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

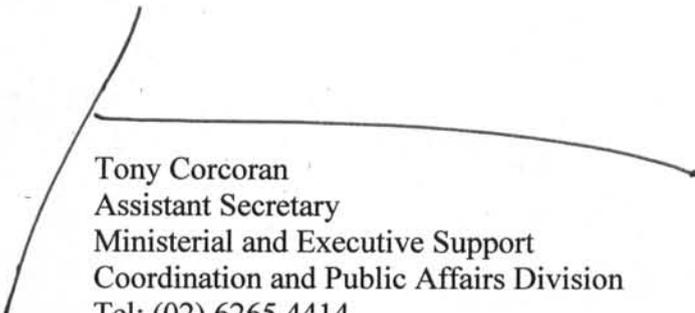
Dear Dr Dermody

I am pleased to enclose responses to questions on notice from the 26 February 2007 hearing into the Implementation of Reforms to Australia's Military Justice System. These responses have been cleared by the Minister Assisting the Minister for Defence.

Also enclosed is the internal Implementation Plan for the Defence Investigative Capability Audit which sets out how Defence will give effect to the 99 agreed recommendations in the Audit Report.

If you have any questions or concerns, please contact Mr Alex Tewes, Director Statutory Reporting and Accountability, on (02) 6265 6277.

Yours sincerely



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# Senate Standing Committee on Foreign Affairs, Defence and Trade

## Review of Reforms to Australia's Military Justice System

### Hearing 26 February 2007 - Responses to Questions on Notice

#### Question 1

Senator Ferguson

Hansard 26 February, p. 14

#### Retention rates

The Podger report into the *Learning Culture at ADF Training Establishments* found that 3600 other ranked personnel were permanently enlisted in the ADF, with around 900 leaving during their training. Additionally, 650 officers are recruited each year, with around 200 leaving during their training.

- a) Are these figures accurate?
- b) Who is made aware of the reasons for personnel leaving?
- c) Is the loss rate of personnel leaving during training higher than previously?

#### RESPONSE

- a) Yes.
- b) A range of senior Defence staff in leadership positions. This includes senior commanders across the Services, commanders in training organisations, personnel managers and staff.
- c) The current separation rates are consistent with Defence's expectations..

## Question 2

### Senator Hutchins

Hansard 26 February, pp. 14-15, 17, 19

#### Assistance for trainees

The Podger report into the *Learning Culture at ADF Training Establishments* found that, while 85 per cent of trainees reported that assistance was available to trainees who fall behind, in one establishment only 48 per cent agreed that such assistance was available.

- a) Can you provide information on this training establishment?
- b) What factors contributed to such a significant difference across establishments?
- c) What are you doing to address these factors?

#### RESPONSE

- a) The training establishment is HMAS *Watson*, located at Sydney's South Head. HMAS *Watson* is Navy's establishment for surface warfare training.
- b) The Inquiry Team noted that factors such as a high staff-to-trainee ratio, more individual coaching and mentoring and good use of modern technologies such as simulators were generally appreciated greatly by trainees. However, the Team did not correlate these indicators with responses to the survey question, or identify other factors that may have contributed to, in this case, an above average negative response rate. There is no obvious correlation between the response in this case and the particular characteristics of the training establishment.

Factors that could have contributed to such a significant difference include the small sample size of just 29 participants, as well as the potential for survey respondents to make different interpretations of the questions, which could further skew the results.

- c) As noted at b), the survey result at HMAS *Watson* may have occurred due to the small sample size. The 29 surveyed participants represent less than 5 percent of the 628 personnel who received training at HMAS *Watson* during 2006. Accordingly, the result may not be representative.

The Defence response to the Inquiry Report commits to implementing a range of enhancements to the ADF learning culture which can be expected to improve the training environment. However, it would be premature to initiate widespread policy change in respect of this isolated survey response without more rigorous quantitative data gathering and analysis to better estimate the incidence rate of the issues of concern.

### Question 3

**Senator Payne**

**Hansard 26 February, p. 18**

#### **Provost Marshall investigators**

- a) Could you provide information regarding the qualifications of the six investigators already supporting the Provost Marshall, and the four investigators who are forward deployed on operations?
- b) Can you provide information on the specific aspects of their training that will raise them to the required standard?

#### **RESPONSE**

a) and b)

Currently six investigators (including the Provost Marshall ADF [PM ADF]) are assigned to the office of the PM ADF and six investigators are forward deployed overseas on operations – Iraq (2), Afghanistan (1), Timor Leste (2) and Solomon Islands (1).

All of these personnel have completed the Investigator Qualification Course (IQC), a 14-week course conducted at the Defence Police Training Centre.

The IQC prepares Service Police to investigate serious and complex criminal matters. The course is aligned with Federal, State and Territory Police investigator training courses and programs and successful completion is recognised with the award of the Advanced Diploma of Public Safety (Police Investigation), accredited under the National Quality Training Framework.

In addition to the formal IQC qualification, most of the investigators currently directly supporting the PM ADF or forward deployed on operations have undertaken additional policing training and education from the list of courses below:

- ADF Scenes of Crime Officer Course (forensic procedures);
- Master's of Public Policy and Administration – Australian Graduate School of Policing, Charles Sturt University;
- Bachelor of Policing - Australian Graduate School of Policing, Charles Sturt University;
- Victoria Police Detective Training School;
- AFP Management of Serious Crime Course;
- AFP and NSW Police Sexual Assault courses;
- AFP Forensic Document Examiners Course; and
- AFP DNA Recovery Workshop.

In accordance with the December 2006 Defence response to the Audit of ADF Investigative Capability, Defence will review the training and employment of Service Police investigators, to ensure they meet contemporary standards. Included in this review will be consideration of opportunities to enhance secondments and exchanges with civilian policing authorities in order to increase/enhance the capacity of Service Police to perform their investigative function as recommended by the 2005 Senate Committee report.

In the interim, some new courses have already commenced which will significantly enhance the professional standards of Service Police investigators. 12 more investigators will complete the Defence Forensic Procedures Course on 24 March 2007. This course is taught by the Australian Federal Police at the Defence Police Training Centre.

