



Australian Government

Department of Defence

Coordination & Public Affairs

Ministerial and  
Executive Support

118  
ASMES /2004

5 November 2004

Ms Jessica Shaw  
Senate Foreign Affairs, Defence and Trade  
References Committee  
Parliament House  
CANBERRA ACT 2600



Dear Ms Shaw

Approved responses to questions arising from the 10 August 2004 hearings on the *Inquiry into the Effectiveness of Australia's Military Justice System* are attached.

Please note that Attachments classified as Restricted or Staff-in-Confidence should not be placed on the public record.

If you have any questions, please contact Jennifer Engle on (02) 6265 7176.

Yours sincerely

Tony Corcoran  
Assistant Secretary  
Ministerial and Executive Support

Attachments:

1. Chapter 1 from the Defence Investigation Technical Instructions
2. Copy of Navy Investigative Service Quality Manual
3. List of policy documents relating to military police investigations
4. Copy Special Investigation Branch Standing Orders
5. Military Police Technical Instructions
6. Copy of Section 4 of the RAAF Police Manual
7. Copy of DI(G) PERS 25-3
8. Copy of DI(G) PERS 25-4
9. Copy of Annex E to the Administrative Inquiries Manual

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

**QUESTIONS ON NOTICE 10 August 2004**

**Investigation Procedures**

**QUESTION 1**

Senator Johnston

Hansard: page 8

Please provide the manuals or guidelines used by the military police for the conduct of disciplinary investigations.

**RESPONSE**

The Defence Investigation Technical Instructions have been issued to the three Services and the Inspector General Division as Defence Investigative Authorities. They were then issued by Provost Marshals, in interim form, allowing all Defence Investigative Authorities to validate them, with a view to issuing the final product in January 2005. That validation includes introducing the contents into training packages at the Defence Police Training Centre.

Note that the *Defence Force Discipline Act 1992* covers the conduct of all military police investigations. Section 101 details all requirements for gathering of evidence for *Defence Force Discipline Act 1992* matters.

Chapter 1 from the Defence Investigation Technical Instructions explains the background. (*Attachment 1*)

**Navy**

A copy of the Navy Investigative Service Quality Manual is attached. (*Attachment 2*).

**Army**

While Defence Investigation Technical Instructions is the new authoritative document, military police investigations are also conducted in accordance with a very wide range of Army and defence instructions and regulations. *Attachment 3* provides a list of all policy documents that relate to investigations conducted by military police.

At *Attachment 4* are the extant instructions for the conduct of military police investigations. Note that with the exception of Special Investigation Branch Standing Orders, they will all be superseded by the Defence Investigation Technical Instructions.

Other list of instructions that investigators use are:

- Military Police Technical Instructions (*Attachment 5*)
- Course Training Notes 1.3
- Provost Marshal – Army Bulletins
- Chief of Army and Deputy Chief of Army Directives
- *Defence Force Discipline Act 1992*

**Air Force**

Section 4 of the RAAF Police Manual (*Attachment 6*) details the extant guidelines for RAAF Service Police.

## **Redress of Grievance Statistics**

### **QUESTION 2**

Senator Hutchins

Hansard: page 8

How many redresses of grievance have been lodged by members while on operations in the last five years?

### **RESPONSE**

The information requested is not readily available. It could only be derived from a physical check of almost two thousand files, held at the Complaint Resolution Agency and in a large number of ADF units, ships and establishments. Defence is not able to devote the considerable time and resources required to manually collate the requested data.

## **Public Duty and Private interest**

### **QUESTION 3**

Senator Johnston

Hansard: page 22

Please provide the Defence Instructions with respect to public duty and private interest.

### **RESPONSE**

The following documents are attached. (*Attachments 7 and 8*):

- DI(G) PERS 25-3 – Disclosure of Interests of Members of the Australian Defence Force
- DI(G) PERS 25-4 - Notification of Post Separation Employment

## **Level of Inquiries**

### **QUESTION 4**

Senator Hutchins

Hansard Page 22

Why were Boards of Inquiry not appointed for the following cases:

- Allegations of serious systemic problems in training school (*HMAS Cerberus* during the period 2000-2002);
- Suicide of Damian Hames at Holsworthy in 2001;
- Allegations of serious misconduct at *TS Hawksbury* from September 2002-January 2003 (involving sexual misconduct, harassment and bullying);
- Moore (significant drug allegations);
- Satatas (suicide);
- Palmer (suicide);
- Andrew (P21 attempted suicide);
- Amos (serious systemic breakdown in a school including all other separate but related allegations of victimisation, harassment, bullying etc at Singleton School of Infantry since Amos and up to June 2004);

- Williams (suicide);
- Tibble (suspension for serious allegations and suicide);
- P25 Group Captain Behm (serious systemic breakdown);
- McNess (P32 multiple deaths);
- Knight (P18 suicide); and
- Liddell (P13 suicide).

