The Senate

Foreign Affairs, Defence and Trade Legislation Committee

Annual reports (No. 2 of 2011)

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Preface

Terms of reference

1. The committee is responsible for examining annual reports of departments and agencies within two portfolios: Defence (including the Department of Veterans' Affairs), and Foreign Affairs and Trade.

2. Under Standing Order 25(20), the committee is required to report on annual reports tabled by 31 October each year by the tenth sitting day of the following year, and on reports tabled by 30 April each year by the tenth sitting day after 30 June of that year.

3. The standing order states:

Annual reports of departments and agencies shall stand referred to the committees in accordance with an allocation of departments and agencies in a resolution of the Senate. Each committee shall:

a) Examine each annual report referred to it and report to the Senate whether the report is apparently satisfactory;

b) Consider in more detail, and report to the Senate on, each annual report which is not apparently satisfactory, and on the other annual reports which it selects for more detailed consideration;

c) Investigate and report to the Senate on any lateness in the presentation of annual reports;

d) In considering an annual report, take into account any relevant remarks about the report made in debate in the Senate;

e) If the committee so determines, consider annual reports of departments and budget-related agencies in conjunction with examination of estimates;

f) Report on annual reports tabled by 31 October each year by the tenth sitting day of the following year, and on annual reports tabled by 30 April each year by the tenth sitting day after 30 June of that year;

g) Draw to the attention of the Senate any significant matters relating to the operations and performance of the bodies furnishing the annual reports; and

h) Report to the Senate each year whether there are any bodies which do not present annual reports to the Senate and which should present such reports.

Role of annual reports

4. Annual reports place a great deal of information about government departments and agencies on the public record. Accordingly, the tabling of annual reports

continues to be an important element of accountability to Parliament. The information provided in annual reports assists Parliament in the effective examination of the performance of departments and agencies and the administration of government programs. Indeed, as noted in the *Requirements for annual reports*:

> Annual reports serve to inform the Parliament (through the responsible Minister), other stakeholders, educational and research institutions, the media and the general public about the performance of departments in relation to services provided. Annual reports are a key reference document and a document for internal management. They form part of the historical record.
>
> Annual reports and Portfolio Budget Statements (PBSs) are the principal formal accountability mechanisms between government and departments and from departments through (or on behalf of) government to the Parliament.[1]

Assessment of annual reports

5. The annual reports are examined by the committee to determine whether they are timely and 'apparently satisfactory'.[2] The committee considers whether the reports comply with the relevant requirements for the preparation of annual reports of departments and authorities.

6. The requirements are set down in the following instruments:

- for portfolio departments: *Public Service Act 1999*, subsections 63(2) and 70(2), and the *Requirements for annual reports for departments, executive agencies and FMA Act bodies*, Department of Prime Minister and Cabinet, 23 June 2010;
- for Commonwealth authorities and companies: the *Commonwealth Authorities and Companies Act 1997*; in particular, the Commonwealth Authorities and Companies (Report of Operations) Orders 2002; and
- for non–statutory bodies: the guidelines are contained in the government response to the report of the Senate Standing Committee on Finance and Government Operations on Non–statutory Bodies, *Senate Hansard*, 8 December 1987, vol s124, pp. 2643–45 (requirements were modified in 1987).

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1 *Requirements for annual reports for departments, executive agencies and FMA Act bodies*, Department of Prime Minister and Cabinet, 23 June 2010, p. 2. www.dpmc.gov.au/guidelines/index.cfm

2 Refer to Appendix 1 for a table of the reports referred to the committee for scrutiny.

Annual reports considered

7. The annual reports of the following organisations have been examined by the committee:

Defence portfolio

Army Amenities Fund Company

ASC Pty Ltd

Australian Strategic Policy Institute Limited

Director of Military Prosecutions

Defence Force Remuneration Tribunal

Defence Housing Australia

Judge Advocate General

Royal Australian Air Force Recreational Company

Veterans' Affairs, Department of

General comments on the annual reports

Timeliness in tabling reports

8. Under Senate Standing Order 25(20)(c), the committee must report to the Senate any lateness in the presentation of annual reports.

9. In accordance with the *Requirements for Annual Reports* published in June 2010, agencies are required to present:

> A copy of the annual report...to each House of Parliament on or before 31 October in the year in which the report is given. If Senate Estimates is scheduled to occur prior to 31 October, it is best practice for annual reports to be tabled prior to those hearings.[3]

10. A table detailing the dates relating to the timeliness of presentation is at Appendix 1.

Comments made in the Senate

11. The committee is obliged, under Senate Standing Order 25(20)(d), to consider any remarks made about these reports in the Senate. There were no comments in the Senate on any of these reports.

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[3] *Requirements for annual reports for departments, executive agencies and FMA Act bodies*, Department of Prime Minister and Cabinet, 23 June 2010, Part 1, section 4.

Matters of significance

12. In accordance with Senate Standing Order 25, the committee is to note any significant matters relating to the operations and performance of the bodies presenting their annual report. The committee found no matters of significance relating to the operations and performance of the bodies presenting their report.

