the Chief Magistrate undertake an investigation or inquest where it is necessary to provide documentation certifying the death of an ADF member, a Defence civilian or accompanying member that has occurred outside Australia, to foreign authorities, for customs, quarantine or transport purposes.

Safety issues and the Coroner's investigation

I understand that if a death occurs on Commonwealth land or premises where the Commanding Officer believes there is a danger to persons, he/she may temporarily restrict access to a site, and secure any weapons, unexploded ordnance or dangerous items. In these circumstances the Base Liaison Officer will advise the relevant Coroners Office that such action has been taken and provide the investigating Coroner with assistance at the site and during the investigation. By way of example, the Coroner's investigation may include (but is not limited to) taking measurements, photographs or obtaining evidence from witnesses.

It is also understood that where the ADF is aware that a body may have been contaminated by any chemical, biological or radiological material, it will inform the Coroner that it believes such contamination has occurred.

Notification as an interested Party to an inquest and applications for suppression

If requested by the ADF Liaison Officer, my office will ensure that the ADF will be notified of an inquest into the death of an ADF Member. Subject to *Coroners Act 1995* (Tas) the ADF may be entitled, on application to the investigating Coroner, to appear as a sufficiently interested Party at any such inquest. If determined to be a Party with sufficient interest, the ADF will be usually entitled to a copy of the Coroner's Brief of Evidence

before the inquest. In most circumstances, the ADF will also be entitled to a copy of the investigating Coroner's finding.

At the inquest, under the *Coroners Act 1995 (Tas)*, if the ADF is determined by a Coroner to be a sufficiently interested Party it may seek suppression orders. It may also seek orders in relation to information having Security implications. It is noted that the ADF may also seek to rely on the *National Security Information (Criminal and Civil Proceedings) Act 2004* in support of any application made on Security grounds.

Access to post-mortem report by ADF

In the event that an investigating Coroner considers that the ADF is an interested Party on application by the ADF Liaison Officer, he/she may provide the ADF with a copy of the post-mortem report.

Confidentiality of information

Where in connection with this protocol, Confidential information is provided to another Party the receiving Party shall not disclose the information to a third Party without the prior consent of the providing Party except where disclosure of the information is required by law or statutory duties, or by Parliament.

A major incident

I understand that, in the event of a major incident involving deaths of a large number of Defence personnel, the ADF Liaison Officer and the relevant Coroners Office will consult regarding the most appropriate arrangements concerning the provision of resources for responding to the incident.

Review of this protocol

In the event that the ADF considers that aspects of this protocol need revision then it should write to the Chief Magistrate setting out the issues. These issues may then be considered by the Chief Magistrate who will decide as to whether or not the protocol requires amendment.

Yours sincerely



Arnold Shott
CHIEF MAGISTRATE

ATTACHMENT A

"Service" means any activity involving an ADF member on duty, whether in Australia or overseas.

"In the course of a member's Service" includes circumstances where a death arises that are incidental to or have a connection with the member's Service, such as suicide or drug overdose.

"Confidential information" means information of a Party that:

- is by its nature Confidential;
- which the relevant Party identifies as Confidential at the time of the disclosure to the other Party; or
- the Party knows or ought to know is Confidential,

but does not include information which:

- is or becomes public knowledge other than by breach of the protocol;
- is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party; or
- has been independently developed or acquired by the receiving Party.

ATTACHMENT B

Coroners Act 1995 (Tas) section 3,

3. Interpretation

In this Act, unless the contrary intention appears –

"reportable death" means –

(a) a death where –

(i) the body of a deceased person is in Tasmania; or

(ii) the death occurred in Tasmania; or

(iii) the cause of the death occurred in Tasmania; or

(iiia) the death occurred while the person was travelling from or to Tasmania –

being a death –

(iv) that appears to have been unexpected, unnatural or violent or to have resulted directly or indirectly from an accident or injury; or

(v) that occurs during anaesthesia or sedation; or

(vi) that occurs as a result of anaesthesia or sedation and is not due to natural causes; or

(vii) the cause of which is unknown; or

(viii) of a child under the age of one year which was sudden and unexpected; or

(ix) of a person who immediately before death was a person held in care or a person held in custody; or

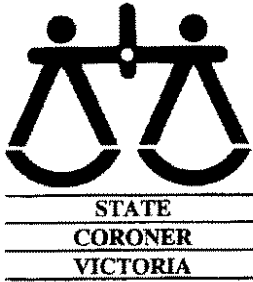
(x) of a person whose identity is unknown; or

