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SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES
COMMITTEE

Reference: Effectiveness of Australia's military justice system

MONDAY, 1 MARCH 2004

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SENATE
FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE
Monday, 1 March 2004

Members: Senator Cook (*Chair*), Senator Sandy Macdonald (*Deputy Chair*), Senators Hogg, Johnston, Chris Evans and Ridgeway

Substitute members: Senator Bartlett for Senator Ridgeway and Senator Evans for Senator Marshall

Participating members: Senators Abetz, Boswell, Brandis, Brown, Carr, Chapman, Collins, Conroy, Coonan, Denman, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Forshaw, Harradine, Harris, Hutchins, Knowles, Lees, Lightfoot, Mackay, Marshall, Mason, McGauran, Murphy, Nettle, Payne, Santoro, Stott Despoja, Tchen, Tierney and Watson

Senators in attendance: Senators Bartlett, Cook, Evans, Hogg, Johnston, Sandy Macdonald and Payne

Terms of reference for the inquiry:

To inquire into and report on:

1. (a) the effectiveness of the Australian military justice system in providing impartial, rigorous and fair outcomes, and mechanisms to improve the transparency and public accountability of military justice procedures; and
(b) the handling by the Australian Defence Force (ADF) of:
 - (i) inquiries into the reasons for peacetime deaths in ADF (whether occurring by suicide or accident), including the quality of investigations, the process for their instigation, and implementation of findings,
 - (ii) allegations that ADF personnel, cadets, trainees, civilian employees or former personnel have been mistreated,
 - (iii) inquiries into whether administrative action or disciplinary action should be taken against any member of the ADF, and
 - (iv) allegations of drug abuse by ADF members.
2. Without limiting the scope of its inquiry, the committee shall consider the process and handling of the following investigations by the ADF into:
 - (a) the death of Private Jeremy Williams;
 - (b) the reasons for the fatal fire on the HMAS Westralia;
 - (c) the suspension of Cadet Sergeant Eleanore Tibble;
 - (d) allegations about misconduct by members of the Special Air Service in East Timor; and
 - (e) the disappearance at sea of Acting Leading Seaman Gurr in 2002
3. The Committee shall also examine the impact of Government initiatives to improve the military justice system, including the Inspector General of the ADF and the proposed office of Director of Military Prosecutions.

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Committee met at 8.34 a.m.

CHAIR—I declare open this meeting of the Senate Foreign Affairs, Defence and Trade References Committee, and I call the committee to order. Today the committee will conduct its first public hearing into the effectiveness of Australia's military justice system. The terms of reference were referred to the committee on 30 October 2003 and the report is due to be tabled in the Senate on 12 May 2004. Copies of submissions from today's witnesses that have been published by the committee are available from the secretariat. Today's hearing will adjourn at approximately 10 a.m. and 12.30 p.m., for short breaks, and will conclude at 1.15 p.m. for lunch and question time, although I might say that there is a sentiment on the committee that we would like to finish a little earlier, if we can. The committee will resume at 3.30 p.m. and conclude no later than 5 p.m.

The committee's terms of reference are very broad and relate to the effectiveness of the Australian military justice system in providing impartial, rigorous and fair outcomes and mechanisms to improve the transparency and public accountability of military justice procedures; the handling by the Australian Defence Force of inquiries into the reasons for peacetime deaths in the ADF, whether occurring by suicide or accident, including the quality of investigations, the process for their instigation and the implementation of findings; allegations that ADF personnel, cadets, trainees, civilian employees or former personnel have been mistreated; inquiries into whether administrative action or disciplinary action should have been taken against any member of the ADF and allegations of drug abuse by ADF members; and the impact of government initiatives to improve the military justice system, including the Inspector General of the ADF and the proposed office of director of military prosecutions.

The committee is also required to consider the process and handling of a number of investigations by the ADF into the death and/or suspension of individuals; and allegations of misconduct by members of the Special Air Service in East Timor. It is important for the committee to stress that, whilst it wishes to conduct its inquiry thoroughly and with fairness to all concerned, the committee does not intend to adjudicate on individual cases. Individual circumstances, however, as highlighted by the terms of reference, may be useful in assessing the broader issues which are the main focus of the inquiry.

Today's hearing is open to the public. If at any stage a witness wishes to give part of their evidence in camera, they should make that request to me as chair, and the committee will consider that request. Should a witness expect to present evidence to the committee that reflects adversely on a person, the witness should give consideration to that evidence being given in camera. The committee is obliged to draw to the attention of a person any evidence which in the committee's view reflects adversely on that person and to offer that person an opportunity to respond.

Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. It is important for witnesses to be aware that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. An officer of a department of the Commonwealth will not be asked to give an opinion on matters of policy; however, officers may be asked to explain government policy, describe how it differs from alternative policies and provide information on the process by which a particular policy was arrived at. When witnesses are first called upon to answer a question, they should state clearly

their names and positions. Witnesses will be invited to make a brief opening statement to the committee, before the committee embarks on its questions.

I would like to note the assistance of the Defence Community Organisation and chaplains throughout the committee's inquiry. Officers of the DCO and chaplains are available for defence personnel and their families, should the need arise. Finally, on behalf of the committee I would like to note that the committee has been referred a copy of the comments of Minister Hill, made during additional estimates, and the committee notes those comments. I would also like to make a statement on behalf of the committee. Senator Hill stated that the submissions so far published by the committee contain untested allegations about the Defence Force and indicated that the submissions should not have been published without the allegations being tested. It is the normal practice of Senate committees to publish submissions when they are received. In relation to this inquiry the committee has considered each individual submission and decided whether it should be published at this stage. The committee has withheld some submissions from publication in some cases, because of the nature of the allegations made in them. The committee has not however withheld the submissions from publication simply on the basis that they make allegations.

The procedures of the committee contemplate that submissions and evidence will be made public which contain allegations. The procedures provide that persons affected by such allegations must be given a reasonable opportunity to respond. The committee intends to follow scrupulously the procedures prescribed by the Senate. The committee is aware of the sensitivities of the subject matter of this inquiry but considers that the inquiry should not be conducted in secret, which would only add to public disquiet in this area.

[8.40 a.m.]

COSGROVE, General Peter John, Chief of the Defence Force

CHAIR—Welcome. I invite you to make an opening statement.

Gen. Cosgrove—I note that you referred to brief opening statements. My statement is quite substantial, given that it is a fulcrum for what will follow. I will be lodging a copy with the committee.

Thank you for the opportunity to address the committee today. As committee members will be aware, Defence has made a detailed submission to this inquiry that addresses the specific aspects of the terms of reference. In addition, and at your request, Mr Chairman, the Director General of the Defence Legal Service, the Inspector General of the ADF and the Director of Military Prosecutions briefed the committee separately on the military justice system.

The purpose of my evidence is to provide the context for subsequent defence witnesses, as well as providing my own views on a range of issues pertinent to the terms of reference. I intend to focus on the broad charter of this inquiry, which is to examine the effectiveness of the Australian military justice system in providing impartial, rigorous and fair outcomes, with transparent and publicly accountable procedures.

What I will be saying to you resonates strongly with what General Baker said to the 1998 joint standing committee inquiry into military justice procedures. Although it was five years ago, the values, principles and justifications that underpin the military justice system remain the same. There have been changes to legislation, policy and processes which have improved that system; however, the central tenets of the system remain valid.

I will be reinforcing why we need an effective military justice system that satisfies the unique requirements of military service. I will briefly summarise how it works and where it sits in the context of the wider Australian society. Let me state from the outset my belief that the military justice system is by and large open, fair and effective. No system can ever be perfect though, and I will also identify where there have been problems, what has been done recently to improve the system—including the introduction of the offices of the Inspector General of the ADF and the Director of Military Prosecutions—and what still lies ahead to make it the best it can be.

I will discuss the broad policy and practice regarding the handling of administrative action, such as censures, inquiries, complaints and allegations in the ADF. However, at this stage I do not intend to go into the detail of the handling of specific cases. The three service chiefs, who will be appearing before you shortly, will be able to expand upon what has been included in the defence submission in relation to those cases as the committee may require. I will also touch on Defence's policy settings and initiatives relating to drugs—including alcohol—mentioned in the committee's terms of reference.

The Australian people and the parliament have much to be proud of in the way the ADF has prepared for and conducted operational deployments in the recent past. It has a reputation that is

second to none. That said, we are not resistant to public scrutiny or constructive criticism—in fact we welcome it. I acknowledge that constant vigilance is required to ensure that the system continues to meet its obligations and that the mechanisms of inquiry and complaint embodied in the military justice system are used to best effect. Collectively, we must be prepared to deal with the failures, systemic or otherwise, that realistically may be expected to occur from time to time in any large complex organisation. The same kind of challenges face military forces around the world. The ADF recognises clearly that this is also part of a general trend towards achieving higher standards, more explicit controls and greater accountability across our society's major institutions, be they in the public sector or the corporate world.

So, in a wider sense, while I feel that this inquiry is an opportunity for us to state our case, we are also here to listen to what others may have to say and, where able, to respond to questions that arise. We will use this inquiry, as we have done with previous parliamentary and 'own motion' inquiries, as a further opportunity to continue to improve our systems, processes and the implementation of appropriate reforms.

I would also point out that I welcome the submissions that individuals and organisations have made to the inquiry. They will provide an opportunity to identify issues that will enable Defence to persevere towards its goal of continuous improvement of the military justice system. They also deserve a response on the part of Defence. The service chiefs and I welcome the opportunity during the hearings to provide balanced consideration of the issues. That said, there are a number of submissions available on the committee's web site that do not appear pertinent in the context of the inquiry. They relate either to personal management or command issues, and I have asked the service chiefs to highlight those cases should they become the topic of discussion before the committee.

Let me speak now on the purpose of the military justice system. At this point I think a common understanding of what the military justice system is, what it is required to do and how it currently works would be very useful. The military and civilian justice systems are similar enough to invite direct comparisons, but they differ sufficiently to make some of those comparisons less relevant or perhaps even unhelpful. Recognising why we need a justice system specifically tailored to the requirements of the military is critical to an understanding of how it works and why it does what it does. Like other armed forces around the world, the ADF has a military justice system to support it during the successful conduct of operations and to facilitate its activities in peacetime, including the maintenance of operational preparedness.

An enduring and essential feature of any effective armed force is the need for discipline. Establishing and maintaining a high standard of discipline in both peace and war is applicable to all members of the ADF. It is vital if we are to win when the government calls upon us to fight. So, within the discipline environment essential for the effective conduct of operations, the military justice system complements the system of command. This is an important difference between the military and civilian justice systems. The military justice system is managed through the exercise of centralised policy development and implementation processes, supported by a devolved system of application through the command functions of the CDF and each chief of service.

What do we mean when we talk about the military justice system? We use the term 'military justice' in quite a broad sense. It covers disciplinary action under the Defence Force Discipline

Act, including the investigation of offences. It also includes the conduct of administrative inquiries, adverse administrative action and the right to complain about such action. The military justice system, writ large, incorporates the laws, policies and processes under which military justice is administered. The detailed briefing the committee received on 12 February regarding the components of the military justice system, its role and application included a simple diagram depicting those components. I commend it to the committee to help maintain a clear and simple frame of reference for the ensuing proceedings.

There are some elements of the military justice system, in particular the Defence Force Discipline Act, that are clearly unique in the Australian jurisdiction. I would like to mention a few of those elements, as they are directly relevant to my statement this morning. For example, the military justice system provides for three types of offences under the Defence Force Discipline Act. First, there are some that are uniquely military in character, such as insubordinate conduct and disobeying a command. Second, there are offences that are criminal in nature, such as assault and falsification of documents, and are similar to offences in the civilian community. Third, there are other civilian criminal offences which have been imported into the act, such as serious sexual assault and fraud.

Importantly, the Defence Force Discipline Act does not exclude the jurisdiction of Australian courts in dealing with criminal behaviour where appropriate. Jurisdiction under the DFDA in Australia during peacetime is confined to circumstances where proceedings under the act can reasonably be regarded as substantially serving the purpose of maintaining and enforcing service discipline. Each case needs to be determined individually as to whether the matter should be referred to the civilian police.

The ability to deal with discipline and criminal conduct under a military code of justice is particularly necessary during operational deployments outside Australia. This is because it provides a stand-alone code where a civil jurisdiction may not apply or, as we have seen through our more recent operational experience, does not exist. It also provides a means for us to deal with misconduct that otherwise might be subject to the jurisdiction of a foreign country. Where operational necessity or training requirements demand, the DFDA also provides for more exacting standards than those that may apply to the wider community, reflecting the additional demands made upon servicemen and servicewomen and the extraordinarily high importance of disciplined conduct under operational circumstances.

The Defence Force Discipline Act also supports the need for prompt and decisive reaction to incidents that have a direct operational impact, sometimes in the context of existing operations. To protect the interests of members, legislative processes for review—such as automatic legal and command review of convictions and punishments and a member's right to petition to commanders for further review of convictions and punishments—are inbuilt to the act. On questions of law, members may also seek external appeals for judicial review of court martial and Defence Force magistrate convictions under the Defence Force Discipline Appeals Act.

Another component of the military justice system is the administrative system, which comprises various legislation and policies. The DFDA deals with service offences, while the administrative system is primarily concerned with decisions and processes associated with the command and control, operations and administration of the Australian Defence Force. It includes the conduct of fact-finding administrative inquiries into issues such as safety, accidents,

unacceptable or unprofessional behaviour and failures in command and control. The administrative system also covers the authority and processes for the imposition of formal warnings, censures, removals from postings or command and discharges from the service for unprofessional behaviour or performance that is below the standards expected in the ADF. In addition, it includes processes for members to make complaints, such as redress of grievance, and the handling and resolution of complaints. New policies on the use of alternative dispute resolution practices and the establishment of a directorate in June 2001 to develop and assist the application of these practices are additional strategies now being used to assist members to resolve complaints. These initiatives set high standards and allow the ADF to take a lead in complaint resolution, resolving issues before they need to be referred to other Commonwealth bodies.

A lack of awareness concerning how the military justice system works can lead to misconceptions regarding its effectiveness. Specifically, the resolution of some proceedings are criticised for not producing results within the disciplinary system, when in fact they are dealt with under other parts of the military justice system. For example, an administrative inquiry into the circumstances of an incident is not conducted to determine liability for an offence under the DFDA. An administrative inquiry determines the facts and the causes of an incident and recommends remedial action to prevent recurrences and to improve operational or workplace practices. If during such an administrative inquiry the possible commission of a service offence by one or more individuals is identified, it is referred to either military or civilian police authorities for investigation. Subject to its terms of reference the inquiry may continue to deal with other issues. Irrespective of any disciplinary action taken under the DFDA, if the conduct of an ADF member is shown to be below the standard expected in the ADF—reflecting poor command or leadership qualities or unsuitability for certain military appointments and duties, for example—then administrative action may also be taken. This action could range from counselling or the issue of a formal warning or censure to, in some cases, removal from an appointment or posting or even discharge from the service.

The investigation of offences allegedly committed by members of the ADF under the DFDA or the ordinary criminal law of the Commonwealth, states and territories can be conducted by the service police, the investigative arm of the Inspector General Division, the Fraud Investigation and Recovery Directorate, and the Defence Security Agency. DFDA investigations can also be conducted by officers and senior non-commissioned officers depending on the nature of the requirement. In addition, specialist legal advice is available under the auspices of the Director of Military Prosecutions, through the Defence Legal Service and through uniformed legal officers occupying specialist appointments throughout the organisation.

Today the ADF operates in an environment that is far more transparent and subject to external controls, both international and domestic, than ever before. We know that, with few exceptions, failures in the military justice system, if not properly dealt with, can quickly result in damage to the reputation, morale and ultimately the operational effectiveness of the ADF. That the ADF has continued to perform exceptionally well on operations provides reassurance of the effectiveness of the current system of military justice. I hope this inquiry might provide another opportunity to clarify perceptions and help explain to both the parliament and the public the disciplinary and administrative components of the military justice system.

I have stressed that the military justice system helps to underpin the establishment and maintenance of a high standard of individual and collective discipline in peace and war. The

military justice system must protect and support all ADF members, including the most vulnerable—the more vulnerable the member, the greater the need for vigilance and institutional protection. This is not just a question for the military justice system. It is a fundamental responsibility of the leadership and commanders at all levels in the ADF. It is in this area that I know we have to maintain continued vigilance with an aim of always doing better.

By way of example, late last year the Defence Ombudsman commissioned an own motion inquiry into the handling of minors by the ADF following the suicide of Cadet Sergeant Eleanore Tibble in Tasmania. The inquiry is continuing. I am entirely supportive of the inquiry and would point out that Defence has strong concern for the welfare of its people. We must continue to do everything we can to meet our obligations in that regard. Suicide is a tragic occurrence and is most regrettable. I will use the findings of that inquiry, whilst seeking the continued support of this committee, the public and all of members of the ADF, to help us get on with the job.