Bodies not presenting annual reports to the Senate

13. The committee is required to report to the Senate each year on whether there are any bodies that do not present annual reports to the Senate and which should present such reports. The committee is satisfied that there are no bodies, within these portfolios, which do not meet their reporting requirements to the Senate.

Standard of reports

14. The committee found all reports to be generally of a high standard. They effectively described the function, activities and financial positions of the various departments and agencies. The committee therefore finds all of the annual reports to be 'apparently satisfactory'.

Chapter 1

Annual reports of departments

Department of Veterans' Affairs—Data-matching program-Report on progress 2008-2010

1.1 The Department of Veterans' Affairs, data matching program—report on progress 2008–2010 was tabled in the Senate on 16 November 2010. This is the nineteenth report on progress of the Data Matching Program presented to Parliament by the Department of Veterans' Affairs.

1.2 In the 1990–91 Budget, the then Government announced new measures to detect incorrect payment in the income support system.[1] This involved a program of computerised matching of identity and income data held by a limited number of government agencies.[2] The legal authority for data matching is contained in the *Data Matching Program (Assistance and Tax) Act 1990.* The Data Matching Program plays an important role in ensuring the integrity of payments made to the veteran community. The annual report focuses on the operation of the program within the Department of Veterans' Affairs from 2008–2010.

Prosecution Statistics

1.3 The Department noted that in the year 2009–2010, ten cases were referred to the Compliance Section, one case was referred to the Commonwealth Director of Public Prosecutions (CDPP) and zero cases were successfully prosecuted. The Department also provided the following prosecution statistics for the reporting period:

(a) one case was dismissed by the CDPP due to 'insufficient evidence' or 'not in the public interest';

(b) six cases are still under investigation by the Compliance Section; and

(c) six cases were finalised by the Compliance Section without CDPP referral.

1.4 The report noted that:

> The Department's role in the prosecution process is to investigate cases where it appears an offence may have been committed and to forward these cases, if warranted, to the Commonwealth Director of Public Prosecutions (CDPP) for a decision on whether prosecution action should proceed…For the last three years any suspected fraud cases detected were referred to the

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1 Department of Veterans' Affairs – Data matching program, Report on progress 2008-10, p. 2.

2 Department of Veterans' Affairs – Data matching program, Report on progress 2008-10, p. 2.

> Compliance Section of the Business Integrity and Legal Services Group for an initial case assessment, prioritisation, and further action if appropriate.[3]

1.5 The committee finds that the Department has submitted a report on progress that meets the reporting requirements for a Commonwealth department.

[3] Department of Veterans' Affairs – Data matching program, Report on progress 2008-10, p. 10.

Chapter 2

Annual reports of statutory and non-statutory authorities and government companies

Army Amenities Fund (AAF) Company

2.1 The AAF Company Report for 2009–2010 was tabled in the Senate on 14 June 2011.

2.2 The AAF Company was incorporated on 17 July 1987 to administer the assets of the Army Central Amenities Fund and is trustee of the Army Amenities Fund and Messes Trust Fund. The Messes Trust Fund provides financial assistance to newly formed Messes and existing Messes for worthwhile projects that benefit the wider mess membership.

Review of Operations

2.3 The Directors reported that the AAF's operations, during the reporting period, were in accordance with the AAF Company statutory objects and comprised the provision of discounted recreational accommodation for Army members, and assistance in the provision of recreational facilities and services to Army members.[1]

Audit Committee

2.4 The AAF Company established an audit committee in accordance with the *Commonwealth Authorities and Companies Act 1997* (CAC Act). The committee is comprised of three members in accordance with regulations prescribing the minimum composition of audit committees.[2]

Financial Statements

2.5 The Australian National Audit Office (ANAO) performed an independent audit report stating:

> The financial report of AAF is in accordance with the Corporations Act 2001, including (i) giving a true and fair view of AAF Company's financial position as at 30 June 2010 and of its performance for the year ended on that date; and (ii) complying with Australian Accounting Standards (including the Australian Accounting Interpretations) and the Corporations Regulations 2001.[3]

2.6 Further:

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1 AAF Company, Annual Report 2009-2010, p. 6.

2 AAF Company, Annual Report 2009-2010, p. 7.

3 AAF Company, Annual Report 2009-2010, p. 7.

> The financial statements of the Army Amenities Fund have (a) been prepared in accordance with the Finance Minister's Orders made under the *Commonwealth Authorities and Companies Act 1997*, including the Australian Accounting Standards; and (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Army Amenities Fund's financial position as at 30 June 2010 and its financial performance and cash flows for the year then ended.[4]

Messes Trust Fund

2.7 Notably the Messes Trust Fund is exempt from all forms of taxation except the Goods and Services Tax (GST). The interest rate increased from 4.50% in 2009 to 4.63% in 2010 as a result of changes in market interest rates. It was reported that the Messes Trust Fund does not have any material credit risk exposure to any single debtor or trust of debtors.[5]