(xi) that occurs at, or as a result of an accident or injury that occurs at, the deceased person's place of work, and does not appear to be due to natural causes; or

(b) the death of a person who ordinarily resided in Tasmania at the time of death that occurred at a place outside Tasmania where the cause of death is not certified by a person who, under a law in force in the place, is a medical practitioner; or

(c) the death of a person that occurred whilst that person was escaping or attempting to escape from prison, a detention centre, a secure mental health unit, police custody or the custody of a person who had custody under an order of a court for the purposes of taking that person to or from a court; or

(d) the death of a person that occurred whilst a police officer, correctional officer, authorised officer or a prescribed person within the meaning of section 31 of the *Criminal Justice (Mental Impairment) Act 1999* was attempting to detain that person;



State Coroner's Office
57-83 Kavanagh Street
Southbank 3006

Telephone: (03) 9684 4444
All Hours
Toll Free: 1800 136 852
(Only Country Victoria)
Fax: (03) 9682 1206

17th August, 2006.

Air Chief Marshal Angus Houston,
Chief of Defence Force,
R1-5-B CDF Suite
Department of Defence
CANBERRA ACT 2600

Dear Air Chief Marshal Houston,

Re: State Coroner's Protocol for Investigating Deaths of ADF members

I am writing to advise the relevant sections of the Australian Defence Force (ADF) of the protocols to be adopted between the ADF and my office in the event of the death of an ADF member arising in the course of the member's service which is being investigated by a Victorian coroner.

This protocol is subject to the discretion of an individual Coroner who is conducting an investigation or inquest under the *Coroners Act* 1985 and may be treated as a general guide only.

The Coroner's process is not about finding blame but investigating the death and recording the facts. To undertake this process the Coroner is assisted by a range of agencies (including Victoria Police) and, in appropriate cases, experts may be used. The Coroner can also make recommendations on public health and safety or the administration of justice.

During an investigation or inquest there may be many issues that require the decision of a Coroner including: the application of privacy legislation; confidentiality of issues associated with National Security; investigation management. In some instances these issues may need to be raised with all of the Parties who have a sufficient interest in the death investigation for comment or submissions before a decision is made by the investigating Coroner.

General introduction and the intention of this protocol

This protocol should be regarded as a document that may be subject to review. Although it will generally apply as a guide to the conduct of most Coronial death investigations in this State, as the circumstances surrounding an incident may differ, from time to time there may be a requirement to alter or add to the processes under this protocol. The proposed alteration/ addition will be notified to the ADF Liaison Officer for Defence's consideration and an opportunity provided for comment.

As there are a range of Parties and circumstances involved in an incident where a Coronial investigation is required to be conducted definitions may be useful for interpreting this document and these are attached and marked '*Attachment 'A' to State Coroner's ADF Investigation Protocol*'.

The function of the State Coroner's Office is to oversee and coordinate Coronial services within this State and this may include the holding of an inquest where any death or suspected death has occurred. The jurisdiction may extend offshore to the coastal waters of the State where a death occurs at sea, or it may be invoked where the deceased was ordinarily a resident in this State at the time of death or a body arrives in this jurisdiction even when the death did not occur in Victoria.

A Victorian Coroner may investigate the scene of death and assume responsibility for the body, the holding of a post-mortem and the disposal of a body, taking into account the wishes of the next of kin. I understand that while *Defence Force Regulations* 1952 permit the ADF to appoint a medical officer to conduct a post-mortem, if requested by a Coroner, the practice will be that my office will arrange the post-mortem examination to be conducted by a forensic pathologist. However, a Coroner may also permit an ADF appointed medical officer and/or dental officer to be present at the post-mortem.

I understand that the ADF has certain statutory powers in relation to the deaths of ADF members occurring while on Service under Part VI of the *Defence Force Regulations* 1952. In certain circumstances the Regulations enable a commissioned officer of the ADF to issue directions for the disposal of the body of a member of the ADF who has died on Service thereby excluding my jurisdiction. However, I understand that the Minister has issued a Direction under the *Defence Force Regulations* 1952 which limits the circumstances where a commissioned officer can issue a direction concerning the disposal of a body to where there is armed conflict within Australia, or where the death occurs outside Australia, including on a ship at sea outside Australian coastal waters. I also understand that the ADF is able to issue a Death Certificate noting the cause of death of its personnel under the *Defence (Certification of Deaths) Regulations* 1953.

