



**Australian Government**  
**Department of Defence**

SEC/OUT/2007/ 306  
CDF/OUT/2007/959

**Senator M. Payne**

Chair

Senate Standing Committee on Foreign Affairs, Defence and Trade  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Senator Payne,

**REPORT ON THE PROGRESS OF REFORMS TO THE MILITARY JUSTICE SYSTEM**

In tabling the Government response to your Committee's report '*The Effectiveness of Australia's Military Justice System*' dated 16 June 2005, Senator Hill noted that: '*...as a further measure of the Government's determination to thoroughly and effectively reform the military justice system, Defence will provide six-monthly reports on progress to the Senate Foreign Affairs, Defence and Trade Committee throughout the two-year implementation period*' (Senate Hansard 5 Oct 2005 refers). We are pleased to provide the fourth report on the ADF's progress of reforms to the military justice system, in accordance with the Government direction.

The Government response to the Senate report agreed in whole, in part, or in principle, with 30 of the 40 Senate recommendations and advised alternative solutions to meet the outcomes sought by the reports recommendations concerning: the referral of offences to civil authorities; the legislative basis of a permanent military court; and the establishment of an Australian Defence Force (ADF) administrative review board. The agreed enhancements will balance the maintenance of effective discipline, which is indivisible from the function of command and the preparedness of the ADF for operations, with the protection of individuals and their rights.

To date, a total of 23 full recommendations (10, 11, 12, 13, 14, 15, 17, 18, 21, 24, 25, 26, 27, 28, 30, 31, 32, 33, 36, 37, 38, 39 and 40) have been completed and considerable work has either been completed, or is underway on the remaining agreed recommendations (4, 5, 6, 16, 22, 23, 29, 34 and 35). The enclosed spreadsheet provides, in more detail, an overview of progress to date. It outlines the action directed in the Government response; the planned completion date and the current status of implementation.

We also intend to provide you with a final report in early December 2007 to update progress since this report and advise future intentions.

Together with the Service Chiefs, we are committed to a fair and just military workplace and are personally driving the required changes. We will continue to review progress on a monthly basis as a standing item at the meetings of the Chiefs of Service Committee until the completion of implementation.

We trust that this report provides you with the information necessary to enable an informed assessment of our progress with implementing reforms to the military justice system.

Yours sincerely,



**Nick Warner**  
Secretary

29 October 2007



**A. G. HOUSTON, AO, AFC**  
Air Chief Marshal  
Chief of the Defence Force

28 October 2007

**Enclosures:**

1. ADF Report to the Senate Standing Committee on Foreign Affairs, Defence and Trade on Progress of Reforms to the Military Justice System October 2007

**AUSTRALIAN DEFENCE FORCE**

**REPORT TO THE SENATE STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE**

**ON**

**PROGRESS OF REFORMS TO THE MILITARY JUSTICE SYSTEM**

**OCTOBER 2007**

**LEGEND:**

	Complete, no outstanding action is required.
	Problematic, requires attention to ensure implementation is on track and/or significant risks to implementation are emerging.
	Highly problematic, requires urgent and decisive attention to get implementation on track and/or major risks are emerging.
	Underway or has not yet started (awaiting precursor actions), no significant risks foreseen.