2.8 In conclusion, the committee finds that this report complies adequately with all reporting requirements of the CAC.

Australian Strategic Policy Institute (ASPI) report for 2009-2010

2.9 The Australian Strategic Policy Institute (ASPI) report for 2009–2010 was tabled in the Senate on 16 November 2010. ASPI's work covers all aspects of national decision-making which bear on Australia's security interests and whole-of-government policy responses, with an emphasis on political, economic and military security.[6]

2.10 ASPI's constitution establishes four broad purposes for the Institute, which are:

(a) to encourage and inform public debate and understanding of Australia's strategic and defence policy choices;

(b) to provide an alternative source of policy ideas to government;

(c) to nurture expertise in defence and strategic policy; and

(d) to promote international understanding of Australia's strategic and defence policy perspectives.

Review of Operations

2.11 The Directors' Report noted that a review of operations of ASPI across the financial year indicates that changes in the sales of goods and services led to a 20.3% decrease in own-source revenue, largely due to the deferral of some events and publication releases. The decrease in own-source revenue was offset by an 11.4%

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4 AAF Company, Annual Report 2009-2010, p. 20.

5 AAF Company, Annual Report 2009-2010, p. 15.

6 Australian Strategic Policy Institute, Annual Report 2009-2010, p. 7.

decrease in supplier expenses, resulting partly from cost savings measures in the areas of administration and travel.[7]

2.12 ASPI's major source of funding is provided by the Commonwealth through the Department of Defence. A seven year Funding Agreement was established in August 2001 at the commencement of its operations.[8]

Financial Statements

2.13 The Australian National Audit Office (ANAO) performed an independent auditor's report noting that the financial report of ASPI was in accordance with the *Corporations Act 2001*, including (i) giving a true and fair view of the ASPI financial position as at 30 June 2010 and of its performance for the year ended on that date; (ii) complying with Australian Accounting Standards (including the Australian Accounting Interpretations) and the *Corporations Regulations 2001*.[9]

2.14 The committee finds that this report complies adequately with all reporting requirements of the CAC.

Director of Military Prosecutions

2.15 The Director of Military Prosecutions Report for 2010 was tabled in the Senate on 14 June 2011. This is the fourth report presented to Parliament by Brigadier L.A. McDade.

2.16 The Office of the Director of Military Prosecutions (DMP) is a statutory body created under the *Defence Force Discipline Act 1982* (DFDA). The position of the DMP was created by section 188G of the DFDA and commenced on 12 June 2006.[10] The office holder must be a legal practitioner with not less than five years experience, and be a member of the permanent navy, regular army or permanent air force, or be a member of the reserves rendering full–time service, holding a rank not lower than the rank of Commodore, Brigadier or Air Commodore.[11]

2.17 Under section 188GA of the DFDA, the DMP has the following functions:

a) to carry on prosecutions for service offences in proceedings before a court martial or a Defence Force magistrate, whether or not instituted by the Director of Military Prosecutions;

b) to seek the consent of the Directors of Public Prosecutions as required by section 63;

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7 Australian Strategic Policy Institute, Annual Report 2009-2010, p. 45.

8 Australian Strategic Policy Institute, Annual Report 2009-2010, p. 20.

9 Australian Strategic Policy Institute, Annual Report 2009-2010, p. 49.

10 Director of Military Prosecutions, Annual Report 2010, p. 1.

11 Director of Military Prosecutions, Annual Report 2007, p. 1.

c) to make statements or give information to particular persons or to the public relating to the exercise of powers or the performance of duties or functions under this Act;

d) to represent the service chiefs in proceedings before the Defence Force Discipline Appeal Tribunal;

e) to do anything incidental or conducive to the performance of any of the preceding functions.[12]

2.18 The primary function of the DMP is to carry on prosecutions for services offences in proceedings before court martial or Defence Force magistrates.

Personnel

2.19 Brigadier McDade reported that at the commencement of the reporting period the DMP established 14 positions for prosecutors.[13]

External Associations: Appointment of the Office of the Director of Military Prosecutions (ODMP)

2.20 Brigadier McDade approved the appointment of an Office of the Director of Military Prosecutions (ODMP) representative to the Australian Association of Crown Prosecutors (AACP) committee.[14]

Internal Liaison: amendments to the DFDA

2.21 Brigadier McDade noted that the Military Justice Coordination Committee (MJCC) provided an effective forum to initiate amendments to the DFDA.[15] The amendments proposed by Brigadier McDade include:

(a) the right of the prosecution to appeal on sentence;

(b) the amendment of section 70 to allow for the consideration by tribunals of victim impact statements;

(c) the creation of an aggravated assault offence and

(d) the implementation of global punishments.

Caseload

2.22 Brigadier McDade noted that from 1 January 2010–31 December 2010, 31 Defence Force magistrate (DFM), 32 RCM and 23 General Court Martial (GCM)

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12 *Defence Force Discipline Act 1982*, section 188GA(1).

