

## Chapter 7

### The reporting of wrongdoing in the ADF

7.1 There are many avenues available to a member of the ADF to register a complaint including the redress of grievance system, the divisional system, chaplains, equity officers, the equity 'hotline' and the Defence Force Ombudsman. Yet there is no doubt that some members remain unwilling to use the system. The committee draws particular attention to the number of cases mentioned in the previous chapter where the parents of ADF members resorted to taking up their son or daughter's concerns with command or even with the Minister. As indicated in the previous chapter, such action is not taken lightly by the parents of service personnel. That it needs to and does happen and that the results have included the deaths of soldiers clearly is a serious indictment of the reporting system or the oversight by senior Defence personnel or both.

7.2 The committee has considered in detail the conditions at SOI, Singleton, against the backdrop of the 3RAR investigations, to highlight the potential for abuse to go unreported and, apparently, undetected. Evidence received by the committee suggests that this problem of unreported bullying and harassment may be found in different parts of the ADF.<sup>1</sup>

7.3 The failure to expose such abuse means that the administrative system stumbles at its most elementary stage—the reporting of wrongdoing. It does not provide a reporting structure that encourages the disclosure of impropriety or poor work practices which means that unacceptable behaviour is allowed to take root.

7.4 Witnesses appearing before this committee who have been the victims of abuse or are relatives of people who have suffered ill-treatment recount an all too familiar story about the unwillingness to report wrongdoing. The very fact that the two young soldiers (Amos and Williams) at Singleton were not prepared to pursue their right to make a complaint and that impropriety came to light through the determined efforts of their parents speaks volumes about the inadequacies of the administrative system at Singleton.

7.5 The committee is concerned that evidence it has received about the failure to disclose poor or dangerous work practices or unacceptable behaviour appears to affect many aspects of life in the ADF. The findings of a number of administrative inquiries have identified behaviour that could potentially endanger members' lives but which

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1 Ms Avril Andrew, *Submission P21*; Confidential *Submission C19*; Confidential *Submission C28*.

had gone unreported until an investigation following an incident exposed a history of negligence, unsafe work practices, or other risky or improper behaviour.<sup>2</sup>

7.6 The committee has considered the evidence presented to it during the inquiry and the findings of previous inquiries into abusive and intimidating behaviour in the ADF over recent years. Also, on 11 and 12 November 2004, a number of reports appeared in the media about Australian soldiers dressed up as members of the Klu Klux Klan and other related allegations of racial abuse. The committee wrote to the Minister for Defence inviting him to make a written submission on the facts and circumstances surrounding this incident at Lavarack Barracks, or any similar type of activity, and on the steps taken to address the problem.<sup>3</sup>

7.7 The Minister declined the invitation on the grounds that the incident and related allegations of racial abuse were under investigation and the findings and decisions arising from them would not be finalised before 17 March 2005.<sup>4</sup> This was the date that the committee was expected to table its report.

7.8 During Estimates hearings on 31 May 2005, members of the Senate Foreign Affairs, Defence and Trade Legislation Committee asked for further information on the alleged offences at Lavarack Barracks. The CDF told the committee that the Chief of Army was concerned that there may have been 'procedural shortcomings in an investigation in 2003 and that the investigation might have lacked thoroughness'. The Chief of Army directed that a 'new and comprehensive' investigation be undertaken. The CDF explained that:

It has now been completed to determine the circumstances of the photograph and the subsequent actions taken by the chain of command. The final report has been cleared by the Defence Legal Service and submitted to the Deputy Chief of Army. He has considered the findings and recommendations of the final report. He has decided on a range of disciplinary and administrative actions against individuals who were in the unit at the time. The soldiers who were subjected to racial name-calling will receive an apology from the Army and will be offered counselling support. The Deputy Chief of Army is also recommending improvements to the preparation of investigation officers and a follow-up examination of the unit to determine if the unacceptable behaviour is still being practised. A directive will be developed to implement the Deputy Chief of Army's decisions and this formal action is being taken now to demonstrate Army's

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2 Apart from the abuses at SOI, other notable inquiries that exposed unsafe or dangerous practices involve those inquiring into the accident that led to the death of Jason Sturgess (poor vehicle maintenance), the incident that led to the death of Seaman Gurr (consuming alcohol against rules) and the F-111 (Fuel Tank) Deseal/Reseal and Spray Seal Programs. See Chapter 12.

3 Correspondence, the Chair, Senate Foreign Affairs, Defence and Trade References Committee to the Minister for Defence, 2 December 2004.

4 Correspondence, Senator the Hon Robert Hill to the Chair, Senate Foreign Affairs, Defence and Trade References Committee, 22 December 2004.

determination to eliminate discriminating behaviour and to support those who need the protection and support of their leaders.<sup>5</sup>

7.9 The committee notes that Army has taken steps to remedy the problem at Lavarack Barracks. It is concerned, however, that again an initial investigation into serious allegations of misconduct proved inadequate and that a second investigation was undertaken only after the alleged events had attracted widespread public attention. Furthermore, it took a second investigation to compensate for the failings of the first and to get Army to take decisive measures to correct the problem.

7.10 The committee understands that the ADF has taken steps to address the broader problems associated with reporting and preventing unacceptable conduct or work practices. These include initiatives such as the Fair Go Hotline, the handy 'seek help' card and the establishment of the Directorate of Personnel Operations to provide strategic direction and advice and to coordinate action with regard to sensitive personnel issues. Army has also developed a specific campaign for the safety and welfare of trainees which includes a code of conduct that governs the treatment of trainees and promotes the desire for all trainees to be successful in training.

7.11 More specifically in the case of Jeremy Williams, Lieutenant General Leahy acknowledged that organisational failures, unacceptable conduct and negative attitudes of staff and trainees towards other trainees contributed to a sense of despair and depression in Private Williams. He further acknowledged that the investigation revealed that there had been a failure to act on recommendations from a similar incident at the School of Infantry some years before. In his view, it 'became patently apparent that the Army needed to take action to tighten up and formalise mechanisms for tracking and ensuring that recommendations are acted on and followed through'. He stated:

We have created separate rehabilitation and transfer centres to improve the rehabilitation of our soldiers who are injured in training and to improve the support that soldiers who are unable to continue training receive. We have developed a new course for instructors to improve instructor performance and to enhance equity training for all instructors. We have put in place a system of external audits to allow soldiers to report anonymously on their treatment during training. We have increased staffing levels and the supervision of staff as well as reducing instructor-trainee ratios to better manage the welfare and performance of both instructors and trainees. We have taken administrative action against members in the School of Infantry chain of command who allowed unacceptable behaviour to go on and, so far, we have charged two noncommissioned officers under the Defence Force Discipline Act. One charge has been heard; another charge will be heard in April. I see both of these as a normal functioning of the military justice system.

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5 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Hansard*, 31 May 2005, p. 70.