**COMMITTEE-IN-CONFIDENCE**

Committee Recommendations	Government Response/Action Directed by Government	Planned Completion	Status
1, 2, 3, 7, 8 and 9	<p>In response to Recommendations 1, 2, 3, 7, 8 and 9, the Government agreed that:</p> <ul style="list-style-type: none"> <li>• Defence would work to improve the management and effectiveness of the relationship between the military and civilian authorities on referral issues. This would include:               <ul style="list-style-type: none"> <li>• reviewing and clarifying the guidelines, and examining the need for, and implementing as necessary, formal arrangements with the States and Territories for referral of offences; and</li> <li>• establishing a common database for tracking referrals.</li> </ul> </li> </ul>	<p>Oct 2007</p> <p>Oct 2007</p>	<p><b>UNDERWAY (SEE RECOMMENDATIONS 4, 5 AND 6)</b></p> <ul style="list-style-type: none"> <li>• The management and effectiveness of the relationship between the military and civilian authorities on referral issues has been well advanced by the recent signing of a Defence/AFP Memorandum of Understanding on 7 Aug 07, and offers of assistance from other State and Territory police agencies.</li> <li>• <i>Defence Instruction (General) PERS 45-1 – Jurisdiction under the DFDA Guidance for Military Commanders</i> is currently being updated to provide clearer guidance to ADF commanders in relation to the referral of offences to civilian authorities.</li> <li>• A major upgrade (Stage 2) to the Defence Policing and Security Management System is currently underway. User testing, which commenced late Jul 07, identified some issues that have resulted in a delay to implementation of the application on the Defence Restricted Network (DRN). Implementation on the DRN is expected to commence from Dec 07.</li> </ul>
4	<p>The Government agreed in part, noting that the ADF made an initial determination on whether offences of a suspected criminal nature should be retained for investigation and prosecution; and that:</p> <ul style="list-style-type: none"> <li>• Defence would .... as for Recommendations 1, 2 and 3 above.</li> </ul>	<p>As for Rec 1</p>	<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>• Action as per Recommendation 1.</li> </ul>

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5	<p>The Government agreed in part that all Service police would act upon accepted recommendations of the Ernst and Young Report, as appropriate to each Service.</p>	Jun 2006	<p><b>COMPLETED (INCORPORATED IN RECOMMENDATION 6)</b></p> <ul style="list-style-type: none"> <li>The outcomes of the Audit of ADF Investigative Capability and its implementation plan have overtaken Ernst and Young. As such, the planned completion dates have been revised to reflect the Audit report.</li> </ul>
	<p>The Government [also] agreed to:</p> <ul style="list-style-type: none"> <li>increase participation in civilian investigative training courses;</li> </ul>	Jun 2007	
	<ul style="list-style-type: none"> <li>encourage military personnel secondments and exchanges with civilian police authorities;</li> </ul>	Jun 2007	<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>Secondments have been undertaken with the Victorian and NSW homicide squads, NSW Forensic Officers Branch and the QLD Police Criminal Investigations Branch. Now that the ADF Investigative Service has been established, stronger links between Service police and civilian police are being put in place to allow for a more comprehensive program of secondments and exchanges.</li> </ul>
	<ul style="list-style-type: none"> <li>undertake a reserve recruitment drive to attract civilian police into the Defence Forces; and</li> <li>design clearer career paths and development goals for military police personnel</li> </ul>	<p>Oct 2007</p> <p>Oct 2007</p>	<ul style="list-style-type: none"> <li>A reserve recruiting campaign to attract civilian police into the ADF is planned to be initiated by Nov 07.</li> <li>Clearer career paths and development goals for service police have been enhanced by the creation of ADF Investigative Service and will be informed by the current review of service police being undertaken by the Services.</li> </ul>

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6	<p>The Government agreed:</p> <ul style="list-style-type: none"> <li>To conduct a Tri-Service audit of Service police to establish the best means for developing investigative capability. <ul style="list-style-type: none"> <li>That Defence would establish a joint ADF investigation unit to deal with more serious disciplinary and criminal investigations.</li> <li>The [investigative] unit would be headed by a new ADF Provost Marshal outside single Service chains of command.</li> </ul> </li> </ul>	<p>Jun 2006</p> <p>Dec 2006</p> <p>Jun 2006</p>	<p><b>COMPLETE</b></p> <ul style="list-style-type: none"> <li>The Audit Report into the ADF's Investigative Capability and the Defence action plan to implement the agreed recommendations were released by the CDF on 4 Dec 06.</li> <li>The ADF Investigative Service has been formed. The Provost Marshal ADF (PM ADF) now controls (vide CDF Directive dated 21 Mar 07) some 140 qualified investigators and direct support personnel, giving him central oversight and control of ADF investigations.</li> <li>The initial PM ADF (Colonel Tim Grutzner AM) was appointed on 14 May 06 and heads up the new ADF Investigative Service.</li> <li>Mr Adrien Whiddett has been re-engaged to mentor the implementation of the Audit Report into the ADF's Investigative Capability. In addition, a senior AFP Officer, currently attached to the Australian Crime Commission, Federal Agent Neil Burnage, has been made available by the AFP to assist on an as required/part time basis with addressing opportunities for AFP assistance in enhancing the ADF investigative capability.</li> </ul>
	<ul style="list-style-type: none"> <li>The unit would deliver central oversight and control of ADF investigations and develop common professional standards through improved and consistent training. Service police may be supplemented by civilian investigators.</li> </ul>	<p>Oct 2007</p>	<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>Work is underway to develop Defence Investigative Standards, based on the Australian Government Investigative Standards and the recently revised AFP Professional standards and is due for completion by Dec 07.</li> </ul>
10	<p>The Government agreed to legislate as soon as possible to create the statutorily independent Office of Director of Military Prosecutions (DMP).</p>	<p>Jun 2006</p>	<p><b>COMPLETED (DEC 05)</b></p> <ul style="list-style-type: none"> <li>The statutory position of the DMP was established under the <i>Defence Legislation Amendment Bill (No.2) 2005</i> which was assented on 12 Dec 05 and the position has been filled by Brigadier Lynette McDade.</li> </ul>