**Question 4**

**Senator Bishop**

**Hansard 26 February, p. 26**

**Trooper Lawrence – Question on Notice**

Who cleared the response to Question on Notice 2424?

**RESPONSE**

The Minister for Defence.

## **Question 5**

**Senator Bishop**

**Hansard 26 February, p. 26**

**Trooper Lawrence – inquiry reports**

Were any of the three inquiry reports subject to legal review internally by Army or the ADF prior to them being signed off?

### **RESPONSE**

Two of the three inquiry reports were subject to legal review prior to being released by the Appointing Authority.

The first inquiry report was legally reviewed in June 2005. The review was completed by Captain Richard Hawke, RAN - Director Administrative Law, Defence Legal.

Legal review of the second inquiry was undertaken retrospectively. At the conclusion of the second inquiry, preliminary legal opinion was obtained by the acting Training Command – Army Legal Officer, Major Cumines, but formal legal review did not occur.

Complete legal review was completed in March 2006, by the Training Command – Army Legal Officer, Lieutenant Colonel Worswick. A Decision and Implementation Directive has been issued.

The third inquiry was legally reviewed in February 2006 by Lieutenant Colonel Worswick.

## Question 6

**Senator Hutchins**

**Hansard 26 February, p. 29**

### **Processes following the death of ADF personnel (referencing Trooper Lawrence)**

- a) Could you explain by what authority the ADF can refuse an inquest into the death of ADF personnel?
- b) Could you advise about the circumstances under which a coroner is prevented from inquiring into the sudden, accidental or unexplained death of an ADF member?
- c) Are there circumstances under which the ADF can refuse to assist the coroner inquiring into the death of an ADF member?
- d) Could you provide an update on the progress between the states and territories in reaching an agreement on a memorandum of understanding governing the investigation of sudden deaths of ADF members? What, if any, are the main sticking points?

### **RESPONSE**

a) and b)

Under Regulation 27 of the Defence Force Regulations 1952, it is possible for a commissioned officer to issue a direction concerning the disposal of the body of an ADF member who dies while in service. Under Regulation 28 of these Regulations, such a direction has the effect of overturning the jurisdiction of the Coroner. The power to issue such a direction is subject to the direction of the Minister.

On 5 May 2004, the then-Minister Assisting the Minister for Defence, the Hon Mal Brough MP, signed a Ministerial Direction that limited the circumstances where a commissioned officer could consider issuing a direction to where there is armed conflict within Australia, or where the death occurs outside Australia, including on a ship outside Australian coastal waters. The direction is required to be made in writing and signed by the officer concerned. The direction may only be issued after the officer has considered whether it is possible or appropriate to comply with applicable State or Territory law relating to Coronial inquiries.

It is important to note that it is a discretionary action to issue a direction, and that extant Defence policy places a further restriction on the exercise of this discretion requiring that a commissioned officer, in considering the issue of a direction, must consult, and where appropriate seek approval from, higher authority, such as the Chief of Service or Chief Joint Operations Command (the Vice Chief of the Defence Force).

- c) The ADF has indicated to all coroners that it generally agrees to assist with their investigations, and comply with all reasonable requests for information and access to witnesses. In addition, the ADF has offered to provide assistance of a technical nature to assist in investigations conducted by a coroner. The provision of assistance by the ADF is subject to the need to protect national (including operational) security.

- d) At a meeting of the coroners held on 15 November 2005, the majority of coroners decided that a memorandum of understanding between them and Defence might be perceived as compromising their independence. It was resolved that coroners would separately write to Defence, setting out mutual procedures within a letter of protocol. Recently, a letter of protocol was signed between Defence and the Victorian State Coroner and the Chief Magistrate of Tasmania. In addition, the Queensland State Coroner has also provided Defence with a draft protocol which is anticipated to be signed in the near future. A meeting to discuss a protocol has been held with the Australian Capital Territory Coroner and it is expected that the ACT will provide Defence with a response in the near future.

On 12 November 2006, the Chief of the Defence Force wrote to the remaining State and Territory Coroners inviting them to provide similar protocols to those already received. The South Australian State Coroner has declined to provide a protocol to Defence. However, contact details for an ADF Liaison Officer have been provided to the South Australian Coroner. Defence anticipates that the remaining Coroners will provide protocols applicable to their jurisdictions.

## Question W1

### Service police – investigative skills

The report of an Audit of the Australian Defence Force Investigative Capability was of the view that the viability of the investigative elements of the three Services was seriously threatened on several fronts. Paragraph 4 noted:

- all are experiencing problems related to staff numbers allocated and their quality and experience; and
  - many investigators have high workloads, poor administrative support and outdated and inadequate information technology support systems.
- a) What is being done to recruit high calibre investigators into the Service Police?
- b) Have resources and support staff been increased since the audit report was finalised? What are the plans for staffing and recourses for the Service Police?
- c) Could you comment on workload on Service Police and what is being done to help ease the problem?
- d) Could you inform the Committee about Service Police and their information technology support system?

### RESPONSE

- a) The Audit of ADF Investigative Capability recommended that (Recommendation 6.2), *“...whilst also taking action to improve the recruitment and retention of investigators, the thrust of reform be on improving the effectiveness and efficiency of the existing workforce”*.

Defence is currently determining the [workforce] requirement for Service Police as an essential starting point in developing a recruiting strategy and a number of ‘retention’ issues are being addressed in implementing the Audit Report, including improved training and professional development, secondments and exchanges with civilian authorities and improved conditions of service.

As recommended by the Audit Report, the focus is on improving the effectiveness and efficiency of the existing workforce. Improvements in these areas will contribute positively attracting high calibre investigators and retaining them in the Service Police.

- b) There has been no increase in Service Police resources or support staff since the Audit Report was finalised. However:
- Under the new ADF investigative framework, Investigator Qualification Course qualified investigators and direct support personnel have been centralised in the ADF Investigative Service (ADFIS). This new arrangement will allow the Provost Marshal ADF to better apportion their resources in accordance with the Audit Report’s recommendation.