We have expanded the medical and psychological support to all training establishments, including a full-time doctor and a full-time psychologist at the School of Infantry. We now formally advise all trainees on arrival of the range of support and counselling services available at their particular training school. We have established formal protocols to improve and streamline processes appropriate to Army circumstances in the case of suicide or accidental death during any military activity. To ease, in part, the pain of families involved, the Army has commenced the practice of providing an officer dedicated as the single point of contact for a deceased member's family should they desire this. That officer will explain the inquiry process to the family, carry forward any concerns they may have and fold these concerns into the inquiry terms of reference. As a conduit for communications, the officer's role is to provide regular updates to families on the progress of the inquiry and any action taken as a result of it.<sup>6</sup>

7.12 The Committee commends the actions taken by the ADF to remedy the deficiencies that the investigation into Private Williams' death so clearly identified. The committee is concerned, however, that certain behaviour associated with discrimination, bullying and harassment may recur in the ADF. This concern is heightened by evidence before the committee that shows ADF's slow response to incidents at SOI and Lavarack Barracks and further that initial investigations proved ineffective in having immediate and necessary corrective action taken.

7.13 The Committee believes that in order to minimise the likelihood of a recurrence, the ADF needs to have an effective mechanism that would encourage the early reporting of any concerns about improper conduct or poor work practices. Such a system would enable prompt and sure action to be taken to address and remove any form of abuse or inappropriate behaviour before it takes hold.

7.14 It now examines the main features of the reporting system to identify the obstacles holding people back from reporting wrongdoings. Further, the committee seeks to ascertain whether ADF members who have genuine grievances or are aware of inappropriate behaviour and wish to report their concerns are well served by the current system. The evidence is based on experiences that go beyond those at Singleton and reflect a wider picture of the ADF. They include the following matters:

- conflicts of interest in using the chain of command;
- the military culture and its influence on reporting wrongdoing;
- institutional blind spots;
- reprisals and the reporting of wrongdoing;
- members' awareness of and confidence in using the current avenues available for reporting wrongdoing; and
- avenues for reporting wrongdoing.

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6 *Committee Hansard*, 1 March 2004, p. 33.

## **Reasons for failing to report wrongdoing or failing to make a complaint**

7.15 One of the most frequently cited impediments to reporting a wrongdoing or making a complaint is the lack of trust and confidence in a system that seems riddled with conflicts of interest.

### ***Conflicts of interest in using chain of command***

7.16 As mentioned earlier, the ADF requires its members to seek to resolve a complaint at the lowest possible level through the normal command channels and administrative arrangements. Defence Instructions are clear on this matter:

Persons who wish to report suspected misconduct should normally raise these concerns through their chain of command or line management. Commanders and managers in Defence have a responsibility to develop and support a working environment in which staff have the confidence to make such reports.<sup>7</sup>

7.17 Although a long-accepted practice, this process of reporting a wrongdoing or lodging a complaint with a member's commanding officer is in itself a major drawback for some members seeking help. Mrs Madonna Palmer, whose son Damien committed suicide in August 1999 soon after he graduated from basic training, and who allegedly had been humiliated and demoralised because of his aboriginality, articulated this problem in the most effective manner:

I think there should be someone separate who these young kids can go to—not only Aboriginals; I mean anybody. It is too in-house; everybody knows everybody or they have been through training with somebody years ago and know their bosses. If you do have a problem you need to go to someone, even off base or somewhere where they can go separately that is not connected with Defence.<sup>8</sup>

7.18 From personal experience, Mr Neil Howard informed the committee that he had knowledge of the use of illegal substances in the ADF and explained that:

There were instances where the need arose to report an incident and subsequently discovered that the personnel to whom I would report was in fact the instigator of the incident.<sup>9</sup>

7.19 Mr David Down, who claims he was subjected to physical abuse while serving in the Navy, voiced similar concerns:

The reporting of incidents is through the chain of command, to people who are of similar rank and usually mates with the perpetrators and is not

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7 Defence Instructions (General), PERS 45–5, *Defence Whistleblower Scheme*. See also Defence Instructions (General), PERS 35–3, *Management and Reporting of Unacceptable Behaviour*, para. 43.

8 *Committee Hansard*, 1 March 2004, p. 92.

9 *Submission P54*, p. 1.

recorded adequately if at all. The navy's point of view is that if nobody saw, it did not happen.<sup>10</sup>

7.20 To the same effect, one witness felt he could not go to his OC with a complaint of bullying and harassment against the CO because his OC had a close relationship with the CO. After considering other options, he felt there was no one to turn to and that Defence Instructions offered no guidance. He recommended that they be rewritten to ensure that clear guidance is provided for situations where the CO or other high ranking officers are involved in the complaint.<sup>11</sup> Further, he believed that an independent civilian investigation agency with a helpdesk function should be available to provide support to staff who feel they have a grievance.

### ***Culture of silence***

7.21 The prevailing cultural environment of a workplace has a powerful influence on the preparedness of an employee to report concerns about wrongdoing. Even where there are formal and known avenues for a person to disclose information about inappropriate conduct, workplace forces may effectively render them useless.

7.22 The Burchett Report went into some detail about the military culture in which each member is highly reliant on the skill and dedication of other members that tends to engender strong peer group discipline. The JSCFADT made similar observations about the unique demands placed on those serving in the ADF which sets a heavy value on dependable and trustworthy mates.<sup>12</sup>

7.23 Evidence before this committee reinforces the above findings. On occasion, however, the values of loyalty, trustworthiness and solidarity can take on a form that has little tolerance for individual difference or perceived vulnerability. The reported instances of abuse at Singleton were a manifestation of this culture in the guise of weeding out the weak from the strong. Improper conduct—belittling, personal denigration, bullying, ganging up, ostracism from the group on the one hand, and the specific targeting of an individual for humiliation on the other—are indications that the culture of denigration and harassment had emerged in concert with the culture of silence. This culture of harassment and silence was not confined to Singleton.

7.24 Indeed, a number of witnesses described an environment in the ADF where one was expected to be strong, stoic and uncomplaining in the face of pain or

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10 *Submission P61*, p. 4. His experiences go back to the late 1970s but nonetheless highlights the problems that are created with reporting wrongdoing within the chain of command.

11 Confidential *Submission C43*, paras 22 and 23. Also *Submissions C29* and *C51*.

12 Paras 2.20–2.22.

emotional stress. Any sign of weakness invited abuse or denigration.<sup>13</sup> One soldier recounted his experiences:

Even when soldiers were performing correctly they would be degraded as being too slow etc, anything to fuel abuse. There would be excessive swearing and verbal putdowns. Soldiers continually reminded of how pathetic or useless they were, how they were the worst of the worst and that they were scum etc. Eventually nerves would see some mistakes and be threatened with punishment. Charges, extra duties or thrashings were the normal threats. Threats of physical violence were not uncommon. Sergeants in particular would make a habit of reinforcing how they could, and would make your life hell.<sup>14</sup>

7.25 A serving Army psychologist attributed this type of conduct to Army's 'cult of endurance'. He explained:

The easiest way to make a judgment about ability to endure is to reward the fit and strong, and vilify the unfit, unskilled, and unable. This does not make allowances for the temporarily sick and injured, but it is a straightforward way of separating who has the ability to endure from those that do not...<sup>15</sup>

7.26 Indeed, this prevailing culture appeared to be one of the most pernicious influences holding members back from disclosing wrongdoing or pursuing a complaint. The evidence before this committee suggests that the pressure to endure in silence has a long established history.