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11	The Government agreed that it is timely to review the Office of the DMP to ensure that it had sufficient resources to meet current and future work loads and was able to respond to operational requirements.	Dec 2006	<p><b>COMPLETED (NOV 06)</b></p> <ul style="list-style-type: none"> <li>• Eleven additional positions, required to implement the enhancements to the military justice system, have been established, albeit not yet filled.</li> <li>• Additional resources such as IT and accommodation have been reviewed and the DMP will relocate to permanent accommodation in Canberra in 2007.</li> <li>• Resource requirements will be further reviewed as part of the review of the system at the end of the two year implementation period (as per Recommendation 35).</li> </ul>
12	The Government agreed to review the training requirements for permanent legal officers assigned to the Office of the DMP (ODMP). The review would be extended to include the training requirements for reserve legal officers who may be assigned prosecution duties by the DMP.	Jun 2007	<p><b>COMPLETED (MAY 07)</b></p> <ul style="list-style-type: none"> <li>• A review of the training requirements for permanent legal officers assigned to the ODMP and Reserve legal officers who may be assigned prosecution duties by the DMP has been completed. The review has resulted in the establishment of a training continuum for legal officers who are, may be or have previously been posted to the ODMP. Training of the ODMP personnel has commenced and comprises of initial training completed at the time of posting-in, together with ongoing training - both individual and on the job training - as well as training in the civilian environment.</li> </ul>
13	The Government noted that the ODMP has been actively engaged in increasing its profile over the last 18 months, and agreed that action should continue to raise the awareness and profile of the Office.	Jun 2007	<p><b>COMPLETED (AUG 07)</b></p> <ul style="list-style-type: none"> <li>• The awareness and profile of the role of the ODMP has been raised over the first year of its operation with a statutorily appointed Director. The ODMP will continue to sustain awareness of its functions on an ongoing basis.</li> <li>• The DMP has conducted a range of briefs to the Services and various command and staff courses and articles on the appointment, function, role and independence of the DMP have appeared in the Service Newspapers.</li> <li>• The DMP is also providing web based information.</li> </ul>
14	The Government agreed to the statutory appointment of DMP at one star rank.	Dec 2005	<p><b>COMPLETED (MAR 06)</b></p> <ul style="list-style-type: none"> <li>• DMP has been established at one star rank and the position has been filled by Brigadier Lynette McDade.</li> </ul>