There are two aspects to the protection we need to provide to our people. Those who are bound to follow orders must be protected from any abuse of the authority to which they are required to submit. Conversely, those exercising authority have a right to procedural fairness when called to account for their actions. Irrespective of whether a member is giving or receiving orders, a member is entitled to the benefits of his or her legal rights. For example, if administrative action is taken against a member in respect of unacceptable professional or personal conduct, then they are entitled to know why and to have an opportunity to respond. This is commonly reflected in the notice to show cause processes used in the ADF.

If disciplinary action is taken in respect of an offence, then there is also legal protection, such as the right to a defence, under the Defence Force Discipline Act. We cannot afford to breed a generation of risk averse commanders who are so concerned about being second-guessed that they do not act at all. Our junior leaders are trained to demonstrate their initiative and to exercise a high level of responsibility. They have shown themselves to be very good at it. They know that with responsibility comes accountability. The more we shift the responsibility for military justice away from the chain of command, the more we risk undermining both systems. That said, I am especially supportive of the establishment of the offices of the Inspector General of the ADF and the Director of Military Prosecutions, both of which I have established in my tenure.

The dynamic relationship that has always existed between military necessity and general societal expectations has become far more complex. Despite changes in modern society, the need to maintain a disciplined force has not diminished. Thus, while societal changes will always challenge us to change with the times, we have seen the benefits of disciplined behaviour demonstrated magnificently by the ADF during conflict in several recent operational deployments. This discipline is balanced by an equally strong commitment by the ADF as a whole to ensuring that all its members are treated fairly, justly and in accordance with the law. In this context, the ADF continues to cultivate and display in its people certain core qualities that are vital not only in conflict situations but for effective routine activities. Taken together, they define our distinctive Australian approach to warfare.

The military justice system directly supports the development of these qualities. For example, professionalism is not just about having high levels of technical skill but about applying that skill with discipline, good judgment and adherence to ethical standards. Clearly, the military justice system has an important role to play in developing and maintaining the professionalism

of the ADF. The system of justice that the ADF trains under in peacetime must be the same one that it takes on military operations. For that reason, both the disciplinary and administrative arms of the military justice system must continue to reflect our unique requirements. The fact that this can mean that there will on occasion be some differences between military and civilian justice procedures is, therefore, natural—rather than being a reason to impose total conformity with a system suitable only for civilian justice.

Unfortunately, military operations may frequently involve death and destruction. Consequently, we also consider morality and legitimacy of action to be core ADF qualities. This means adherence by ADF members to the laws of armed conflicts and to the moral principles on which they are founded. To complement this, we also seek to foster the qualities of courage and compassion, including the duty of care of ADF leaders at all levels to those under their command.

As I have mentioned earlier, the ADF reconciles the need for a hierarchical structure that is necessary for operations with the recognition that all members of the ADF are of equal worth as human beings and are entitled to a fair go. This goes to the very heart of the Australian way thinking. We therefore consider fairness and respect for the individual to be particular core ADF qualities that underpin the military justice system. The cultures of the three services envisage tough-minded, determined people who overcome odds to succeed in a harsh environment. They are conditioned to be resilient and to rely implicitly on each other. This inevitably creates a fine boundary to our behaviour. We must always be watchful to prevent individuals and small groups from drifting into intolerance and insensitivity, and to correct them if they begin to.

On occasions when ADF members fail to demonstrate these core qualities a formal system of military discipline will deal with unacceptable behaviour or misconduct. But we need to be very clear in distinguishing between legal liability for behaviour that may result in disciplinary sanctions and other administrative measures that might be taken. Often failings by members are identified not to be of a criminal nature or not to be offences under the DFDA, although they still relate to issues of professional competence, judgment and fitness to command or to perform other duties. The administrative inquiry system is there to find out the facts and support decision makers. Where the issue of criminal or professional fault arises, the military justice system can deal with it appropriately.

I will turn now from the conceptual foundations of the military justice system—where it comes from and why—to its practical interaction with the wider Australian legal framework: where it sits. The military justice system complements the existing civilian framework. It is subject to internal and external review, as well as judicial review. As I mentioned before, under the DFDA there are automatic reviews of convictions and punishments. Members can also seek petition for further internal review.

In addition, under the Defence Force Discipline Appeals Act, members have the option of appealing to a judicial tribunal on questions of law. The recent appointment of the Inspector General of the ADF now provides an additional avenue for internal reviews of discipline and administrative processes. This includes access by aggrieved or offended service men and women, outside the chain of command if necessary. Importantly, it also provides an avenue by which failures of the military justice system may be exposed.

In an administrative context, there are also various internal and external sources for review of administrative processes and decisions. For example, under the Defence Force Regulations redress of grievance provisions a member has a legally protected right to make a complaint about any matter affecting his or her service, and it is an offence to attempt to prevent or dissuade a member from submitting a grievance. Where adverse administrative action, such as a formal warning, censure, removal from command and termination of service, is proposed, there is legislation and/or policy in place to ensure that people in the ADF receive procedural fairness through the notice to show cause process. Procedural fairness for members can also be provided through the redress of grievance system.

There is also an opportunity for independent review by the Inspector General of the ADF. In addition, ADF personnel have access to external review through several government agencies, such as the Defence Force Ombudsman, who will investigate defective administration practices in the ADF. There is the Privacy Commissioner and the Human Rights and Equal Opportunity Commission. Moreover, administrative conduct and decision making in the ADF may be further subjected to external judicial review in the Federal Court and thereafter in the High Court.

While some may wrongly think it is a closed shop, the military justice system exists within a wider body of checks and balances. For example, administrative inquiries which are used for fact-finding missions to support ADF operations are often the subject of legal review. In cases where adverse administrative action is recommended against individuals, no final action should be taken against those individuals without first affording them procedural fairness. Again, this is usually reflected in the notice to show cause processes, and there is guidance for those procedures in various instructions and policies.

However, significant process continues to be made to improve the openness and external scrutiny of the administrative system, including inquiries. For example, inquiry reports on the deaths of ADF members are often requested by coroners. The Defence (Inquiry) Regulations, which are supplemented by various ADF policies, set out the procedural requirements for the conduct of inquiries into ADF activities. While on occasion—as in the administration of justice in the civilian arena—there may be some procedural errors, the inquiry-handling process is sound and produces good and reliable results.

All boards of inquiry and most investigating officer inquiries are reviewed by a civilian or military lawyer and staff officers to ensure that the procedures and outcomes are legally and administratively sound. Coronial consideration of some recent administrative inquiries, including the inquiry into the deaths which occurred in the fire on HMAS *Westralia*, suggests that the administrative inquiry process is indeed sound. In addition, the Director General of the Defence Legal Service commissioned a management audit of the ADF's board of inquiry procedures by an external consultant in May 2003. The findings of the review indicate that the board of inquiry process is generally sound and serves the purpose for which it was created.

So far I have talked about where our military justice system comes from, what we want out of it and how it should work. I will now talk in broad terms about some of the problems we have had, whether as the result of individual actions or some aspect of the wider system. For a start, unquestionably, we acknowledge human fallibility. No matter how hard we may strive to avoid it, sometimes people will get it wrong. No system of command, administration or justice is perfect. A single death through accident or suicide is one too many.

Where mistakes are made in administering the system, the ADF needs to accept its inadequacies and work to rectify those shortfalls. But the occurrence of mistakes, whether they are criminal acts or errors of judgment, does not of itself indicate systemic failure or inappropriate culture. We have got it wrong from time to time in the ADF but this does not make the entire system wrong or ineffective or our people chronically negligent. During your considerations throughout this inquiry, I urge you to separate things that are systemic shortcomings from those that result from human failings within the system.

I am aware of the kinds of external criticisms that have been made of the military justice system over time. Where criticism is levelled we must either be able to explain why it is not valid or acknowledge faults and endeavour to fix them when criticism is sustained. We must do so without causing corresponding harm to the rest of the justice system or indeed to the command and operational effectiveness of the ADF.

As with any complex system and organisation, major changes can sometimes take longer than we would like. However, I would once again highlight the progress made as a result of the inquiries undertaken by Abadee and Burchett, together with the results of a range of other reviews and inquiries, parliamentary and otherwise, as evidence of a willingness to accept appropriate change.

I said earlier that the unique nature of ADF service demands a system that will work in both peace and war. The ADF is also responsible for providing a working environment that protects the health and safety of its members. We are not immune from social issues prevalent in society. The consumption of alcohol is a legal and social custom in Australian society. The ADF recognises the right of an individual member to use alcohol in a responsible manner outside normal duty hours and, of course, subject to operational requirements. Importantly, the ADF does not tolerate the abuse of alcohol or the use of illicit drugs. The adoption of stringent policies about issues such as the abuse of drugs and alcohol are considered essential in an organisation where lives depend on a confidence that each member is able to perform his or her duties at their optimum capacity in life-threatening environments.

The fact that Defence views breaches of its drugs and alcohol policy seriously does not mean we never expect any breaches. But we do attempt to prevent lapses where we can and follow up on breaches when they occur. We also seek to be discerning with regard to the level of seriousness of any breaches that may be detected. We have made our position very clear to our people concerning the use of illicit drugs and the management of alcohol. We have recently introduced random drug testing ADF wide. Air Force and Navy have recently commenced random alcohol breath testing, with the Army's program set to start in April this year.

Our policy settings are designed to achieve cultural change concerning alcohol abuse. The handling of allegations regarding illicit drug use and alcohol abuse is undertaken within the military justice system. Because the ADF is part of the wider Australian society it is made up of people who broadly reflect the social norms and behaviours of that society. However, while the procedures of the ADF must acknowledge this, they must not undermine the ability of the ADF to achieve its ultimate role: the defence of Australia and its national interests. That is why ADF service remains unique and why special provisions such as the military justice that I have described are required to support it.

The ADF must function as part of our Australian democracy. However, the nature of our business requires the subordination of all members to a disciplinary code that acts in conjunction with the civil legal code. As I mentioned earlier, that subordination brings with it significant responsibilities for all who exercise command and provide leadership. The military justice system aims not just to deter improper behaviour but to fix issues as they arise. Military discipline must be robust, provide adequate, appropriate and timely standards of military justice, and acknowledge the unique disciplinary requirements of the ADF. By and large, the military justice system provides impartial, rigorous and fair outcomes. Reinforced through ongoing reforms, it includes comprehensive review mechanisms for transparency and public accountability within the limits of security and privacy constraints.

A recent survey of perceptions of ADF members about military justice conducted as part of the ADF attitudes survey indicated that a majority of ADF members agreed that the DFDA is an effective and efficient tool for the maintenance of discipline and that the standards of discipline in their service were about right. While we are not afraid to strive for perfection, we must always be prepared for reality. The large majority of our people already know what is right and have the courage to act accordingly. Some may need further instruction and support to change their attitudes or to act when they see others in breach. Where preventative measures fail, the military justice system remains available to correct unacceptable behaviour. When considering the military justice system, we know where we want to be and why. We know we have had our share of problems along the way and that any lessons arising must be learnt and acted upon.

I would like to highlight where we are working hard to continuously improve the system of military justice and its delivery. The ongoing implementation of the recommendations stemming from reviews of the MJS and a number of inquiries into accidental deaths, suicides and other serious incidents is serving to continuously improve the system. Many of those reviews and inquiries have been undertaken by agencies external to Defence, and I acknowledge the important role of previous parliamentary inquiries. The extent of the recent reform processes shows that we do learn from the lessons of the past. It continues to demonstrate the ADF's desire and ability to change for the better. Since the conduct of the 1998 joint standing committee inquiry into military justice procedures, the Senate commissioned an inquiry into rough justice in 2001, and my predecessor commissioned an own motion inquiry into military justice in the ADF by retired Federal Court Justice, Mr James Burchett QC.

As a consequence of those inquiries, a number of recommendations made have either been implemented or are planned to be implemented to further improve the processes and procedures associated with the military justice system. In my view, the most significant recommendations of those inquiries to be implemented include the establishment of the office of the Inspector General of the ADF, the Director Military Prosecutions and the Registrar of Military Justice. I appointed the Inspector General of the ADF on 13 January 2003 to provide me with an internal audit and review of the military justice system independent of the ordinary chain of command. This includes all aspects of the military justice system—namely, the Defence Force discipline and administrative systems. The IGADF provides an avenue by which any failure of military justice may be examined and exposed. It does not supplant the existing processes of review. It ensures that review and remedy are available and that systemic causes of injustice, if they arise, are eliminated. I commend the fuller description of the role and functions of the IGADF contained in the Defence submission to committee members. While I expect that it will be some time before we are able to report definitively regarding the impact of the IGADF's

establishment, I am encouraged by the work done to date and the audit program the IGADF will conduct this year.

In addition, the establishment of the position of the Director Military Prosecutions as an independent statutory appointment was agreed on 19 February 2003. He commenced operations on 1 July 2003 under interim arrangements awaiting legislative amendment to establish it as a statutory appointment. The principal role of the DMP is to provide pretrial advice and conduct prosecutions before courts martial or defence force magistrates under the DFDA and is separate from the chain of command. It provides independent advice concerning the sufficiency of evidence and the likelihood of a successful prosecution.

The military justice system continues to be improved as we complete implementation of the log of recommendations stemming from previous reviews. It is interesting to note that this inquiry is the fifth such inquiry in the past eight years. The need for legislative change has meant that a number of recommendations from earlier inquiries have been subsumed by subsequent inquiries. These changes to the military justice system are significant. They represent a process of continuous improvement not only for the management of the system but also to provide for constant and independent oversight of the system and its processes.

Recent changes as a result of the ongoing Defence-wide reform processes mean that the availability of support mechanisms such as welfare, chaplains, psychology and social workers and dispute resolution is greater than ever before. We recognise that ADF members and their families need this support, especially in times of stress and trauma. We know we can never fully remove the pain and sense of loss that will arise from often harrowing circumstances. All we can try to do is provide a full range of services to help our people and their loved ones to recover. The services made available through the Defence Community Organisation to support the complex and wide-ranging needs of the ADF are impressive. We will continue to provide that support to ADF members and where appropriate their families when they are affected by traumatic events.

In concluding, the issues involved in the administration of military justice are complex. The stakes are high. Unfortunately, some unwelcome incidents are bound to occur. The military justice system is fair and open and sits within the wider body of Australian law and public accountability. It works well for the most part. Where it has been discovered that it could work better it is being improved. It is pertinent to note that none of the five inquiries conducted since 1998 has concluded that the military justice system or aspects of it are broken. They have concluded that there is a range of improvements that will enhance this system, and considerable work has been undertaken by Defence to realise these enhancements. Less than three years out from the Burchett inquiry, it is in my view unsustainable to argue that the conclusions he drew lacked credibility and were flawed. The system is not and perhaps never can be perfect. However, we are committed to further improving the functioning and governance of military justice within the ADF. I am very much focused on this issue, as are the service chiefs. In the final analysis we recognise that this is a command responsibility.

The ADF is held in trust by the parliament for the people of Australia. The recent outstanding operational successes of the ADF would not have been possible had the system of military command and justice not been able to effectively harness the wonderful efforts of our people. No-one would deny that Australia has a defence force of which it can be justly proud. We are all

ordinary Australians doing a unique job. We operate in a most unusual environment under most unusual pressures. We conform in all regards to the spirit and the letter of the laws that govern all Australians and we do so within a system tailored to our environment. The ADF is a critical component of the ability of the government of the day to achieve its security policy objectives on behalf of the Australian people. The successes that the ADF has enjoyed and of which the public is justifiably proud are based on our people, who are unquestionably our most important asset. Our success is also based on a range of command and management systems of which the military justice system is a critical part.

I accept that we need to better educate the parliament and the Australian people with respect to the military justice system. I also accept that we need to continually improve our processes of communication with those members of the public and those families who have been directly affected by serious incidents, especially where a member of the service has died or been seriously injured. We need to do all this in a way that will enhance rather than inhibit our operational capability. The military justice system is sound, even if it has sometimes not been applied as well as we would like. This inquiry presents both an opportunity to explain recent developments in the system and, building on these developments and the outcomes of previous inquiries, to improve the system further where any continuing problems are identified but have not yet been resolved.

My aim today in these opening remarks has been to tell the public about our comprehensive, sophisticated and modern system of justice and how we will adapt it as needs demand. We remain alert to requests for improvement from both the people we serve and the people who serve us. I have every confidence that on the whole the military justice system is effective and serves the interests of the nation and of the Defence Force and its people. That confidence is born of my long experience in the service and direct observation of the people who are responsible for and subject to the military justice system during peacetime activities, routine training requirements and operations.

During the course of these hearings you will undoubtedly hear criticisms of the military justice system from people affected by it. Some of that testimony will require a response from the service chiefs, other defence witnesses or myself after our testimony today is completed. I therefore welcome the opportunity for us to return at a later date to assist the committee by providing further information on particular cases and issues. I would also welcome the opportunity to provide a summary of Defence's position during the concluding stages of the inquiry. Thank you for the committee's patience.

CHAIR—Thank you. The committee may require you to come back towards the end of our hearing. Did you say in introducing your remarks that you have copies of your remarks available in writing for the committee?

