

## **Appendix 4**

### **Written questions on notice to the Department of Defence**



# ADF investigative capabilities

## *Core investigative skills*

1. 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. It 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—many investigators have high workloads, poor administrative support and outdated and inadequate information technology support systems.<sup>1</sup>

- What is being done to recruit high calibre investigators into the Service Police?
- 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?
- Could you comment on workload on SP and what is being done to help ease the problem?
- Could you inform the committee about SP and their information technology support system?

2. 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?

3. 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?

## *Co-operation and liaison with civilian police*

4. 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.'

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1 Report of an Audit of the Australian Defence Force Investigative Capability, July 2006, paragraph 4.

- Could you provide a further up-date?

5. The recently conducted audit of the ADF's investigative capability noted the lack of co-operation and co-ordination between the SP and their civil counterparts as a significant impediment to the SP carrying out their duties (eg obtaining search warrants). It recommended that Defence intensify its efforts to have Defence Investigatory Authorities recognised as Commonwealth Law Enforcement Agencies.<sup>2</sup>

- 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?

6. Following the recommendations of 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'.<sup>3</sup>

- Has the number of SP attending civilian investigative training courses increased? Have you any details?
- 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?
- 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?

7. The Board of Inquiry into the Death of Private Jacob Kovoc also noted the need to improve arrangements for co-operation between SP and their civilian counterparts. It noted the assistance provided by the New South Wales Police and recommended:

—the establishment of formal protocols with Australian State Police to allow MP 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.<sup>4</sup>

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2 Report of an Audit of the Australian Defence Force Investigative Capability, July 2006, paragraph 4.11.

3 ADF response to recommendation 7.23.

4 Paragraph 287 (aa) (i), Report of the Board of Inquiry into the Death of 8229393 Private Jacob Kovoc.

- 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?
- 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?

8. 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.<sup>5</sup>

- Could you explain the intent and significance of this upgrade?

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

9. 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'. Some described the document as 'outdated and anachronistic' and suggested that it 'does not match modern disciplinary, legal and policing requirements'.<sup>6</sup> In response to the recommendation 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.<sup>7</sup> This response appears to be tame when considering the weight of opinion on the Act.

- What does 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?

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

—the DFDA is an effective and efficient tool for the maintenance of discipline: 61% agree, 20% disagree and 19% were uncertain;

—the DFDA is not easy to understand: 25% agreed; 28% disagreed and 47% were uncertain

—minor breaches of discipline would be better dealt with by counselling and warning rather than charging under the DFDA: 76% agree, 12% disagree and 12% are uncertain.<sup>8</sup>

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

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

6 Report of an Audit of the Australian Defence Force Investigative Capability, July 2006, paragraph 4.8.

7 Response to recommendation 4.13.

8 Department of Defence, *Annual Report 2005–2006*, p. 258.

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

—both genders are treated equally under the military justice system: 39% agree, 26% disagree, 35% uncertain;

—not all ranks are treated equally under the military justice system: 53% agree, 20% disagree, 27% uncertain.

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

## **Learning culture**

### ***Benchmarking and assumptions***

12. 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?

### ***Bullying and harassment***

13. The report on learning culture 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'.<sup>9</sup>

14. 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

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9 Department of Defence, *Final Report of the Learning Culture Inquiry: Inquiry into the learning culture in ADF schools and training establishments*, July 2006, paragraph 54.

generally low now, given the rules on inappropriate behaviour, but other forms of more subtle abuse are not uncommon' (paragraph 196).

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

## **Duty of Care**

15. The Board of Inquiry into the death of Pte 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?

16. 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?

## **Mental Health**

17. The committee has received correspondence from a few former ADF members that go to the issue of discharge from the service on mental health/psychological grounds.

- 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?
- Have any concerns been drawn to your attention that question the procedural fairness of the current process?
- Are you confident that the current process resulting in the discharge from the Service on mental health grounds is fair and just?
- 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?
- With regard to privacy issues—who has access to a member's medical records?
- Are members entitled to have access to their medical records?
- 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?