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15	The Government agreed to appropriate remuneration for the appointment of the DMP, the remuneration to be determined by the Commonwealth Remuneration Tribunal.	Jun 2006	<p><b>COMPLETED (DEC 05)</b></p> <ul style="list-style-type: none"> <li>The Commonwealth Remuneration Tribunal made a determination on remuneration for the DMP, effective 12 Dec 05 (the determination also covered the Inspector General ADF, Chief Judge Advocate and Registrar of Military Justice).</li> </ul>
16	The Government agreed in-principle that: <ul style="list-style-type: none"> <li>legal officers in the Office of the DMP would be required to hold Practising Certificates, and other permanent legal officers would be encouraged to take them out; and that</li> </ul>	Oct 2007	<p><b>COMPLETE</b></p> <ul style="list-style-type: none"> <li>All legal officers in the Office of the DMP now hold Practising Certificates.</li> <li>Permanent legal officers are being encouraged to take out practicing certificates.</li> </ul>
	<ul style="list-style-type: none"> <li>the matter of their independence would be established through amendment of the Defence Act, and commitment to professional ethical standards (ACT Law Society).</li> </ul>		<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>An amendment to the <i>Defence Act 1903</i> to address the matter of legal officer's independence and professional ethical stands was included in the <i>Defence Legislation Amendment Bill 2007</i>, which was introduced into Parliament on 15 Aug 07. The Bill was passed by the House of Representatives on 19 Sep 07 and introduced into the Senate on 20 Sep 07. The Bill has now lapsed with Parliament prorogued. The Bill will be reintroduced into the new Parliament following the election.</li> </ul>
17	The Government agreed to establish a Director of Defence Counsel Services (DDCS) as a military staff position within the Defence Legal Division, to coordinate and manage the access to and availability of Defence counsel services by identifying and promulgating a Defence panel of legal officers, permanent and reserve.	Jun 2006	<p><b>COMPLETED (APR 06)</b></p> <ul style="list-style-type: none"> <li>The position of DDCS has been established and filled. ADF members requiring Defence Counsel Services have the right to select their legal representatives from the Defence Counsel Services panel. When they select an ADF legal officer (permanent or reserve), their services are provided at Commonwealth expense. Defence counsel discharge their duties at trial or during Inquiries in accordance with their professional duties to the service member who is their client, and their independence is legislated in the <i>Defence Force Discipline Act 1982</i> (section 193(2)) and regulation 61(2) of the <i>Defence (Inquiry) Regulations 1985</i>.</li> </ul>

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18, 19 and 20	The Government agreed to create a permanent military court – the Australian Military Court (AMC), to replace the current system of individually convened trials by Court Martial and Defence Force Magistrate. The AMC would be established under appropriate Defence legislation.	Oct 2007	<p><b>COMPLETED</b></p> <ul style="list-style-type: none"> <li>• Legislation (the <i>Defence Legislation Amendment Act 2006</i>) to create the AMC was passed by Parliament on 5 Dec 06 and assented on 11 Dec 06.</li> <li>• The AMC commenced on 1 Oct 07.</li> <li>• The AMC rules were signed by the Chief Military Judge on 17 Oct 07 and commenced on 18 Oct 07.</li> </ul>
21	<p>The Government:</p> <ul style="list-style-type: none"> <li>• agreed in principle that judge advocates appointed to the Australian Military Court should have appropriate experience, and that appointments should be based on the same professional qualifications and experience that apply to other judicial appointments; and</li> <li>• noted that military judge advocates would predominantly be drawn from the Reserve and would have adequate civilian and military experience, nevertheless, qualified military legal practitioners should not be automatically excluded on the basis that they do not have civilian practice experience.</li> </ul>	Oct 2007	<p><b>COMPLETED (OCT 07)</b></p> <ul style="list-style-type: none"> <li>• Brigadier Ian Westwood was appointed by the Governor-General on 22 Aug 07 to the statutory position of Chief Military Judge of the Australian Military Court and sworn into his position on 3 Oct 07.</li> <li>• Colonel Peter Morrison and Lieutenant Colonel Jennifer Woodward were appointed by the Governor-General on 6 Sep 07 as the two permanent military judges of the Australian Military Court and sworn into their positions on 3 Oct 07.</li> <li>• The Commonwealth Remuneration Tribunal made a determination on remuneration for the Chief Military Judge and military judges on 13 Feb 07.</li> </ul>
22	The Government agreed in principle with the concept of a right to elect trial. The form of that right and appropriate thresholds would be determined once the structure of the Australian Military Court was established, but would be based on existing determinations that certain classes of serious offence must be tried by a court incorporating a military jury.	Oct 2007	<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>• The form of the right to elect trial from summary procedures to the Australian Military Court was included in the <i>Defence Legislation Amendment Bill 2007</i>, which was introduced into Parliament on 15 Aug 07. The Bill was passed by the House of Representatives on 19 Sep 07 and introduced into the Senate on 20 Sep 07. The Bill has now lapsed with Parliament prorogued. The Bill will be reintroduced into the new Parliament following the election</li> </ul>