7.27 Picking up on this theme, Mrs Williams told the committee that soldiers at Singleton would not seek help from the social worker because it was seen as a weakness.<sup>16</sup> Their situation was made even more difficult because they again must work through the chain of command to make an appointment. As Mrs Williams explained:

If they want to see anybody, they have to sneak out behind closed doors in order to do it. The only way that they can formally go and see the social worker or the padre is to actually apply through their NCO. If you are a soldier and you go up to your NCO and say, 'Can I go and see the psychologist? I've got a problem,' what do you think is going to happen?

...These soldiers have told us categorically and unequivocally that they will not use those sorts of channels. They will not go to their corporal or their

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13 Ms Avril Andrew provides examples of this type of behaviour. *Submission P21*. Also Confidential *Submission C19*. The author of confidential *Submission C35* was a soldier who recalls a time when he was suffering from a leg injury but was forced to endure long periods of standing on parade, being subjected to oral abuse and told to 'harden up'.

14 Confidential *Submission C19*.

15 Confidential *Submission C30*, p. 8.

16 *Committee Hansard*, 28 April 2004, pp. 59–60.

sergeant simply because of the denigration and the browbeating they will get. It is seen as a form of weakness and they are treated in that manner.<sup>17</sup>

7.28 One witness, who had reported his suspicions about drug use in his unit, told the committee:

I found a dangerous myopic attitude held by some, that 'loyalty to your mates' is in essence, above all else, and reporting on your mates is equivalent to committing a serious crime, even if it involves doing the right thing and reporting drug users.<sup>18</sup>

7.29 Not only does the military culture discourage individuals from reporting wrongdoing, it also exerts influence over the preparedness of the institution to accept or expose wrongdoing. The ADF is not alone in this regard. Organisations, public and private, are also known to fail to act on reports of wrongdoing and to discourage such reporting simply by failing to recognise that reporting impropriety is a 'positive and constructive force'.<sup>19</sup>

### ***Downplaying or dismissing complaint***

7.30 The committee has received evidence that suggests that although the military culture fosters a strong sense of solidarity and loyalty, it also has the potential to create blind spots in the institution and its members particularly among higher ranking officers.<sup>20</sup>

7.31 The Defence Force Ombudsman made the observation that the office had received several complaints where 'it appears Defence has had considerable difficulty in entertaining the notion of investigating a complaint in the first instance despite very clear concerns being expressed both by the individuals involved, as well as by other people in relatively senior positions in the ADF'. He observed:

It is axiomatic that if a complaint is not accepted as a complaint, it cannot be resolved.<sup>21</sup>

7.32 Mr David Hartshorn wanted to report an alleged hit and run accident that he had witnessed while on duty overseas involving ADF personnel. He explained to the committee that he was talked out of pursuing a redress of grievance by the appointed investigating officer who said he was 'an extremely busy man and that I was wasting the Army's time.'<sup>22</sup> On a second occasion, he was again persuaded not to proceed with

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17 *Committee Hansard*, 28 April 2004, pp. 59–60.

18 *Confidential Submission C7*, p. 1.

19 Public Concern at Work, OECD Labour/Management Programme, [http://www.pcaw.co.uk/policy\\_pub/oecdreport.html](http://www.pcaw.co.uk/policy_pub/oecdreport.html) (14 September 2001).

20 See for example, Mr Satatas, *Committee Hansard*, 28 April 2004, p. 6 and Peter Gerrey, *Submission P7*.

21 *Submission P28*, p. [3].

22 *Submission P52*, p. 1.



his complaint by an Army Legal Officer, who said, there were 'no legal grounds to pursue the redress of grievance as it did not have anything to do with my service...'<sup>23</sup> Another person, subjected to unacceptable and bullying behaviour, informed the committee that she was told 'to accept it and move on'.<sup>24</sup>

7.33 Mr and Mrs Amos informed the committee that they had contacted senior officers at the SOI at Singleton and advised them about their son who, in their opinion, was being subjected to 'inappropriate treatment'. According to Mr and Mrs Amos:

Telephone discussions with senior officers at SOI advising them of what was going on in their command were ignored and failed to bring about change in the treatment of soldiers, their rights to appropriate treatment or the right to normal soldier management procedures while in SOI's care, in this case the right to apply for corps transfer, a right both our son and other IET soldiers were denied.<sup>25</sup>

7.34 Along similar lines, Mr Richard Satatas, the brother of a young soldier who had committed suicide at Holsworthy, had been told by a Major that the allegations of mistreatment, including bullying, raised by his brother, had been looked into but officers decided that no action was needed because:

basically, they felt that it was just horseplay...and that things like this happened with so many boys all living together on the same base—a bit of tension builds up.<sup>26</sup>

7.35 To the same effect, Ms Williams told the committee that the Army took a 'flippant approach' to their warnings and it failed in its duty of care. Furthermore, assurances given that her father's call about Jeremy's welfare would be kept confidential were broken.<sup>27</sup> Mr Williams concluded:

I point out to the Senate committee that, when we attempted to lay at the feet of the commanding officer at Singleton over a year ago all the problems he had on that base, he basically shooed us away. He told us that our concerns were baseless and that his base was professionally run.<sup>28</sup>

7.36 He added:

What provoked our concern and our desire for an investigation was the appalling situation at Singleton that came to light in the two days that we were on that base—in particular, the interaction we had with the young

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23 *ibid.*, p. 1.

24 Confidential *Submission C28*. The author of Confidential *Submission C29* stated that those in his chain of command were indifferent to his allegations.

25 *Submission P6*, p. 1.

26 *Committee Hansard*, 28 April 2004, p. 5.

27 *Committee Hansard*, 28 April 2004, pp. 35–8.

28 *Committee Hansard*, 28 April 2004, p. 60.

soldiers of the R&D Platoon of which Jeremy was a member. Clearly things were very seriously amiss at Singleton and in that platoon. There was a culture of denigration and abuse. It was very easy for us to put together a picture of why Jeremy had despaired to the extent that he did. From there we commenced our efforts to bring about some form of inquiry and ventilation of the system at Singleton. We actually voiced our concerns at a final meeting with Roney in his office on the Wednesday afternoon. His response was that there was nothing wrong on his base and that it was professionally run.<sup>29</sup>

7.37 This tendency to overlook or make light of a complaint is not necessarily borne of bad intentions. Mr David Down expressed the view that one of the main problems with the military justice system was that it was run by military personnel and 'their pride in the forces makes it difficult for them to accept that some things actually go on.'<sup>30</sup>

7.38 So much of the evidence received repeatedly shows that the culture of the ADF seems to encourage an approach that downplays, dismisses or ignores the existence of inappropriate conduct. The committee believes that it is important for ADF members to accept that the ADF is protective of itself as an institution and that the ADF must ensure that safeguards are in place to counter balance this tendency to protect the institution. Independence and impartiality on the part of those responsible for receiving complaints or reports of wrongdoing must be part of the solution.

### ***Threats of reprisals or fear of 'getting into trouble'***

7.39 If members are to report alleged wrongdoing or complain about improper conduct, they must be confident that they will be protected from reprisals for doing so. Defence Force Regulations stipulate clearly that a member is guilty of an offence if he or she prevents or dissuades another from making a complaint or causes another member to be 'victimised, penalised or prejudiced in any way for making a complaint'.<sup>31</sup> A number of witnesses, however, recalled their fear of recrimination should they make a complaint. It would seem that the message at the official level has not found its way into common acceptance.<sup>32</sup>

7.40 Mrs Jayne Fitzpatrick, who was pursuing action against an RSM for allegedly defaming her husband, stated that when she refused to drop the complaint she was told

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29 *Committee Hansard*, 28 April 2004, p. 41.