Gen. Cosgrove—Yes. I have one copy with me.

CHAIR—We will arrange for that to be collected.

Senator CHRIS EVANS—Chair, because General Cosgrove gave a comprehensive introduction to Defence's position, there are five or six witnesses to follow who will also make remarks in addition to the written submission and most of my questions go to the written

submission rather than General Cosgrove's opening remarks, I am unsure how we proceed. Are all the other witnesses going to make lengthy remarks?

Gen. Cosgrove—I can assist the chair. I am aware that my colleagues the service chiefs will have substantial opening remarks, though they will not be as long as mine.

Senator CHRIS EVANS—The point I make is that most of my questions go to issues in the submission. I am happy if the general wants to take those questions, but I suspect a lot of them—technical details about how the system works—will be directed to Air Commodore Harvey and others. Will we do that now or shall we wait until we have the other witnesses?

CHAIR—It is up to the committee. It can decide to take all the other opening statements now and then proceed to questions in a block later. The program requires us to question General Cosgrove until 10 o'clock, but that is a proposal. Does the committee have a view?

Senator JOHNSTON—I do not think we have yet heard any matters we would want to raise with the general.

CHAIR—As there are no questions for General Cosgrove from the committee, and the committee being mindful of your offer to come back later, General Cosgrove, at the moment we will move to our next witness. Thank you, General Cosgrove.

[9.29 a.m.]

RITCHIE, Vice Admiral Chris, AO, RAN, Chief of Navy, Department of Defence

CHAIR—Welcome. I invite you to make an opening statement.

Vice Adm. Ritchie—As the Chief of Navy, I greatly appreciate this opportunity to appear before you today to discuss those matters raised in the terms of reference which relate to the Royal Australian Navy. Naturally, everything that the Chief of Defence Force has already said applies to Navy and underpins the system of military justice for those members of the ADF who serve at sea. However, I would like to put a few of the elements of this system into the naval context. I am also going to give my perspective of the two matters raised in the terms of reference which relate directly to matters which occurred in Navy—the fire in HMAS *Westralia* and the disappearance of Acting Leading Seaman Gurr. I want to also give you my personal view of what you will read in the Navy's contribution to the ADF's submission to this committee.

I would like to set the scene for the substance of my remarks by saying that I am very proud of what the Navy has achieved in recent years. The spectrum of tasks for which the government authorises the deployment of naval forces is very broad. I am sure the committee will recall the excellent service of our sailors in fisheries protection, peacekeeping, border protection, drug interdiction, the enforcement of maritime sanctions and Iraq, to name just a few. In ships, submarines, aircraft, patrol boats, bases and shore establishments, Navy people have excelled in carrying out the tasks put before them by the government.

Apart from answering the call to action when it has arisen, Navy also maintains a regular, active schedule of diplomatic relationship building with regional naval forces, through port visits, bilateral training exchanges and national naval exercises. We work closely with Army, Air Force, foreign forces, Coastwatch, Customs, fisheries and state and federal police forces in a security environment that is much less predictable than it has been in the past. We achieve that partly through maintaining flexible maritime capabilities and doctrine to provide the government with the largest possible palette of options. Most important are some 13,000 men and women serving all over Australia and overseas who proudly wear the Navy uniform. I know from my nearly 40 years in the Navy that these people are professionals of the highest calibre. Indeed, perhaps they make up the most educated professional body that we have ever had in the Royal Australian Navy. Over and over again at home and abroad, and at sea and ashore, they have demonstrated their dedication, their capability and their loyalty.

As the head of the Royal Australian Navy, one of my duties is to ensure and administer a fair justice system for all of our people. In my view, discharging this duty to the highest possible standard strengthens Navy's ability to fight and to win at sea. The fair and efficient administration of justice increases the morale and therefore the operational efficiency of the Royal Australian Navy. It is for that reason that I view the subject matter of this inquiry to be of the utmost importance in the conduct of Navy's contribution to the defence of Australia.

Against that operational and strategic background, I would like to make a point which may appear self-evident but which underlies my entire message to you—we in the Royal Australian

Navy are part of Australian society and culture, yet the nature of naval operations and activities in some cases necessitates differences between our legal processes and procedures and those that apply to civilians. In general, these differences only vary the form of legal proceedings, not their content. The underpinning principles remain true to the rule of law as practised in everyday civil society. It is this balancing of the similarities and the differences in military and civilian law that is perhaps at the heart of misunderstandings over the operation of the military justice system in the RAN.

Firstly, I am going to describe those differences which make naval life unique. The central and driving concept that distinguishes Navy is that of command. Naval command at sea encompasses the authority and the responsibility for effectively using available resources and for planning, employing, organising, directing, coordinating and controlling naval forces for the accomplishment of assigned missions. Importantly, it also includes responsibility for the health, welfare, morale and discipline of our people.

This broad and often intimidating range of responsibilities must be exercised by a single individual: the commanding officer. Often, ships are deployed to environs far from the sphere of direction, communication and assistance afforded by higher levels of command. On these occasions, the ship's captain must be able to make decisions regarding the discipline and regulation of his or her crew without recourse to outside authorities and specialist advice. It is not always possible to fly an inquiry officer or legal expert to a warship which is many days distance from land. Rather, the captain must be able to use the limited resources contained on board the ship to resolve the situation. He or she must be able to do this in an efficient way that does not interfere with the ship's ability to float, manoeuvre and fight. This means that the military justice system on board a warship must be fully integrated into the day-to-day activities of life at sea. Were this not the case, the morale and efficiency of the crew would suffer.

I am not saying this to downplay the importance of the military justice system; quite the contrary. It is hard to fully describe the nature of life at sea to someone who has never lived at sea for long periods out of sight of land; it is therefore equally difficult to explain why an effective justice system is fundamental to the operational capabilities of a warship. Having said that, I know that some members of the committee have had the opportunity to go to sea through the ADF parliamentary program. Life at sea has numerous privations with respect to individual privacy and liberty. We live in conditions that are communal and often crowded. All members of the ship's company are entirely dependent on their shipmates for their safety, wellbeing and, ultimately, survival. Many basic evolutions performed by the ship's company are inherently dangerous, so Navy people often encounter danger and adversity on a daily basis.

In these difficult yet challenging circumstances I am certain that it is fundamentally necessary to employ a system of military justice that is pared down to the essential elements. Be assured that I consider that individual rights and fairness are essential elements in the maintenance of service discipline. The main point that I am making is that there cannot be protracted legal processes without very good reason. From my experience I can affirm that long and drawn-out legal procedures will have a detrimental and corrosive effect on the morale and cohesion of a ship's company. Neither I nor the commanding officers of any ships of the Royal Australian Navy can afford to have this occurring in times of high operational tempo.

Of course our ships are not always at sea and are not always isolated from the support of shore establishments and civilian institutions and organisations. As the need arises, they are in port for maintenance and logistics support. At the same time, our personnel must be refreshed through leave, training and respite from sea service through posting ashore. For this reason it is vital that the Royal Australian Navy has a military justice system that operates seamlessly and consistently whether our personnel are posted to ships, tied up alongside at Garden Island, serving in ships which may be in the middle of the Indian Ocean, working in one of our many shore establishments or serving in a predominantly civilian group in Defence. It is amid the demanding mix of sea based deployment, operations, exercises and shore based training and employment that make up normal naval life that we must be able to administer justice and discipline in accordance with the rule of law.

Because of these complicating factors, Navy has developed some unique means of leading, managing and maintaining discipline amongst its people. Most important is what we call the divisional system. Sailors are grouped in divisions along functional lines to align their working and living environment with their training and their welfare needs. Commanding officers appoint a divisional officer for each division and he or she in turn forms an essential part of the chain of command. Divisional officers have a broad duty of care for all aspects of their sailors' wellbeing and development and they are accountable to the commanding officer for the effective management of their division. This includes the maintenance of discipline on a personal level.

Incidents of a disciplinary nature are usually investigated by the ship's naval police coxswain or another officer appointed by the commanding officer. The divisional officer is involved in the process as adviser and friend to the accused. In the regular scheme of minor disciplinary infractions, speedy justice occurs to punish and correct aberrant conduct with minimal disruption to the normal operations of the ship. More serious incidents such as criminal offences must obviously be handed over to the civilian authority or may be referred to higher command for investigation. The two incidents that I mentioned earlier—the fire on board HMAS *Westralia* and the disappearance of Leading Seaman Gurr—were both investigated by a board of inquiry and I am sure that sufficient factual background to both of these cases is already known by all members of the committee.

I would like to give you my view of how Navy has evolved since each of those tragic events in order to form a better and a safer fighting force. Firstly, I will refer to HMAS *Westralia*. I can assure the committee that this disaster and the tragic deaths of four young men and women have led to major changes that have permeated almost every aspect of naval life—engineering, risk management, safety management, damage control training and operations. Every person in any position of responsibility has been exposed to the lessons of HMAS *Westralia*, to the degree that the changes are now embedded in Navy's culture.

I am pleased to note that the Western Australian coroner who conducted the subsequent coronial inquiry into those deaths would agree with what I have said, and I refer to some of the statements in his report. He referred to an excellent analysis of safety issues by the board of inquiry; he noted that most of the board's recommendations had already been implemented; he noted that the board's report dealt with a wide range of issues in a comprehensive and most helpful way, as a result of which it was not necessary for him to revisit many of these issues; and he noted that, in relation to events after the fire started, he supported the conclusions of the board.

I am therefore extremely pleased to see that the Western Australian coroner largely upheld Navy's inquiry procedures. It is my personal belief that the *Westralia* board of inquiry was an independent, public and open fact-finding process, particularly in light of the fact that there were two civilian experts on the board. Contrary to the unfounded allegations of some that the inquiry was an internal Navy whitewash, rigged to make predetermined findings, the board in fact judged Navy's actions by objective civilian standards. It identified the problems and recommended reforms in a way that met Navy's immediate needs, as well as satisfying the external probity standards of the Western Australian coroner.

I should note that one of the coroner's primary findings with regard to Navy's inquiry standards was that the board of inquiry was constituted too early after the incident. The coroner felt that, despite the open and public nature of the inquiry, the families of the four victims were not emotionally ready to effectively participate in the proceedings. Whilst I appreciate the families' concerns, and I certainly share their grief, Navy's duty at the time was to identify the causes as quickly as possible and to prevent recurrence. I was reassured of the soundness of that inquiry process by the coroner's endorsements of our safety analysis.

I also want to stress that the board of inquiry was a fact-finding investigation, rather than an inquiry to determine the culpability of the members concerned. Navy considered that there were potentially two issues which called for the laying of charges pursuant to the Defence Force Discipline Act. However, the external legal opinion of a Queen's Counsel recommended that there was little prospect of obtaining a conviction for either issue. Given that it was never the aim to find a scapegoat, I am satisfied that the *Westralia* board of inquiry justly fulfilled all of the requirements.

Secondly, in the case of the tragic disappearance of Acting Leading Seaman Cameron Gurr, Navy identified that there were some shortfalls in its control of the illegal use of alcohol. Processes with respect to the use and abuse of alcohol have evolved since Leading Seaman Gurr's disappearance, and they continue to improve. The latest addition to our administrative regime to combat alcohol abuse is the introduction of a program of random alcohol testing late in 2003.

Navy already had extensive procedures to identify people at risk of alcohol abuse, with our focus being to intervene at the earliest indication of abuse in order to prevent the development of greater problems later on. All Navy personnel are exposed to what preventive action may be taken to militate against alcohol abuse at regular intervals throughout their careers, as well as by annual education sessions through the divisional system. At a higher level, management-specific education is provided to personnel in supervisory and management roles.

Because of our extensive education campaign, Navy achieve early diagnosis of problems before destructive habits become too well established. Navy also recognise that alcohol dependency is a condition that can be treated. Accordingly, a dedicated network of trained uniformed professionals working within the Royal Australian Navy alcohol and drug program provides counselling, education and support to personnel afflicted with alcohol related disorders.

In Navy's experience, there are a number of factors that fundamentally influence the success of the program's treatment regime. Accordingly, if a member remains physically fit, cooperates completely and maintains a positive attitude towards the therapy, Navy will fully support

treatment until the member is able to return to their place of duty as an active, reliable and operationally deployable person. Conversely, a member may choose not to actively engage in the treatment process that we offer. If their behaviour or work performance suffers because of continued alcohol abuse, the commanding officer may take disciplinary action against the member and may recommend that the member's service in the Navy be terminated.

Fortunately, however, the majority of members referred for counselling and treatment take up the opportunity that we provide in order to combat abuse. Military rehabilitation centres have at least a 60 to 70 per cent success rate in achieving long-term sobriety—and I am advised that outside in the civilian world that rate is about 20 to 30 per cent. I think that that demonstrates Navy's dedication to rehabilitating its members, both for their individual wellbeing and to help Navy to be a fit, healthy and professional fighting force.

What I have said today supports what I have said in many other forums—that naval service is absolutely incompatible with the abuse of alcohol. Personnel who are impaired by alcohol may be a danger to themselves and their shipmates, as well as being a security risk. That is not just my opinion but it has been official Navy policy, as promulgated by my predecessors, for many years. In accordance with these views, Navy has never condoned the illegal or irresponsible consumption of alcohol; nor has Navy ever condoned a culture of alcohol abuse.

A board of inquiry into the disappearance of Acting Leading Seaman Gurr supported these views. It found that Navy's problems with alcohol lay with the illegal consumption of illicit alcohol and occasional lax practices which facilitated the concealment of alcohol for unsupervised consumption outside of approved procedures. It was for this reason that I was comfortable in allowing the traditional Navy beer issue to continue on board our ships. This is in line with normal Australian culture, which tolerates the responsible and sociable consumption of alcohol in the appropriate circumstances.

I remain convinced that the vast majority of members of the Royal Australian Navy can be trusted to consume alcohol sensibly and in accordance with our rules so that they can perform their duties at all times, and I have faith that Navy's revised procedures will safeguard our ships from those few people who might be inclined to abuse the regulations. We have taken the lessons of the board of inquiry into the disappearance of Leading Seaman Cameron Gurr extremely seriously. We acted quickly to put the recommendations into practice. The Western Australian coroner's office to date has stated that it does not intend to undertake any further investigation into the disappearance of Leading Seaman Gurr.

As for the *Westralia* board of inquiry I made it clear that it was deemed legally inadvisable to pursue disciplinary or administrative action. On the other hand, in the case of Leading Seaman Gurr, the balance of evidence unearthed through the inquiry process led the Maritime Commander to impose administrative censure on seven members of the ship's company. I want you to understand that in the Royal Australian Navy a censure can have a serious impact on a member's career. Each case is of course entirely dependent on individual circumstances; however, in general, censure can affect promotion, postings of choice and selection for courses offering advantageous career advancement opportunities.

In short, Navy considered that on the balance of probabilities the personal behaviour of the seven members of the ship's company of HMAS *Darwin* fell below the high standards expected

in the Navy. Disciplinary action against the seven was not feasible because there was insufficient evidence to prove culpability to the standard that is required in both military and civilian criminal law—that is, beyond reasonable doubt. As a result, their conduct in relation to the disappearance of Leading Seaman Gurr warranted and received the imposition of administrative censure. I should note that the Director of Military Prosecutions is considering disciplinary action under the DFDA against one particular member of HMAS *Darwin* at that time. Again, this proposed action is not indicative of a desire to find a scapegoat; rather, I believe that the adverse administrative action that has been taken to date and the potential disciplinary prosecution that may be taken are consistent with Navy's desire to prevent any further incidents of a similar or related nature.

The death of any member of the Royal Australian Navy in any circumstances has a major detrimental impact on his or her ship. It also sends a chill through all of us who serve at sea, even for those of us who did not know the deceased member, because any such death reflects the inherent danger of what we do in terms of both the environment in which we work and the mental stress which people are put under.

This latter aspect of naval life—the mental stress—sadly manifests itself every so often with the suicide of one of our members. The loss of any of our members has an amplified and detrimental effect on the Navy organisation as a whole, as well as being a personal catastrophe for the family and friends of the deceased. For this reason we allow no complacency in our preventing suicide or in the prevention and identification of people who may be at risk of self-harm. Navy are dedicated to minimising the underpinning causes and the predisposing factors which may cause one of our members to take his or her own life.

As the front-line defence against suicide, I am strongly supportive of the Australian Defence Force's mental health strategy and suicide prevention plan. Additionally, for divisional officers, executive officers, commanding officers and people in positions of leadership, Navy has placed extremely strong emphasis on the importance of pastoral care for one's colleagues and subordinates. This approach of individual care and concern is deeply embedded in our training and culture. Not only do we seek out the immediate triggers for suicide but we are also alert for the more subtle warning signs that not everything is right with one of the naval family.

There are also a range of specialist personal services available to members and their families that complement the divisional system. The combination of medical professionals, psychologists, chaplains and social workers collaborate to maintain the physical, mental and spiritual health of our members, as well as providing a fast, effective crisis management service when called upon to do so. At both ends of the spectrum, from routine personnel dilemmas to the trauma of a critical incident, these professionals add preventative layers of medicine and care, providing a boost to the wellbeing of people.