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23	The Government agreed the concept of an automatic right of appeal, on conviction or punishment, from summary authorities to a judge advocate of the Australian Military Court. The current process of review would be discontinued. The existing right of appeal from Court Martial and Defence Force Magistrate to the Defence Force Discipline Appeals Tribunal (DFDAT) would be retained. Currently, the DFDAT may only hear appeals on conviction on points of law, and may quash a conviction or substitute a conviction on an alternative offence. This would be amended to include appeals on punishment, noting that such an appeal might result in an increased punishment.	Oct 2007	<b>COMPLETE</b> <ul style="list-style-type: none"> <li>Amendment to the right of appeal to the DFDAT was included in the Act which created the Australian Military Court.</li> </ul>
			<b>UNDERWAY</b> <ul style="list-style-type: none"> <li>The right of appeal from summary authorities to a military judge of the Australian Military Court is being progress in conjunction with Recommendation 22.</li> </ul>
24	The Government: <ul style="list-style-type: none"> <li>Agreed to continue the regular reviews of the Defence Whistleblower Scheme that have been undertaken since its inception. The current comprehensive review and its implementation would emphasise the present provisions against reprisals in the current Defence Whistleblower instruction.</li> <li>Supported annual reporting of the operation of the scheme against documented performance standards.</li> </ul>	Dec 2005	<b>COMPLETED (DEC 05)</b> <ul style="list-style-type: none"> <li>The first of a series of regular reviews was completed into the Defence Whistleblower Scheme and the operation of the Scheme is to be reported annually in the Defence Annual Report (this internal review indicates that the scheme is operating satisfactorily).</li> </ul>
		Jun 2006	
25	The Government noted that Defence already reported statistics on reporting unacceptable behaviour in its annual report. The Government agreed in part that Defence would continue to include this data in the Defence Annual Report.	Jun 2006	<b>COMPLETED (DEC 05)</b> <ul style="list-style-type: none"> <li>Reporting of wrong-doing was included in the 2004-05 Defence Annual Report and will continue to be reported (wrong-doing is generally accepted as being inappropriate behaviour).</li> </ul>
26	The Government agreed to amend the Administrative Inquiries Manual to specify that quick assessments, while mandatory, should not replace the appropriate use of other forms of administrative inquiries. The Manual would provide improved guidance on the use of quick assessments.	Jun 2006	<b>COMPLETED (APR 06)</b> <ul style="list-style-type: none"> <li>Amendments to the Administrative Inquiries Manual were completed and promulgated in Apr 06. In addition to covering these recommendations, the amendments incorporate agreed action from the earlier Acumen Alliance Review.</li> </ul>
27	The Government agreed to amend the Administrative Inquiries Manual to improve guidance to Commanders who are responsible for the selection of inquiry officers to carry out administrative inquiries, such as routine inquiries, or those appointed as Investigating Officers under the Defence [Inquiry] Regulations.	Jun 2006	<b>COMPLETED (APR 06)</b> <ul style="list-style-type: none"> <li>As for Recommendation 26.</li> </ul>