- The Services' requirements for additional resources has been examined and a new policy proposal to supplement the Services' investigative capability is being developed.
  - Additionally, the Services will shortly commence an internal review of their overall Service Police functions and roles and general duties policing requirements, and the ADFIS workforce will be reviewed after 12 months of operation in order to rebalance Service Police effort to effectively conduct policing across the ADF.
- c) With the establishment of the ADFIS, the investigative assets will be centrally managed to better address case loads across the Services, Australia and other areas of operation. The implementation of the Audit Report's recommendations, which involve improvements to investigator practices, training, equipment and technology, can also be expected to result in a productivity benefit and a balancing of investigator workloads.
- d) The existing Defence Policing and Security Management System (DPSMS) is undergoing a project upgrade and is to become a 'live' case management system which will provide for the management of all Defence Investigative Authority (DIA) (Service Police, Defence Security Agency, Inspector General Division) inquiries on a common system, facilitating enhanced information sharing and the rapid production of statistics, reports and trends. Importantly, the revised DPSMS will allow the Service Police to implement 'intelligence-led policing'. The response to Question W8 provides more detail on the implementation of the DPSMS.

## **Question W2**

### **Crime scene management**

In keeping with the recommendations of the audit report, the ADF stated that it would include the proper care and management of incident and crime scenes as an element of all pre-command training courses in the ADF which would be reinforced periodically during career advancement. (Response to recommendation 5.8).

Is it the intention of the ADF to conduct a follow-up audit to determine the progress and effectiveness of the undertakings contained in the ADF's response to the audit report?

### **RESPONSE**

Yes. The progress and effectiveness of the enhancements to the ADF's investigative capability will be reviewed:

- as part of the broader independent review of the enhancements to the military justice system at the conclusion of the two year implementation period (as reflected in the Government response to Recommendation 35 of the 2005 Senate Committee report); and
- the establishment of the ADF Investigative Service will be reviewed after the first 12 months of operation.

Incident scene initial action and preservation training ('REACT') has been included as an element of all force preparation training for ADF personnel deploying on operations and will be included in relevant single-Service pre-command and career training courses.

### **Question W3**

#### **Service police**

The intention of the recommendations contained in the audit and Defence's response is to improve the investigative standard of Service Police.

Is it the intention for Service Police to have specialist investigative skills, for example in forensic science, to examine the scene of an incident such as suspected suicide, or to rely on specialist skills in the civilian police?

#### **RESPONSE**

It is the intention for Service Police to have specialist investigative skills.

Selected ADF investigators are currently trained as Scenes of Crime Officers, qualified to secure incident scenes, detect various types of evidence therein and collect and preserve that evidence for analysis. Defence currently does not have a capability for some specialist forensic skills, such as ballistic analysis, and in these situations, civilian police are requested to assist in the investigative process under longstanding arrangements. The development of such forensic capabilities was previously contraindicated given the relatively small size of the individual Services' investigative capabilities and the relative infrequency of the requirement for specialist forensic support.

With the establishment of the ADF Investigative Service as the single ADF investigative agency for complex and serious matters, it is appropriate to review the forensic capabilities required to support ADF investigations. In accordance with the Defence response to the Audit of ADF Investigative Capability and in order to increase/enhance the capacity of Service police to perform their investigative function as recommended by the 2005 Senate Committee report, Defence will:

- review the training and employment of Service Police investigators, including the requirement for specialist forensic training, and opportunities to enhance secondments and exchanges with civilian policing authorities; and
- build on the existing cooperation between the ADF and civilian policing authorities by entering into formal agreements, principally with the AFP, for the provision of forensic services, that remain beyond the capacity of the Service Police.

## **Question W4**

### **Cooperation and liaison with civilian police**

The second progress report advised the committee that an ADF policy of referring matters to civilian authorities 'is being finalised for consideration prior to discussion with civil jurisdictions.'

Could you provide a further update?

### **RESPONSE**

The Constitution (and the High Court opinion on these provisions) and also the *Defence Force Discipline Act 1982* itself require that certain alleged offences be referred to the relevant civilian authorities for prosecution and/or investigation rather than being dealt with by the ADF. Based on these legal requirements, the ADF has in place policy which expands on when this is to occur, and prescribes procedures for how this is to occur. In accordance with the Government response to Recommendation 4 of the 2005 Senate Committee report, Defence is working to improve the management and effectiveness of the relationship between the military and civilian authorities on referral issues. This includes the process/procedures for referring matters and the information technology tools that will provide better visibility of the progress and status of matters once referred. Initial discussions have been held with the AFP on this matter.

## **Question W5**

### **Defence Investigatory Authorities**

The recently-conducted audit of the ADF's investigative capability noted the lack of cooperation and coordination between the Service Police and their civil counterparts as a significant impediment to the Service Police carrying out their duties (eg obtaining search warrants). Paragraph 4.11 recommended Defence intensify its efforts to have Defence Investigatory Authorities recognised as Commonwealth Law Enforcement Agencies.

What needs to be done to have Defence Investigatory Authorities recognised by civilian authorities as law enforcement agencies and how close is the ADF toward this goal?

### **RESPONSE**

Section 85ZL of the *Crimes Act 1914* defines a “law enforcement agency” as including: the Australian Federal Police; the police force of a State or Territory; the Australian Customs Service; and a number of other agencies and individuals.

The definition does not include ADF Service Police. The Act would require amendment to empower Defence Investigatory Authorities as Commonwealth Law Enforcement Agencies.

Whilst the Audit Report did note in the text that Defence intensify its efforts in this regard, it did not make a specific recommendation to that effect. Indeed, the Report noted that the ‘...situation is likely to be remedied, at least in part, by developing closer and more formal relationships with the necessary external organisations’.

This is the current priority for implementation effort and useful discussions have already been held with the AFP in this regard.

## Question W6

### Cooperation with civilian police

In response to recommendation 7.23 the audit of the ADF's investigative capability the ADF undertook to 'establish and maintain formal lines of communication and liaison with Federal, State and Territory law enforcement bodies'.

- a) Has the number of Service Police attending civilian investigative training courses increased? Have you any details?
- b) Are there now in place formal arrangements, principally with the AFP and also State and Territory police, for Service Police to attend relevant accredited training courses and for secondments between the agencies?
- c) Are formal arrangements now in place between the ADF and the civilian police authorities, principally with the AFP, for forensic services in Australia and overseas especially for major incidents or crimes involving the non-combat related death of, or serious injury to, ADF personnel?