In this context I would like to talk about some of the actions that we took in the aftermath of the fire on board HMAS *Westralia* so as to demonstrate our commitment to personal problem awareness and prevention in acute circumstances. That said, I want to point out that Navy's policies and procedures have of course evolved further since that time. After the fire in May 1998, personnel who had been engaged in firefighting, rescue and support were debriefed and counselled. Further psychiatric and specialist treatment was provided where it was requested by individuals or where it was recommended by the engaged health professionals. Some members

were diagnosed with post-traumatic stress disorder. They received particular attention, and to this day Navy continues to monitor their progress and their status.

Sadly, one of the junior sailors from HMAS *Westralia* who had been involved in firefighting and the handling of the bodies of the four members who died in the fire, took his own life in November of last year. From the time of the fire until his discharge from the Navy in May 2000, Able Seaman Matthew Liddell, firstly, was identified as being at risk from post-traumatic stress disorder and, secondly, received ongoing treatment from the time that he was diagnosed with post-traumatic stress disorder. I understand that the Department of Veterans' Affairs supported his continued treatment after his discharge in the year 2000. I regret greatly that, despite all the treatment and care that Able Seaman Liddell received both during and after his naval career, he committed suicide. I know and understand that his family remain profoundly distressed.

I should reiterate that Navy treat suicide awareness and prevention as a command and leadership responsibility and that our people receive comprehensive training and refresher courses at regular intervals in their naval careers. I therefore have confidence that the revised proactive strategies that have been implemented in recent years will make their mark in preventing such a terrible tragedy.

I said earlier that the core message of my statement today would be about the differences and similarities between naval life and Australian society. As with the unfortunate occurrence of suicide amongst both the Navy and their civilian counterparts, other similarities abound. A more positive area of common ground is the application of laws for the protection of individual rights in the investigatory and inquiry process. The rules which apply to the Navy in terms of evidentiary standards and the rights of the accused in relation to questioning, due process and procedural fairness, among other things, are the same as the rules which apply to civilians. The Navy is often criticised by those who feel disgruntled by the outcome of an inquiry or investigation because nobody is convicted in a court of law. While I can sympathise very strongly with the frustration that these outcomes may cause, I want to emphasise that the legal and disciplinary authorities in the Navy must comply fully with the fundamental principles of natural justice that apply to all Australian citizens.

In one particular case, for which there is a submission before this committee, that of Chief Petty Officer John Hyland, the Navy is accused of failing to investigate and prosecute an assault that took place in an ADF establishment. In this matter, I want to inform you that Chief Petty Officer Hyland's allegations were thoroughly investigated by military police from the Air Force and by civilian state police and Navy authorities. None of these investigative bodies found there was sufficient evidence to support Chief Petty Officer Hyland's assertions and hence decided that it would not be in the interests of justice to proceed with prosecution.

This brings me towards the end of my opening statement. I have aimed to give you an insight into the special challenges facing the Navy and how we deal with military justice in this context. I wanted to reassure you that our disciplinary and internal inquiry system is robust in delivering fair outcomes. Through our well-developed and comprehensive systems of internal auditing of procedures and results we in the Navy are well aware of where we need to implement further improvements which better cater for the needs of our service and our people. Similarly, we will listen to and closely consider any advice on how we should improve those processes.

In closing, I want to impress upon you that as the people in the Royal Australian Navy stand watch day and night during times of peace and times of conflict, there must be an effective military justice system that keeps up with our operational pace and supports us in carrying out our mission. Through a process of almost constant evolution, our current system manages to achieve this. This evolution continues today as we continue to implement the recommendations of the five inquiries into military justice over the last six years. The guiding values that underpin everything that we do in the Navy are honour, honesty, courage, integrity and loyalty. Our commitment to these core values will see us through the challenges we face in the present and in the future, and I look forward to leading the Navy to greater and greater strengths. I thank you for your time, and I have completed my statement.

CHAIR—Thank you. Has the committee any questions for the Vice Admiral?

Senator CHRIS EVANS—I have a couple of questions. Vice Admiral Ritchie, do you accept that there was a culture of illegal drinking on board HMAS *Darwin*?

Vice Adm. Ritchie—I do not accept that there was a culture of illegal drinking on board HMAS *Darwin*. I would accept that there was a culture of illegal drinking amongst a small group, a particular trade category, on HMAS *Darwin*.

Senator CHRIS EVANS—Am I to interpret from that response that you do not maintain that the evening was a one-off event, but that your summation is that this was a small subset of the crew?

Vice Adm. Ritchie—Yes. I certainly do not contend that it was one-off, but I do contend that it was a small subgroup. Indeed, the board of inquiry found that it was not a one-off event and that there had probably been instances before which could have been brought to a head much earlier and were not.

Senator CHRIS EVANS—Were not over 40 illegal bottles of alcohol found on the ship?

Vice Adm. Ritchie—I am not sure of the number that were found, but bottles of alcohol were found. Bottles of alcohol were found on other ships. There are obviously subcultures around the place, but it is not something that is widespread. But it exists and it existed; I do not deny that.

Senator CHRIS EVANS—You say that the only actions arising out of the inquiry surrounding the death of Seaman Gurr et cetera were the seven administrative censures. Was the captain one of those censured?

Vice Adm. Ritchie—No, the captain was not.

Senator CHRIS EVANS—How, then, do you respond to the concern that arises here that somehow this was tolerated and not dealt with on the ship?

Vice Adm. Ritchie—My response to that concern is that people in positions of middle-ranking authority in the ship, if you like, who ought to have brought knowledge of that sort of event to the commanding officer's attention but did not were included amongst those seven. That is where they fell down, and that is where the system of leadership in that ship fell down. I have

described a divisional system. The captain sits at the top of it, and down through it there are other people who are accountable to him to do certain things. Certain people in that ship did not take those responsibilities seriously enough. I have described the fact that we are unable to take disciplinary action against them for lack of evidence. On the basis of probability, they did not do what they should have done and therefore they have been censured.

Senator CHRIS EVANS—But you also conceded the concern which exists that there seems to be a common response that we do not have the legal proof to deal with these situations. I think you conceded that there is some concern that—I have certainly expressed it and I express it here today—whenever there is a revelation of a serious incident or serious abuse of the regulations no-one ever seems to get charged and the matter is not dealt with in any serious way. You then come and assure us about how seriously you treat the matter. I accept that; I do not question your bona fides at all, but the suggestion that the system does not seem to deal very effectively with transgressors leaves a question mark about the real commitment.

Vice Adm. Ritchie—I think we have conceded that we have to apply the same standards that are applied outside the Defence Force. Therefore, if we cannot achieve that same standard of proof, we cannot go forward with a prosecution and obtain a conviction.

Senator CHRIS EVANS—But you also made a very strong and compelling case as to why the Navy has things that are different from the normal justice system. In effect, I think you were saying that there are higher standards required while you are on operational duty and that, with the confines of a ship at sea, you have a need for higher disciplinary standards than would normally be required. But it seems to me that these standards were not being met in the case of the death of Acting Leading Seaman Gurr. The public understanding is that clearly a large number of men were severely affected by alcohol and one of them lost his life. But we are assured that it is not really a problem, that it is all okay, but we cannot do anything about those who failed in their command duties. It is not a very satisfying outcome.

Vice Adm. Ritchie—I do not think we are talking about a large number; we are talking about half a dozen or so who, on a particular night, were illegally consuming alcohol. I am saying to you that there is not enough evidence available to us to prosecute those things in accordance with the rule of law as it is applied in this country—not in accordance with the rule of law as it is applied in the Navy but in accordance with the rule of law as it is applied in this country. I regret that, but there is nothing I can do about it. That evidence does not exist in a way that can be used in legal proceedings.

Senator CHRIS EVANS—I thought the number of bottles of liquor found on HMAS *Darwin* was something over 40, but if I am wrong I stand to be corrected. Are you asserting, then, that all that liquor belonged to those six individuals?

Vice Adm. Ritchie—I am probably asserting that most of it did, yes—that it belonged to that subculture, that particular category of people, who had found that this was an interesting thing to do.

Senator CHRIS EVANS—So the subculture of six had 40-odd bottles of liquor between them, stored illegally on the ship?

Vice Adm. Ritchie—You are now getting into figures that I am really not going to agree with, because I am not quite familiar with the numbers. What I am saying is that there was a group of people on that ship who found that they could bring bottles of liquor illegally onto the ship, that they could hide them in various compartments of the ship and that, at certain times, they could gain access to them. Part of the remedy for that is to make it much more difficult for people to bring things onto the ship, and that has been done. Part of the remedy, if there is any suspicion that people are doing this, is to allow random breath testing, to see whether we can catch those people out. Part of the remedy is to make sure that all of the compartments in a ship are inspected on a much more frequent basis so that the likelihood of people being able to hole up and do these sorts of things is reduced.

Senator CHRIS EVANS—Are you convinced that this is a problem limited to HMAS *Darwin*?

Vice Adm. Ritchie—I am not convinced it is a problem that is limited to HMAS *Darwin*. If it was in HMAS *Darwin*, there probably were subcultures in other places. Therefore we took all of these steps not only in HMAS *Darwin* but in all other places. The message of random breath testing is very strong. It really says that we are out to stamp out illegal consumption of alcohol in our ships and workplaces.

Senator CHRIS EVANS—Has this incident led you to reconsider the Navy's policy on legal consumption of alcohol—on the issue of alcohol that is permitted?

Vice Adm. Ritchie—It has certainly led me to think about whether the policy was correct but, as I said in my opening statement, I have come to the conclusion that the legal consumption of alcohol in properly controlled circumstances in a non-operational environment is the right of everybody in this country. It is something that we all do, and therefore why should we deprive people who live in HMA ships of that particular right? What we should do is to ensure that the rules that bind the legal distribution of alcohol are enforced, and we are doing that.

Senator CHRIS EVANS—You might want to take this on notice. The submission refers to 71 recommendations from the board and then discusses those that were agreed to but are subject to implementation. I think the committee would appreciate a detailed response to the recommendations.

Vice Adm. Ritchie—I have that with me.

Senator CHRIS EVANS—You might like to submit that as a piece of evidence.

Vice Adm. Ritchie—We can do it that way.

Senator CHRIS EVANS—That would be great.

Senator JOHNSTON—With respect to the HMAS *Westralia* matter, or any other matter, are you aware of any current inquiries that would render the work of this committee problematic or inappropriate? I note that ADI have been charged with an offence relating to HMAS *Westralia*. Are you familiar with that charge in Western Australia?

Vice Adm. Ritchie—I am aware that Comcare has brought a charge against ADI.

Senator JOHNSTON—Does the Navy have a view as to how we should proceed to look at the matters in the terms of reference with respect to the fatal fire on HMAS *Westralia*, given the recent charging of ADI? If not, take it on notice.

Vice Adm. Ritchie—Could I come back to you after the break?

Senator JOHNSTON—Sure.

CHAIR—Thank you, Admiral Ritchie.

Proceedings suspended from 10.08 a.m. to 10.26 a.m.

CHAIR—Admiral Ritchie, I understand that you have an answer to a question from Senator Johnston.

Vice Adm. Ritchie—As I understand the question, it was what parts of the *Westralia* incident ought not to be discussed here because of other legal proceedings. I think it is quite legitimate for the committee to inquire into Navy's actions after the fire as a result of the board of inquiry recommendations and I think it is legitimate to talk about the conduct of the inquiry. But I would have some difficulty with the issue of the cause of the fire, because it is the cause of the fire that is at the heart of both an action between the Commonwealth and ADI and an action between Comcare and ADI. So perhaps we could stay away from that part of it.

CHAIR—There are no further questions. Admiral Ritchie, thank you.

[10.28 a.m.]

LEAHY, Lieutenant General Peter, Chief of Army

CHAIR—Lieutenant General, before you address the committee, I wish to make a suggestion to committee members. I suggest that after the Chief of the Air Force has made his submission the other submissions be tabled, unless the committee holds a contrary view, as we have been briefed on these submissions. We can then go directly to questions. Perhaps we will point that out when those witnesses come before us. That will mean that they can speak to their submissions briefly in the normal course. Agreed? Lieutenant General, the floor is yours.

Lt Gen. Leahy—Good morning; thank you. My statement is of a similar length to the CDF's and a written copy will be made available at the conclusion of my evidence. Let me start by thanking you, Mr Chairman and committee members, for the invitation to make this statement today. The last time a committee of parliament was briefed by Chief of Army on the military justice system was by Lieutenant General John Sanderson. I welcome this opportunity to provide you with an update of developments in the military justice system in Army since that time. Today I intend to deal with three areas, the first of which is improvements and progress we have made; but more importantly I intend to share with you those areas that have presented particular challenges for Army and the steps that we have taken to ensure that the military justice system in Army approaches as close to best practice as we can make it.

Let me say from the outset that as Chief of Army I will accept responsibility for those things that Army is responsible for. Not only will I accept responsibility; I will take action to ensure that we learn, we change and we get better. I will hold people accountable for their actions and mistakes and, where appropriate, take legal or administrative action against them. There are 40,000 men and women in the Army and I believe that they are the professional equal of any army in the world. Our Army enjoys an enviable record and a reputation of which all Australians can be justifiably proud. That is why I find most disturbing recent press reports which followed the public release of some submissions to this inquiry. These reports implied widespread harassment, bullying and racism. They suggested that such behaviour was somehow part of the culture of the Australian Army.

I fully acknowledge, regret and abhor that individual and isolated incidences of harassment, bullying and racism have occurred. There is no place in the Australian Army for such behaviour. However, I strongly reject the gross generality that these aberrations constitute a culture. To me, a culture is the sum total of how an organisation behaves. It suggests something systemic, widespread and condoned. The overwhelming majority of those who serve their nation in the Army do not harass others, are not bullies and are certainly not racist. Even to hint otherwise is an unfair distortion and a gross affront to the men and women of the Australian Army.

The Army works as a team, with everyone in that team understanding their place and their role and with everyone making an indispensable contribution to the safety, effectiveness and achievements of the team. Of course there are hierarchies in Army, and obedience plays a different role within the Army than outside it; but it is obedience in the context of the team working together to achieve a mission. In the Army we want an environment where everyone is

free to contribute to their fullest capacity. After all, we are a volunteer army. Our values are courage, initiative and team work, and we all joined to be part of a high achieving team. But sometimes we do not achieve this. Sometimes the team breaks down. In some cases individual members of the team fail. Perhaps they are unable or unwilling to contribute and become part of that team—or perhaps in some cases leaders fail; sometimes they revert to bullying, harassment or violence. To them I say simply, ‘You have failed as a leader.’ There is no place for people like this in the Army. Simply put, they just do not understand that a leader’s job is to empower, to persuade, to inspire and to lead.

Military service is not an easy calling. I am sure I do not need to remind the committee of what Army has achieved in the years since General Sanderson spoke on military justice to the committee. At that time we were involved in truce monitoring on Bougainville, a commitment that ended just a few months ago. The following year an international coalition force formed around the Australian Army paved the way for a highly successful United Nations effort in East Timor; Army involvement continues there today. In recent times elements of the Army have been sent into harm’s way in Afghanistan and Iraq. There they have acquitted themselves with great courage and distinction, and our troops remain there today in a variety of roles. In the Solomon Islands some semblance of normalcy is now returning to a close neighbour, due in no small part to the conspicuous presence of the Army.

In the last six years, the Army has responded to a wide range of other tasks, from terrorist bombings to tidal waves and from cyclones to the Sydney Olympics. Members of the Army today fly the national flag on operations and peacekeeping missions in trouble spots from the Balkans to the Middle East to Africa. They also help deliver a diverse suite of defence cooperation program activities throughout South-East Asia and the South West Pacific. Wherever the men and women of the Army serve, they earn the respect and support of the communities they touch. I am very proud of how deeply the Australian Army reaches into our wider national community as well. For all but the smallest handful of those Australian families with members in the Army, the service rendered by their sons and daughters is a source of unanimous pride.

Right now the overwhelming bulk of the Army is busy getting on with its core business of training for and conducting successful operations as safely as possible. Barring unforeseen circumstances, around 3½ thousand Australian Army members will serve throughout this year on operations outside Australia. At the same time, the Army training system will induct and prepare some 2½ thousand new recruits, both officers and soldiers. This is our core business, and the military justice system plays an important support role in achieving the core business.

That the Army continues to attract the very best of Australia’s youth with the very highest motives of service before self and duty to the nation is not something I or any of those serving with me take for granted. A world-class army with a first-class record relies on top-class people—and Army’s people deserve the best possible military justice system we can have. As I said earlier, the Army runs on leadership, teamwork and discipline. This is a fundamental truth of all professional armies. In the lethal environment of the modern battlefield, commitment to your mates and your team, maintenance of discipline and well-drilled responses to orders are matters of life and death.

My task from the Chief of the Defence Force is to raise, train and sustain the Army. I am responsible for preparing the Army for operations. We train hard to perform tough missions. Being in the Army is a robust and very serious business. So I make no apologies for the demands of training in the Army. An operational record like ours does not just happen. To relax our standards of training would be derelict. I believe it would in extremis imperil the lives of the young soldiers and those around them.