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28	<p>The Government agreed in part:</p> <ul style="list-style-type: none"> <li>to consider proposals to enhance the transparency and accountability in the appointment of investigating officers, and that investigating officers be required to produce statements of independence and to make known any potential conflicts of interest.</li> </ul> <p>The Government did not support the proposal that conflict of interest reports be included in reports to the Commanding Officer, rather, the Government would direct Defence to:</p> <ul style="list-style-type: none"> <li>amend the Administrative Inquiries Manual to require that investigating officers must provide statements of independence, and that following receipt of the statement of independence, the complainant must alert the appointing authority to any potential conflict of interest or objection to an investigating officer. Resolution of any conflict would then occur prior to the commencement of the investigation.</li> </ul>	<p>Jun 2006</p>          <p>Jun 2006</p>	<p><b>COMPLETED (APR 06)</b></p> <ul style="list-style-type: none"> <li>As for Recommendation 26.</li> </ul>
29	<p>In response to Recommendation 29, the Government agreed the need to improve the complaints and redress of grievance management system and proposed that the shortfalls in the existing system would best be met by streamlining the existing ADF complaints management and redress of grievance system and retaining independent internal and external review and oversight agencies. The Government <b>proposed to</b> reform and streamline the complaints and redress of grievance management system in line with the recommendations of a joint Defence Force Ombudsman/ CDF Redress of Grievance System Review 2004. Implementation of these recommendations has commenced in line with a CDF Directive 2/2005.</p>	<p>Oct 2007</p>	<p><b>COMPLETE</b></p> <ul style="list-style-type: none"> <li>The Defence Fairness and Resolution Branch was established (vide CDF/Sec Directive dated 27 Feb 06) as the central management body, outside of normal line-management, for managing all complaints and grievances. Implementation of the ROG Review recommendations is being monitored through a senior- level ROG Review Working Group.</li> <li>The IGADF has been established as a statutory position, remuneration has been determined, &amp; Mr Geoff Earley appointed to the position. IGADF provides CDF with internal audit &amp; review of the military justice system independent of the ordinary chain of command. This includes both Defence Force discipline and the Defence Inquiries system.</li> </ul>          <p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>The revised Defence Instruction (G) Personnel 34-1 ROG Tri-Services Procedures has been drafted and cleared and will be distributed once amendments to the Defence Force Regulations (DFR) have been made.</li> <li>The changes to the DFR have been drafted and are currently being settled. They will be submitted for consideration by the Federal Executive Council early in the term of the next Parliament.</li> </ul>

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30	The Government has taken action to clear the backlog of grievances in line with recommendations from the DFO/CDF Redress of Grievance Review 2004. This is scheduled to be completed by the end 2005, with no requirement for additional funding or a task force.	Dec 2005	<p><b>COMPLETED (DEC 05)</b></p> <ul style="list-style-type: none"> <li>The backlog of Redresses of Grievance cases has been cleared (there is no longer a backlog of cases which previously caused undue pressure on the complaints resolution system).</li> </ul>
31	The Government agreed to amend the Administrative Inquiries Manual to require the President to ensure that a copy of the relevant evidence is provided to a person whom the President considers is an affected person but who is not present at the hearings. It would be a matter for the President to determine what evidence should be made available to an affected person having regard to all the circumstances of each case.	Jun 2006	<p><b>COMPLETED (APR 06)</b></p> <ul style="list-style-type: none"> <li>As for Recommendation 26.</li> </ul>
32	The Government agreed to amend the Administrative Inquiries Manual as recommended, noting that the matter of what constitutes a reasonable opportunity for familiarisation is a matter for the decision of the President of the Board of Inquiry having regard to the circumstances of each case.	Jun 2006	<p><b>COMPLETED (APR 06)</b></p> <ul style="list-style-type: none"> <li>As for Recommendation 26.</li> </ul>
33	<p>The Government noted that the substance of this recommendation was agreed to following the 1999 Senate Inquiry into the Military Justice System, and Defence is finalising changes to Defence [Inquiry] Regulations 33.</p> <p>The Government agreed in part that:</p> <ul style="list-style-type: none"> <li>In cases where either the appointing authority, before the inquiry starts, or the President of a BOI makes a written determination that persons may be adversely affected by the Board's inquiry or its likely findings, that persons would be entitled to appear before the Board &amp; would have a right to appoint a legal practitioner to appear to represent them before the Board, if they wish.</li> <li>Where such persons are represented by an ADF legal officer, or some other Defence legal officer, such representation would be provided at Commonwealth expense, in accordance with standing arrangements.</li> <li>The representatives of the estate of deceased persons who had died as a result of an incident and may be adversely affected by the Board's inquiry or its likely findings, would be entitled to be legally represented before the BOI into that incident. Where the representative of the estate of such persons choose to be represented before the Inquiry by an ADF legal officer, or some other Defence legal officer, such representation would be provided at Commonwealth expense, in accordance with standing arrangements.</li> </ul>	<p>Dec 2006</p> <p>Dec 2006</p> <p>Dec 2006</p>	<p><b>COMPLETED (MAR 06)</b></p> <ul style="list-style-type: none"> <li>Amendments to the <i>Defence (Inquiry) Regulations 1985</i> (D(I)R) 33 were completed as at 31 Mar 06.</li> </ul>