30 *Submission P61*, p. 4.

31 Regulation 80, Defence Force Regulations 1952.

32 See for example, Ms Avril Andrew, *Submission P21*, p. 5; Ms Jayne Fitzpatrick, *Submission P35*; Confidential *Submission C42*, p. 4; Ms Knight, *Submission P18*, p. 2 Mr Southam claims that he was mistreated after he submitted a redress of grievance making allegations of mistreatment, *Submission P19*, p. 4. Although Mr Lloyd Richards' account of racism, harassment, intimidation and lack of support goes back to 1988, it provides an insight into the type of activity that can be tolerated in certain pockets of the Defence Force. *Submission P36*.

by an ADF member that her husband would be court martialled or handed over to state or federal police. She understood these comments to be threats.<sup>33</sup>

7.41 One ADF member, who alleged that he suffered serious reprisals for reporting the use of illegal drugs in his unit, told the committee:

Soldiers simply did not speak up to anyone through fear of repercussion should it be discovered. I discussed some problems with the barracks padre but was too scared to discuss our overall treatment. To speak up about anything was a definite no-no; we were made well aware of that via threats to us and our families.<sup>34</sup>

7.42 Another member, claiming that he was bastardised, exploited, abused, harassed and physically tormented as part of his training, and, as a consequence, has suffered a 'complete mental breakdown', stated:

...you will never get serving soldiers to fully comment on wrongdoings. Whether you speak to them privately, away from their Sergeants and Lieutenants it does not matter, the fear of repercussions should they discover you have spoken up, something that has an uncanny knack of occurring in the Army, is far too great.<sup>35</sup>

7.43 In referring to approaches such as 'open door policies', he maintained that while they look good on paper and sound good in theory:

...speaking from one who has experienced life from the inside, they are bound to fail and provide nothing to grieving or abused soldiers. Had I known that I had the power to go above my direct superiors and straight to a commanding officer's door I still would have chosen not to. As mentioned, the fear of repercussion is simply too great.<sup>36</sup>

7.44 Mr Williams recounted an incident where a soldier had sought a redress of grievance through the chaplain. He explained:

The sergeant found out about it and acted accordingly....

He threatened him with a beating because he went to the padre and had overturned a decision of the sergeant. The sergeant then took him into his office and threatened to beat him. Then he said he would take him outside and do another job on him in the unarmed combat area.<sup>37</sup>

7.45 Clearly, some members perceive those who expose inappropriate practices within their unit as disloyal and deserving punishment.

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33 *Submission P35*, p. 2.

34 *In camera Committee Hansard*, 29 April 2004, p. 2. Confidential *Submission C7*, p. 1.

35 Confidential *Submission C19*.

36 Confidential *Submission C19A*, p. 2.

37 *Committee Hansard*, 28 April 2004, p. 60.

7.46 The experiences of Aircraftman Nathan Moore stand out as an example of the type of reprisals that are used to punish those who report wrongdoings in their ranks. His complaints and subsequent treatment after reporting drug abuse at Amberley in 2002 have been widely reported in the media in publications such as the *Bulletin* and the *Weekend Australian*.<sup>38</sup> These issues have also been the subject of questioning through the Senate Estimates process for some time.

7.47 There is some contention over whether Aircraftman Moore first reported his concerns to a senior officer at Amberley or independently approached the Australian Federal Police and Queensland Police in May 2002. It was reported in the *Weekend Australian* that Moore raised the issue with a senior officer whose response was '...what do you want me to do about it' and that drugs were 'okay if they use them in their own time'.<sup>39</sup> According to the *Weekend Australian*, it was after this response that Nathan Moore decided to approach the civil authorities. The Chief of Air Force, however, is adamant that Moore first approached the Australian Federal Police and Queensland Police and did not approach the RAAF prior to doing so.<sup>40</sup>

7.48 From May 2002, Aircraftman Moore became an official informant for the Queensland Police on drug activity on and off base. The Queensland Police investigations culminated in a civil drug raid on a number of houses in the south Queensland area on 29 August 2002. This raid found two serving Airfield Defence Wing personnel and one former member involved in illegal drugs.<sup>41</sup>

7.49 The Chief of Air Force advised the committee during Supplementary Budget Estimates in November 2003 that the Commander at Amberley had no knowledge of the raids prior to them taking place and no knowledge that Moore had made drug allegations by way of a formal statement to the Queensland Police.<sup>42</sup> The Chief of Air Force further advised that it was this civil raid that prompted the Commander, Combat Support Group, to question the extent of any drug issue at Amberley by requesting members to come forward with information.

7.50 Based on allegations that were then made by three members (including Moore) on 4 September 2002, the Commander appears to have used all powers

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38 See Paul Toohey, 'The Fugitive', *The Bulletin*, 23 March 2004 and Cameron Stewart, 'Shot Down', *The Weekend Australian Magazine*, 10-11 July 2004, pp. 22-27.

39 Cameron Stewart, 'Shot Down', *The Weekend Australian Magazine*, 10-11 July 2004, p. 26.

40 Senate Foreign Affairs, Defence and Trade Legislation Committee, Additional Estimates 2003-2004, *Committee Hansard*, 18 February 2003, p. 92.

41 Senate Foreign Affairs, Defence and Trade Legislation Committee, Additional Estimates 2003-2004, *Committee Hansard*, 5 November 2003, p. 128.

42 Senate Foreign Affairs, Defence and Trade Legislation Committee, Additional Estimates 2003-2004, *Committee Hansard*, 5 November 2003, p. 138.

available to him to take action regarding this information, including briefings, interviews and encouraging self-referrals.<sup>43</sup>

7.51 On 29 July 2002, one month prior to the drug raid by the Queensland Police, two RAAF members physically assaulted Aircraftman Moore at his home off-base. He suffered a fractured cheekbone and broken jaw in the attack. The two offenders were subsequently targeted by the Queensland Police drug raid on 29 August 2002.<sup>44</sup>

7.52 It has been reported that, since this incident, Moore has been threatened with physical assault, received death threats, suffered severe psychological stress and has attempted to commit suicide. Moore is reported to have requested a transfer from Amberley when reporting back for duty on 26 August 2002 because he feared for his safety. Both he and the members who had assaulted him were still on base together.

7.53 In September 2002, the RAAF transferred Moore to Brisbane's Victoria Barracks and a month later to RAAF base Richmond. He alleges that he continued to receive threats to his safety and was subsequently transferred a number of times.

7.54 Reprisals, however, do not always take the form of overt threats or acts of physical aggression. They are known to take many various and subtle guises. Failure to be promoted, relocation or ostracism in the workplace can also be used to censure a person for making a complaint. The Australian Peacekeeper & Peacemaker Veterans' Association submitted:

Defence members who wish to submit an ROG will be strongly advised against doing so by peers and superiors on the basis of its unlikely success and negative impact on careers.<sup>45</sup>

7.55 Witnesses also suggested the use of psychological testing as a means to undermine their credibility for making a complaint.<sup>46</sup> One witness submitted to the committee that:

There was a determined effort to get me psychologically tested. This was couched in terms of having my best interests at heart...significantly, the label of someone being under 'psychological' care is the first attack a bureaucratic system uses when it wishes to discredit a person.<sup>47</sup>

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43 Senate Foreign Affairs, Defence and Trade Legislation Committee, Additional Estimates 2003–2004, *Committee Hansard*, 5 November 2003, pp. 128–9.

