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The Secretary  
Senate Foreign Affairs, Defence and Trade References Committee  
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Parliament House  
CANBERRA ACT 2600

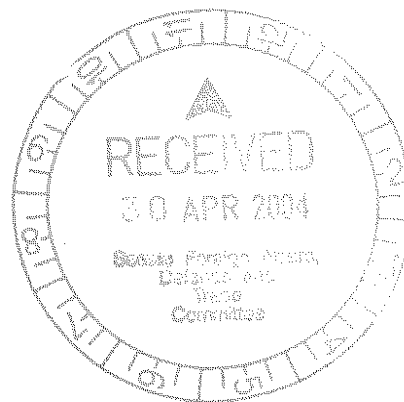
**RESPONSES TO QUESTIONS ON NOTICE FROM 1 MAR 04 SENATE INQUIRY  
HEARING INTO THE EFFECTIVENESS OF THE MILITARY JUSTICE SYSTEM**

1. Attached please find Defence responses to questions taken on notice during the 1 March 2004 public hearing of the Senate References Committee inquiry into the effectiveness of the Military Justice System.
2. In accordance with Departmental practice the responses have been cleared by the Minister Assisting the Minister for Defence.

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Military Justice Inquiry

Tel: 02 6265 4145  
R8-2-50

29 April 2004



**Rate of Prosecutions in Army Compared to the other Services**

**QUESTION 1**

**ACTION AREA: ST in consultation with Service Chiefs**

Senator Johnston

Hansard: page 36

In relation to the data on page 101 of the Defence Submission, could you explain to the Committee the higher rate of prosecutions in Army as compared to the other Services?

**RESPONSE**

Drawing any valid conclusions from a direct comparison of the overall rates of prosecutions between the Services is problematic. The larger Army representation in the discipline statistics is likely to be a product of its relative size in relation to the other two Services. Averaged over the five-year period of the data the Army comprised 58.6 percent, Air Force 21.8 percent and Navy 19.6 percent of the total number of full-time and reserve personnel in the ADF.

In addition, the environments (including living environments) in which the Services must train and fight require different organisational structures and fighting methods which, in turn, dictate different styles of discipline and administration of the *Defence Force Discipline Act 1982 (DFDA)*.

There may also be variations between different Corps/Groups within each Service based on different operational roles and operating environments which provide the context for application of the DFDA.

**Air Force Inquiry Report into the Suspension of CSGT Eleanore Tibble**

**QUESTION 2**

**ACTION AREA: CAF in consultation with DGTDLs**

Senator Evans

Hansard: page 47

Can you provide the Committee with a copy of the Air Force inquiry report into the death of Eleanore Tibble?

**RESPONSE**

Yes. A copy of the report, with privacy deletions is attached.

**Control of Volunteer Staff in the Cadets**

**QUESTION 3**

**ACTION AREA: DGCADETS in consultation with Service Chiefs**

Senator Johnston

Hansard: page 51-52

Could you advise the Committee on whether there is scope to improve the level of control by the Service Chiefs over volunteer staff in the Cadets?

**RESPONSE**

The degree of control over Cadet staff could be increased by bringing the Cadet organisations under the military justice system. However, the system is designed to operate in support of the ADF's conduct of, and training for, warlike operations. This system would be inappropriate for a community-based Cadet organisation staffed with volunteers.

As indicated below a number of initiatives to improve the management of the Cadet organisations are already underway.

The adult volunteer staff who are involved in the three Cadet organisations are a representative cross-section of the Australian community. They are drawn from a wide variety of civilian professions and volunteer their time to the Cadet organisations for a number of reasons. Some are parents who want to be actively involved in their teenager's activities, some have been recruited into the Cadet organisations for their valuable skills, some have been cadets themselves who want to give something back to the Cadets, and, for some staff, it represents their chosen form of being able to give back to the Australian community through voluntary work.

The adult volunteer staff are not members of the ADF nor are they subject to the *Defence Force Discipline Act 1982*. In accordance with the enacting legislation for Cadets in the *Defence Act 1903*, the *Naval Defence Act 1910* and the *Air Force Act 1923* and the subservient *Cadet Force Regulations 1977*, they are administered by the Service Chiefs. This administration is effected through the respective Cadet policy manuals. Volunteer Cadet staff are subject to the administrative processes defined in these manuals.