### RESPONSE

- a) Currently ADF Service Police undertake a wide range of courses delivered by civilian Policing authorities, including:
  - AFP Management of Serious Crime Course
  - AFP and NSW Police Close Personal Protection Courses
  - AFP and NSW Police Sexual Assault Courses
  - AFP Forensic Document Examiners Course
  - AFP DNA Recovery Workshop
  - Victoria Police Detective Training Course
  - Victoria Police Defensive Tactics Course
  - NSW Police Scenes of Crime Operators Course
  - NSW Police Fingerprint Course
  - NSW Police Ballistic Officers Course
  - QLD Police Strategic Management and Leadership
  - QLD Police Economic Crime Course

In the past, attendance on these courses has been arranged by the individual Services. Now that it is established, the ADF Investigative Service will centrally coordinate the attendance of ADF investigators on relevant external training courses, and the numbers of personnel attending courses will increase. As an example, there have already been 12 investigators attend the 2007 AFP instructed forensic procedures course, a 100 percent increase from 2006.

- b) No. Formal arrangements are not in place yet. As noted in the response to Question W3 and in accordance with the Defence response to Recommendation 5.9 of the Audit Report, Defence is working to formalise arrangements with the AFP, principally, and also State and Territory police, on the attendance of Service Police on relevant training courses. This is the current priority for implementation effort and useful discussions have already been held with the AFP in this regard.

- c) No. As noted in the response to Question W3, Defence will build on the existing cooperation between the ADF and civilian policing authorities by entering into formal agreements, principally with the AFP, for the provision of forensic services. Under existing arrangements, civilian forensic services are provided on a case-by-case basis.

## **Question W7**

### **Cooperation with civilian police**

The Board of Inquiry into the Death of Private Jacob Kovco also noted the need to improve arrangements for cooperation between Service Police and their civilian counterparts.

Paragraph 287 (aa) (i) noted the assistance provided by the New South Wales Police and recommended:

- the establishment of formal protocols with Australian State Police to allow Service Police secondments and to provide expertise, resources, and training where the ADF lacks this capacity; and
  - the establishment of a pool of State Police investigators who are ADF 'force prepared' to accompany a Counsel Assisting team during the scoping of offshore Inquiries.
- a) Could you advise the Committee whether formal protocols are in place with Australian State Police to allow Military Police secondments and to provide expertise, resources, and training where the ADF lacks this capacity?
- b) Has a pool of State Police investigators been established who are ADF 'force prepared' to accompany a Counsel Assisting team during the scoping of offshore Inquiries?

### **RESPONSE**

- a) There are no formal arrangements in place at this time. As noted in the response to Question W3 and in accordance with the Defence response to Recommendation 5.9 of the Audit of ADF Investigative Capability Report, Defence will seek to formalise arrangements with the AFP, principally, and also State and Territory police, on the attendance of Service Police on relevant training courses. This is the current priority for implementation effort and useful discussions have already been held with the AFP in this regard.
- b) No. The most appropriate means to provide support to counsel assisting during the scoping of offshore inquiries is currently being examined.

## **Question W8**

### **Defence Policing and Security Management System**

The ADF's second progress report explained that a major upgrade to the Defence Policing and Security Management System was currently underway and was expected to meet this requirement.

This update remains unchanged from the advice given in the first progress report.

Could you explain the intent and significance of this upgrade?

### **RESPONSE**

Between 1997 and 2000, DPSMS Stage 1 was developed and implemented in the Defence Investigative Authorities (DIA). It was built by the Information Systems Division and sponsored by the Inspector General. The main goals of the system were to improve:

- visibility of the extent of Service discipline, criminality and security matters;
- the operational effectiveness and efficiency of Defence security and policing operations;
- provide Defence investigators with access to an enhanced and modernised investigation case management system; and
- statutory and ad hoc reporting to Parliament, the Attorney General's Department, the Australian National Audit Office (ANAO), and internal reporting to Defence executives.

Stage 1 is currently used by the DIA. However it is built on obsolescent software (Paradox) that can only provide for a distributed hierarchy of local databases. In other words, it cannot deliver a centralised database capable of being accessed by a large number of geographically-dispersed users in "real time". Stage 1 was always intended to be replaced by a Stage 2 system that would provide this key capability and provide further enhancements.

A contract with Oracle Corporation Australia Pty Ltd (Oracle) was signed on 1 August 2006 for design, development and delivery of the first two releases of the new system. The Oracle project team is currently undertaking system tests the new application with implementation on the Defence Restricted Network planned to occur by the latter part of 2007.

Stage 2 will enable the DIA to collect, share and report on policing and security matters more efficiently and effectively than at present.

The new system is intended to provide Defence with a capability that addresses the requirements of the 2005 Senate Committee report – for a common referral tracking database (Recommendation 4) and addresses relevant recommendations of the December 2006 Defence response to the Audit of ADF Investigative Capability.

## Question W9

### *Defence Force Discipline Act 1982 (DFDA)*

The Report of an Audit of the Australian Defence Force Investigative Capability found that a commonly held view expressed by ADF members was that the DFDA had 'simply had its day'. Paragraph 4.8 reported that some described the document as 'outdated and anachronistic' and suggested that it 'does not match modern disciplinary, legal and policing requirements'. In response to recommendation 4.13 that Defence review the DFDA, Defence stated that it would amend a number of offences as part of the *Defence Legislation Amendment Bill 2007* and continue a more detailed review. This response appears to be tame when considering the weight of opinion on the Act.

What is ADF's response to the recommendation mean in terms of the comprehensiveness of the review of the DFDA and the intention to consider the current legislation?

### RESPONSE

The discipline system is continuously reviewed and reformed by Defence. Changes recently implemented and those under consideration will, when completed, represent a comprehensive revision of the DFDA. Since the commencement of the DFDA, it has been substantially amended, including:

- the establishment of the Discipline Officer scheme for dealing with minor disciplinary infringements (DFDA, Part IXA Special Procedures Relating to Certain Minor Disciplinary Infringements);
- amendments to DFDA Part VI Investigation of Service Offences, including amendments to the requirement to caution persons and access to legal practitioners, tape recording of confessions and admissions and the requirements for medical examination or the taking of a specimen for the purpose of obtaining evidence; and
- the creation of new offences;
- the extension of the limitation period on certain charges from 3 to 5 years; and
- the application of the Criminal Code to the DFDA.