44 There are two suggestions as to the reason for this assault. First, that LAC Moore had become known as an informant, or second, that it was over a girl that both Moore and one of his attackers had been seeing. See for example, Paul Toohey, 'The Fugitive', *The Bulletin*, 23 March 2004. See also Senate Foreign Affairs, Defence and Trade Legislation Committee, *Committee Hansard*, Estimates, 5 November 2003, p. 141.

45 *Submission P42*, p. 3. See also Ms Jayne Fitzpatrick, *Submission P35* and Confidential *Submissions C25, C25A, C40, C40A, C42* and *C56*.

46 Confidential *Submissions C25, C40, C51* and *C59*.

47 Confidential *Submission C40A*.

7.56 The number of requests made to the committee to receive submissions on a 'confidential basis' because of likely adverse repercussions is a further indication of a widespread prevalence of this fear of reprisal for reporting failings in the ADF.<sup>48</sup> A number, who were serving members, stated quite clearly their apprehension that they would suffer adverse action should it become known that they had made a submission.<sup>49</sup> One submitter wrote:

In this culture, the identity of Defence personnel in Senate submissions can have an adverse effect on an individual's reputation and tenure in the Defence force. I appreciate that although the ADF has publicly declared that all ADF personnel are free to make submissions to the Senate Committee, I can tell you that within Defence ranks an atmosphere of fear often drives personnel to remain silent lest they may suffer covert consequences for 'going public'.<sup>50</sup>

7.57 Another believed that knowledge of his submission to the committee may prejudice or jeopardise his civilian employment and 'make it exceedingly difficult to deal with various persons in key executive positions in Defence'.<sup>51</sup>

7.58 The committee accepts that the senior leadership of the ADF would uphold the right of an ADF member to make a submission to a parliamentary committee without that person suffering adverse consequences. It is clear, however, from the concerns expressed, that ADF members do not necessarily feel confident to exercise this right.

7.59 Clearly, the assurances offered by the ADF that a person will be punished for threatening to intimidate or causing detriment to another for making a report is falling on deaf ears. Many members in the ADF have a strong and embedded belief that, if they disclose wrongdoing some form of detriment will follow, particularly to career prospects. For them silence is the best option—it holds less risk.

### ***Lack of awareness of alternative reporting avenues***

7.60 While a number of witnesses gave evidence of being actively discouraged from making a complaint or being reluctant to approach their superiors, others spoke of their frustration with, or lack of understanding of, the processes involved.<sup>52</sup> Some of those unwilling to take their concerns to their superiors felt that there was no where

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48 Confidential *Submission C57*. Also Confidential *Submissions C8, C9, C16, C25, C26, C33, C43*.

49 Confidential *Submission C57*. Also Confidential *Submissions C8, C9, C16, C25, C26, C33, C43*.

50 Confidential *Submission C33*.

51 Confidential *Submission C57*.

52 See for example, Ms Jayne Fitzpatrick, *Submission P35*. Confidential *Submission C35* stated that he did not report incidents straight away 'because I did not know I could. I was confused about how the military worked with things like this'.

else to turn. One member, who alleged that he suffered serious reprisals for reporting the use of illegal drugs in his unit, told the committee:

There was no known avenue for soldiers to complain. We did not know of any right of complaint besides that of through your chain of command, in this case the very people inflicting the wrongdoing. At no time during my period at...was there any mention of, or attempt to mention, a soldier's rights to bypass superiors in relation to ill-treatment.<sup>53</sup>

7.61 The common understanding was 'What happens in our unit stays in our unit. Nothing goes out of here'.<sup>54</sup>

7.62 Another member explained that he did not report abusive conduct because he did not know that he could—I was confused about how the military worked'.<sup>55</sup> Similarly, the parents of a young soldier reported that their son, together with others, was 'totally unaware' of the avenues available to report wrongdoing. They informed the committee that the soldiers:

...were of the understanding that the chain of command must be taken within your troop, thus making it impossible to really complain or do anything about a situation. So with that came the total feeling of powerlessness, the feeling of isolation and being 'trapped', another frequently used term by soldiers.<sup>56</sup>

7.63 The parents suggested the establishment of an independent grievance body available to all serving personnel, located somewhere off base, so that soldiers who feel that they have problems can go and speak with someone who is 'civilian'.<sup>57</sup> A number of witnesses put similar proposals.<sup>58</sup>

### ***Frustration with administrative complaint handling processes***

7.64 The breakdown in communication once a report had been made was a common complaint cited in evidence. Lost paperwork, misplaced applications for transfers, failure to respond to correspondence, and documentation simply not produced were among the complaints raised.<sup>59</sup> One member stated that he was:

...given the run-around by the Defence Equity Organisation when I was attempting to obtain advice on how to proceed. The lack of support

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53 In camera *Committee Hansard*, 29 April 2004, p. 20.

54 In camera *Committee Hansard*, 29 April 2004, p. 9.

55 Confidential *Submission C35*.

56 Confidential *Submission C19*.

57 Confidential *Submission C19A*.

58 See para 7.19.

59 See Ms Marlene Delzoppo, *Submission P1*, p. 2; Ms Jayne Fitzpatrick, *Submission P35*; Confidential *Submission C29*.

provided by Air Force during this critical period has now been compounded by a defective investigation.<sup>60</sup>

7.65 Mr Keith Showler related how he had suffered constant harassment and verbal abuse from an officer to whom he was answerable. Having suffered a breakdown and been hospitalised in February 2002, Mr Showler stated that nothing was annotated on his medical files at the time. He explained that he submitted the appropriate paperwork through the Equity Officer at the Hospital detailing the harassment and abuse he had received during his deployment. He noted that, in June 2002, he attended the initial interview with the investigating officer and over the following 13 months requested, from his former Commanding Officer, a copy of the investigating officer's report and details of his hospitalisation. He informed the committee that the last correspondence he received from the Commanding Officer advised that he would have to contact Defence Health for the records but that 'the attending doctor or the medical staff have never furnished these details'.<sup>61</sup>

7.66 Whether the lack of attention given to a report or complaint stems from a deliberate effort to prevent a report or complaint from proceeding or from a failure to appreciate the importance of acknowledging a person's concerns, the result is the same—exasperation with the processes and a lack of confidence in the system.

### ***Seeking a transfer or discharge as an alternative to reporting wrongdoing***

7.67 A number of witnesses reported that they did not make a complaint hoping instead that their experiences would be temporary and would be remedied by a transfer. One witness stated her belief that 'a lot of things are perceived as one-off events—that they are not going to happen again—and therefore there is a sense that it is just managed for this event'.<sup>62</sup> Others simply put up with mistreatment. Mrs Williams explained that:

...at the moment, you will not have soldiers coming forward to complain about the way they are being treated by an NCO because they now know, as a result of this, that nothing will happen to them. So they will sit in silence and suffer in silence.<sup>63</sup>

7.68 Others, however, just gave up. They sought a release through discharge from the forces. When asked whether he had formally submitted a notice of grievance, Mr Showler replied, 'I have literally walked away from the military now—other than, as I said, in February of this year when I wrote to the Chief of Staff of Air Force Health

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60 In camera *Committee Hansard*, 21 April 2004, p. 3.

