



Australian Government
Department of Defence
Coordination & Public Affairs

**Ministerial and
Executive Support**

SRA 30/2004
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2 December 2004

Dr Kathleen Dermody
Committee Secretary
Senate Foreign Affairs, Defence and Trade
References Committee
Parliament House
CANBERRA ACT 2600



Dear Dr Dermody

Please find attached responses to the 14 questions that arose from the 5 August 2004 hearing on the *Inquiry into the Effectiveness of Australia's Military Justice System*.

You will note that, in response to questions 4 and 5, we have committed to provide the requested documents to the committee but strictly in confidence as they contain personal and sensitive information. Those will be provided to you separately by the Chief of Staff, Australian Defence Headquarters.

The Minister for Defence has determined that the McIvor Report (requested by Senator Hutchins under Question 7) is not approved for release. The report contains sensitive personal details of a large number of RAAF personnel, including allegations that were subsequently determined by the Investigating Officer to be unsubstantiated, with no flow-on adverse administrative consequences.

By way of background, Investigating Officer inquiries are required, under Regulation 72 of the *Defence (Inquiry) Regulations 1985*, not to be conducted in public. This requirement facilitates their fact-finding purpose and encourages persons appearing before an Investigating Officer to be open and frank. The non-public nature of Investigating Officer inquiries supports the non-disclosure of relevant reports or documentation. It is important to ensure that the reputations of the complainants and respondents are maintained.

Yours sincerely

Alison West
A/Director Statutory Reporting and Accountability
Coordination and Public Affairs Division

Attachment:

A. Responses to questions from the 5 August 2004 hearing

Enclosures:

1. Report of the review of military police investigative capacity (Question 3 refers)
2. Course material for Investigating Officer training (Question 12 refers)
3. Defence Attitude Survey 2003 – Military Justice Supplement (Question 14 refers)

**SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE
INQUIRY INTO THE EFFECTIVENESS OF THE MILITARY JUSTICE SYSTEM**

QUESTIONS ON NOTICE 5 August 2004

Travel for Next of Kin

QUESTION 1

Senator McDonald

Hansard: page 23

How is the decision made on the level of travel assistance provided to next of kin following the death of a member?

RESPONSE

The family situation and circumstances surrounding the death of each member is unique. For instance, the death may be Defence related or due to natural causes. It could occur on operations overseas or in Australia. Perhaps most significantly, the composition, dynamics and relationships within each family vary for every ADF member.

In relation to travel for the next of kin to the place of an ADF member's death, the level of assistance is tailored according to the circumstances surrounding the death of each ADF member and is informed by advice provided by the next of kin, unit Commanders, chaplains, police, social workers and other health professionals. In the event of a death overseas, further advice may be obtained from the relevant Australian Embassy, Department of Foreign Affairs and Trade, foreign governments and allied military forces.

The level of assistance is determined and coordinated by the relevant Service Headquarters. Additional support, such as psychologist, chaplain and social worker support is included where appropriate. These arrangements enable the Services to provide a comprehensive package of assistance for each family that is individually tailored to address the unique circumstances surrounding the death of each member.

Legislative Amendments

QUESTION 2

Senator Johnston

Hansard: page 25

What is the status of pending legislative changes relating to the Director of Military Prosecutions and the Chief Judge Advocate?

RESPONSE

Legislative proposals, including provisions to create a statutory position of Director of Military Prosecutions and to vary the terms and conditions of appointment of the Chief Judge Advocate, have category 'A' status for the Spring 2004 Parliamentary sittings. The proposals were also included in the Government's legislation program for the Autumn 2004 and the Winter 2004 sittings. So far, the proposals have not progressed to the draft Bill stage.

Review of the Military Police Investigative Capacity

QUESTION 3

Senator Hutchins

Hansard: page 28

Please provide a copy of the review of the military policy investigative capacity.

RESPONSE

The report of the review has been provided to the committee.

Posting Preferences – Ms Munday

QUESTION 4

Senator Hutchins

Hansard: page 31 and 32

Please provide copies of correspondence from Ms Munday requesting to remain on HMAS *Westralia*.

RESPONSE

Copies of Ms Munday's requests to remain in HMAS *Westralia* will be forwarded to the Committee under separate correspondence as her requests include other personal information which should not be placed in the public domain. Relevant passages have been reproduced below; these passages are also included in the Navy attachment to the Defence Closing Submission.

13 July 1998 - Advised DSCM via Posting Preference Form PE42 her first choice for sea posting was to WA based replenishment vessel, ie *HMAS Westralia*

3 August 1998 - Advised DSCM in writing on PE42 Form - "*I am currently onboard HMAS Westralia and would like to remain on it for as long as possible*"

16 October 1998 - Minute to DSCM – "*I am foregoing my shore time in a hope to stay onboard HMAS Westralia.....As I was on Westralia when the fire took place onboard, I would like to remain here to help fix her and take her back to sea*" "*I am not only happy to remain on Westralia but I believe it will benefit the ship and the Navy if I were to stay.*"

11 November 1998 - Minute to DSCM – "*I am still very keen on staying on WES to help with repairs.....*"

8 February 1999 - Minute to DSCM – "*I would like to remain on Westralia to assist in repairs.....it would be good therapy for myself after the fire onboard*"

Management of Personnel Post-Operational Service

QUESTION 5

Senator Johnston

Hansard: page 35

Please provide the paper prepared last year by a psychologist on the management of personnel returning from service in Her Majesty's Australian Ships in the Middle East.

RESPONSE

The paper has been provided to the committee. Sections concerning Naval operations and operational medicine issues have been excluded.