13 Director of Military Prosecutions, Annual Report 2010, p. 3.

14 Director of Military Prosecutions, Annual Report 2010, p. 5.

15 Director of Military Prosecutions, Annual Report 2010, p. 6.

hearings were held. She also provided the following caseload data for the reporting period:

(a) 58 matters were not proceeded;

(b) 65 matters were referred back for summary disposal; and

(c) 3 matters were referred for prosecution.

Significant cases

2.23 The Annual Report cited six significant cases heard during the reporting period:

(a) Flynn v Chief of Army [2010] DFDAT 3 of 2009: an appeal in relation to the conviction of Private Flynn by GCM on a charge of being intoxicated whilst on watch at an ADF base in Baghdad. The appeal was allowed.

(b) Parker v Chief of Air Force [2010] DFDAT 1 of 2010: an appeal in relation to a conviction by GCM on a charge of culpable driving and driving under the influence of intoxicating liquor. The conviction on the charge of culpable driving was set aside and an acquittal was substituted. The conviction of driving whilst under the influence of intoxicating liquor was confirmed.

(c) Watson v Chief of Army [2010] DFDAT 2 of 2010: Private Watson was convicted by a Defence Force magistrate of using a forged document. Private Watson appealed the conviction. The DFDAT allowed the appeal.

(d) Davis v Chief of Army [2010] DFDAT 3 of 2010: An appeal to the DFDAT was heard on 29 November 2010 which was dismissed by the DFDAT on 22 February 2011.

(e) Green v Chief of Army [2010] DFDAT 4 of 2010: An appeal to the DFDAT was filed on 12 November 2010 and was due to be heard on 29 April 2011.

(f) Nicholas v the Commonwealth and Another: An appeal to the High Court was filed on 19 August 2010 and was due to be heard on 29 March 2011.

Section 87 DFDA

2.24 An amendment to section 87, which deals with the power to charge members of the ADF, is under consideration for a further version of the DFDA.

Civilian casualty incident in Afghanistan

2.25 Three members of the ADF were charged with service offences. The matters have been referred to the Registrar of Military Justice for trial by general courts martial. The report included the following table of offences:

Class of Offence	**RAN**	**ARMY**	**RAAF**	**TOTAL**
Acts intended to cause injury	18	13	3	**34**
Sexual assault and related offences	14	5	3	**22**
Dangerous or negligent endangering persons	0	5	0	**5**
Harassment and other offences against person	0	0	0	**0**
Theft and related offences	4	6	1	**11**
Fraud, deception and related offences	18	26	13	**57**
Illicit drug offences	0	2	0	**2**
Property damage and environmental pollution	0	0	0	**0**
Traffic and vehicle regulatory offences	1	1	0	**2**
Miscellaneous civilian offences	0	4	0	**4**
Specific military discipline offences	11	18	6	**35**
TOTAL	66	80	26	**172**

The command discipline system

2.26 Brigadier McDade expressed the view that the current command-based system is operating adequately to meet the discipline needs of the Australian Defence Force.

Defence Travel Cards

2.27 During this reporting period the number of credit card fraud matters referred to ODMP continued to decline, representing approximately 5.8% of matters compared with 7.5% in the previous year and 25% of matters two years ago.

Conclusion

2.28 In conclusion, Brigadier McDade stated that:

> The ODMP has experienced a period of consolidation in terms of manning and practice following the reintroduction of the Defence Force magistrate and court martial system. The priority remains to conduct efficient and effective prosecution of matters brought within the jurisdiction, with a focus on timeliness. It remains my view that the command based system currently operating meets the discipline needs of the Australian Defence Force.[16]

Defence Housing Australia

2.29 The Defence Housing Australia (DHA) report for 2009–2010 was tabled in the Senate on 16 November 2010. DHA was established as a statutory authority in 1988. In 1992, DHA became a Government Business Enterprise.

2.30 The primary function of DHA is to provide housing and related services to members of the Australian Defence Force and their families in accordance with the *Defence Housing Australia Act 1988*.[17]

2.31 DHA's major projects include:

(a) Muirhead, Darwin

(b) Voyager Point, Sydney

(c) Gordon Olive Estate, Brisbane

(d) Crace, Canberra

(e) Larrakeyah, Darwin

(f) Dundas, Sydney

(g) Everton Park, Brisbane

(h) Pickering Hill, Brisbane

(i) Lyons, Darwin

(j) Weston Creek, Canberra

Relocations events

2.32 Since 2001, DHA has provided relocation services to all ADF members.[18] In 2009–2010, DHA administered more than 36,000 relocation 'events' involving ADF members. The annual report stated that of this total: nearly 11,000 events involved ADF members moving for posting reasons; 7,000 were for ADF members moving

16 Director of Military Prosecutions, Annual Report 2010, p. 17.

17 Defence Housing Australia, Annual Report 2009-2010, p. 4.

18 Defence Housing Australia, Annual Report 2009-2010, p. 31.

to/from courses around Australia; and some 5,000 were associated with members changing private rental accommodation.[19]