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34	<p>In response to Recommendation 34, the Government agreed that there is a need to demonstrate that ADF inquiries into notifiable incidents including suicide, accidental death or serious injury are independent and impartial. To meet this principle, the Government would:</p> <ul style="list-style-type: none"> <li>propose amendments to legislation to create a Chief of Defence Force Commission of Inquiry.</li> <li>CDF should appoint a mandatory Commission of Inquiry into suicide by ADF members and deaths in Service.</li> <li>The commission may consist of one or more persons, with one being a civilian with judicial experience. Where the commission consists of more than one person, the civilian with judicial experience would be the President.</li> <li>This form of inquiry would be in addition to the existing arrangements for appointment of Investigating Officers and Boards of Inquiry.</li> <li>External independent legislative oversight by Comcare would continue in relation to the conduct of all ADF inquiries into notifiable incidents. This includes arrangements for consultation with Comcare on the terms of reference, as well as options for attendance or participation in the inquiry process.</li> <li>The Defence Force Ombudsman would continue to provide external independent legislative review of the conduct of ADF inquiries. This may occur as a consequence of a complaint or by own motion independently of the ADF.</li> </ul>	Dec 2006	<p><b>COMPLETED (DEC 06)</b></p> <ul style="list-style-type: none"> <li>Legislation (the <i>Defence Legislation Amendment Bill 2006</i>) was passed by Parliament on 5 Dec 06 to facilitate the creation of a CDF Commission of Inquiry (CDF COI). The provisions for the CDF COI commenced on Royal Assent on 11 Dec 06.</li> <li>Amendments to the <i>Defence (Inquiry) Regulations 1985</i> to support the conduct of a CDF COI, were considered and passed by the Federal Executive Council on 21 Jun 07 and commenced on 26 Jun 07.</li> <li>A panel of suitably qualified persons with judicial experience to preside over/sit on a CDF COI has been establishment.</li> <li>A CDF COI coordination and support cell has been establishment within the Office of the CDF.</li> </ul>
	<ul style="list-style-type: none"> <li>State and Territory Coroners would continue to review the outcomes of ADF inquiries into deaths of personnel. The ADF would work towards completing a Memorandum of Understanding with State and Territory Coroners.</li> </ul>	Oct 2007	<p><b>UNDERWAY</b></p> <p>The ADF is also consulting with State and Territory Coroners to establish protocols regarding the review of outcomes of ADF inquiries into deaths of personnel. Four State Coroners have already signed protocols, a fifth has provided draft protocols for Defence review and the sixth has agreed to establish liaison arrangements. A seventh is working on a draft protocol.</p>

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<p>35</p>	<p>The Government agreed in principle that, in addition to ongoing internal monitoring and review, Defence would commission regular independent reviews on the health of the military justice system. Such reviews would be headed by a qualified eminent Australian, with the first timed to assess the effectiveness of the overhauled military justice system proposed in this submission, at the conclusion of the two-year implementation period.</p>	<p>Oct 2007</p>	<p><b>UNDERWAY</b></p> <ul style="list-style-type: none"> <li>Proposed arrangements for the conduct of a review of the effectiveness of the overhauled military justice system at the conclusion of the two-year implementation period, including the broad timeline, and options for the authority under which the review might be conducted have been agreed by CDF. This independent review will be conducted in an open and transparent manner, and include a more detailed review of the DFDA. The review will commence in mid 2008 after the current enhancements have bedded down.</li> </ul>
			<p><b>COMPLETED (DEC 06)</b></p> <p>In addition to the Government response, as announced by the CDF in Oct 2005, an independent audit of the learning culture in ADF schools and training establishments was undertaken. The Learning Culture Inquiry report into ADF Schools and Training Establishments and Defence's action plan for implementing the agreed recommendations were released by the CDF on 6 Dec 06. Implementation is on track with action on over half the agreed recommendations underway. Implementation is being reported separately.</p>
<p>36</p>	<p>The Government agreed in principle to examine the combination of criminal law and administrative action in terms of best-practice military justice, noting that such a review would also satisfy a recommendation from the Burchett Report to review the nature of the punishments that may be imposed in the light of contemporary standards. This review would be undertaken outside the broad review proposed at recommendation 35, and would be completed within the two-year implementation period.</p>	<p>Oct 2007</p>	<p><b>COMPLETE</b></p> <ul style="list-style-type: none"> <li>Examination of the combination of criminal and administrative law was completed by obtaining independent external advice on double jeopardy from the Australian Government Solicitor. The advice has been incorporated into a revised Defence Instruction (General) 35-6, which deals with Formal Warnings and Censures in the ADF.</li> <li>An internal review of offences and punishments has been conducted as part of the process for enhancing summary procedures, and is now being progressed under Recommendations 22 and 23.</li> <li>Offences and punishments will also be further reviewed as part of the review of the effectiveness of the overhauled military justice system to be conducted in accordance with Recommendation 35.</li> </ul>