The military justice system needs to suit both the rigours of training in peace and the demands of service in war. Like CDF, I believe it does this and it does it well. None of the five major public inquiries into the military justice system over the last six years has contradicted this. That is not to say that we cannot improve it. We can and we are doing that now—and I hope to demonstrate that to you this morning. The Army is different from our sister services—Navy and Air Force. Our numbers, our organisation, our equipment and the way we do business make us different. Because our role is different, our training is different and the demands on our trainees are also different. When our people engage an enemy, it is mostly with small arms; it is invariably within visual distance; it is often under fire; and it is always very personal. Small team dynamics are crucial to Army's task. Discipline, morale, trust, mateship and confidence are the lifeblood of team Army. Military justice underpins the lot.

The military justice system is one of the four pillars that support the conduct and behaviour of everyone in the Australian Army. It is enshrined in our doctrine that all ranks must, first, abide by the laws of the Australian society; second, abide by the laws of armed conflict; third, follow Army's simple rules for a fair go; and, fourth, abide by the military justice system. The military justice system is a fundamental part of the Australian Army. The Defence Force Discipline Act and defence administrative policy each provide discipline tools for all ranks at all levels. While the one is used to discipline our members, the other works to enforce the uniform standards of behaviour to which a body of troops must conform in order to be effective. Justice is also a key component of morale. In Army we have one system that provides a fair go for all. Each and every member is subject to it. Each and every member has rights and responsibilities under it. The military justice system serves the individual and institutional needs of a very complex organisation effectively in peace and in war.

Let me state at the outset of this inquiry with absolute candour: we do make mistakes. I freely admit this. Some of these are organisational failures; some are individual failures. So, even with a fully functional system, people are fallible. Some lessons we learn with perfect hindsight and some lessons have been tougher to learn. I will now address for the committee a few areas where I believe we have performed poorly—even failed. I would then like to tell you about some of the enduring solutions we are setting in place to improve things.

In the past, I believe we have been quite good at identifying problems. We have been even better at making recommendations to fix those problems, but we have on occasions simply not followed through with the implementation of those recommendations. Part of the reason for this has been the natural churn rate of commanding officers, coupled with shortfalls in our procedures for the handover and takeover of unit command. This might be the reason; it is not an excuse. There are 97 units in the Australian Army of battalion or regimental size. These units are commanded by a lieutenant colonel, and that commanding officer will change, on average, every two years. That translates to a high rate of throughput at unit command level, and we rely on this to grow our pool of experienced leaders. In almost every case, handover and takeover procedures

have been robust enough to ensure a seamless transition of command. Regrettably, that has not always been the case. It is not good enough, and we have made some changes.

Formalised handover and takeover audits conducted physically and personally by outgoing and incoming commanders are now established practice throughout Army. Work has commenced to strengthen this further by issuing a directive that mandates these standard handover procedures for all Army commanders and key staff. This directive will include a specific procedure that ensures formal handover of responsibility for incomplete, in progress or unactioned decisions by investigating appointing authorities. In addition, advice on decisions that have been actioned or completed during the departing officer's tenure will be included. Decisions that flow from investigations or directions for implementation will be assigned to responsible officers by name, not just by position. Transfer of responsibility for action on incomplete, in progress or unactioned investigation decisions will occur by name at the time of handover.

We have also failed to see trends and patterns develop. Frankly, we have not learned enough as an institution from the errors that we have made. This has been largely due to lack of visibility and senior level management oversight. We are now establishing an Army wide database of administrative inquiries. This database will not only allow the progress of inquiries to be tracked but, more importantly, record the decisions of appointing authorities and allow the implementations of decisions to be closely monitored. We will also work with the Registrar of Military Justice to contribute to ADF wide visibility of discipline investigations and administrative inquiries.

Along with the issue of implementation, I am equally concerned by the length of time some investigations take. When I listen to criticisms of the military justice system within Army, I often hear the claim that justice delayed is justice denied. In some cases, this might be fair criticism, but the decision to proceed with legal action has on occasion been ill considered and some investigations could have been done much better. While some criticisms of delay are warranted, justice takes as long as it takes. I have an abiding belief that truth will eventually come out, however long it takes. Indeed, with its inbuilt appeal mechanisms which provide defence personnel more rights of review than their civilian counterparts have, this is a feature of the military justice system.

This was true in the case of allegations of misconduct against an SASR soldier in East Timor, one of the two Army specific cases raised in the committee's terms of reference. Despite a protracted police investigation which caused frustration and upset to those involved, the military justice system was followed through and seen to a result. Chair, you and the committee members would be aware that, as a result of the exercise of the military justice system, I made an apology to the soldier involved. I am on the public record as acknowledging that errors were made during the investigation and the subsequent prosecution of this soldier. There were organisational failures, such as the length of the investigation. There were problems with the quality of statements taken from witnesses and with Army press releases.

The administrative action taken against the soldier, on reflection, might have been best not taken. I have directed action to rectify defects which this case revealed in Army procedures and practices. I am also pleased to report to the committee that the soldier is assisting the Army to

take remedial action to ensure that a situation like this does not happen again. The recent establishment of a Director of Military Prosecutions is a further positive development.

Our processes are now in some ways similar to those of directors of public prosecutions around Australia. When a DPP finds insufficient evidence to prosecute, they do not then release all the evidence they have gathered and publish a detailed justification for the decision not to lay charges. Under our new arrangements, if the Director of Military Prosecutions applies ADF prosecution policy and assesses that there is insufficient evidence and a prosecution should not proceed then no DFDA action will be taken. We believe that the introduction of a DMP should alleviate previous concerns about a lack of independence or command influence, as well as provide a legal basis for proceeding or not proceeding with discipline action.

Where a case is made by a DPP to go to trial the outcome of the trial and any subsequent appeals resolve the issue. In the military, the same applies. I am committed to ensure that soldiers in the Army receive the same rights and protections as their civilian peers. Honest men and women should not have their names sullied or slurred unfairly by unsubstantiated and unproven allegations. This is just as true for members of the Army as it is for any other Australian.

As with the allegations in East Timor, many of the cases we investigate are extremely complex, involving actions far from our shores and people of different nationalities and cultures. As an example, we have had occasion in the past to request that a United Nations agency exhume bodies and permit us to subject those bodies to rigorous forensic inspection by Australia's foremost independent experts. That is how committed we are to scrutinising our own actions. That is how committed we are to ensuring a fair go. That is how committed we are to the principle of justice for all. But it does take time.

We are just as painstaking when investigating the actions of our senior officers and non-commissioned officers, particularly our commanders. There are two major reasons for this. First, commanders and senior soldiers are regularly called upon to make decisions, and not always popular decisions. We need to make sure that allegations of professional impropriety are not the result of personal vendetta. Commanders deserve a fair go as much as the troops they lead. Having said that, command is a heartland issue for the Army. I am going to hold my commanders accountable to the highest possible standards. There is no favouritism due to rank. Any allegation of misconduct by commanders and senior soldiers is rigorously and comprehensively investigated. Those entrusted with command would want it no other way.

Delay is not always the result of institutional mismanagement or bureaucratic bungling, nor should it be assumed as such. Most service police investigations and administrative inquiries in the Army are conducted efficiently, expeditiously and to the satisfaction of all parties involved. When there is delay, this is often the result of complexity and the volume of work asked of our military justice team. Our desire to ensure the processes are fair and just sometimes adds to that delay. But we cannot afford to deny natural justice to anyone in the name of haste.

Other criticisms I hear levelled at the military justice system revolve around the charges that it lacks transparency; that it is somehow closed and not subject to scrutiny or review; that the Army for some reason cannot be trusted to investigate itself; and that military justice is simply not fair. I reject these notions. They are not only an affront to the integrity of the officers and

soldiers of the Army but they do a grave disservice to the men and women who serve with great honour and professional pride as uniformed legal officers in the Army, the Army Reserve and the other services. The system of internal checks and balances, of review and counter review, of appeal and counter appeal is extraordinarily resilient, made even more so by recent changes to the Defence Act, which now further separates appointing and reviewing authorities and discipline procedures. An additional failsafe layer has been introduced with the establishment of an Inspector General ADF and the Director of Military Prosecutions, of which CDF spoke earlier today.

Some criticisms of the military justice system are fair and we are acting to correct these. The idea that the Army cannot and should not investigate possible offences, and in some cases prosecute those within its jurisdiction, is simply wrong. Are we perfect? No, we are not. Are we doing our best? Yes, we are. But we must be careful to balance justice for those who have been wronged and justice for individuals of a system that has been inaccurately or falsely maligned. Like justice in civil society, the military justice system is subject to continuous review, update and improvement. Along with all the other tasks inherent in raising, training, equipping, sustaining, deploying, commanding and operating an army, I firmly believe that we are constantly evolving the best military justice system possible.

I will briefly summarise some of the more significant reforms that we have implemented in the recent past or that we are in the process of introducing. Army's rules for a fair go were introduced in late 2000. This was a direct and positive response to allegations of unacceptable behaviour in our parachute battalion. Army's policy on unacceptable behaviour is zero tolerance, with visible accountability. Rough justice has no place in the Army. The rules for a fair go relate to leadership—training and reporting breaches of Army's standard of behaviour—and include an encouragement to use the military justice system.

A key element of the fair go initiative that has endured is the Fair Go Hotline. The Fair Go Hotline is used often and provides a useful safety valve for members of the Army who are unwilling to raise allegations of harassment or mistreatment within their chain of command, or who have done so but believe their grievance has been inadequately dealt with. Army members' family and friends may also call the hotline anonymously if they wish. All calls are treated very seriously. Where appropriate, allegations of offences or unacceptable behaviour are investigated. The Army hotline has proved an effective, strong and very successful system.

In mid 2000, Army recognised the need for a specialised staff directorate to manage sensitive personnel issues and, accordingly, the Directorate of Personnel Operations was formed within Army headquarters. Headed by a colonel, the directorate provides strategic direction and advice, and coordinates action in respect of sensitive personnel issues, including sudden deaths, serious crimes, serious harassment allegations and the like. The directorate also oversees Army and Defence's equity and diversity initiatives, including management of the Army Fair Go Hotline.

For many years, Army has had suitable protocols for dealing with the death of its members on operations. However, there was no such single set of protocols dealing with the death of Army personnel who were not on operations. Accordingly, on 19 November last year, I authorised a set of protocols to be followed where members of the Army had either tragically taken their own lives or been killed accidentally while on duty in Australia. There are a number of key tenets: prompt reporting, recording of all decisions, ensuring that relevant agencies are notified, close

monitoring of all actions, working directly with bereaved families throughout the process and the continued involvement of the chain of command.

As I said earlier, delays in investigations by military police are a common source of frustration for commanders and soldiers. It became apparent to me that many investigations were being conducted by the military police in order to meet mandated reporting requirements and to gather mandated statistics. Naturally, this was increasing the time it took to complete investigations and was making it very difficult to re-task military police with their specialist investigative skills on to more serious matters. Army has therefore put in practice procedures whereby military police conduct a triage of reported offences so that police expertise can be most efficiently allocated. I have also directed that more simple matters are referred to units for investigation. This 'room to move' initiative appears to be reducing the case load on our military police investigators.

Still on the subject of military police, the quality and timeliness of their investigation plays a central role in the system of military discipline. Last year I commissioned external consultants Ernst and Young to conduct an independent study of the military police capability to evaluate their work and recommend improvements to ensure that their capability reflects best practice in modern police investigations.

In addition to putting in place mechanisms which will reduce delay in completing investigations, Army is examining ways we can better support those under investigation and those subject to disciplinary procedures. This is with a view to alleviating the anxiety and disruption often felt by such members and their families. The appointment of case officers for such members is already occurring. The role of the case officer is to ensure the member is receiving proper legal, medical and psychological support. A case officer is to ensure the member is kept abreast of progress and is to act as a point of contact both with and on behalf of the member. While a number of agencies provide support to members subject to legal proceedings, the overall welfare of such members and their families remains very firmly a command responsibility.

Mandatory training is an important element of the changes we are making. Every year every new unit commander in the Australian Army attends a mandatory pre-command seminar. Among other issues covered at that seminar, the director of personnel operations delivers training on my behalf to commanding officers and regimental sergeants-major in the unit level management of a range of personnel incidents. The training covers the management of such things as harassment allegations; serious crimes, including sexual offences; and sudden deaths, including suicides. In addition, commanding officers and regimental sergeants-major receive formal training from Defence Legal Office in administrative decision making and disciplinary law.

Training is not restricted only to our commanders. Broad-based education is the key to maintaining the high standards of personnel and group behaviour within Army. Defence policy mandates that every member of the ADF undergo equity training at least annually. To ensure that the equity training delivered in Army units is focused and relevant, Army's training command has developed our own equity training packages. These scenario based packages emphasise Army's expected standards of behaviour as well as educate our people on mechanisms for reporting and dealing with unacceptable behaviour. Commanding officers are intimately involved in the conduct of this training and they report annually to me through their chain of command the numbers of their people who have undergone the training. Army's training

command is responsible for leading the 2,000 personnel who deliver training in the Army and for managing the more than 1,000 courses that ensure that the Australian Army remains among the best trained armies in the world.

In relation to the 30,000 personnel who attend these training courses every year, Army Training Command has developed a specific campaign plan for the safety and welfare of trainees. Among a range of initiatives, this campaign plan includes a code of conduct that governs the treatment of trainees and promotes the desire for all trainees to be successful in training. In addition, the general at the head of our training command released in November last year an order of the day on safety and welfare of trainees. Included in article 6 of this order was the empowerment of commanders to stop training at any time and in any place if training cannot be conducted in a way that keeps our trainees safe, supported and respected at all times.

These are some of the things we have done to build the Army the best military justice system we can. The process is dynamic and we continue to evolve and improve our military justice system. The culture of the Australian Army is a culture of commitment to continuous improvement in the way we do business in all areas and at all levels. Like the Army itself, the military justice system is a work in progress, and you can be confident that with every review reform and recalibration the military justice system is moving in the right direction. It is beyond dispute that we get it more right than wrong. Regrettably, though, we are not perfect. We do make mistakes and in every circumstance those mistakes are tragic. The committee's terms of reference specifically highlight the death by suicide of Private Jeremy Williams. I would like therefore to point out what we have learned from this and how we are working to improve our systems not only to ensure justice but also to make every effort we can to reduce the chances of such a tragic event ever happening again.

The report into the death of Jeremy Williams did not identify any single factor as the sole cause of his decision to end his life. However, I acknowledge that organisational failures, unacceptable conduct and negative attitudes of staff and trainees towards other trainees contributed to a sense of despair and depression in Private Williams. Furthermore, our investigation revealed that there had been a failure to act on recommendations from a similar incident—not involving a suicide—at the School of Infantry some years before. We have formally investigated the reasons for this and the affected families have recently received a copy of this report. It became patently apparent that the Army needed to take action to tighten up and formalise mechanisms for tracking and ensuring that recommendations are acted on and followed through, and I described to you earlier how we are doing that. But we have gone much further and I would now like to describe other things that we have done.

We have created separate rehabilitation and transfer centres to improve the rehabilitation of our soldiers who are injured in training and to improve the support that soldiers who are unable to continue training receive. We have developed a new course for instructors to improve instructor performance and to enhance equity training for all instructors. We have put in place a system of external audits to allow soldiers to report anonymously on their treatment during training. We have increased staffing levels and the supervision of staff as well as reducing instructor-trainee ratios to better manage the welfare and performance of both instructors and trainees. We have taken administrative action against members in the School of Infantry chain of command who allowed unacceptable behaviour to go on and, so far, we have charged two noncommissioned officers under the Defence Force Discipline Act. One charge has been heard;

another charge will be heard in April. I see both of these as a normal functioning of the military justice system.

We have expanded the medical and psychological support to all training establishments, including a full-time doctor and a full-time psychologist at the School of Infantry. We now formally advise all trainees on arrival of the range of support and counselling services available at their particular training school. We have established formal protocols to improve and streamline processes appropriate to Army circumstances in the case of suicide or accidental death during any military activity. To ease, in part, the pain of families involved, the Army has commenced the practice of providing an officer dedicated as the single point of contact for a deceased member's family should they desire this. That officer will explain the inquiry process to the family, carry forward any concerns they may have and fold these concerns into the inquiry terms of reference. As a conduit for communications, the officer's role is to provide regular updates to families on the progress of the inquiry and any action taken as a result of it.

These are just some of the initiatives that we have already implemented as a result of the death of Jeremy Williams. The Army has put considerable and sometimes painful thought and action into its examination of the circumstances surrounding Jeremy's death. As the Chief of Army and the officer ultimately responsible, I have expressed my regrets and sorrow to the Williams family and I hope it will not be entirely cold comfort to them to know that the Army has taken positive and reformatory action in the wake of this tragic and awful event.