DHA lease agreement

2.33 Revenue generated from the sale and leaseback of property is DHA's primary source of capital.[20] At the end of the reporting period, more than 11,000 properties of DHA's property portfolio, were managed on behalf of investors.[21]

2.34 In the reporting period, DHA introduced a new edition of its Lease Agreement to improve readability, clarify DHA and lessor responsibilities, separate 'lease' and 'service' components, and maximise consistency with state and territory *Residential Tenancy Acts*.[22] Key features that the annual report noted are:

(a) a long term lease;

(b) rent payable from the commencement date until the end of the lease; and

(c) no loss of rent when Defence tenant changes

Operating Results and Returns to Shareholders

2.35 DHA's net operating surplus after income tax for 2009–2010 was $87.8 million.[23] The report noted that, DHA fully complies with the *Income Tax Assessment Act*, Commonwealth Fringe Benefits Tax and the Goods and Services Tax legislation.[24]

Statement of Corporate Intent

2.36 In DHA's statement of corporate intent the economic stimulus plan was discussed. The Federal Government provided $245.58 million to DHA as part of the National Building—Economic Stimulus Plan. DHA expects to complete 829 houses from this funding by March 2011.[25]

2.37 Further, in the statement it was noted that DHA has had a successful year[26] and through the capital program, the portfolio was maintained in line with the New Housing Classification Policy standards.[27]

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19 Defence Housing Australia, Annual Report 2009-2010, p. 31.

20 Defence Housing Australia, Annual Report 2009-2010, p. 57.

21 Defence Housing Australia, Annual Report 2009-2010, p. 57.

22 Defence Housing Australia, Annual Report 2009-2010, p. 57.

23 Defence Housing Australia, Annual Report 2009-2010, p. 65.

24 Defence Housing Australia, Annual Report 2009-2010, p, 65.

25 Defence Housing Australia, Statement of Corporate Intent 2010-2011, p. 1.

26 Defence Housing Australia, Statement of Corporate Intent 2010-2011, p. 2.

27 Defence Housing Australia, Statement of Corporate Intent 2010-2011, p. 2.

Financial Statements

2.38 The ANAO conducted an independent auditor's report which concluded that the financial statements of the DHA have been prepared (a) in accordance with the Finance Minister's Orders made under the *Commonwealth Authorities and Companies Act 1997* and (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Defence Housing Australia's financial position as at 30 June 2010 and its financial performance and cash flows.[28]

2.39 The committee finds that this report complies adequately with all reporting requirements for statutory bodies.

Defence Force Remuneration Tribunal

2.40 The Defence Force Remuneration Tribunal twenty-fifth report 2009–2010 was tabled in the Senate on 16 November 2010.

2.41 The functions of the Tribunal are to:

(a) inquire into and determine the salaries and relevant allowances to be paid to members; and

(b) inquire into and make determinations in respect of prescribed matters that have been referred to the Tribunal.[29]

2.42 The Tribunal consists of three members who are appointed by the Governor-General. In accordance with the relevant legislation the President is a presidential member of Fair Work Australia. The other members are: a person who is experienced in industrial relations matters; and a person who has been a member of the ADF.[30]

2.43 Matters considered by the Tribunal during the reporting period included:

(a) ADF officer aviation remuneration structure;

(b) ADF workplace remuneration arrangement 2009–2011;

(c) graded officer pay structure;

(d) graded other ranks pay structure;

(e) medical officers; and

(f) two yearly review of allowances.

2.44 In its report, the Tribunal provided a thorough account of 'all matters considered' during the reporting year. It disclosed information on the outcomes of each review and on the negotiating process that occurred between the parties involved.

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28 Defence Housing Australia, Annual Report 2009-2010, p. 91.

29 *Defence Act 1903*, section 58H.

30 Defence Force Remuneration Tribunal Annual Report, 2009-2010, p. 3.

2.45 The committee finds that this report adequately complies with all reporting requirements for statutory bodies.

Judge Advocate General

2.46 The Judge Advocate General annual report for the period 1 January 2010 to 31 December 2010 was tabled in the Senate on 14 June 2011.

2.47 The office of the Judge Advocate General (JAG) of the Australian Defence Force was created by s. 179 of the *Defence Force Discipline Act 1982* (DFDA). The current JAG, Major General the Hon Justice R R S Tracey, RFD, was reappointed as JAG on and from 10 February 2010 for a term of four years. The JAG also holds the appointment of President of the Defence Force Discipline Appeals Tribunal (DFDAT).

2.48 The functions of the JAG are prescribed by the DFDA. The JAG is responsible for the following functions:

(a) reporting annually to Parliament on the operation of the DFDA, the Regulations, the Rules of Procedure, and, the operation of any other law of the Commonwealth or the ACT insofar as that law relates to the discipline of the Defence Force[31];

(b) making Procedural Rules for Service tribunals, being Court Martial and Defence Force Magistrate Rules, and Summary Authority Rules

(c) nominating the judge advocate for a court martial[32] and Defence Force magistrates[33];

(d) nominating to a Service Chief officers to be members of the judge advocate's panel[34]

(e) appointing Defence Force magistrates from officers appointed as members of the judge advocate panel[35];

(f) nominating to a Service Chief legal officers for the purposes of DFDA s. 154(1)(a); and

(g) if requested, providing a final and binding legal report in connection with the internal review of proceedings before Service tribunals.