61 *Submission P3*, p. 1. Also *Committee Hansard*, 28 April 2004, pp. 20–21.

62 In camera *Committee Hansard*, 9 June 2004, p. 9. Also Confidential *Submission C19* which gives an account of a soldier who alleges he was subjected to bullying and sought a transfer.

63 *Committee Hansard*, 28 April 2004, pp. 60–61.



Records to get a copy of my records that were never written.<sup>64</sup> A former member of the ADF told the committee:

It takes an enormous amount of courage to take on the Military system and the system will and does use inordinate amounts of power to manipulate any inquiry or any investigation that suits their agenda, knowing full well that the member will in most cases capitulate in fear that their career will be destroyed through intimidation, implied or real.<sup>65</sup>

### ***Committee view***

7.69 The committee cannot ignore the instances of breakdowns in the reporting system that allowed unsafe practices to go unheeded for some time. It is concerned about the ineffectiveness of the reporting system as an early warning system and as a means of stopping unsound practices.

7.70 The experiences recounted in evidence provide some understanding of the reasons ADF members do not make complaints. Their reluctance to disclose wrongdoing to their superiors or senior officers is a certain indication of systemic problems in the reporting process. Evidence suggests that for many the reporting system does not inspire confidence and fails to counter the culture of silence. The committee found that ADF members are reticent to use the reporting system and many choose to remain silent because of:

- the requirement to use the chain of command and the potential conflict of interest which creates a perception that the process may be unfair and the system lacks integrity;
- the cultural environment that values team work, group solidarity and conformity but which, in some cases, gives rise to a misplaced sense of loyalty that discourages the reporting of wrongdoing—members do not want to appear weak or disloyal;
- institutional blind spots which make it difficult for some members, particularly the professional and dedicated ADF member, to admit to failings in the organisation or their colleagues;
- the fear of the stigma attached to making a report and the prospect of reprisals that may take many different forms from threats of physical harm to likely damage to career;
- a lack of awareness of alternative means of making a report or lodging a complaint;
- the complicated reporting process with its delays and frustrations and, in any event, a sense that a complaint may prove futile—complainants simply give up; and

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64 *Committee Hansard*, 28 April 2004, p. 28.

65 *Submission P12*, p. 2.

- a hope that the situation is transitory which means that they seek alternative 'escape' solutions such as a transfer. Those in more dire situations often seek discharge from the forces.

## Whistleblowing scheme

7.71 The committee now turns to the Defence Whistleblower Scheme which offers another avenue for reporting wrongdoing. Although the committee did not examine this aspect of the administrative system in detail during the inquiry, it briefly discusses the whistleblower scheme in the following section.

7.72 Currently, the Inspector-General of Defence (IG) is responsible for the management of the Defence Whistleblower Scheme. Matters reported to him or her concerning the administration of military justice will normally be referred to the Inspector-General of the Australian Defence Forces.<sup>66</sup>

7.73 Even though the Defence Instructions on the Defence Whistleblower Scheme state that it is 'an alternative process for the reporting and investigation of misconduct when the whistleblower lacks confidence in the normal reporting process', the expectation is still that members will use the chain of command first.<sup>67</sup> A whistleblower may report anonymously or request that their identity be protected.

7.74 Defence has had an administratively based Whistleblower scheme in place since 24 July 1997. The scheme was originally intended to provide 'an effective mechanism for Australian Public Service employees and ADF members to disclose mismanagement or corruption in the department'. The scheme focused specifically on fraud and probity issues.<sup>68</sup> The Burchett Report in 2001 recommended widening the scope of the scheme to incorporate matters other than fraud and probity issues. Under the current scheme, the types of suspected misconduct that may be the subject of a whistleblower report include activities such as fraud, misconduct under the *Public Service Act 1999*, harassment or unlawful discrimination, and practices that compromise occupational health and safety.

Defence Instructions note:

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66 Defence Instructions (General) ADMIN 61-1, Inspector-General of the Australian Defence Force – role functions and responsibilities, para. 9. It reads: '...attention is drawn to the distinction between the respective responsibilities of the IGADF and the Inspector-General Defence (IGD). In short, the IGADF is responsible for matters relating to the administration of Military Justice and IGD is responsible for matters relating to fraud, lack of probity, ethics and management audit. IGD is also responsible for the management of the Defence Whistleblower Scheme. Matters reported to the Defence Whistleblower Scheme concerning the administration of Military Justice will normally be referred to the IGADF.'

67 Defence Instructions (General), Defence Whistleblower Scheme, paras 8, 12 and 13.

68 Department of Defence, submission to the Senate Finance and Public Administration Committee's inquiry into the Public Interest Disclosure Bill (2000 [2002]), dated 4 October 2001.

Whilst the IG's organisation has responsibility for the management of this scheme and for the management of persons who make a report through this scheme (including identity protection if necessary), the actual investigation may be conducted by another agency. The IG will determine the most appropriate investigative or other relevant authority in consultation with the whistleblower.<sup>69</sup>

7.75 A number of members referred to the ADF's whistleblowing scheme. Mr Showler stated, 'The new equity system called the Defence Whistleblowers Scheme indicates to me that the 'fair go' system failed. In view of my case, who in their right mind is going to be a whistleblower in the Defence Force?'<sup>70</sup> Another witness maintained that he had not been afforded protection and has suffered career detriment on account of reporting impropriety.<sup>71</sup>

### ***Protection from reprisal***

7.76 If a whistleblower scheme is to remain a credible mechanism for the reporting of wrongdoing, it must offer a guarantee that a person will not suffer on account of making a report. The committee is concerned with the section in Defence Instructions that reads:

There may also be a requirement for the provision of physical security of the whistleblower and special provisions may be considered on a case-by-case basis. For example, security escorts may be provided or, in exceptional circumstances, the matter may be referred to an external agency. In some circumstances, it may be necessary to transfer a whistleblower to another work location.<sup>72</sup>

7.77 Although the committee accepts that the requirement for protection may be the reality, the statement does not inspire confidence in the military justice system where protection relies on removing the person from harm rather than stopping the perpetrators. Relocation, in itself, may be a form of reprisal for making a report. The committee would like to see emphasis given to stamping out acts of reprisal.

7.78 The case of Aircraftman Nathan Moore illustrates the failure of the ADF's whistleblower scheme to protect members from adverse action on account of that member reporting wrongdoing. It also highlights the confusion surrounding who has responsibility for protecting those who report wrongdoing. The RAAF was clearly of the view that Moore provided information relating to drug use to civilian authorities. Because he made his complaints to outside authorities who conducted the investigation, the Defence Whistleblower Scheme would not become involved in that matter. Moore did, however, alert the whistleblower scheme to his concerns about

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69 Defence Instructions (General), PERS 45-5, Defence Whistleblower Scheme, para. 39.

70 *Committee Hansard*, 28 April 2004, p. 21.