Before I close, I would like to address separately for the committee the deeply concerning, cross-cutting issue of drugs and alcohol in the Australian Army. Let me be absolutely unequivocal that there is no place whatsoever in the Army of the Australian people for illegal drug use, the misuse of prescription medication or the abuse of alcohol. Let me be equally clear and candid that this is not only a serious personnel issue but a problem with potentially fatal implications, and we in the Army fully recognise this. I am sure I do not need to describe for the committee the problems created by drugs in our wider community or the apparent ease of access to an extensive range of drugs by our youth. The problem is especially concerning for the Australian Army and we are taking appropriate action.

On 27 November last year I signed new regulatory guidelines concerning the Army's random and targeted urine analysis drug testing program. The program will see more than 4,200 tests conducted up to the end of June this year with an ongoing annual test rate of one in 10 personnel after that. The training of our testing staff is underway now and will be completed by the end of this month at which time the program will be fully implemented. In most cases members who test positive will be issued a notice to show cause for termination and may be discharged from the Army.

It is an ongoing source of frustration that some members involved with illicit drugs can delay their discharge with vexatious claims relating to the circumstances of their involvement or the testing process. I have therefore sought amendments to the Defence Force Discipline Act and other legislation to enable the prosecution and to expedite the removal of those convicted of involvement with illicit drugs. Like drugs, problematic and dependent use of alcohol can contribute to illness and accidents during training or operations. As with the management of alcohol abuse across the Defence force, the Army's approach combines education, counselling, treatment and rehabilitation all supported by testing.

In closing, let me assure you and every member of the committee that the overwhelming majority of your Army are dedicated professionals committed to being part of a high performance team and capable of meeting the training, operational and behavioural standards demanded by the Australian people. Almost without exception, the men and women of the Army bring honour upon themselves, their mates and their country daily in everything that they do. They feel well served, and they are well served by the military justice system to which they have voluntarily subjected themselves. But there are some who feel the military justice system has failed them in a variety of ways for a variety of reasons.

Military justice, and the Australian Army, is not a zero defect system. It is unlikely ever to be as long as it must deal with individuals under largely difficult, demanding and often dangerous circumstances. But, is the military justice system better now than it was 12 months ago? I believe it is. Will it be better in 12 months than it is now? I can confidently say it will be. Will it ever be perfect? I dare say it will not, but it will not be for the want of self-critical examination and ongoing reform assisted by the public scrutiny inquiries such as this afford. On this day, our 103rd birthday of the Australian Army, I welcome, as the Chief of Army, the invitation extended by your committee to place our military justice update on the record. That finishes my prepared remarks.

CHAIR—Thank you. I did not realise today was your 103rd birthday. Congratulations.

Senator HOGG—I have a couple of questions on the Fair Go Hotline. Can you give us an outline of what has happened there; when it started; how many calls; the types of incidents that are raised and remedial action that is taken as a result of those calls?

Lt Gen Leahy—I would prefer to take a question of that detail on notice, but I can give you a rough idea.

Senator HOGG—I accept that you would need to take that on notice but could you give us a broad outline now?

Lt Gen Leahy—There have been hundreds of calls. They come from a wide range of Army units. They cut across a wide range of activities. Some of them are of a disciplinary nature. Many are to do with administration. Quite a few deal with workplace disagreements where people feel they cannot get things resolved in the workplace. We have trained staff who receive those calls. They counsel the people and encourage them in the first instance to deal with it through the chain of command. Where the callers are not comfortable dealing with that, the staff will take it on and deal with it themselves. We have found a very high level of satisfaction with the Fair Go Hotline. People tend not to call back. We find that it is working very well. It acts as a bit of a circuit-breaker. When the staff on the hotline are able to explain some of the issues and perhaps some of the administrative procedures and policies, it seems to take the heat off. I have found it very successful but, as I have said, I will get you the exact details and some more definitive—

Senator HOGG—I am not interested in issues that do not relate to military justice.

Lt Gen. Leahy—I think many of them would not relate to military justice.

Senator HOGG—If you could give us an idea of what the rate of calls is, what types of calls are being received, what the frequency of calls is and what the outcomes as a result of calls that you have had to the Fair Go Hotline are, that would suffice.

Lt Gen. Leahy—Sure.

Senator JOHNSTON—As I asked Vice Admiral Ritchie, are there any matters that the committee might touch upon that Army considers are subject to external or other inquiries that would be inappropriate? I want you to take that on notice, and if you have any matters please advise the committee, because I do not think we should go into certain places where judicial officers are making considerations.

The other question I wanted to ask you while you are here is this: have you read the Defence Department's submission into the workings of the committee? It was forwarded by the Chief of Defence on 19 February. It has over 100 pages. I would like to draw your attention to page 101, and I ask that you take these questions on notice. In your opening remarks, you did touch on the differences between Army, Navy and Air Force, but when I look at the statistics for the period from 1998 through to 2002 I see that there is a very marked difference in the number of prosecutions—and I take it that these are prosecutions—between, let us say, Army and Air Force.

If we go to the first column, which is headed 'Courts martial', we see that there were only four general courts martial in those five years, three of which were Army and one of which was Air Force. Then we go to the restricted courts martial and we see that 19 were Army, nine were Navy and five were Air Force, and so on. When you do that calculation, just simply running down and working out what is what, the numbers I have totalled up show that there are just under 10,000 prosecutions for Army, 5,444 for Navy and just over 1,000 for Air Force. I have those exact figures, if you would like them. It is simply a mathematical equation, but the fact is that it is almost two to one between Army and Navy and it is about 10 to one between Air Force and Army. I feel you should give the committee some rationale for that discrepancy. Is it simply that you have more disciplining officers on the end—and in civilian life I think it is a reasonable assumption to make that, the more police officers there are, the more prosecutions are generated—or is it indicative of something else? I do not think it is appropriate to spring that on you today, but I would like you to expand, if you would, on why those numbers do appear so disparate in terms of the numbers of prosecutions. It may be, of course, that we have many more men in the Army than we do in the other services. I am not sure if that is right, though.

Lt Gen. Leahy—That would be my initial response: the Army is roughly twice the size of the Navy and the Air Force, but I would agree with you that it is a question that—

Senator JOHNSTON—All right. If it is a statistical answer like that, that is good—I would like to know that.

Lt Gen. Leahy—But I also agree with you that there may be other issues and it is worth looking at, and I will take it on notice and we will do that.

Senator JOHNSTON—All right. I would have thought Navy in the confined circumstances of a ship away from port for a long time would have more, as a percentage of the number of

personnel. I am not sure these figures really help us in that regard, but I would like you to discuss them on that basis.

Lt Gen. Leahy—I am happy to do that, Senator.

Senator JOHNSTON—Lastly, I will turn to the SAS soldier for a moment. I am wondering whether, given your apology of 17 February, you can categorically assure the committee that he will suffer no adversity whatsoever in his career arising from this event—in other words, your apology is on behalf of Army and is unreserved and unconditional.

Lt Gen. Leahy—Yes, I can. I said that in the press release: it is unreserved. When I spoke to the soldier involved I said exactly that. I might add that throughout the course of the investigations the soldier has not suffered any detriment to his rank in that he has been promoted on the way through. There was an issue that he was liable for an overseas posting during that period of time but we took a decision that, because of the investigation and possible prosecutions, he needed to remain in Australia. He is now under no such restriction, and in the middle of this month he will deploy on operations into the Middle East. I view both the promotion and his overseas posting on operations as a clear and positive statement that he will suffer no detriment.

Senator JOHNSTON—I think that is correct. That is the clear inference that you are sending in conducting the matter the way you have. Are you aware of the fact that he has made a confidential submission to the committee?

Lt Gen. Leahy—I am.

Senator JOHNSTON—This is an on notice issue: would you prefer to discuss matters arising from that submission in camera also?

Lt Gen. Leahy—I most certainly would.

Senator JOHNSTON—We will come back at a future date and discuss that once we have heard from you.

Senator CHRIS EVANS—The inquiry into the allegations against Australian INTERFET troops in East Timor was initiated at the highest level by Chief of Army, it had a joint investigation team brought together and a considerable amount of resources were dedicated to that task. So, in a sense, it was a very serious response by Army to very serious allegations. What do you say to me when, if you like, you put your most senior, well resourced team in and then you have to apologise for the outcome and describe it with terms such as ‘superficial content of statements’, ‘inclusion of inadmissible material’ and ‘premature conclusions’? It is a pretty damning indictment, in your words and in part of your official submission to us today, of the standard of investigation.

Two issues arise from that in my mind. Firstly, given that we put a joint investigative team together initiated by Chief of Army, with huge public interest, into a matter that was very sensitive and of continuing press commentary and, at the end of the best we can do, we find that it was a bit of a disaster and you have been forced to apologise publicly for the treatment of one

of the soldiers subject to that investigation, what confidence can we have in minor matters handled at lower levels with less public interest? I am being a bit provocative, but I am trying to tease out the issue here. It seems to me that we put the best resources into this to have a professional investigation of a most serious matter and yet we end up saying, 'Really, we buggered it up.' Why would I have any confidence in the normal course of proceedings if our best ended so poorly?

Lt Gen. Leahy—I would say a few things. I would start by saying that the system works. As we all know, this was very time consuming, protracted and done to the best efforts of our people involved. At the end of that, the soldier involved felt that he had not been treated well. Using the military justice system, he applied to the Inspector General of the ADF, who appointed a respected county judge out of Victoria to look at the issue. The judge has made those statements that you have talked about. I have accepted his report and I think what I see here is that the justice system works. We have done our best on the way through and clearly, judged by our military justice system, on review there were some shortfalls.

With regard to those shortfalls, Army identified this early in the process and there is the review of the military police that I have spoken about, which is essentially a review of the quality and the quantity of our military police—and that would be my first statement directly answering your question. This is something that we did not expect to have to do. That is why, early in the piece, we asked for the assistance of the Australian Federal Police and for the naval and Air Force investigators. We are set up to handle certain things; this came as something well beyond what we would normally expect to do. I think that our military police, given the degree of training and the number of them that actually exist, have done a solid job on the way through this. They admit and I admit that they have made some errors. The acceptance of the fact that we need a review, the fact that the review will be reporting in May this year, is acknowledgment that we are seeking very clearly, using the justice system, to improve. I am confident that towards the middle of this year I will see a very positive way forward to make sure that this does not happen again.

Senator CHRIS EVANS—But, General Leahy, your apology and the statement in your submission is not just a criticism of the military police; it is implicitly a criticism of your whole legal department—the people that you applied to a high profile, highly controversial set of allegations. The system failed, in your admission. It was not just a question of the initial investigation by military police; your prosecutors decided to prosecute based on evidence that proved incapable of being supported. Do you know what I am getting at? This is not just a question of a shoddy mistake at military police level; this is a high profile joint investigation of serious, highly public allegations. The failing is obviously at a level well above the military police investigation.

Lt Gen. Leahy—There are different elements of this investigation, and I have clearly accepted responsibility inside Army for some of those elements—and they relate to the quantity and the quality of our military police, to some of the statements that were made as press releases and some of the conduct of that. Yes, I agree with you: there are shortcomings there, and we are working to make sure that those shortcomings are rectified and that we can work into the future. I can give you a reason why it failed, and it is essentially that this was an enormous task—one that I think we did well, but clearly not well enough. We would seek to do it better in the future.

Senator CHRIS EVANS—I am not making the point to hammer away at you, but there are a couple of things that arise from that. Nothing really turns on it, but if there had been a quicker resolution the soldier would not have had the appeal to the Inspector General at the time because the office did not exist. So, in a sense, having a longer period of investigation meant at least by then the Inspector General's office had been established.

Lt Gen. Leahy—But there were in existence then, and there are now, other methods of appeal. The soldier, under our justice system, had access to, for example, redress of grievance appeal or direct approach to the CDF or myself.

Senator CHRIS EVANS—But the other more serious point that troubles me now is that this was a major investigation into serious allegations about the treatment of prisoners et cetera. What confidence can we have in the other findings that basically said that those allegations were disproved, given that on the one point that did go further the case fell apart and there were serious errors in the whole process? What confidence can the Australian public have that the wider investigation into the very serious allegations had the rigour and efficacy that we would expect?

Lt Gen. Leahy—I would make two points. The first is that, in each case of allegations where we found that there was inadequate evidence to proceed with any further investigation or prosecution, the cases were given to senior, respected civilians in Army Reserve—lawyers who are typically Queen's Counsel—to review. Each one of them was able to make a judgment to say that they agreed that there was no requirement to go ahead with the prosecution; that is, the case was unsubstantiated. The second point is that I would say that our investigators pursued these matters very vigorously. I almost see a minor contradiction between one argument that says we did not do it hard enough and the other that says we did it too hard. I think we did this really hard; and, where we could not find anything, there was clearly nothing there.

Senator CHRIS EVANS—I am only raising it with you because it certainly raises in my mind a concern about the rest of the investigation. Defence's formal submission is fairly damning of the processes involved in the prosecution of that charge. While I am pleased for the individual soldier affected that you have come to that conclusion, I still ask: what confidence can we have in the rest of the investigation and the conclusions it reached? You made a point about transparency before and rejecting the arguments about transparency, but this is one of my concerns. You are telling me where we got this one wrong, but that the rest of it was all very okay—in other words, 'don't worry'.

Lt Gen. Leahy—As I said, Senator, it had been reviewed vigorously and quite properly by responsible and very competent people—

Senator CHRIS EVANS—The same people who decided to prosecute the charges against the SAS soldier?

Lt Gen. Leahy—There were a number of other allegations and, in each case, particularly the case with the SAS soldier, they were very serious allegations. I think what you are seeing is that we have taken a view that, because of the serious nature of that, we need to take this as far as we can. In other places I have been criticised for that, and I accept that criticism as well. But it is

really difficult to see which way you work here. If we go too hard we get criticised, and if we do not go hard enough we get criticised for that.

Senator CHRIS EVANS—And I accept that I have been accused of having a bob each way, and that is right and I plead guilty, because what we are trying to do is to test the system—tease out whether or not it is working. So we have put you on one case—

Lt Gen. Leahy—Thank you for that, Senator.

Senator CHRIS EVANS—I acknowledge that; that is right, but quite frankly that is our job. Our job is to test whether the military justice system is working, and we will test you both ways. Anyway, I think that leaves that question hanging a little bit at the moment. We will come back to some of the detail of that, no doubt, as we go through.

You refer to the new protocol about administration of instances of sudden death. As you know, concern about that was one of the motivating factors behind this inquiry. I see also in the appendix that you have listed Chief of Army Directive 14/03. I just want to confirm that is the new protocol that you refer to in your submission.

Lt Gen. Leahy—That is correct. It was issued on 19 November last year.

Senator CHRIS EVANS—Lieutenant General Leahy, in the submission there is talk of the increasing military police caseload. This follows on from Senator Johnston's question: can you explain to me why there has been such an increase in the workload of military police?

Lt Gen. Leahy—In the submission, I mentioned that there had been a new requirement to gather statistics which came out of the requirement to get as much visibility as we can for the military justice system. So, from a central level, at both Defence and Army level, we were asking that the military police provide these mandated reporting systems. The military police, in wanting to do that as properly and correctly as they could, were naturally assuming more investigations for themselves. I have talked about the pressure on the number of police that we have and the training requirements for that; this just made it harder for them. I also talked about the room to move policy; this was a reaction from the observation that the police were taking longer, but also from an observation by the Army's commanders that justice and investigations were being taken away from them and were taking a very long time. A lot of the administrative and other investigations can be handled at a relatively low level. What we have sought to do is to make sure that those investigations that can be handed back to the units are handed back, thus freeing up the military police to do more investigations. So it was largely that they wanted to report more correctly and more comprehensively, and that was taking up time.

Senator CHRIS EVANS—I want to ask a couple of things relating to the protocol. Firstly, does the protocol deal with the qualifications of an investigating officer?

Lt Gen. Leahy—Which protocol is this?

Senator CHRIS EVANS—The one you have issued in relation to sudden deaths. I wonder whether this addresses the question of the qualifications and experience of investigating officers.

Lt Gen. Leahy—It does not directly; it is more about guidance to commanders on the protocol to be followed to make sure that a comprehensive investigation is conducted. It will be followed up this year by a Defence Instruction (Army) that may deal with those issues, but right now I am not aware of the full content of the DIA—when it comes out. The protocol is to say to commanding officers: ‘Some very serious things are happening, and I want you to make sure you look at them in a very comprehensive and fulsome manner.’

Senator CHRIS EVANS—You also talked about discussing with the family any concerns that they might have—that is, involving them in the drafting of the terms of reference for the inquiry. Does that not assume that the inquiry starts a bit later than a normal inquiry would start?

Lt Gen. Leahy—There are essentially two ways that you can look at this. The first thing we ask for in sudden deaths or other very serious accidents is a quick assessment. Rather than prepare terms of reference, we want to know right now whether there is anything we should be doing that might stop something from happening again. Under the Defence (Inquiry) Regulation, the terms of reference are drawn up and an investigating officer is appointed and he will take statements and evidence and talk to witnesses. But what we are seeing is that the two ways are separate things. The first is a commander’s quick assessment of what happened and what we can do right now to stop it; the second is under the Defence (Inquiry) Regulation.