## **RESPONSE**

Annex E to the Administrative Inquiries Manual (*Attachment 9*) is only for guidance and does not claim to prescribe the required type of inquiry. The ability to exercise discretion is essential to ensure the most suitable inquiry for the particular situation in question is undertaken. This manual was first issued May 2000.

The purpose of any internal inquiry is to serve the organisational need of determining what happened, why it happened and how to rectify or prevent the same thing happening in the future. It should also be noted that if the Appointing Officer believes the Investigating Officer was unable to provide a comprehensive report, or if the Investigating Officer identifies issues outside the Terms of Reference, there is no bar to ordering a further inquiry including a Board of Inquiry.

### **Navy**

#### ***TS Hawkesbury***

A female Army colonel was appointed by the Chief of Staff Navy Systems Command to conduct the investigation. She was appointed because she was considered very suitable for the task, particularly noting her previous experience in conducting investigations, her background as a Nursing Officer, the sensitive nature of some of the issues involved and her proven tact and communications skills and her seniority. It was considered she would be perceived as relatively non-threatening by the children being interviewed, while possessing the rank and seniority to conduct the inquiry with the appropriate level of authority. It should be noted that members of *TS Hawkesbury* are not military personnel and are generally not subject to the provisions of the Defence Inquiry Regulations.

In view of this combination of factors, the colonel was considered to be very suitably qualified to conduct this particular inquiry, not only to investigate the issues involved, but also to assist with the healing of the *TS Hawkesbury* community.

#### ***HMAS Cerberus***

The Commander Navy Systems Command, on legal advice and after consultation with the Deputy Chief of Navy, appointed an experienced Navy captain (accompanied by an experienced Navy Reserve Legal Officer) to investigate allegations of misconduct and mismanagement at the Recruit Training School. At the time, and subsequently, this was considered an appropriate level of investigation given the nature of the complaints.

#### ***Ex-Leading Seaman Liddell***

An investigation was not conducted. Ex-Leading Seaman Liddell was not a member of the ADF when he committed suicide. He was discharged Medically Unfit for Naval Service on 28 May 2000 and passed away on 24 November 2003.

### **Army**

The suicide referred to in Mrs Knight's submission (Private Gutteridge) occurred in 1997 and the suicide of Private Palmer was in 1999. No administrative inquiry was conducted into these deaths as this was not the practice at the time. The suicides of Private Hames, Gunner Satatas, and Private

Williams all occurred when the soldier was not on duty. There was an Investigating Officer Inquiry conducted into each of these deaths in order to determine the circumstances of each case and to identify if there were any issues that the Army needed to address to prevent a recurrence. Each inquiry was a thorough and detailed investigation that resulted in a high quality report in each case. The outcomes of each of these reports have not been questioned. The Army does not believe that, in these cases, a Board of Inquiry would have produced better outcomes.

It is generally not Army practice to conduct detailed investigation of non-fatal suicidal behavior (such as that mentioned by Ms Andrew in her submission) as the needs of the soldier involved are addressed through medical and psychological treatment. In the case of Ms Andrew's son, there was no inquiry into his suicide.

## **Air Force**

### ***Aircraftsman C Moore***

The drug allegations were referred to the civilian police for investigation. There was no accidental death, nor was there judged to be a 'serious systemic breakdown of Service discipline or morale'. Commander Combat Support Group appointed an Investigating Officer (Squadron Leader G Mc Ivor) to inquire into the involvement with illegal drugs in Air Field Defence Wing arising from the voluntary self referral of 22 Air Field Defence Wing members in September 2002.

### ***Cadet Sergeant Tibble***

Cadet Sergeant Tibble was a member of the Air Force Cadets, not the Air Force. Consequently, she was not covered by the Administrative Inquiries Manual. The inquiry was in line with extant Cadet policy. The suicide did not occur on service property nor while in the care of the Air Force Cadets. The suicide was properly investigated by the civilian authorities.

### ***Group Captain Behm***

Group Captain Behm's submission was based on a concern that he was not afforded the appropriate legal support that he believed he required to support the conduct of his investigation. The issue was a matter between the Appointing Authority, Commander Combat Support Group and Group Captain Behm, and did not involve a 'serious systemic breakdown of Service discipline or morale'.

### ***Flight Lieutenant McNess***

The current Administrative Inquiries Manual was not extant at the time of the McNess accident. At that time, there was no mandatory requirement for a Board of Inquiry. That decision was left to the responsible commander who, in the case of Flight Lieutenant McNess, was the Air Commander Australia. The decision not to hold a Board of Inquiry was agreed at the time but later proved to be inappropriate. However, an accident investigation team was formed by Air Commander Australia for the purpose of investigating the accident.