

The Solution

Introduction

- 6.1 In this final chapter we will detail the committee's concluding comments and recommendations on the issues surrounding the allegations of brutality and rough justice in 3 RAR. The committee considers that this report does not close the entire issue, as there are a number of investigations and processes still ongoing.
- 6.2 We would like to place Defence on notice that we intend to reconsider aspects of this inquiry in twelve months time to determine whether the lessons from the incidents have been learned. In particular, we will be interested in the outcomes and actions taken as a result of a variety of audits and investigations currently underway. In responding to this report the Government should make a detailed statement to Parliament.
- 6.3 The committee did not investigate counselling services and compensation for victims of brutality in this inquiry, although there was some discussion of these issues in hearings. Defence should be aware that it is likely that the committee will look more closely at these two issues in any future review of military justice procedures.
- 6.4 This chapter makes concluding comments and recommendations following order as the allegations detailed in Table 1.1:
- 3 RAR
 - The ADF Inquiry Process
 - The ADF Justice System

3 RAR

Extra-Judicial Discipline Procedures

6.5 We are in no doubt that there was a system of extra judicial punishment taking place at 3 RAR over the period of 1996–1998. The punishment was perpetrated on private soldiers who were presumed guilty of offences, most notably theft and involvement with drugs, without a hearing, or who were considered not to be performing to an adequate standard. Individuals who were loud, brash or over confident were more likely to be targeted in this way. The punishments appeared to be designed to teach individuals a lesson and subsequently modify their behaviour.

Illegal Punishments

6.6 There is strong evidence that this punishment primarily took the form of illegal bashings, most often perpetrated on victims by fellow privates, or junior NCO's. These bashings involved at least two perpetrators and it is likely that other individuals in the unit would have been aware of the activity. In most cases the victim required medical attention after the attack. These bashings were criminal acts.

6.7 We do not have enough information to conclude that there were other illegal punishments, that involved putting offenders through activities which, by their nature, were designed to punish. While some activities such as continuous parading and cleaning of uniforms may be considered to be of little benefit to some, there is some doubt as to whether this type of activity is widespread, illegal or indeed a punishment.

The Use of Intimidation

6.8 The committee feels that there was a system in place that inhibited soldiers from speaking out in relation to the bashings. Misguided unit loyalty on the part of individuals who knew of the events and fear of retribution on behalf of the victims appear to be the primary reasons for this. The fact that two of the individuals who complained about their treatment and contacted outside agencies were sent death threats and had their property vandalised is evidence enough of the likelihood of retribution.

6.9 We are concerned however, that none of the victims used available avenues to raise their concerns. There are a variety of avenues available to soldiers to raise complaints including the equity hotline, the unit equity officer and the unit padre. In this case they were not used.

Recommendation 1

- 6.10 **We recommend that educating Defence personnel of their rights and responsibilities be part of an ongoing program, commencing at recruit training.**

Equity Officers

- 6.11 We feel the equity officer system in 3 RAR was not effective. The appointment of the RSM as an assistant equity officer when he was also responsible for the discipline system seemed a direct conflict of interest. In the specific circumstance of the 3 RAR incidents the committee can understand why soldiers may feel the equity officer system would be of little support in addressing an overzealous and illegal discipline system.
- 6.12 The committee considers that an effective equity system is vital to ensure events such as those that occurred in 3 RAR do not occur elsewhere. Continuing efforts must be made by Defence to support and further develop this system.

Recommendation 2

- 6.13 **We recommend that officers in the direct chain of command and SNCO's responsible for the discipline system in units not be appointed as Equity Officers. The two roles cannot be adequately reconciled.**

Complicity of Key Appointments

- 6.14 There is strong evidence that the Company Sergeant Major not only condoned the illegal system of punishment, but was key to its implementation. In our opinion it is likely that the RSM would have known of this, given his position in the organisation, albeit there is no direct evidence to back this up. We cannot state whether or not Commanding Officers or Company Commanders knew about the beatings; however there is evidence to show that information about the system of punishments was hidden from commissioned officers.¹
- 6.15 Regardless, this failure to know what was going on in an organisation they were responsible for is of great concern to the committee. We commend the Chief of Army for instituting an investigation into the

1 See Chapter 4, Para 4.16.

collective events in 3 RAR at the time, including the issue of command responsibility, and await the report with deep interest.

Prevalence

- 6.16 We do not feel that the evidence shows that this system of illegal justice was employed outside of A Company 3 RAR. There is certainly no evidence to show that it occurs in the wider Army or Defence Force.
- 6.17 The Military Justice Audit being conducted by Mr Burchett QC is tasked to ascertain whether or not there exists any evidence of a culture of systemic avoidance of due military process and whether or not there are any irregularities in the administration of military justice in the ADF.
- 6.18 The committee is keen to review the results of the audit and any recommendations Mr Burchett may have, and speak to him at the completion of his investigation. The engagement of Mr Burchett QC was a very positive action by the CDF and was a direct result of the commencement of the committee's inquiry. The audit should provide further clarification of justice issues in the ADF.