In certain circumstances I understand that Military Inquiries may be initiated by the ADF under the *Defence (Inquiry) Regulations* 1985. My belief is that the purpose of such inquiries is to investigate matters that have the potential to detract from the operational capability of the ADF. Also my understanding is that these inquiries are primarily concerned with determining facts and are not employed to investigate disciplinary or criminal matters nor empowered to impose punishment.

The intention of this Coroner's protocol is to facilitate the efficient management and clarify the requirements of my office in conduct of the Coroner's powers of inquest and investigation involving the death of ADF members while on Service (which includes any case in which the remains of the deceased ADF Member is repatriated to Australia).

It is understood that it will apply to the death of an ADF member on Service whether occurring either within or outside Australia.

My understanding is that the ADF is proposing to establish an ADF Liaison Officer to more efficiently deal with Coronial investigations in Victoria.¹ On the death of an ADF member occurring (if reportable to the Coroner) the ADF Liaison Officer will be notified and will act as the primary point of contact between the State Coroner's Office, the forensic pathologist and the ADF.

I understand that the ADF has implemented a five step process to manage a sudden death situation when it arises in the course of an individual's military duties within Australia, except in the event of armed conflict. Following the initial site management and assessment, the Base/Unit Liaison Officer will advise Military Police, Victoria Police and my office to enable an investigation to begin.

I understand that the ADF will provide access for the Coroner and Victoria Police to the incident scene and will cooperate where possible in the forensic investigation subject to any Security concerns of the relevant Commanding Officer. In most cases, this will amount to securing any weapons or ordnances and to provide for the dignity of the body to be preserved with the least disturbance to the scene of death.

I understand that the ADF agrees generally to assist the investigations of my office. Also where possible, the ADF will provide assistance of a technical nature to assist in investigations by a Victorian Coroner.

Participation – the ousting of the jurisdiction of the Coroner

I understand that under regulation 27 of the *Defence Force Regulations* 1952 it is possible for a commissioned officer to oust the jurisdiction of the State Coroner where an ADF member dies while on Service. This occurs when the officer issues a direction concerning the disposal of the body. I also understand that the Minister has issued a direction under the *Defence Force Regulations* 1952 which limits the circumstances where a commissioned officer can issue a direction concerning the disposal of a body to where there is armed conflict within Australia, or where the death occurs outside Australia, including on a ship at sea outside Australian coastal waters. In these circumstances the ADF Liaison Officer will advise my office as soon as practicable after such a direction has been issued.

The ADF Liaison Officer and role

The ADF Liaison Officer will be the person occupying from time to time the position of Head Defence Personnel Executive, or delegate.

The ADF Liaison Officer will be provided with contact details for the State Coroner's Office and the Victorian Institute of Forensic Medicine.

¹ The role of the ADF Liaison Officer is further discussed in this protocol under the sub-heading "The ADF Liaison Officer and role"

I understand that, for the purpose of the Coroner's investigation, the ADF Liaison Officer will deal with issues such as, but not limited to: coordinating information requests; requests to de-classify information; assistance with requests to the Minister to release information; publicity; decision-making processes; and secondment of ADF personnel to aid in an investigation.

In addition, as mentioned elsewhere in this protocol, the ADF Liaison Officer has the role to inform the Coroner when there has been a decision to oust the jurisdiction of the Coroner in relation to a particular death and notify the Coroners in respective jurisdictions where the place of ordinary residence applies or the body of the deceased ADF member arrives.

A Military Inquiry

Even if the ADF decides to hold a Military Inquiry, a Victorian Coroner is not precluded from conducting his/her own inquiries and investigating the death. A Coroner retains the discretion whether to include any findings made as a result of a Military Inquiry into his/her final report.

It is also understood that where the ADF has conducted a Military Inquiry into the circumstances of a death, it will provide such report to the Coroner as has been publicly released to assist the Coroner in the investigation.

Death occurring outside Australia

I understand that where a death occurs outside Australia, other than on board a ship, usual practice is that as part of operational orders, every ADF mortuary plan will include contract mortuary services to repatriate the remains to Australia.

I understand that in the event that an ADF member dies outside of Australia (where the circumstances of the death indicate that the death may be reportable to a State or Territory Coroner), the ADF Liaison Officer will notify both the Coroner of the State or Territory that is receiving the body of the deceased ADF member and the Coroner of the deceased member's last place of residence. If this occurs, and either of these options applies to Victoria, then the Victorian State Coroner will consult with the head of the other Coronal jurisdiction and the ADF Liaison Officer will be informed as to which Coroner's office will accept jurisdiction to conduct the investigation. The ADF may raise matters for consideration by the Coroners in this process.