The Senate Foreign Affairs, Defence and Trade References Committee 2005 *Report on the Effectiveness of Australia's Military Justice System* provided a major impetus to Defence to further substantive changes to its wider military justice arrangements, including the discipline system. The changes to the discipline system agreed to by the Government are still being implemented, together with changes resulting from other inquiries or reviews relating to the military justice system that were conducted between 1997 and 2005.

Of note, the following significant changes to the discipline system have been recently implemented:

- the establishment of an impartial and judicially independent permanent military court, the Australian Military Court, to replace individually convened trials by way of Courts Martial and Defence Force magistrates;
- establishment and appointment of the statutory position of Director of Military Prosecutions;

- establishment and appointment of the statutory position of Registrar of Military Justice; and
- establishment of the Director Defence Counsel Services.

Defence is currently attending to the following significant amendments to the discipline system which will:

- extensively simplify the summary hearing process to enhance its expeditious yet fair application by commanders; and
- expand the Discipline Officer scheme to higher ranks.

In 2007, the Inspector-General ADF will conduct an own motion review of Part VI of the DFDA, which provides the statutory powers for the investigation of service offences by investigating officers. The results of the review and any recommendations for reform will be provided to the Chief of the Defence Force.

The results of the annual Defence Attitude Survey, the military justice audits and the focus groups conducted by the Inspector General ADF demonstrate that ADF members are interested in changes to the discipline system that balance the maintenance of effective discipline with the protection of individuals and their rights. Defence has demonstrated a commitment to radical change of the discipline system to better achieve this objective. A full review of the effectiveness of the new discipline system will be conducted at the conclusion of the Government's two-year implementation period as stated in the Government's Response to the 2005 *Report on the Effectiveness of Australia's Military Justice System*.

## Question W10

### DFDA – Defence Attitude Survey

The Defence Attitude Survey of ADF personnel on military justice produced the following responses to the given propositions (*Defence Annual Report 2005-06*, p. 258):

- the DFDA is an effective and efficient tool for the maintenance of discipline: 61 per cent agree, 20 per cent disagree and 19 per cent were uncertain;
- the DFDA is not easy to understand: 25 per cent agreed; 28 per cent disagreed and 47 per cent were uncertain; and
- minor breaches of discipline would be better dealt with by counselling and warning rather than charging under the DFDA: 76 per cent agree, 12 per cent disagree and 12 per cent are uncertain.

Could you expand on the results of this survey and what they are telling Defence about the DFDA?

### RESPONSE

The survey results simply reflect the perceptions of members based upon their personal experience and knowledge of the military justice system. In many cases, a member's knowledge of the military justice system may be quite limited, if there has been little or no first hand experience of the system to draw upon. Therefore, the survey results may not necessarily reflect the facts of a given matter, but merely how it is perceived by an individual.

The survey found a majority of ADF members agreed that the Defence Force Discipline Act was an effective and efficient tool for the maintenance of discipline.. However, when asked whether they agreed with the proposition that the *Defence Force Discipline Act 1982* (DFDA) was not easy to understand, some 72 per cent of members surveyed either agreed with that proposition or else were uncertain as to whether they agreed or not. A conclusion that may be drawn is that while it might be thought to be an effective tool for the maintenance of discipline, the DFDA is generally not well understood and would benefit from being simplified. Accordingly, a major overhaul of the summary trial system is underway with a view to a significant simplification of the summary justice process as part of a range of wider reforms to the military justice system being implemented following the Committee's inquiry report.

The fact that a large majority of ADF members agree that minor breaches of discipline would better be dealt with by counselling and warning, in other words by recourse to less formal disciplinary procedures, is also useful feedback. This is being addressed by expansion of the Discipline Office Scheme, which is a much simplified and less formal method of dealing with minor disciplinary breaches. It appears to have a high level of acceptance across the ADF.

## Question W11

### Defence Attitude Survey

The Defence Attitude Survey of ADF personnel on military justice produced the following response to the given propositions (*Defence Annual Report 2005-06*, p. 258):

- both genders are treated equally under the military justice system: 39 per cent agree, 26 per cent disagree, 35 per cent uncertain; and
- not all ranks are treated equally under the military justice system: 53 per cent agree, 20 per cent disagree, 27 per cent uncertain.

Could you expand on the results of this survey and what they are telling Defence about the military justice system?

### RESPONSE

Of those surveyed that had a definite opinion about whether genders were treated equally, more than 60 per cent thought that they were. Furthermore, feedback from focus groups interviewed during unit-level military justice audits, indicates that gender inequality in the military justice system is not a particular issue. Therefore, the overall results from surveys about equality of treatment as between genders do not indicate that a significant problem exists.

With regard to unequal treatment based on rank, it is not surprising that a majority of members surveyed thought that various ranks were treated differently under the military justice system. This is because, to some extent, different (not necessarily unequal) treatment is an intrinsic feature of the *Defence Force Discipline Act 1982*. For example, the Discipline Officer Scheme at present only applies to privates and their equivalents, and officer cadets. The punishments to which officers may be subjected are not necessarily the same as those that can be awarded to other ranks. It is more important to determine not whether ranks are treated equally, but whether they are treated fairly. There is no reason to believe that despite the inherent differences in treatment between ranks, that those differences result in unfairness.

## **Question W12**

### **Learning culture - benchmarks**

The report on learning culture stated that 'there is clear evidence of improvements in behavioural standards in all the training establishments we have visited and of universal knowledge of ADF policies of zero tolerance of bullying and harassment' (paragraph 106).

What mechanism was used to measure this shift in behavioural standards – for example, what was the benchmark?

### **RESPONSE**

Focus group discussions, which included members at all levels of the training continuum and staff, survey data and comparisons with relevant previous Defence Attitude Survey data, provided the baseline for the Inquiry Team's observations.