Post Traumatic Stress Disorder Statistics

QUESTION 6

Senator Johnston

Hansard: page 37

How many sailors from HMAS *Westralia* subsequently developed Post Traumatic Stress Disorder?

RESPONSE

Of the 94 surviving personnel who were onboard HMAS *Westralia* on 5 May 1998, a total of 23 were medically diagnosed with Post Traumatic Stress Disorder while serving in the RAN.

Aircraftsman Moore

QUESTION 7

Senator Hutchins

Hansard: page 42

Please provide a copy of the McIvor report.

RESPONSE

The report has not been approved for release because it contains sensitive personal details of a large number of RAAF personnel, including allegations that were subsequently determined by the Investigating Officer to be unsubstantiated, with no flow-on adverse administrative consequences.

Drug Testing

QUESTION 8

Senator Hutchins

Hansard: page 42

Please provide, by Service, the total number of positive drug tests since 2002 and what action resulted.

RESPONSE

Navy

The Navy cannot provide reliable data on the actual number of positive drug tests performed since May 2002. The Navy has collected data on the numbers of personnel found to have committed drug offences. Some of these were disclosed through drug tests, while others were convicted as a result of search, third part information and other non-tested means.

The Navy can now provide accurate data on the number of random drug tests, and consequent positive results since January 2004. Drug convictions can also result from non-random means, ie targeted tests and searches.

Data provided is based on personnel who have *committed* a drug offence since 17 May 2002:

Total number of personnel	121
Personnel discharged	42
Personnel retained	18
Action still pending	61

Army

Army figures were provided during the inquiry at Hansard pages 57 and 58.

Air Force

The table below relates to results of action taken under the provisions of DI(G) PERS 15-2, Involvement by Members of the Australian Defence Force with Illegal Drugs. Since January 2002, 65 Air Force people have had action taken against them for involvement in illicit drug use under this policy. (Figures are accurate as at 23 July 2004)

Results	Total
Discharged	20
Formal Warnings	29
Discharge due	1
Case outstanding	13
Action ceased/rescinded	2
Total	65

The table below relates to results of action taken under the provisions of DI(AF) PERS 4-26, Illicit Drug Testing in Air Force, since it came into force in February 2004. As at 31 July 2004, 419 tests have been conducted with two positive results.

Result	Total
Discharged	1
Formal Warnings	1
Total	2

Legal Representation

QUESTION 9

Senator Hogg

Hansard: page 69

Did legal officers represent more than one potentially affected person during the Board of Inquiry into the disappearance of LS Gurr?

RESPONSE

Yes. A Navy Legal Officer represented four potentially affected persons and an Army Legal Officer represented three persons. An assessment was undertaken at the commencement of the Board of Inquiry by the Legal Officers concerned as to whether there was any potential conflict of interest and, upon that assessment, the potentially affected persons were then allocated to either one of the two lawyers. No conflict of interest arose during the inquiry.

Vetting of Cadet Staff

QUESTION 10

Senator Hutchins

Hansard: page 76

Does the ADF have a vetting system for Cadet Staff similar to State legislation for people working with minors?

RESPONSE

Yes.

Investigations in ADF Cadets

QUESTION 11

Senator Hutchins

Hansard: page 79-80

Do Cadet Staff conduct investigations if so what procedures are in place?

RESPONSE

Australian Navy Cadets (ANC)

ANC staff may informally 'look into' complaints or breaches of the code of conduct, however, formal investigations are carried out by the Permanent Navy at the discretion of the Regional Local Naval Authority.

The ANC manage their own affairs under the supervision of the Permanent Navy. In general terms complaints or breaches of the code of conduct are looked into and dealt with at the lowest appropriate level, usually unit level. However, more serious matters may be formally investigated by the permanent Navy Representative, the Local Naval Authority, who may also refer the matter to the police.

Australian Army Cadets (AAC)

Senior officers of cadets (normally from regional or national headquarters) can conduct investigations if they have had training and prior experience and at least 10 years in the Cadet organisation.

All reports/investigations are conducted in accordance with extant Defence policy and procedures and are reported back to the Commander AAC within a set time frame.

Australian Air Force Cadets (AAFC)

No Cadets Corps staff conduct formal investigations. When an incident occurs, AAFC staff may conduct initial inquiries to ascertain the facts of the matter, and to determine whether the issue can be dealt with locally. More serious matters are dealt with through a formal process by trained RAAF personnel. If it is a criminal matter, it is immediately handed over to legal authorities

Investigating Officer Training**QUESTION 12**

Senator Hogg

Hansard: page 87

Please provide the course material for the investigating officer training instigated by the Inspector General of the ADF.

RESPONSE

The course timetable and lecture outline have been provided to the committee.

Inspector General Australian Defence Force Cases**QUESTION 13**

Senator Hogg

Hansard: page 97

Please provide an indication of how long the 105 cases on the books of Inspector General Australian Defence Force (IGADF) have been running and whether they are live or old.

RESPONSE

Using the first incident leading to the complaint to IGADF as the point of reference, there are 11 files which are in the category of less than one year old, 55 cases which are in the category of 1-3 years old, 19 files which are in the category of 3-5 years old and 20 cases which are in the category of over 5 years old.

The reference to "live" cases was intended simply to make a distinction between those matters raised in submissions in respect of which the military justice process had in effect ended, and those for which the process was still on going, for the purposes of allocating priorities within the IGADF office. Of the cases that are in the category of over 5 years old, one is still live; of those cases which are in the category of 3-5 years, eight are live; of those cases which are in the category of 1-3 years, two are still live.

ADF Attitude Survey**QUESTION 14**

Senator Johnston

Hansard: page 100

Please provide the results of the ADF attitude survey as it relates to the military justice system.

RESPONSE

A copy of the relevant results have been provided to the committee.