*Cadets: The Future*, a review on the Australian Services Cadet Scheme which was released in 2000, recommended that the Government reinvigorate the levels of support provided to this community-based, Defence-sponsored organisation. It recommended that a National Commander be appointed for each Cadet organisation and that a Directorate of Defence Force Cadets be established to implement a Cadet enhancement program. Since 2000, Defence has worked to significantly improve the levels of support provided to the Cadets. A substantial amount of work has gone into the creation of the right environment for the volunteer staff to be able to conduct youth development activities in a military-like setting. Defence is providing policy, awareness training and tools to clearly establish the standards that are expected of all Cadet participants, both staff and Cadets alike.

The Australian Defence Force Cadets Behaviour Policy was developed in 2003 and the implementation phase commenced in February 2004. This policy provides a framework for behaviour within each of the Cadet organisations, including tools for managing unacceptable behaviour and formal codes of behaviour for both Cadets and Cadet staff. All Cadets and Cadet staff will be required to read and sign these codes of behaviour indicating that they are aware of the standards of behaviour expected.

All three Cadet organisations are implementing Cadet staff education programs aimed not only at educating Cadet staff on the important issue of working with adolescents from 12.5 to 20 years of age, but also outlining the legal obligations and requirements for Cadet staff. Training modules have been developed in a range of subject areas including equity and diversity, legal principles and implications for Cadet members, psychology of adolescent behaviour, management of behaviour modification, and management of due process.

**Remuneration of Volunteer Staff in the Cadets**

**QUESTION 4**

**ACTION AREA: DGCADETS in consultation with Service Chiefs**

Senator Evans

Hansard: page 52

How many Cadet staff are remunerated?

**RESPONSE**

All appointed staff in the three Cadet organisations are entitled to remuneration according to rank and attendance of up to a combined total of 28 full days and 40 half days per annum. The following table details the number of paid staff members of each Cadet service for the period 2002-03.

<b>Air Force</b>	<b>Army</b>	<b>Navy</b>	<b>Total</b>
1,008	1,234	435	2,677

**Nature of Prosecutions**

**QUESTION 5**

**ACTION AREA: DGTDLs in consultation with IGADF and DMP**

Senator Johnston

Hansard: page 65

In relation to the data on page 101 of the Defence Submission, could you advise the Committee on the nature of the offences and the outcomes of the prosecutions under General and Restricted Courts Martial and Defence Force Magistrates?

**RESPONSE**

The data referred to summarises information produced by the Judge Advocate General in his annual reports to Parliament as required by the *Defence Force Discipline Act 1982* (DFDA). Extracts of the reports for 1998 to 2002 that provide

the detail of the offences referred to General and Restricted Courts Martial and Defence Force Magistrates are attached.

The statistics do not include a word description of the offences but refer to the section of the DFDA that creates the offence. To assist the Committee in determining the nature of the offences, two schedules that provide the titles of the offences are also attached. The current schedule applies to the data from the 2002 reports while the earlier schedule relates to pre-2002 reports.

The offence provisions illustrated in the Judge Advocate General's reports do not detail offences relating specifically to operations against the enemy (sections 15-22) as no charges were laid under these sections in the period covered by the reports.

Similarly, offences against section 61 of the DFDA are not specifically detailed. Section 61 imports into the DFDA offences against Commonwealth law and the criminal law as applied in the Jervis Bay Territory. In practice, a significant number of the charges preferred against section 61 relate to fraudulent crimes and specific forms of assault, such as indecent assault.

**Handling of Defence Responses to Evidence**

**QUESTION 6**

**ACTION AREA: HST**

Senator Evans

Hansard: page 70

Could Defence advise the Committee on how it wishes to handle responses to other witnesses' evidence?

**RESPONSE**

Yes. The Chief of the Defence Force wrote to the Chair of the Committee on 5 March 2004 suggesting a methodology.

**Composition of the Defence Taskforce**

**QUESTION 7**

**ACTION AREA: HST**

Senator Evans

Hansard: page 69-70

Can Defence provide the Committee with the composition of the Defence Taskforce and the resources devoted to its activities?