The ADF Inquiry Process

Obfuscation by the Department

- 6.19 We were disappointed that neither the Department of Defence nor the relevant Minister saw fit to inform the committee of the 3 RAR investigation during its previous Military Justice Inquiry. While the existence of the 3 RAR issue may have materially affected the committee report, there is no evidence to show that there was any intent to mislead the committee.

Apparent Secrecy in the Inquiry Process

- 6.20 There was concern in the committee that the Department of Defence kept knowledge of these incidents quiet for a period of over 16 months. It was only media attention that brought the incidents to light. This can only serve to fuel speculation about cover-ups and further question whether ADF investigative practices have any level of accountability or transparency. Defence should learn from this mistake.

The Speed of the Inquiry Process

- 6.21 We are concerned that one Commanding Officer failed to take action when advised of an offence, but there was no other evidence presented to the committee that the ADF system failed to act when advised of illegal behaviour. Frankly the process took far too long.

Military Police Performance

- 6.22 The committee feels that while the MP investigation could have been completed in less than eight months, it was not an inordinately long process. We support the establishment of the 1st MP Battalion and feel that should make a significant improvement to the investigation of major incidents particularly, and to the general standard of MP performance. We intend to watch the performance of that unit with interest.

Recommendation 3

- 6.23 **We recommend that Army establish a pool of investigators held centrally for the conduct of larger investigations. These investigators should not be routinely drawn from outlying areas.**

Recommendation 4

- 6.24 **We recommend that Army investigate the feasibility of placing MP's with Federal, State and Territory Police Forces as part of their training.**

Recommendation 5

- 6.25 **We further recommend that Army review the conditions for reserve Military Police, with the view to better utilising the investigative skills in the Military Police Reserve units, especially for major cases.**

The ADF Justice System

Is the Justice System Unwieldy?

- 6.26 There was some evidence given that illegal punishments were instituted because of frustration with slow pace of the ADF justice system. The evidence presented to the committee does not back this up. Other Army units do not seem to have the same problem; indeed Army seems able to incarcerate soldiers at a rate significantly higher than the civil system. In addition the types of offences in question were easily within the OC and CO's capability to try in an expeditious fashion.

Is the System Subject to Interference?

- 6.27 We found no evidence to suggest that either the system is subject to interference or that there any deliberate interference in the 3 RAR process. A decision by a senior officer to move charges out of 3 RAR on legal advice was well intentioned, but had the effect of prolonging the legal process.

Is the System Too Slow?

- 6.28 We believe the entire legal process surrounding the incidents at 3 RAR took far too long. Much of the blame lies with the defence legal system, which needs some reform.

Recommendation 6

- 6.29 **We recommend there be a formal review of the Defence Legal Office, with terms of reference and timetable for completion, and that the review be made public.**
- 6.30 We support the proposal put forward by the CDF to appoint an independent Inspector General of the Australian Defence Force.
- 6.31 **The committee feels that Defence has gone a significant way to addressing the issues raised by the events at 3 RAR. There was considerable discussion in the committee regarding a Director of Military Prosecutions, but the committee felt that Defence needed to be**

given sufficient time for the results of their actions to be assessed before discussing the possible establishment of such a position.

- 6.32 We were concerned with evidence regarding the selection practices for legal officers in Defence. In particular the lack of legal expertise on selection panels and the issue of senior service officers transferring to the legal area with rank seemed to the committee to have scope to diminish the level of legal expertise.

Recommendation 7

- 6.33 **We recommend that officers transferring to the Defence legal specialisation on completion of a law degree necessitate relinquishment of rank commensurate with their legal expertise and experience.**

Recommendation 8

- 6.34 **We further recommend that legal officer selection boards have a legal officer on the panel.**
- 6.35 The committee was also concerned about the number of complaints about the Redress of Grievance system, in particular that the process was taking years to complete, and that people were being disadvantaged regardless of the success of their redress or otherwise.
- 6.36 The committee understands that a review has been conducted into the ADF ROG system to ensure it provides an adequate avenue for redress for individuals. We await with interest the outcome and recommendations of this report.

Conclusion

- 6.37 In the course of this investigation committee members were made aware of activities in 3 RAR that reflected no credit on the individuals involved, and sullied the reputation of an outstanding and highly decorated Army unit. There were failures of character, command and process. In its entirety the episode was poorly handled. We are now relatively comfortable, however, that pressure by this committee and subsequent

action by Chief of the Defence Force and Chief of Army have put a process in place to correct the situation.

- 6.38 Those specifically responsible for the incidents have been identified, and legal processes instituted where possible. While not all cases have been finalised, closure on this specific incident is in sight.
- 6.39 Additionally, the ADF is looking at how this type of incident was allowed to happen. The Burchett Audit and the investigation into the issue of command responsibility and the climate that allowed this type of incident to occur will allow lessons to be learned and identify if there are further issues to be addressed. Investigative and justice processes have already been amended as a result of lessons learned, and more reform is needed.
- 6.40 Finally, the action taken by the senior leadership of Defence to raise the profile of the issues of justice and harassment combined with the intense media scrutiny should ensure that Defence personnel are aware of their rights. This will go a long way to ensuring this type of incident does not occur again.

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Chairman