I understand that the ADF may ask that the State Coroner's Office undertake an investigation or inquest where it is necessary to provide documentation certifying the death of an ADF member, a Defence civilian or accompanying member that has occurred outside Australia, to foreign authorities, for customs, quarantine or transport purposes.

Safety issues and the Coroner's investigation

I understand that if a death occurs on Commonwealth land or premises where the Commanding Officer believes there is a danger to persons, he/she may temporarily restrict access to a site, and secure any weapons, unexploded ordnance or dangerous items. In these circumstances the Base Liaison Officer will advise my office that such

action has been taken and provide the investigating Coroner with assistance at the site and during the investigation. By way of example, the Coroner's investigation may include (but is not limited to) taking measurements, photographs or obtaining evidence from witnesses.

It is also understood that where the ADF is aware that a body may have been contaminated by any chemical, biological or radiological material, it will inform the Coroner that it believes such contamination has occurred.

Notification as an interested Party to an inquest and applications for suppression

If requested by the ADF Liaison Officer, my office will ensure that the ADF will be notified of an inquest into the death of an ADF Member. Subject to *Coroners Act 1985* the ADF may be entitled, on application to the investigating Coroner, to appear as a sufficiently interested Party at any such inquest. If determined to be a Party with sufficient interest, the ADF will be usually entitled to a copy of the Coroner's Brief of Evidence before the inquest. In most circumstances, the ADF will also be entitled to a copy of the investigating Coroner's finding.

At the inquest, under the *Coroners Act 1985*, if the ADF is determined by a Coroner to be a sufficiently interested Party it may seek suppression orders. It may also seek orders in relation to information having Security implications. It is noted that the ADF may also seek to rely on the *National Security Information (Criminal and Civil Proceedings) Act 2004* in support of any application made on Security grounds.

Access to post-mortem report by ADF

In the event that an investigating Coroner considers that the ADF is an interested Party on application by the ADF Liaison Officer, he/she may provide the ADF with a copy of the post-mortem report.

Confidentiality of information

Where in connection with this protocol, Confidential information is provided to another Party the receiving Party shall not disclose the information to a third Party without the prior consent of the providing Party except where disclosure of the information is required by law or statutory duties, or by Parliament.

A major incident

I understand that, in the event of a major incident involving deaths of a large number of Defence personnel, the ADF Liaison Officer and the State Coroner's Office will consult regarding the most appropriate arrangements concerning the provision of resources for responding to the incident.

Review of this protocol

In the event that the ADF considers that aspects of this protocol need revision then it should write to the State Coroner setting out the issues. These issues may then be considered by the State Coroner who will decide as to whether or not the protocol requires amendment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Graeme Johnstone', written in a cursive style.

Graeme Johnstone
State Coroner

ATTACHMENT A

PROTOCOL FOR DEFENCE/CORONIAL RELATIONSHIP

"Service" means any activity involving an ADF member on duty, whether in Australia or overseas.

"In the course of a member's Service" includes circumstances where a death arises that are incidental to or have a connection with the member's Service, such as suicide or drug overdose.

"Confidential information" means information of a Party that:

- is by its nature Confidential;
- which the relevant Party identifies as Confidential at the time of the disclosure to the other Party; or
- the Party knows or ought to know is Confidential,

but does not include information which:

- is or becomes public knowledge other than by breach of the protocol;
- is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party; or
- has been independently developed or acquired by the receiving Party.



DIRECTION PURSUANT TO DEFENCE FORCE REGULATIONS 1952, REG 27

MINISTER'S DIRECTION

I, Mal Brough, Minister Assisting the Minister for Defence, acting under regulation 27 of the Defence Force Regulations, direct that a commissioned officer of the Australian Defence Force may only give directions for the disposal of a body of a member of the Defence Force who died while on service so as to exclude reference to a State or Territory Coroner in such circumstances where –

- a. the death occurred during a period of armed conflict within Australia, or
- b. the death occurred outside Australia, including on a ship at sea in waters outside Australian coastal waters.

Where a commissioned officer gives a direction for disposal of a body, the direction shall:

- a. be made in writing and signed by the commissioned officer concerned, and
- b. be issued after consideration of whether it is possible or appropriate to comply with applicable State or Territory law relating to coronial inquiries.

Original signed

MAL BROUGH

Minister Assisting the Minister for Defence

Dated...5/5...2004