**RESPONSE**

On 3 December 2003, Chief of the Defence Force and the Secretary jointly directed AVM R.B. Treloar to comprehensively manage and coordinate, across the whole of Defence, support for the inquiry.

A Taskforce was formed and comprises one 2 Star officer, one 1 Star officer, one Colonel equivalent, two Lieutenant Colonel equivalents, a Naval Petty Officer and two APS officers at levels 5 and 6. Four of these members continue to pursue pre-assigned tasks.

Other personnel, including Service representatives, single-Service teams assisting the Taskforce, APS staff, a legal representative, a Chaplain and a Defence Community Organisation representative have also been made available to assist the Taskforce.

The Taskforce has funding of \$250,000 to cover all activities excluding salaries.

**Defence Legal Resources**

**QUESTION 8**

**ACTION AREA: DGTDLs in consultation with the Service Chiefs**

Senator Evans

Hansard: page 70

Can Defence provide the Committee with a breakdown of the legal resources available to Defence?

**RESPONSE**

There are 109 uniformed and 21 APS qualified lawyer positions in The Defence Legal Service spread around Australia and overseas to advise and provide training on all legal matters affecting Defence, including military justice matters.

In addition, Defence has access to the services of civilian legal practitioners such as those in the Australian Government Solicitor's office and private law firms.

The Services have Reserve legal officers who can be called upon as required, although their availability and period of service is subject to similar limitations as other Reservists.

**People Involved in the Military Justice System**

**QUESTION 9**

**ACTION AREA: DGTDLs in consultation with the Service Chiefs**

Senator Evans

Hansard: page 70

Can Defence provide the Committee with an overview of those involved with the military justice system to gain a sense of where they are, who they are, and the numbers that exist?

**RESPONSE**

The entire command chain from senior officers down to non-commissioned officers is involved in administering the military justice system.

The number of Defence legal officer positions has been provided in response to question 8.

The Canberra legal office has eight uniformed and three APS lawyers whose main roles are policy development, advice and training on the military justice system. Also

in Canberra are the Chief Judge Advocate (a lawyer) and the Registrar of Military Justice (non-lawyer).

Outside the Canberra head office, the involvement of legal officers in military justice is very dependent upon the type of position and the current matters being handled. For instance, the legal officer at a recruit training unit like the Headquarters Army Recruit Training Centre at Kapooka will spend a significant amount of time on military justice matters. In contrast, the legal officer at a unit like the Australian Defence Force Warfare Centre would not usually deal with many military justice matters. However, such officers would be available to provide advice to personnel who, for example, may be subject to or assisting another member with, a Defence Force Discipline Act charge, lodging a redress of grievance or preparing a Notice to Show Cause in response to adverse administrative action.

The Inspector General - ADF has a staff of nine including two dedicated legal officer and three Service police positions.

The Office of the Director Military Prosecutions has eight established prosecution positions (which includes the part-time Reservist Director), a Service police liaison officer and two paralegal positions.

Across the three Services, there are 673 permanent ADF positions involved in police duties. The Army Reserve has another 226 police positions (These figures include those involved in management and instructional duties but excludes RAAF Military Working Dog Handlers whose primary role is security). The majority of these personnel are not employed full time in conducting investigations as they have other more operationally-focussed primary roles. However, those employed in Navy ships and shore establishments, Army barracks, and Air Force bases do often become involved, as required, in investigations leading to DFDA charges. The proportion of time spent on DFDA tasks will also vary depending on the nature of activities being conducted at the establishment. The more serious cases will be referred to either the civilian police or dedicated Service investigatory arms. These investigatory arms comprise 144 of the total permanent positions and another 20 in the Army Reserve.

The Complaints Resolution Agency has five full-time and nine part-time military staff and eight full-time and one part-time civilian positions. This is equivalent to a total of 19 full-time personnel who manage complaint resolution for both military and civilian members of Defence.

**Handling of Questions on Notice**

**QUESTION 10**

**ACTION AREA: FASMSPA**

Senator Evans

Hansard: page 70

Is Defence required to have answers to questions taken on notice cleared by the Minister?

**RESPONSE**

Yes, in accordance with longstanding departmental practice.