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37	<p>The Government supported the need for transparency and parliamentary oversight of the military justice system. The Government agreed to provide, in the Defence Annual Report, reporting on the state of health of the military justice system. Reporting would include: progress in the implementation and effectiveness of reforms to the military justice system, arising both from this report and previous reviews under implementation, and the workload and effectiveness of the key bodies within the military justice system.</p> <p>Defence would also amend the Defence (Inquiry) Regulations to provide for an annual report on the operation of the Defence (Inquiry) Regulations, fulfilling a recommendation of the Burchett report, and report twice a year to the Senate committee [April and October], on progress of the reforms throughout the two year implementation process.</p>	<p>Jun 2006</p> <p>Jun 2006</p>	<p><b>COMPLETED (JUN 06)</b></p> <ul style="list-style-type: none"> <li>• A report on the state of health of the military justice system is included in the 2005-2006 Defence Annual Report, and will be an ongoing element of this report.</li> <li>• The Defence (Inquiry) Regulations have been amended to provide for an annual report on the operation of the <i>Regulations</i>. (Amendments were approved by the Federal Executive Council on 22 Jun 06.)</li> <li>• Reports to the Senate FAD&amp;T Committee on progress with enhancements to the military justice system have been submitted in Apr and Oct 06 and Apr 07. This reporting will continue until the end of the implementation period.</li> </ul>
38	<p>The Government agreed to commission an expert to examine whether the human rights of children are being respected.</p>	<p>Jun 2006</p>	<p><b>COMPLETED (JUN 06)</b></p> <ul style="list-style-type: none"> <li>• Jenni Whelan, a consultant &amp; former solicitor at the Human Rights and Equal Opportunity Commission, has been engaged, under a standing offer for up to two years, to review specific policies and programs for compliance with the Convention on the Rights of the Child in order to determine whether the human rights of children are being respected.</li> </ul>
39	<p>The Government agreed that the ADF take steps immediately to draft and make regulations dealing with the ADF Cadets to ensure that the rights and responsibilities of Defence and cadet staff are aligned, noting that as part of the significant work initiated under the Government's Cadet Enhancement Program, Defence is finalising amendments to the regulations that would more than meet the Committee's recommendations on the human rights of minors.</p>	<p>Jun 2006</p>	<p><b>COMPLETED (JUN 06)</b></p> <ul style="list-style-type: none"> <li>• The ADF Cadet Forces Regulations 1977 have been amended. (Amendments were approved by the Federal Executive Council on 22 Jun 06.)</li> </ul>
40	<p>The Government agreed that further resources be allocated to the Australian Defence Force Cadets to provide for an increased number of full-time, fully remunerated administrative positions across all three cadet organisations and noted that the Service Chiefs had already provided additional resources to the ADF Cadets to improve administrative support.</p>	<p>Jun 2006</p>	<p><b>COMPLETED (JUN 06)</b></p> <ul style="list-style-type: none"> <li>• Further administrative positions across all three cadet organisations have been established and filled.</li> </ul>

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