Operation of the Superior Military Tribunals

2.49 The number of matters proceeding before court martial and Defence Force Magistrate are largely consistent with the volume of work which was heard by the

31 DFDA s. 196A.

32 DFDA s. 129B.

33 DFDA s. 129C.

34 DFDA s. 196.

35 DFDA s. 127.

former Australian Military Court.[36] The JAG noted that the interim measures for these superior military tribunals have operated satisfactorily during the reporting period.[37]

2.50 The JAG noted that in the case of a General Court Martial, it is necessary for the Registrar to panel a court comprising at least five officers including a president of the rank of Colonel Equivalent or above. The work associated with this, including the screening process to identify availability and to avoid potential bias, is generally the equivalent of the administrative effort that was required to panel a jury of six for the former Australian Military Court.[38]

2.51 In the case of a matter referred for trial before a court martial, the court martial must be assembled and sworn, even in the event of a plea, because the president and members will proceed to impose sentence having had appropriate directions from the judge advocate.[39] The JAG expressed the view that if the number of matters that are referred to court martial is to continue, it will be necessary to review the levels of staffing within the Registrar's office.

The Operation of DFDA s.62

2.52 DFDA s.62 creates the offence of commanding or ordering a service offence to be committed. Defence Legal raised issues, with this section, to the Office of Parliamentary Counsel, with a view to recommending legislative amendment. Legislative amendment was not introduced during the reporting period.

Appeals to the DFDAT

2.53 During the reporting period, there were four appeals to the DFDAT in connection with convictions recorded by court martial and Defence Force Magistrate. Each of these appeals was allowed, at least in part except for *Davis v Chief of Army* [2011] ADFDAT 1 which was dismissed. These were:

(a) Flynn v Chief of Army [2010] ADFDAT 1

(b) Parker v Chief of Air Force [2010] ADFDAT 2

(c) Watson v Chief of Army [2010] ADFDAT 3

(d) Davis v Chief of Army [2011] ADFDAT 1

High Court Challenge

2.54 A writ of summons was filed in the High Court in the matter of *Nicholas v the Commonwealth of Australia and the Chief of the Defence Force No S 183 of 2010*, during the reporting period, seeking a declaration, inter alia, that such of the

36 Judge Advocate General Annual Report, 2010, p. 5.

37 Judge Advocate General Annual Report, 2010, p. 5.

38 Judge Advocate General Annual Report, 2010, p. 5.

39 Judge Advocate General Annual Report, 2010, p. 6.

provisions of the *Military Justice (Interim Measures) Act (No 2) 2009* as purport to give effect to punishments imposed and orders made by the former Australian Military Court are invalid. The application was heard on 29 March 2011. At the time of reporting, the High Court had reserved its judgement.[40]

Conclusion

2.55 In conclusion, the JAG stated that:

> The interim arrangements reinstating the system of trial by court martial and Defence Force Magistrate are operating satisfactorily. However the number of matters proceeding to court martial (as opposed to Defence Force Magistrate) is significantly out of proportion with the demands immediately preceding the purported establishment of the former Australian Military Court.[41]

Royal Australian Air Force Welfare Recreational Company (RWRC)

2.56 The Annual Report of the Royal Welfare Recreational Company (RWRC) for the year ended 30 June 2010 was tabled in the Senate on 10 May 2011.

2.57 The RWRC was incorporated on 25 October 1972 to administer the assets of the RAAF Central Welfare Trust Fund and is subject to the *Corporations Act 2001*.

2.58 The RWRC has established an audit committee comprising of three members. The objectives of the Audit Committee are:

(a) Improving the effectiveness and efficiency of RWRC's internal control framework;

(b) Ensuring that RWRC has appropriate risk identification and management practices in place;

(c) Improving the objectivity and reliability of financial reporting;

(d) Ensuring that RWRC has adequate procedures on matters of audit independence; and

(e) Assisting the Board to comply with all governance and other obligations.

2.59 The RWRC annual report is in accordance with the CAC Act. The annual report includes a 'report of operations' which is prepared by the Chairman. It details rental activities of the Ambassador, Tuscany and Marrakai facilities. The Board made the decision to increase the rates of all facilities by 10%, effective 1 August 2010. The report of operation includes an outline of the organisational structure; review of operations and future prospects; reviews by outside bodies; RWRC board of directors; and board member's attendance at meetings.

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40 Judge Advocate General Annual Report, 2010, p. 8.

41 Judge Advocate General Annual Report, 2010, p. 12.

2.60 The report also includes financial statements and a delegate of the Auditor-General's report on those financial statements, in accordance with the CAC Act.