The Inquiry Report notes (paragraph 6) that “gaining an accurate appreciation of the culture of an organisation requires the use of a number of techniques, many of which are subjective” and (paragraph 7) that “literature suggests that qualitative information is at least as important as quantitative information”. The Report notes (paragraph 7) the elements of the layered approach to assessing the culture of schools and training establishments on which the Inquiry Team based their observations.

## Question W13

### Bullying and harassment

*The Final Report of the Learning Culture Inquiry: Inquiry into the learning culture in ADF schools and training establishments* summarised its findings

The Inquiry Team found no evidence of an inappropriate culture that supports bullying or harassment. However, it is the Team's view that there is still some way to go before the underlying culture will firmly oppose harassment and bullying, and firmly support explicit policies on such issues of E&D (paragraph 108).

Could you reconcile this statement with some of the views expressed to the Team carrying out the inquiry into the ADF culture such as:

One trainee said: 'People become victims because they let the team down.'  
Another said: 'There needs to be a change of culture where we can ask for help with a discipline problem. Now I feel I have failed my job if I ask for help.' Those who were not contributing to the team tended to be isolated and ignored (with the risk of being bullied), rather than being assisted and supported by their peers, or their peers seeking assistance. The culture seems to encourage trainees to be negatively judgmental about their peers as demonstrated by the frequency of terms such as 'chitters', 'malingerers', 'marginals', 'jack', 'gobbing off' and 'bludgers'.(paragraph 54)

### RESPONSE

The Inquiry Team reported that it found no evidence of an inappropriate culture that supported bullying or harassment, but expressed a view that there was still some way to go before the underlying culture would firmly oppose harassment and bullying.

Furthermore, the Inquiry Team (Mr Andrew Podger, Ms Catherine Harris and Mr Roger Powell) who were consulted in preparing this response) advises,

*The Inquiry Team's findings are based on its assessment of all the evidence it gathered from visits, focus groups, surveys and documentation. The majority of responses to survey questions and in focus group discussions were positive, but there were significant exceptions that demonstrated there is still some way to go to manage the risk of bullying and harassment by developing a culture that firmly opposes such behaviour and supports explicit policies on equity and diversity.*

## Question W14

### Bullying and harassment

Paragraph 196 of the report on learning culture stated,

Our strong impression is that the level of direct bullying of those perceived to be performing poorly by trainers or trainees is generally low now, given the rules on inappropriate behaviour, but other forms of more subtle abuse are not uncommon.

Could the committee have some clarification on this statement? How is Defence responding to this problem of 'subtle abuse'?

### RESPONSE

The Inquiry Team was also consulted in preparing a response to this question. Accordingly, the Inquiry Team (Mr Andrew Podger, Ms Catherine Harris and Mr Roger Powell) advises,

*The Report refers in various places to the tendency to isolate those who are perceived to be performing poorly or not contributing sufficiently to the team. This can become a form of abuse, particularly if the trainee concerned perceives that his or her peers have collectively taken such a stance, particularly if derogatory terms are used towards the individuals concerned. This is the subject of the Inquiry Team's Recommendations 27 and 30.*

*The Inquiry Team also draws attention to the risks involved in promoting teamwork and close bonding, and its Recommendations 14 and 27 are relevant to managing the risks of both explicit and subtle forms of bullying.*

*These recommendations have been fully accepted by the ADF.*

*The Inquiry Team also reported that the ADF has some way to go to improve the treatment of women, where the emphasis to date has been on equality with men rather than recognising and appreciating the different styles and approaches of women and adjusting training practices and the learning culture to better suit their requirements. Failure to do so may be regarded by the Inquiry Team as a subtle form of inappropriate behaviour.*

As indicated in the Defence response to the Learning Culture Inquiry Report, Defence will enhance the preparation of trainers for their roles, particularly in respect of dealing appropriately with trainees, and will include awareness training for new entry trainees that specifically addresses 'inter-personal relationships'.

## **Question W15**

### **Procedures during deployments**

The Board of Inquiry into the death of Private Kovco observed that a number of soldiers 'were unfamiliar with extant Standard Operating Procedures; in particular the provisions addressing Degrees of Weapons Readiness.' The ADF accepted the Board's recommendation that 'the Appointing Authority investigate and review the process by which critical ADF procedures are promulgated before and during ADF deployments.'

Could you provide the Committee with progress on the review and the measures being taken to ensure that procedures are being promulgated and that all relevant members of the ADF are aware of them?

### **RESPONSE**

The investigation and review into the process by which critical ADF procedures are promulgated before and during ADF deployments is ongoing. Action to fully implement the relevant Board of Inquiry recommendation will be completed, as scheduled, by the end of April 2007.

## **Question W16**

### **Compliance with procedures**

#### **Senator Evans**

The reports on the deaths of Trooper Lawrence and Private Kovco seem to highlight the need for all ADF personnel to be not only aware of Defence rules, instructions, orders and guidelines but for Defence to ensure that all members comply with them.

What steps are being taken to strengthen compliance?

#### **RESPONSE**

In response to the Inquiry into the death of Trooper Lawrence, the two following key compliance measures were implemented:

- the introduction of mandatory annual heat illness training for all Army personnel which is to be formally recorded when completed; and
- mandatory heat and humidity assessments to be undertaken prior to and during the conduct of all Army training.

In response to the inquiry into the death of Private Kovco, Army has been tasked to review the conduct of Self Loading Pistol training. This may result in the additional compliance requirements such as:

- amendments to existing qualification skills for use of the Self Loading Pistol; and
- 'buddy system' procedures will be introduced as an integral part of Self Loading Pistol handling drills.

Army has also been tasked to investigate the method and cost of introducing training on the Self Loading Pistol into ADF induction training, which would also potentially impose a significant compliance requirement upon the entire ADF.