Senator CHRIS EVANS—You referred in your submission to proposed amendments to the Defence Force Discipline Act to deal with potentially vexatious appeals by persons as to why they ought not to be discharged in relation to drug or alcohol offences. Can you explain what form that is going to take and whether it requires an amendment to the act by parliament or can be done by regulation?

Lt Gen. Leahy—I might need to request the assistance of the legal officers for some of that question, but let me put the intent. In a number of circumstances, soldiers are found to have been using illicit drugs. We have sought their discharge through an administrative process—that is, a notice to show cause why they should not be discharged. Using natural justice, the soldier has a right to reply to that and to request—if he wants to—that he stay in the Army. There are circumstances that I am aware of where the use of the military justice system—which is there to protect both sides, the soldier and the commander—may delay the discharge of the soldier for periods in excess of 12 months and for perhaps up to 18 months. I have heard a lot from my commanders that they find it intolerable that a soldier who has used illicit drugs remains in the unit whilst going through an administrative process to say that he should not be discharged.

Recognising that frustration, we are seeking to see if we cannot do it differently. We might be able to remove the soldier from the unit administratively differently—and I would need to look at that pretty carefully as well—but I would like to see in clear-cut cases how we could not expedite the whole issue of discharge, making sure that we recognise the natural justice side of things. It does take a very long time in some cases to discharge the soldiers.

Senator CHRIS EVANS—You do not have a specific proposal as yet as to how you might overcome that issue?

Lt Gen. Leahy—We are still working on it. It is a problem that we have identified that we are uncomfortable with.

Senator CHRIS EVANS—I gather you have a large number of appeals against discharge with respect to those Robertson Barracks cases.

Lt Gen. Leahy—I do not know the exact number. I believe we have discharged some of those soldiers; others would be appealing. As I said, those appeals could take upwards of 12 or 18 months.

Senator CHRIS EVANS—While the appeal is in process, how do you treat those soldiers?

Lt Gen. Leahy—Typically, they remain in the units. They would be on restricted duties.

Senator CHRIS EVANS—So they could not deploy overseas, for instance?

Lt Gen. Leahy—I would not have thought so, no.

Senator CHRIS EVANS—What does restricted duties mean?

Lt Gen. Leahy—It means that they would not be engaging in normal training activities. Quite often, what happens is that the requirements to prepare the defence of the notice to show cause and to provide other information for redress of grievance cases that they might be putting forward require that they have access to legal officers and that they are around the barracks rather than deployed on field training or other operations. They tend to be consumed by trying to defend their position in the Army, so they are not available for normal duties. We call that restricted duties.

Senator CHRIS EVANS—What are they actually doing for the Army during this period?

Lt Gen. Leahy—Not a lot.

Senator CHRIS EVANS—Thanks for that.

CHAIR—Thank you, Lieutenant General Leahy.

Lt Gen. Leahy—Thank you.

[11.38 a.m.]

HOUSTON, Air Marshal Allan Grant, Chief of Air Force, Royal Australian Air Force

CHAIR—Welcome. Air Marshal, the floor is yours.

Air Marshal Houston—Mr Chairman and senators, I would like to thank the committee for the opportunity to speak to you today. I will try to avoid repeating what CDF and my fellow service chiefs have said, and my presentation is a lot shorter than the previous ones.

Senator CHRIS EVANS—Politically very astute!

Air Marshal Houston—To begin, I will give you a short overview of my perspective on why we need the military justice system and on its crucially important relationship to command. Second, I will make some observations about the military justice system as it relates to the Air Force. Then I will look at peacetime deaths, the treatment of our people and drug abuse, before finishing with some considerable detail on cadets and the processes and handling of the suspension of Cadet Sergeant Eleanore Tibble.

I turn now to the military justice system and its crucial relationship to command. The military justice system exists to enable command and discipline in the ADF in both peace and war, on operations, across the spectrum of conflict and in all areas of the world, including foreign states and international waters. Commanders in the Air Force have an onerous responsibility. They have the potential to use lethal force from the air and on the ground. In peacetime, while maintaining operational preparedness, this requires tight control and self and collective discipline. In war, this requires a measured and legal approach under the prevailing rules of engagement and Australia's undertakings under the laws of armed conflict.

Because of the nature of armed conflict, the consequences of a failure to comply are much more significant than in the civil domain. It is imperative for our commanders to have the authority to dictate how these operations will be conducted and to maintain discipline. For example, loosely controlled military activities could result in inappropriate and unsafe practices, unnecessary loss of life or circumstances of severe embarrassment to the Australian government. While this argument is readily understood, it may not be readily apparent that the military justice system is also essential to dealing with more mundane transgressions. As an example, petty theft in a barracks would probably attract little priority from a hard-pressed civilian police force, but this behaviour is corrosive of command and the trust and unit cohesion that is essential to military success.

The concept of command is uniquely military. An officer who commands an element of the Air Force is responsible for controlling it, organising it and ensuring that it achieves its objectives. In meeting its objectives, Air Force commanders may be required to place their people in harm's way in a manner inconceivable to the general public. There are very few civilian jobs where a manager or supervisor can enforce a direction to a subordinate with the weight of legislation behind them and take punitive action if that direction is not followed. In the military environment in both war and peace, a commander needs to be able to establish and

maintain high levels of discipline, and this is provided by the military justice system. Discipline is one of the most crucial components of maintaining effective control over our people, in whom we entrust the responsibility to operate military weapons of great destructive potential. We have enshrined discipline in our culture which is strong, but given the implications of negligent, careless or wilful misuse of our weapons or aircraft, discipline must be supported by legal backing. The military justice system provides this backing.

I would now like to make a few observations about the military justice system in the Air Force. In mid-2002 I wrote to all my Air Force commanders, senior officers and executive personnel advising them that I require natural justice and procedural fairness to be accorded to individuals in all situations. I said that, before any adverse action is taken against anyone, that person must be provided with the full detail of the action being contemplated, including access to copies of all documents being used, and allowed a reasonable time to provide formal comment before a final decision is made. Importantly, I stressed that the decision maker must ensure that he or she has the authority to make the decision, that they consider all relevant facts, that they be impartial and that they provide reasons for their decision. I expect there to be a separation between the person initiating the adverse action and the decision maker. I also expect them to be well trained in the processes and policies that apply.

For this reason, those posted to command positions in the Air Force undergo specialised training in the roles and responsibilities of command. This training includes the military justice system, its procedures and its application to our people. To support them in fulfilling their command obligations, they are also provided with specialist administrative and legal support to ensure they carry out their command responsibilities within the framework of both discipline and administrative law.

Over the years, the Air Force has pursued improved transparency, natural justice, procedural fairness and protection of the rights of the individual, consistent with meeting service requirements. I think we are achieving this. I am personally satisfied that the elements of the system are sound and fair. I believe the inquiry regulations provide sound guidance to help commanders deal objectively with issues that can often become clouded and confused. I also believe boards of inquiry are an effective way of dealing with very complex issues. The only personal experience I have had recently with boards of inquiry is with the F111 desal-reseal BOI. Although there were some minor administrative issues in running the board of inquiry, it proved to be a very successful inquiry which defined the problems and corrective action required in a highly credible and most transparent way.

The Senate terms of reference raise the issue of how we handle the unfortunate occurrence of deaths in peacetime. Over the last 2½ years we have had no major aircraft accidents, but sadly we have still lost people. Some have died from natural causes and illness, and others in accidents, mostly motor vehicle related.

We have spent a considerable amount of time resolving some of the people issues associated with some of our fatal aircraft accidents in the 1990s. We have been criticised in the past for the impersonal and insensitive way we handled the administration of Air Force accidents. In recognition of this, we enlisted the help of the wife of a pilot who was killed in an Air Force training accident in the early nineties. With her assistance, a commanders and managers guide for the management and counselling of next of kin following accidents has been produced. I am

confident that this will enable a more caring and sensitive approach to post accident trauma at all levels of the Air Force.

I will now address the treatment of our people, which is my No. 1 priority. I, and my senior leadership group, have put in a great deal of work over the past three years to establish a values based leadership culture that emphasises our people. This culture ensures that all of our people are given a fair go in all aspects of their service. The Air Force is essentially a team of teams, each team being dependent on the others. Nowhere is this more evident than in our flying squadrons—but it applies as much to a section of combat communicators as it does to the crew of an Orion aircraft.

Our people are very supportive of this culture. This is reflected in continuing high morale and historically high retention rates. Another indicator is the downward trend in formal complaints. While it is unrealistic to expect no complaints, we have taken action to reduce their number and the time it takes to resolve them. Firstly, we established a new organisation in 2001 to provide an alternative and faster avenue to the formal redress of grievance process. Secondly, and more importantly, we have made a concerted effort to resolve problems at the lowest possible level and in the shortest possible time. The result has been that the number of redresses of grievance declined from 173 in 2000 to 37 in 2003.

Finally, we place great importance on training our people in the military justice system. For this reason, training is included in all stages of the professional and military education and training system. This is designed to provide skills in all aspects of the military justice system, appropriate to the needs of each rank and job.

With regard to the matter of alleged drug abuse, the use of drugs is incompatible with a safe working environment in Air Force. I have a duty of care to ensure that the working environment is drug free. For this reason, we have now introduced random drug testing. This will parallel the random alcohol testing program which has also begun.

I would now like to make some points about the Air Force Cadets. I would like to acknowledge the great work done by the 1,030 volunteers who run the Air Force Cadets. They provide a world-class youth aviation organisation for 8,000 young Australians, many of whom go on to join the ADF or civil aviation organisations. The Australian Air Force Cadets are not subject to the Defence Force Discipline Act but they are subject to normal administrative processes. Therefore, I have no command authority over them. In accordance with section 8 of the Air Force Act, I administer the Air Force Cadets through the cadet policy manual. They are a community based, volunteer organisation whose members wear the Air Force uniform and are subject to what I would term my administrative control.

The terms of reference require me to speak now in some detail about the process and handling of the suspension of Cadet Sergeant Eleanore Tibble shortly before she took her own life on 27 November 2000. Firstly, I deeply regret the tragic death of Eleanore Tibble. This is not a case of military justice; this is a case of natural justice. Before this tragic event, she had been the subject of administrative action by staff of No. 5 Cadet Wing for allegedly fraternising with an adult cadet instructor. At the time of her death, Ellie believed that she was being discharged from the cadets because of these allegations. However, unbeknown to her, Air Force Headquarters in

Canberra had given a direction to the cadet commander some two weeks earlier that she was to be retained in the cadets. This direction was not carried out.

She was a vulnerable and fragile 15-year-old who was placed in a situation that would make most adults feel uncomfortable and embarrassed. I apologise for how Ellie's family has suffered. I acknowledge there were significant shortcomings in the way the whole matter was handled. An Air Force inquiry was initiated into the processes and procedures surrounding the suspension of Ellie from cadet activities. But with the benefit of hindsight I believe that the investigation should have been conducted immediately after Ellie's death. Action should have occurred straightaway and it did not. In accordance with Tasmanian law, Ellie's death was investigated by the coroner.

When the Air Force inquiry report was completed it was referred to the then Director-General Personnel Air Force, who at the time had oversight of the cadet organisation. He accepted all but one recommendation and that related to the administrative action against one of the cadet staff who was involved. Administrative appeal action in relation to this particular recommendation is continuing.

The Air Force investigation took into account concerns by Ellie Tibble's mother, Susan Campbell, about the handling of the allegations of fraternization and the subsequent suspension of her daughter. Susan Campbell was provided with a full and uncensored copy of the final report of the inquiry. Susan Campbell also assisted Air Force staff by reviewing the proposed changes in policy and training from a parental perspective. In particular, she asked that cadets be allowed access to the Defence Community Organisation staff in circumstances where they felt they could not raise issues with their instructors. Air Force agreed with Susan Campbell, and this change was also incorporated into cadet policy.

Administrative support manuals and guidelines have been revised and updated to clearly state procedures and processes to be followed in the management of young people in the cadets. The training of adult volunteer staff has been updated and made more relevant. Cadet instructions have been strengthened to provide specific guidance to adult volunteer staff in the management of adolescents. The cadet policy manual has been revised and now includes codes of behaviour for staff that clearly detail the administrative procedures and practices to be followed when dealing with minors, including mandating occasions when communication is required with parents or guardians.

Air Force has implemented a training program for cadet officers and instructors that places particular emphasis on developing their skills to work effectively with adolescents. Training modules have been developed in a range of subject areas, including equity and diversity, legal principles and implications for cadet members, the psychology of adolescent behaviour, the management of behaviour modification, the management of due process, and occupational health and safety. Existing staff are receiving instruction in these subjects, and the modules have been incorporated into the initial training program that all staff undergo on joining the cadets. The training is also now included in cadet recruitment, promotion and command courses to ensure ongoing awareness at all stages of the training and development continuum. I firmly believe we have learned from our mistakes. I am sorry it took the death of Eleanore Tibble for the Air Force to realise things were not right.

Let me conclude by emphasising that the Air Force, like the Army and Navy, requires an effective military justice system to meet the Australian peoples' expectations in peace and war. But the military justice system is not used in isolation or indiscriminately. The values based culture of the Air Force dictates that the military justice system supports our commanders in a fair and equitable manner. I believe that with its recent improvements, like the introduction of a separate military prosecutor and the Inspector General of the ADF, the military justice system meets the needs of the Air Force. However, mistakes have been made in the past. As an air force, we acknowledge mistakes, try to set them right and make the changes necessary to ensure as far as possible that they do not occur again. I would be pleased to answer any questions you might have.

CHAIR—Thank you, Air Marshal.

Senator CHRIS EVANS—First of all, Air Marshal Houston, does Air Force intend to provide the committee with a copy of its Air Force inquiry report into the death of Eleanore Tibble?

Air Marshal Houston—Present procedures require that I refer that to the minister, but I would be very pleased to do that.

Senator CHRIS EVANS—Perhaps you could do so. We might have a discussion about that in a few minutes. This is the sort of core issue that we have not been getting to this morning and which really go to the inquiry. You, like the other service chiefs before you, refer to matters, inquiries and documents which are at the heart of the concerns and the terms of reference of the investigation, but I notice that they are not included in the submissions. Quite frankly, for the committee to do its work properly we are going to need to see those. Without them, I suspect we will become extremely frustrated in the process. Perhaps you could take that on notice, and perhaps Air Commodore Harvey can be warned that that is what I am going to ask him about when he has his turn as a witness.

Air Marshal, can you explain what has happened with the administrative action arising out of Eleanore Tibble's death? It is a little unclear from the two statements what has actually occurred or is occurring. You said in your opening statement:

... Director General Personnel - Air Force ... accepted all but one recommendation—and that related to the administrative action against one of the cadet staff who was involved.

Administrative appeal action in relation to this particular recommendation is continuing.

Quite frankly, that does not tell me what is happening. Maybe you could more plainly explain what is occurring.

Air Marshal Houston—The individual concerned has put in a redress of grievance which is still active, and it has been passed to the Australian Government Solicitor for advice. I believe it is a very complex submission. As for that individual, the inquiry recommended that he be removed from his appointment. The DG Personnel Air Force decided, after getting specific specialist advice, that that should be overturned and the individual should be counselled instead. Subsequently the individual refused counselling—and I am satisfied that that was the case. When that happened, I took action and asked him to show cause as to why he should not be

removed from his position, and he was stood aside. At about that time, which was in March 2002, he submitted the redress of grievance, which related to aspects of the inquiry report. I cannot talk in detail about that, but that is broadly what I can talk about in relation to this matter.

Senator CHRIS EVANS—Just so I am clear, the Director-General Personnel Air Force effectively decided not to pursue any action against this individual but merely to seek that he be counselled; is that fair?

Air Marshal Houston—First of all I would reiterate that there is no scope for taking disciplinary action against anybody who is a volunteer in the Air Force Cadets. The only avenues that are open—where action has to be taken against an individual—are removal from position or counselling.

Senator CHRIS EVANS—Just so I am clear: is that true of Air Force and of the cadet organisation, or only true of Air Force?

Air Marshal Houston—That is true, I think, of the whole cadet organisation. It was not always thus. Before 1974 all of the officers in the cadet force were reservists, but in 1974 a fundamental change was made and the cadets were turned into a volunteer community based organisation—and they have remained the same ever since.

Senator CHRIS EVANS—Has this issue arisen before, though—effectively, Air Force's inability to discipline when difficulties arise inside the cadets?

Air Marshal Houston—I would contend that these people are volunteers. They come in, they volunteer, they give of their time, they run a very good organisation, and I do not think it would be appropriate to apply the defence disciplinary code against them while they are serving as volunteers in that organisation.

Senator CHRIS EVANS—I accept that raises new issues—I have not thought about it deeply—but, equally, you would accept that their branding, their recognition in the community, is as part of Air Force. I accept the legal changes you make, but Air Force cadets and the organisation would be assumed to be under your direct control, I think, by most people in the community.