71 Confidential *Submission C56*.

72 Defence Instructions (General), PERS 45-5, Defence Whistleblower Scheme, para. 34.

harassment and intimidation. According to Air Marshal Angus Houston, the Defence Whistleblowing Scheme 'only provides protection of identity, it does not provide protection in other ways'.<sup>73</sup> He explained the steps taken by the ADF to protect Nathan Moore:

AC Moore returned to work and almost immediately he expressed concerns about his safety. We responded immediately to that and we moved him off base to Brisbane. He still had concerns about his safety. In fact, he expressed concerns for his safety to the inspector-general here in Canberra. That came to my notice so we moved him again. We moved him down to Richmond, then we moved him to Glenbrook and then we moved him into Sydney. We kept moving him when he felt unsafe. We have moved him again—and I prefer not to mention where he is at the moment—but we are very concerned for his welfare. We have a case officer who is supporting him and we are concerned for his welfare.<sup>74</sup>

7.79 Air Marshal Houston believed that the decisions taken at the time to assist Moore were very reasonable. He nonetheless acknowledged that:

...perhaps we need to have a look at how we approach these sorts of circumstances in the future.<sup>75</sup>

7.80 It is clear that the Defence Whistleblower Scheme does not have adequate measures to protect those making genuine disclosures from unlawful reprisals.

### **Confidentiality**

7.81 Reporting systems must have in place safeguards to protect the confidentiality of all parties involved in the report. In keeping with this principle, the Defence Manual underlines the importance of maintaining confidentiality and respecting a person's right to privacy. Yet practice is not always consistent with this guidance.<sup>76</sup> A number of witnesses were concerned with the treatment of confidential information. Complaints about violations of privacy rights came from persons who had reported the wrongdoing and who believed that there had been a serious breach of trust in allowing their identity to become known. Criticism also came from people who were the subject of a complaint and who also believed that their identity and the allegations against them had been disclosed unnecessarily.<sup>77</sup>

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73 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Committee Hansard*, Estimates, 18 February 2004, p. 91.

74 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Committee Hansard*, Estimates, 5 November 2003, p. 142.

75 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Committee Hansard*, Estimates, 18 February 2004, p. 91.

76 Confidential Submission C61.

77 Confidential Submission C37.

### **Committee view**

7.82 The whistleblower scheme is intended to offer a viable alternative for people wishing to report wrongdoing but who believe that they 'may be victimised, discriminated against or disadvantaged in some way if they make a report through the chain of command, line management, or established complaint mechanisms.'<sup>78</sup> The committee has concerns that the scheme is not meeting expectations especially in light of the range of obstacles identified in this chapter that stop people from reporting wrongdoing.

7.83 The committee is strongly of the view that the ADF needs to examine very critically its whistleblowing scheme and more broadly the arrangements that it has in place to protect those who report improper conduct. The reliance placed by senior leadership in the ADF on physically removing a person, often more than once, from the threat of reprisal is in itself an acknowledgement that the protection scheme does not work. Indeed it is ironic that this measure is regarded as a 'solution' seemingly before the prevention of reprisals is considered a solution. The committee accepts that the ADF has an uphill battle in convincing a highly sceptical workforce that reprisals will not take place. It must take firm steps initially to have a protection scheme that will offer ADF members assurances that they will not suffer detriment for making disclosures, in good faith, about wrongdoing.

7.84 The committee is also concerned with the scheme's overall integration in the ADF's system for reporting wrongdoing or making a complaint. It is concerned that the current system may be confusing and result in a duplication of responsibilities especially with regard to the bodies responsible for the protection of people making a complaint and for the prosecution of unlawful reprisals.

### **Improvements to the ADF's reporting system**

7.85 Following the JSCFADT's report and the Burchett Report, the ADF has taken measures to improve its reporting procedures. In the Government's response to the joint committee's findings, it stated:

In order to strengthen the equity and fairness environment within Army, the Chief of Army issued his *Plan for a Fair Go*. A key element of the plan was the promulgation across the Army of his strong and clear expectation of the required standards of behaviour in the form of 'Fair Go' rules. These have been supported by the establishment within Army of an additional hotline to those normally operating within Defence, for individuals to confidentially seek assistance outside of the normal command chain, if necessary. Additionally, the *Plan for a Fair Go* included a review of equity

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78 Defence Instructions (General), Defence Whistleblower Scheme, par 13 and Annex A, Guidance on the Reporting of Suspected Misconduct, para. 6.

training, the redevelopment of equity training packages, the conduct of a baseline equity audit and two follow-up equity audits.<sup>79</sup>

7.86 Updating progress on the implementation of the Fair Go scheme, Lieutenant General Leahy told the committee:

The Fair Go Hotline is used often and provides a useful safety valve for members of the Army who are unwilling to raise allegations of harassment or mistreatment within their chain of command, or who have done so but believe their grievance has been inadequately dealt with. Army members' family and friends may also call the hotline anonymously if they wish. All calls are treated very seriously. Where appropriate, allegations of offences or unacceptable behaviour are investigated. The Army hotline has proved an effective, strong and very successful system.

...

We have trained staff who receive those calls. They counsel the people and encourage them in the first instance to deal with it through the chain of command. Where the callers are not comfortable dealing with that, the staff will take it on and deal with it themselves. We have found a very high level of satisfaction with the Fair Go Hotline. People tend not to call back. We find that it is working very well. It acts as a bit of a circuit-breaker. When the staff on the hotline are able to explain some of the issues and perhaps some of the administrative procedures and policies, it seems to take the heat off.<sup>80</sup>

7.87 In the view of Ms Jayne Fitzpatrick, however, who sought assistance from the Hotline on behalf of her partner, 'the Defence Equity Hotline and the Fair Go Hotline have been set up as a public relations exercise, they seem to do little for members'.<sup>81</sup> Her husband suffered from Post Traumatic Stress Disorder, had attempted suicide and, according to Ms Fitzpatrick, had been defamed in front of the Sergeants' Mess. She informed the committee:

Prior to Keith's discharge he wrote to the much vaunted Army Fair Go Hotline. As a serving member his complaint should have been investigated in its own right. This was Keith's only way to redress the defamatory remarks and threats made against him. Unfortunately the reply came back that his complaint had been addressed by my letter to the minister and no further action would be taken on his behalf.<sup>82</sup>

7.88 The committee accepts that not every complaint will be resolved to the satisfaction of the complainant. The process should, however, be an efficient and

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79 Media Release, the Hon. Danna Vale, MP, Minister Assisting the Minister for Defence, Government Response to the Report on *Rough Justice? An Investigation into Allegations of Brutality in the Army's Parachute Battalion*, No. MIN 203221/02, 22 March 2002.

80 *Committee Hansard*, 1 March 2004, pp. 35–6.

81 *Submission P35*, p. 4.

82 *Submission P35*, p. 2.

transparent one, free from the perception of bias. Members of the ADF should have a sound understanding of how the process operates and have easy access to agencies responsible for dealing with complaints or reports of wrongdoing.