2.61 The committee finds that this report complies adequately with all reporting requirements for statutory bodies.

Non-Statutory authorities and government companies

ASC Pty Ltd – Annual Report 2010

2.62 The ASC Pty Ltd Annual Report 2009 was tabled in the Senate on 23 November 2010.

2.63 Initially established in 1985 as Australian Submarine Corporation, ASC was subsequently chosen in 1987 as the prime contractor for the design, manufacture and delivery of the Royal Australian Navy's (RAN) fleet of six Collins Class submarines.[42]

2.64 ASC Pty Ltd is a proprietary company limited by shares registered under the Corporations Act 2001. All the shares issued in the capital of ASC Pty Ltd are owned by the Minister for Finance and Deregulation.[43]

2.65 In his chairman's report, Vice Admiral Chris Ritchie AO RANR, stated that 2009/10 represented a period of significant internal change.[44] Specifically three members of the board retired and four new board members were appointed.[45]

2.66 The principal activities of the ASC Pty Ltd during the course of the financial year ending 30 June 2010, included:

(a) Collins class submarine related activities; and

(b) Hobart Class AWD related activities

Collins Class Submarine Project

2.67 ASC Pty Ltd carries out maintenance, upgrades and engineering activities for the Collins Class submarines under an agreement with DMO, called Through Life Support (TLS).[46] ASC Pty Ltd is in the seventh year of the Collins Class submarine TLS contract.[47] The contract is due to expire in 2018, subject to exercise of options

42 ASC Pty Ltd, Annual Report 2010, p. 4.

43 ASC Pty Ltd, Annual Report 2010, p. 20.

44 ASC Pty Ltd, Annual Report 2010, p. 6.

45 ASC Pty Ltd, Annual Report 2010, p. 8.

46 ASC Pty Ltd, Annual Report 2010, p. 10.

47 ASC Pty Ltd, Annual Report 2010, p. 26.

for two further five-year periods—consistent with the expected life of the Collins Class submarines.[48]

2.68 In this reporting period, the major submarine related activities included maintenance, design development, engineering and upgrading of six submarines for the RAN. These activities were undertaken for the Collins Class submarines under the TLS Contract.

2.69 During 2009–2010, ASC Pty Ltd maintained Collins Class submarines at ASC's facilities in South Australia (ASC North) and Western Australia (ASC West). Three submarines were operational by the end of 2010.[49] Activities undertaken from ASC North included:

(a) one full cycle docking;

(b) one intermediate maintenance availability;

(c) a main motor refurbishment;

(d) a pre-full cycle docking;

(e) crew training on operational deployment;

(f) one intermediate maintenance availability;

(g) a main motor refurbishment with an in country contractor;

(h) metal loss repairs of bilges and surrounding tanks; and

(i) preparations for a full cycle docking due to commence in January 2011.

2.70 Activities conducted at ASC's West included:

(a) technically challenging generator repairs;

(b) one intermediate docking; and

(c) one certification docking.

2.71 Major achievements included:

(a) exploration of efficiencies in the Collins Class maintenance project;

(b) obsolescence management;

(c) development of design improvements to platform systems and equipment;

(d) on schedule and successful completion of a Critical Design Review of the AWD project ;

(e) successfully introducing the Matrix One Product Lifecycle Management Systems and Aveva marine 3-D CAD;

48 ASC Pty Ltd, Annual Report 2010, p. 25.
49 ASC Pty Ltd, Annual Report 2010, p. 7.

(f) development of in situ repair to rectify banding problems with the 5.4 MW Jeumont DC propulsion motors;

(g) a complex in situ repair and rewinding after a main generator failure and

(h) increased focus on on-going reliability problems with the Hedemora diesel engines.

Establishments in 2010

2.72 The Australian Submarine Project Officer (ASPO) was established in 2010. The managing director stated that the establishment of the ASPO will maintain close cooperation between ASC, DMO and the RAN.[50] The Techport Australia's Common User Facility (CUF) also opened in 2010.

Hobart Class AWD related activities

2.73 Activities continued under the Alliance Based Target Incentive Agreement (ABTIA) with other members of the AWD Alliance, the Commonwealth of Australia represented by the DMO, and Raytheon Australia. The ABTIA commits the Alliance members to work as an integrated team to deliver the RAN's next generation warships.[51]

2.74 The Directors Report noted that:

> Since entering into the alliance based contract for the design and construction of three Hobart Class AWDs in October 2007, key milestones have been completed according to plan, most notably the Integrated Baseline Review in July 2008, the Preliminary Design Review in December 2008 and the Critical Design Review in December 2009. Contracts have been placed with BAE Systems Australia Defence Pty Ltd (BAE) and FORGACS Engineering Pty LTd (FORGACS) for the construction of ship blocks, and production activities have commenced on both sites. Production activities have also commenced in ASC's shipyard. Across the three sites construction of eleven blocks has commenced for Ship 1, in addition to two pilot blocks at ASC and FORGACS. Procurement of major combat systems and platform equipment continues in accordance with programs requirements. Development activities on ASC's shipyard completed during the period, with all buildings now operational and the workforce in residence.[52]

2.75 In 2010, together the Alliance partners, ASC managed key aspects of the AWD project, including:

(a) development of the Alliance team;

(b) alliance schedule and budget;

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50 ASC Pty Ltd, Annual Report 2010, p. 9.