**Question W17**  
**ADF mental health**

- a) When was the last time the ADF reviewed the procedures in place for dealing with mental health issues and the discharge of a member on such grounds?
- b) Have any concerns been drawn to your attention that question the procedural fairness of the current process?
- c) Are you confident that the current process resulting in the discharge from the Service on mental health grounds is fair and just?
- d) Could you outline for the committee, the safeguards built into the process that ensures procedural fairness to a member undergoing medically assessment and who is subsequently discharged on mental health grounds?
- e) With regard to privacy issues—who has access to a member's medical records?
- f) Are members entitled to have access to their medical records?
- g) Can outside organisations such as the Federal or State Police Forces, or security agencies obtain access to a member's medical record including psychological assessments?

**RESPONSE**

- a) Procedures for dealing with mental health issues are constantly being reviewed by the Directorate of Mental Health in the Defence Health Services Division. This is carried out as part of the ADF Mental Health Strategy which has the following initiatives:

**Integration and enhancement of ADF mental health services.** Activities under this initiative include:

- Establishment of 22 regional mental health teams within Australia, and two operational mental health teams.
- Liaison with key stakeholders and other organisations on matters of mutual interest, particularly with respect to the liaison with the Department of Veterans' Affairs to maintain continuation of mental health care for ADF members post discharge.
- Enhancement of service delivery through the development of a number of health directives on matters of clinical importance (e.g. PTSD, depression, anxiety disorders and other psychiatric disorders) and the release of Defence policies.
- Development of a coming home readjustment program to assist with sub-clinical problems associated with post-deployment readjustment.
- Sponsorship of research examining pathways to care (barriers and stigma associated with the delivery of mental health support).
- Establishment of an acute mental health on operations management course.

- Development and promulgation of a set of ADF mental health promotion fact sheets; a mental health support website and mental health articles regularly published in single Service newspapers and other Defence media.
- **ADF mental health research and surveillance.** ADF mental health research is focused on care of the member and enhancement of operational capability. A key feature of this initiative has been the establishment of the mental health research, surveillance and advisory group as a body to oversee mental health research projects and monitor mental health within the ADF.

A major project within the initiative is the ADF mental health and wellbeing study. The study aims to provide baseline data on the mental health of the ADF population, and to inform the ADF on the use of mental health services and potential barriers to care.

**Enhanced resilience and well being.** Through collaboration with the Australian Centre for Posttraumatic Mental Health, the strategy will be sponsoring the ADF resilience study designed to examine the course and predictors of psychological resilience (risk and protective factors) over the first three years of service in the ADF. Currently in the planning stage, the study will assist in the design of initiatives to enhance resilience.

The strategy has also facilitated the development of a Wellbeing Forum to promote better communication between key Defence agencies and enhance workforce wellbeing through informed policy.

**ADF critical incident mental health support.** The provision of Critical Incident Mental Health Support (CMS) is considered a fundamental part of the ADF's response to critical incidents and potentially traumatic events. Developed in conjunction with the Australian Centre for Posttraumatic Mental Health, CMS is considered best-practice and offers a framework to mitigate and alleviate possible psychological injuries following a critical incident.

**ADF suicide prevention program.** Reflective of the Australian population, suicide rates within the ADF have declined over recent years, however suicide related behaviour continues to be taken seriously by the ADF. While the data suggests that suicide risk factors among ADF members are the same as in the general community, it is recognised that there are many protective factors that can be influenced by command.

Ongoing suicide awareness briefs are provided to ADF personnel during annual and induction training activities, and more recently, the ADF commenced roll-out of suicide first aid training as a component of *The Keep Your Mates Safe* series (*Keep Your Mates Safe – Suicide*) and Clinical Upskilling for Mental Health Professionals working with clients/patients experiencing a suicidal episode.

**ADF alcohol, tobacco and other drugs service.** The ADF Alcohol, Tobacco and Other Drug Service (ATODS) provides for a major health promotion campaign that links to the National Alcohol Campaign. Awareness presentations are conducted during annual and training induction activities to promote safe drinking behaviour and *Keep Your Mates Safe – Alcohol* is delivered as a first aid-based program to encourage the responsible use of alcohol and provide referral information.

- b) No.
- c) Yes. Defence is committed to ensuring that the men and women of the ADF, and their families, are provided with an exemplary separation service to facilitate their transition to civilian life. Every effort is to be made to ensure that the separation service is as uncomplicated and stress free as possible.

Services such as education assistance and financial awareness can be regarded as through-service benefits for long-term career transition planning. In addition, Defence's transition services are sufficiently flexible to support those personnel who separate at short notice for medical or compassionate reasons. Those who must separate for medical reasons are supported by the ADF Rehabilitation Program.

Defence and DVA established the Transition Management Services in 2002. This incorporates provision of:

- Health Services, including Rehabilitation and Compensation
- Entitlement advice (covering matters such as housing, relocation, pay and leave)
- Administration coordination and assistance
- Education and Career Training and Skilling entitlements

ADF members separating due to medical reasons are provided with the same transition management services as for others, however, their pathway may differ because of a greater interaction with Defence Health Services, and in particular the ADF Rehabilitation Program.

The DVA provided 'Stepping Out Program' aims to increase awareness of exiting ADF members and their partners of appropriate psycho-social skills and behaviours that may assist them in their transition from military to civilian life. The program aims to achieve this through the provision of a comprehensive information and skills enhancement program and reinforces the case coordination principles, for those Members who are in the process of being medically discharged.

The concept of the 'Staying in Touch' program will allow for continued Departmental contact with former ADF personnel. The program will be comprised of an ADF Exit Survey, post separation surveys and seminars in order to improve communication post separation. These surveys will assist with longitudinal studies that both Departments need to undertake.

The aim of the follow-up surveys will be to gain a snapshot of the separated members' post-ADF life and how this has been influenced by support and services provided leading up to separation from the ADF. It could also be an opportunity to:

- gain feedback on the transition process;
- provide preventive health messages;
- promote early intervention strategies, such as free medical reviews at two and five year periods post separation; and
- provide information about changes to support services, new initiatives and benefits.

Issues concerning the health of veterans of past deployments have been difficult to resolve because insufficient data was collected at the time of those deployments. Defence, assisted by DVA, has established a program of post-deployment health surveillance. This program will conduct retrospective studies on East Timor, Bougainville and Solomon Islands veterans. It will also conduct studies on veterans from the current operations in the Middle East.