7.89 Following the various recent inquiries into the military justice system, the ADF has introduced a series of initiatives which have resulted in a number of bodies now dealing with various aspects of the administrative system which aside from the chain of command includes:

- the Inspector-General of the ADF;
- the Defence Whistleblower Scheme Hotline (under the Inspector General of Defence);
- the Defence Equity Organisation;
- the Complaints Resolution Agency;
- the Directorate of Alternative Dispute Resolution and Conflict Management; and
- the Army Fair Go Hotline.<sup>83</sup>

7.90 This list of options presents ADF members with a mixed and confusing set of choices. It is not always clear to the ADF member, let alone an observer, which is the most appropriate route to take. Clearly, ADF members need a reporting system that is simpler to use and provides the necessary support for those seeking to lodge a complaint or report wrongdoing.

## **Conclusion**

7.91 Without doubt, there is an embedded anti-reporting ethic in some areas of the ADF. The reticence to report improper conduct or to make a legitimate complaint means that responsible commanders are not well placed to detect and correct wrongdoing and hence unsafe practices or inappropriate conduct continue unchecked.

7.92 The committee understands that a fundamental change in the ADF mindset must be achieved to overcome the stigma attached to lodging a complaint.

7.93 Furthermore, members will not make reports if they believe they will not be protected from reprisals. The administrative system must be sufficiently robust to instil confidence in members that if they do the right thing they will be protected; that allegations will be duly investigated; that they will not suffer reprisals on account of making a complaint; and that offenders will be brought to account. The committee accepts that removing the fear of reprisal is a most difficult challenge but one that should not be shirked.

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83 Department of Defence, <http://www.defence.gov.au/mjs/st/mjs/organisations.cfm> (23 February 2005).

7.94 Clearly, education is one answer. The recommendation for improved education has been made by a number of inquiries and needs to be reinforced yet again. The committee underlines the need for the ADF to review the way it promotes its reporting schemes and to put in place a more thorough education program designed to familiarise members with the system but also to develop an education program designed to counter the culture of silence.

7.95 Even so, the committee is not convinced that the reporting system as now structured provides the most effective avenues for the disclosure of wrongdoing. Evidence before this committee suggests that the reporting system falls down in its practical application and its ability to convince members of the merits of the system. It accepts that the reporting system has on occasion failed its members. At times, it has caused great distress to members and next of kin who found difficulty in having their concerns acknowledged, listened to and acted upon. The committee is not convinced that the Fair Go Hotline or similar initiatives are the complete answer. Rather they provide another add-on reporting mechanism to a system that is confused and fundamentally flawed, and they do nothing to counter systemic problems such as conflicts of interest, the culture of silence and fear of reprisal. Overall, the committee believes the system would operate more effectively if it were less complicated and more streamlined.

7.96 In chapter 11, the committee has recommended the establishment of an independent grievance review body to be known as the Australian Defence Force Administrative Review Board (ADFARB). This board is not intended to remove the responsibility for resolving disputes from the chain of command. Rather it will provide a mechanism to resolve grievances that are unable to be resolved promptly and effectively within the chain of command. This initiative will remove some of the problems identified in this chapter (see recommendation 29).

7.97 In proposing the establishment of an independent Australian Defence Force Administrative Review Board, the committee took particular account of situations that may arise where an ADF member is reluctant to report a wrongdoing. It recommended that the ADFARB receive reports and complaints directly from ADF members where:

- the person making the submission believes that they, or any other person, may be victimised, discriminated against or disadvantaged in some way if they make a report through the normal means; or
- the person has suffered or has been threatened with adverse action on account of his or her intention to make a report or complaint or for having made a report or complaint.

The committee is also very concerned to ensure that ADF members who choose to disclose improper conduct or work practices are protected from reprisals for making such a report.



## Recommendation 24

**7.98 In line with Australian Standard AS 8004–203, Whistleblower Protection Programs for Entities, the committee recommends that:**

- **the ADF's program designed to protect those reporting wrongdoing from reprisals be reviewed regularly to ensure its effectiveness; and**
- **there be appropriate reporting on the operation of the ADF's program dealing with the reporting of wrongdoing against documented performance standards (see following recommendation).<sup>84</sup>**

## Using complaints as signposts to broader problems

7.99 Before concluding this chapter, the committee underlines the important role of an effective reporting system in producing information that provides an accurate representation of the overall state of the military justice system. The Burchett Report was of the view that:

...the diversity of the ADF, and the upheavals it has gone through in recent years, make for the possibility of occasional lapses, unless preventative steps are taken. It is important to set in place some means of detecting misconduct promptly, when it occurs, so that its perception by the ADF does not have to await an eruption in the form of notorious events. It is necessary to maintain constant vigilance, including the monitoring of key indicators and the provision of means for problems to be aired and dealt with, as they arise.<sup>85</sup>

7.100 Taking up the same point, the Defence Ombudsman stated:

Over time, in the 25 or so years that the Ombudsman's office has been going, one of the points it has tried to emphasise to agencies is that complaints should not be seen as discrete problems, as idiosyncratic occurrences that can be corrected and then put aside. Complaints, even though they can be episodic and unrepresentative, should nevertheless be regarded as an indication of matters that require internal attention. There is a whole philosophy out there now that complaints can provide an agency with an opportunity for a dedicated learning process. It is our impression that there is more work to be done within the Australian Defence Force in establishing recognition of the point that complaint handling, investigation and administration is regarded as something inextricably interwoven with the remainder of the operation of the Australian Defence Force.<sup>86</sup>

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84 Standards Australia, Australian Standard AS 8004–2003, paras 2.4.3 and 2.4.4.

85 Report into Military Justice in the Australian Defence Force, conducted by Mr J.C.S.Burchett, QC, An Investigating Officer appointed by the Chief of the Defence Force, under the Defence(Inquiry) Regulations 1985, p. 28.

86 *Committee Hansard*, 9 June 2004, pp. 1–4.

7.101 The committee believes that it is vital for the ADF to be aware of and to monitor the effectiveness of its reporting system. A continuous assessment would not only provide information on the incidents of wrongdoing and the prevalence of unacceptable behaviour throughout the ADF but could also be used to gauge the extent to which members are deterred from reporting wrongdoing or making a complaint. The committee found the survey conducted by the Directorate of Strategic Personnel Planning and Research on the experiences of unacceptable behaviour in the Australian Defence Force extremely helpful as an indicator of the willingness or otherwise of members to report inappropriate behaviour.

7.102 The committee notes that Defence's Annual Report contains statistics on the percentage of reported unacceptable Behaviour Incidents by Service. It, however, provides no context and no meaningful analysis or commentary on these statistics. The committee believes that more searching questions could be asked of these statistics regarding the failure to report an incident and the reasons for this lapse. Such information would allow better informed public debate on the reporting of wrongdoing in the ADF and allow Parliament to carry out its scrutiny role more effectively.

### **Recommendation 25**

**7.103 The committee recommends that, in its Annual Report, the Department of Defence include a separate and discrete section on matters dealing with the reporting of wrongdoing in the ADF. This section to provide statistics on such reporting including a discussion on the possible under reporting of unacceptable behaviour. The purpose is to provide the public, members of the ADF and parliamentarians with sufficient information to obtain an accurate appreciation of the effectiveness of the reporting system in the ADF.**

7.104 To this stage, the report has examined the reporting procedures for wrongdoing or for making a complaint. The following chapter examines the next stage of the administration system—the investigation following a report of wrongdoing or a complaint.