51 ASC Pty Ltd, Annual Report 2010, p. 25.

52 ASC Pty Ltd, Annual Report 2010, p. 26.

(c) alliance program review milestones;

(d) the review combat system, ship design and shipbuilding progress;

(e) procurement of equipment and materials; and

(f) commencement of Ship 1 construction at three Australian sites.

Review of Operations: One Company Transformation

2.76 A key initiative that ASC Pty Ltd undertook in 2010 was the 'One Company' transformation. In May 2010 ASC Pty Ltd had an amalgamation of the Submarine and Shipbuilding sides of the business.[53] The Chairman, Vice Admiral Chris Ritchie AO RANR, stated that this transformation resulted in job losses where duplication existed[54]—41 personnel were made redundant and 34 unfilled positions were abolished[55]—but allowed ASC Pty Ltd to become "more customer focussed and efficient across the business"[56]

Deep Blue Tech

2.77 Deep Blue Tech (DBT) is a wholly owned subsidiary of ASC Pty Limited. DBT was established in 2007 to conduct research and develop concepts for Australia's SEA 100 Future Submarine project. The projects that DBT worked on for the reporting period include:

(a) defining the processes necessary for early concept design and developing the requirements for the project;

(b) identifying key activities and resources for the lifecycle of the project;

(c) developing models capturing the sources of propagation paths for critical signatures for the future submarines;

(d) developing a whole-of-submarine model called Subsim;

(e) evolving a model for developing a system architecture, based on best practice systems engineering and open architecture principles;

(f) developing solutions to increase habitability; and

(g) studying combat systems, auxiliary systems, and energy and propulsion solutions for various submarine concept designs

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53 ASC Pty Ltd, Annual Report 2010, p. 9.

54 ASC Pty Ltd, Annual Report 2010, p. 7.

55 ASC Pty Ltd, Annual Report 2010, p. 25.

56 ASC Pty Ltd, Annual Report 2010, p. 9.

Work Smart program

2.78 In 2009 the 'Work Smart program' was initiated. The program aims to identify sources of waste and eliminate them in order to improve processes, performance, and customer and staff satisfaction.[57] During 2009-2010 the projects included:

(a) the 'Pipe Shop 5S' project which reviewed and improved the handling of piping material during the refurbishment process;

(b) a joint ASC-DMO program called Management of Work;

(c) six improvement events; and

(d) two workshops set up to improve the processes and performance in the delivery of engineering, materials, workpacks and scheduling.

Code of Conduct

2.79 ASC Pty Ltd has implemented a Code of Conduct for directors and executives which seeks to:

(a) articulate the behaviour expected of directors and executives;

(b) encourage the observance of those standards to protect and promote the interests of shareholders and other stakeholders;

(c) guide directors and executives as to the practices considered necessary to maintain confidence in the ASC Pty Ltd Group's integrity; and

(d) set out the responsibility and accountability of directors and executives to report and investigate any reported violations of the Code of Conduct or unethical or unlawful behaviour.

2.80 ASC Pty Ltd has presented a comprehensive and informative report. The committee finds that it adequately complies with all reporting requirements.

2.81 The committee considers that all the annual reports of the abovementioned organisations fully met their respective reporting requirements.

Senator Ursula Stephens

Chair

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[57] ASC Pty Ltd, Annual Report 2010, p. 14.

Appendix 1

Defence Portfolio

List of annual reports tabled during the period 1 November 2010 to 30 April 2011 and referred to the committee

Department/Agency	Date of transmittal letter (if known)	Date sent to Minister (if known)	Date received by Minister (if known)	Date tabled in Senate
AAF Company				14/6/2011
ASC Pty Ltd				23/11/2010
Australian Agency for International Development				9/2/2011
Australian Centre for International Agricultural Research				16/11/2010
Australian Strategic Policy Institute Limited				16/11/2010
Australian Trade Commission				16/11/2010
Defence Force Remuneration Tribunal				16/11/2010
Defence Housing Australia				16/11/2010
Defence Housing Australia, Statement of Corporate Intent				23/11/2010

Department of Defence				24/11/2010
Director of Military Prosecutions				14/6/2011
Department of Veterans' Affairs-Data Matching program				16/11/2010
Judge Advocate General				14/6/2011
Repatriation Commission, Military Rehabilitation and Compensation Commission and the Department of Veterans' Affairs				16/11/2010
Royal Australian Air Force Veterans' Residences Trust Fund				9/2/2011
Royal Australian Air Force Welfare Recreational Company				10/5/2011
Royal Australian Navy Central Canteens Board				16/11/2010
Services Trust Funds				16/11/2010