The Middle East Area of Operations health study, including Iraq and Afghanistan, will be significantly different from the other studies as it will be in part prospective, with participants being followed from time of deployment. Detailed real-time exposure data is critical to the success of this approach.

All the studies are expected to be conducted by the Centre for Military and Veterans' Health. This is a joint venture involving Defence and DVA and a consortium consisting of the University of Queensland, University of Adelaide and Charles Darwin University. The studies are similar to those being conducted by allies such as United States and United Kingdom.

It is anticipated that the studies will inform a continuing, comprehensive health surveillance program for the ADF, concentrating on the health effects of operational deployments.

- d) Extant Defence policy outlines that once a determination of medical employment classification (MEC) status has been made, there are three opportunities to appeal:
- A member may make a representation against a decision of a unit level MEC review.
  - A member may appeal a MEC Review Board (MECRB) determination. This is to be based on compelling new medical or occupational information. It is to be heard by a MECRB, with confirmation of recommendation being sought from the specific delegate.
  - If the member considers the outcome of the appeal unsatisfactory, the member may submit redress, in accordance with extant Defence policy.

A MECRB consists of a range of representative including a senior level officer (Director-General of the relevant Service personnel management agency) ultimately responsible for the determination of the MECRB; a representative from the member's Service career management area; a Joint Health Support Agency representative; a subject matter expert on entitlements; and other members as deemed relevant by the Chair.

The principles under which a MECRB operates are:

- Each case is to be considered individually.
- The final determination in each case rests with the Chair of the MECRB and is a personnel management decision, rather than a medical decision.

- MEC is to be assessed in terms of the member's ability to be employed in their primary occupation when deployed in an operational environment.
  - The MEC is determined according to each member's primary military occupation.
  - The MEC is to be determined from 'first principles', that is, from an assessment of the direct and quantifiable impact of the member's medical condition on deployability in that member's specific circumstances.
  - A member may provide a Member's health statement outlining their understanding and views of the effects of their medical condition on their ability to undertake their military duties and any comments they may wish to make on their medical and administrative management.
  - A workplace disability report outlining the functional effects of any disability in the workplace and on deployment is required. This includes whether the member is working full or part time, the type of duty currently performed and whether the member is capable of performing all aspects of their primary and deployed role.
- e) Health information is collected by a Defence health practitioner or health facility personnel to manage, diagnose and treat an individual's health on an ongoing basis and to provide documentary evidence of the preparedness of an individual. It is also collected for the purposes of health research subject to ethics approval from the Australian Defence Human Research Ethics Committee, and when de-identified, for operational surveillance and for clinical quality improvement activities. Access to a member's medical records is outlined in extant Defence policy
- f) Yes.
- g) Outside organisations can access a member's medical record only in the following circumstances:
- consent for disclosure has been given;
  - disclosure is reasonably believed necessary to lessen or prevent a serious and imminent threat to an individual's life, health or safety, or a serious threat to public health or public safety;
  - the disclosure is required or authorised by law;
  - where the Defence health practitioner has reason to suspect unlawful activities;
  - where the information concerns a patient incapable of giving consent and is disclosed to a person legally responsible for the patient;
  - where the use or disclosure is necessary for the compilation of statistics for public health or safety reasons or for research approved by the Australian Defence Human Research Ethics Committee;
  - to an investigating officer appointed pursuant to regulation 74A of the Defence Inquiry Regulations 1985; or
  - as authorised or required by law in response to a formal complaint to which the health information may reasonably be considered relevant.

**SENATE STANDING COMMITTEE ON FOREIGN AFFAIRS,  
DEFENCE AND TRADE**

**REVIEW OF REFORMS TO AUSTRALIA'S MILITARY JUSTICE SYSTEM**

**REQUEST FOR SOME INDICATION OF THE ELEMENTS OF THE  
IMPLEMENTATION PLAN FOR THE AGREED RECOMMENDATIONS OF THE  
DEFENCE INVESTIGATIVE CAPABILITY AUDIT**

An internal Implementation Plan for the Defence Investigative Capability Audit sets out how Defence will give effect to the 99 agreed recommendations in the Audit Report. This working document identifies against each recommendation: indicative timelines for completion, methods to promote change, initial resources required, the Defence Groups/Services with implementation responsibilities, and measures of success (for implementation).

Where the Defence Investigative Capability Audit implementation action correlates with the overarching military justice implementation actions, the intention is to complete implementation within the two year period for the Government response to the 2005 Senate Report. These include establishing a joint ADF investigative capability, establishing a Provost Marshal ADF, providing the Office of the DMP with sufficient numbers of qualified and experienced staff, seconding a senior AFP officer to mentor the ADF Investigative Service (ADFIS), and developing common professional standards through improved and consistent training (including training and secondments with civilian police).

Other separate recommendations are planned to be at least commenced by mid 2008, noting that some of them will be ongoing over the five year period the Defence Investigative Capability Audit Report indicated will be required to achieve effective reforms.

Action is already completed or underway in respect of a number of the Report's recommendations, in particular, the ADFIS has been established, a senior former AFP officer has been seconded to mentor and oversight implementation, a number of foundation policy and procedural documents are under development, additional training has commenced with civilian police, and other training and operational support is being arranged in consultation with civilian police.

A range of measures have been incorporated in the implementation plan to monitor/measure progress. These include specific milestone activity such as the successful establishment of particular capabilities – including the ADFIS, promulgation of policy and procedures, promulgation of an ADF policing plan developed around service police functions and roles, and the formalisation of relationships with civilian authorities.

In addition, the seconded AFP officer will provide a more qualitative assessment of implementation progress; the establishment of the ADFIS will be reviewed after twelve months of operation; and relevant performance data on the operation of the ADF investigative capability will now be collated. This data will be used as the benchmark for measuring progress in achieving effective reform over the next five years.

The effectiveness of the enhancements to the ADF's investigative capability will also be addressed as part of the broader independent review of the enhancements to the military justice system at the conclusion of the two year implementation period (as reflected in the Government response to the 2005 Senate Committee report). Additionally, Defence will follow up the audit of ADF investigative capability with another similar comprehensive and independent review in three years time, using the recent audit as a benchmark, as recommended by the Committee in its second progress report, tabled on 29 March 2007.