Air Marshal Houston—They are under my administrative control. That administrative control is exercised through the issuing of the policy in the Australian Air Force cadet policy manual, and that is the way in which I enforce that control. I also meet on a quarterly basis with the commander of the cadets, and I talk to him about issues involving the cadets. But I do not have the command authority over him, because I do not have recourse to the Defence Force Discipline Act in circumstances where things have gone wrong.

Senator CHRIS EVANS—Is it fair to say, then, that the Director-General Personnel Air Force only had the option of counselling at his disposal?

Air Marshal Houston—That is correct.

Senator CHRIS EVANS—So it was not a question of him choosing out of a range of options; the reality is that he had no power to discipline. Did he have the power to remove?

Air Marshal Houston—He had the power to remove; but, as is always the case in these sorts of circumstances, specialist advice was provided and the specialist advice related to the fact that the individual concerned had given, I think, 40 years of faultless service in the cadets in Tasmania. That was taken into account in his decision.

Senator CHRIS EVANS—As a result he ordered that counselling occur, and the individual refused the counselling.

Air Marshal Houston—That is correct.

Senator CHRIS EVANS—You then took what action?

Air Marshal Houston—After the counselling was refused—that came to my notice early in 2002—in early March of 2002 I wrote to the individual asking him to show cause why he should not be removed, and he was stood aside from his command. At about the same time or shortly thereafter, he put in a redress of grievance against the whole process of the way the inquiry was run and, indeed, the outcome from the inquiry. So at that stage the process was stopped, until such time as the redress of grievance is resolved. In the meantime, the individual has got to the age of 62 and is no longer a member of the Air Force Cadets.

Senator CHRIS EVANS—You therefore had the power to remove him from his position.

Air Marshal Houston—I have the power to remove him from his position, yes.

Senator CHRIS EVANS—When I asked you before I might not have phrased the question properly. You said that the director-general did not have the power to do anything other than counsel—but Air Force did have the power.

Air Marshal Houston—Let me just clarify.

Senator CHRIS EVANS—I may have misled you by the way I asked the question.

Air Marshal Houston—The Director-General Personnel had only two options: counselling or removal from the position.

Senator CHRIS EVANS—So the director-general could have decided to remove him from his position, but he did not; he chose the counselling route.

Air Marshal Houston—That is correct.

Senator CHRIS EVANS—When you found out that he had refused the counselling, you asked him to show cause why he should not be removed.

Air Marshal Houston—Yes. I cannot have anybody in the Air Force or the Air Force Cadets who refuses counselling, particularly a commander.

Senator CHRIS EVANS—It is a direct rejection of the authority of the finding made that he required to be counselled, isn't it?

Air Marshal Houston—Yes.

Senator CHRIS EVANS—So he then sought a redress of grievance. Given that he is no longer in the Air Force, obviously the show cause notice no longer has any effect. Why then is the redress of grievance continuing? Is that in a sense because he is effectively appealing the inquiry process and finding?

Air Marshal Houston—As is the case in all of our administrative procedures, he wants to give his side of the story—he sees it from a different perspective—and we enable him to do that.

Senator CHRIS EVANS—How is that being pursued?

Air Marshal Houston—It is a very complex redress of grievance and at the moment it is with the Australian Government Solicitor for advice. It will eventually come back to the Director-General of Reserves. He will consider all of the advice that he is provided with, the member's redress of grievance, and he will make a determination in regard to that redress of grievance.

Senator CHRIS EVANS—You say in your submission that the direction some two weeks earlier from Air Force Headquarters in Canberra to the cadet commander that Eleanore was to be retained in the cadets was not carried out. Why was that not carried out?

Air Marshal Houston—It all started around 10 to 12 November, when there was a cadet conference in Canberra. The cadet commander approached the senior Air Force officer from Tasmania, who was at the same conference, regarding the Tibble matter and showed him all the paperwork. In looking through the paperwork it became apparent to the senior officer from Tasmania that the young lady had only had a friendship with the adult; there had been no sexual relationship. Up until that time the information that had got to the permanent Air Force, Air Force Headquarters, was that there was a sexual relationship involved. When it became apparent that this was a friendship and not a sexual relationship, the senior officer from Tasmania said, 'You have to reinstate that young lady; there are no grounds for discharging her.'

A conversation then occurred on 12 November which involved the staff officer responsible for cadets in Air Force Headquarters, the senior officer from Tasmania and the cadet commander. The cadet commander was left, I believe, in no doubt: he was given clear direction to reinstate Ellie Tibble. For some reason he did not do that. Subsequently on 20 November he made a phone call to the area of the DRes—the Director of Reserves—in Canberra seeking advice on the issue. They again confirmed that the appropriate way to go was to reinstate Ellie Tibble and to counsel her on what had happened. Of course a few days later she took her own life, and obviously we deeply regret that.

Senator CHRIS EVANS—But it was felt that the decision to refuse to give a clear direction to reinstate warranted only counselling.

Air Marshal Houston—The recommendation from the officer conducting the inquiry was that he should be removed. After consideration with the delegate, who was the Director-General Personnel Air Force at the time, he decided to go with counselling.

Senator CHRIS EVANS—Was any action taken against the cadet staff member who was the subject of the friendship with Ellie Tibble?

Air Marshal Houston—That individual essentially resigned from the cadets at the time that he informed his commander of the relationship and I understand he subsequently left the state.

Senator CHRIS EVANS—Just to be clear for the record: there was no action pursued against him because effectively he resigned.

Air Marshal Houston—He effectively resigned and left the state.

Senator CHRIS EVANS—You comment that, in hindsight, an Air Force inquiry should have occurred much sooner. Do you know why one was not initiated earlier?

Air Marshal Houston—I have tried to find out all the background on that. It would appear that there was a meeting in early December, a week after the tragic death of Ellie, and the discussion was that there would be a coroner's inquiry, and because there was a coroner's inquiry I think there was an assumption that all the matters to do with this would be taken up in that coroner's inquiry. With the benefit of hindsight, I think it was a mistake. In my view it was absolutely imperative to investigate the processes that surrounded the suspension of Ellie Tibble and why she was not reinstated when it became clear that the relationship was a friendship.

Senator JOHNSTON—How many cadets do we have in the Air Force?

Air Marshal Houston—There are 8,000 cadets and 1,030 staff members in the Australian Air Force Cadets.

Senator JOHNSTON—When you say staff members do you mean volunteers?

Air Marshal Houston—Yes, volunteers. Every one of them is a volunteer.

Senator JOHNSTON—What are we doing about extending your oversight in terms of the administration of those 1,000 volunteers?

Air Marshal Houston—We go to great pains to provide them, as I said in my submission, with policy, with guidance and with training. We have regular contact with them. I go and visit them on a regular basis. I also speak to the annual conferences, impressing upon them the importance of establishing the right culture and basically embracing these changes that we have made. That is, of course, reinforced by the DG Cadet Directorate in Defence Headquarters. That is under Air Vice Marshal Dunlop and his staff. He spends a lot of time ensuring that we have a common approach across the three cadet forces.

Senator JOHNSTON—Are you happy with that, given this event? I think we have distilled this down to the fact that we ended up in a circumstance where we had two alternatives which on

the face of it appear, to people who were reviewing the matter, problematic. There did not appear to be enough flexibility in the system, given the lack of jurisdictional oversight over these volunteers—things were not as flexible and as apt to deal with a circumstance as they could have been. It is in that vein that I ask the question. An alternative that strikes me is that, with these 1,000 volunteers, we need to look at contracting them such that they do accept a degree of jurisdictional control by Air Force, particularly given that the youngest of these kids coming into cadets is 15. Is 15 the youngest?

Air Marshal Houston—They are even younger than that.

Senator JOHNSTON—Maybe you want to take this next question notice, but I will leave it up to you. In interviews with children there is a very strict protocol, as I am sure you know, when it comes to disciplinary matters. It is a highly technical and problematic area. I know that you would want to see best efforts flowing from top to bottom. It seems to me that we have a break in the chain here, that we need to somehow hook the cadets into the best intentions of Air Force, who have, I think, quite considerable and good experience in handling issues of this nature. What worries me here is that the cadets are sort of hanging off the back of the whole process and are tenuously hooked on.

Air Marshal Houston—I would disagree with that. I have very strong control over the cadets. I am telling them the way they have to train their staff, the way they have to train their people, but at the end of the day it is a volunteer organisation. To get the sort of control you might suggest that I need would probably require us to put permanent Air Force people back into the cadets, like we had back before the 1970s. But there is a resource bill that comes with that. I think the Australian Air Force Cadets is a world-class organisation. Mistakes were made here, but the organisation runs very well on a day by day, week by week, year by year basis. I am very happy with the way it is running at the moment. We have an excellent commander, who meets with me on a regular basis. He is enthusiastically implementing all of these changes that we have ordered. I think those changes will hopefully prevent the sorts of mistakes that were made on this occasion.

Senator JOHNSTON—I do not take issue with anything you say. What worries me is the enforceability of these directions. When you issue a directive to a person to reinstate someone in the circumstances of this matter and they do not do it, it strikes me that your remedy is totally different to what you would have if it was an enlisted member of the ADF. That is the only worry I have. All I am asking is whether there is scope for somehow being able to quickly address that issue so that these volunteers are clearly in the position of: you either obey orders or you are out—simple.

Air Marshal Houston—I will take that on notice, if you wish, and I will come back to you.

Senator CHRIS EVANS—You can take it on notice that it is an issue that we will want explore. Senator Johnston raises it today, but it is certainly an issue that I had marked down. I would also be interested in how many members of the air cadet organisation are remunerated. Obviously we will want to have a look at that issue. I was surprised because I thought from my experience they were still Reserve officers and I did not realise that sort of disjuncture had occurred.

Air Marshal Houston—Since 2000 we have had the Topley initiatives and the creation of the DG Cadets, and the Chief of Staffs Committee has looked extensively at this issue. We have discussed the issue that you have raised. I think what we have is probably the best we can come up with at the moment, but I will take it on notice. If you have some good ideas as to how we can tighten that up, we will take them on board.

CHAIR—Thank you, Air Marshal Houston.

[12.24 p.m.]

EARLEY, Mr Geoffrey John, Inspector General, Australian Defence Force, Department of Defence

HARVEY, Air Commodore Simon John, Director-General, The Defence Legal Service, Department of Defence

HEVEY, Colonel Gary, Director, Office of the Director of Military Prosecutions

CHAIR—Welcome. I think it is convenient, gentlemen, if we take you altogether but hear from you seriatim. We thank you for your written submissions. We do not want to cruel your pitch but we know, from your earlier contact with the committee, that we have got a background in the issues you want to bring to our attention. However it is appropriate that we give you an opportunity now to address us and I invite you to do so. The order in which you appear on my agenda paper means that Air Commodore Simon Harvey starts, if that is convenient. The floor is yours, Air Commodore.

Air Cdre Harvey—Mr Chair, I note your comments about not reading detailed submissions but, with your indulgence, I would like to take two or three minutes to address a couple of key issues.

CHAIR—You can have even more than two or three minutes.

Air Cdre Harvey—I am mindful of the time.

Senator CHRIS EVANS—We just thought that, rather than your reading your submission, it would be better if you say what you want to say and then we can ask you questions.

Air Cdre Harvey—I would like to refer to my submission but I can do that in about three minutes, if that is all right. I will just refer to the key issues.

CHAIR—We do not want you to unnecessarily truncate it, such that there is a sense afterwards that maybe you should have told us more than you have, but we do want you to summarise it.

Air Cdre Harvey—As head of the Defence Legal Service, I am responsible for the provision of legal advice and other legal services to the ADF, the Department of Defence and the minister. However, it is important to recognise—and this point has been made this morning—that the operation of the military justice system is controlled by the chain of command. The role of ADF legal officers includes the provision of legal advice and legal policy advice to commanders in respect of the system. To ensure that any changes to the military justice system do not adversely affect operational effectiveness or individual rights, changes to the system need to be carefully considered. As the military justice system is an interrelated system and is comprised of both law and policy, any changes need to be methodically reviewed to ensure that a change in one part of the system will not detrimentally affect another aspect of the system. The fact that we are dealing

with both operational effectiveness and individual rights means that we cannot afford to take a 'try and see' approach.

Supporting the military justice system are the roles played by external civilian agencies in ensuring the independent and equitable application of criminal and civil justice and procedural fairness to the ADF. I will not go through those various forums, because the CDF himself mentioned them this morning. The military justice system is not static, but is constantly evolving in response to community expectations and legal developments. However, once again I stress the importance that any changes recommended or made to the current military justice system not detract from the ability of the ADF to maintain discipline and, through that, contribute to the operational effectiveness of the ADF.

Both the disciplinary and administrative parts of the military justice system are essential to maintaining a disciplined and operationally effective military force. Importantly, and perhaps critical to the current committee's terms of reference, neither type of investigation or inquiry ousts the jurisdiction of civilian authorities. The purpose, process, outcomes and nature of the disciplinary system under the DFDA, on the one hand, and the administrative system, on the other hand, are very different; hence, the application of both systems, including any outcomes, does not amount to double jeopardy or any other form of double punishment.

Although the current military justice system has many safeguards and rights, there may be occasions when the application of the system falls short of what we would expect—and that comment has been made by the service chiefs. I believe it is absolutely critical to distinguish between failures in administering a system and systemic failures in the system itself. In my view, the structure of the military justice system is sound and it appropriately balances the needs of the ADF and the rights of the individual.

Some of the initiatives that are under way have been mentioned this morning, and I am joined at the table by the Director of Military Prosecutions and the Inspector General of the Australian Defence Force. Another initiative is the Registrar of Military Justice, which has also been mentioned. I have full confidence that the creation of these institutions will be very beneficial, particularly in respect of the DMP and the inspector general. Full implementation of some of these initiatives will require some continuing legislative amendments, which are imminent, to give full effect to the proposals. As a result, it may be too early to accurately determine and reflect upon their effectiveness and whether further changes are necessary. That is all I wish to say in amplification of the key points of my statement, and I will answer any questions.

CHAIR—We will hear from all three of you before asking questions. Colonel Hevey, you are next in the batting order.

Col. Hevey—Thank you for the opportunity to appear before the committee today. The basic point I would make, separate and apart from the paper which is now before you, is that effectively we have jumped into the water in this matter as of 1 July and it has been sink or swim since that time. The people who have been staffing the office and coming to us on an ongoing basis have been working incredibly hard to get to grips with the job which presents to them. We are a triservice organisation: our authority comes from three Defence instructions, which we follow assiduously.

The workload has increased enormously simply because the ADF now knows that we are in existence and we are getting the matters referred to us that we would hope to get referred to us. As a brief overview, in the previous three years of an ADF prosecution office there were about 153 matters which attended in that office, of which 33 were left over when the office was effectively subsumed into ours. Since that stage we have had about 116 come to us in the first eight months.

CHAIR—We have to pause at this point as the Senate bells are ringing, Colonel Hevey.

Proceedings suspended from 12.30 p.m. to 12.33 p.m.

CHAIR—Please continue, Colonel Hevey.

Col. Hevey—We have taken on an enormous amount of work over the last eight months. As you will appreciate, when the office was formed it was not formed in totality, so it has been coming on stream over the last eight months. We are in fact now in a position where over the next few weeks we will come up to full strength with our prosecution staff and other staff, except perhaps for one paralegal person. During that eight months the office has provided numerous pieces of advice. In fact, over 116 matters have been advised on over the last eight months, with the office effectively having a staff of only four or five people. We are moving out of the advice stage into the advocacy stage; in other words, a lot of those matters that we have advised on are now heading to trial work. That will put further pressure on us because we will not have people in the office to do the advising because they will be doing their advocacy work.

One of the matters which Senator Johnston raised on the last occasion we met, when we had our prebriefing, was the training aspects of those persons who come to the office and remain in the office. No doubt the director-general is better positioned to answer as to training generally across the legal section of the Defence Force, but those people who come to the Office of the Director of Military Prosecutions will have completed at least a legal module in disciplinary law, which is part of the master's degree conducted through the auspices of the University of Melbourne and the Asia Pacific Centre for Military Law.

In addition to that, at least with Navy and Air Force, we have had the opportunity over the last few years of outposting our new recruits into the area to the offices of the police prosecution, both in New South Wales, where we are currently located, and, on previous occasions, in Victoria so that people new to prosecution work have, effectively, six to 12 months of learning the ropes as someone would in a police prosecuting court. We then take them from that environment to a secondment with the office of the public prosecutor in New South Wales, where they stay for another three months. Hopefully, by the time they arrive with us on a full-time basis, we have a person who is competent and professional in what is a demanding area, where your opponents are always ready to slash and burn to try to show that you have not done things correctly. We hope to at least have them trained up to that standard.

There is in-house training, which takes place through me and my deputy. We hope that that will be sufficient, but time will test that over the next year or two. At the moment, we are in the infancy stage. We are working hard, we are doing the best that we possibly can at the present time and, over the next year or two, we will see whether that best has been good enough. We

hope that it is. Those are the only matters I wanted to raise in addition to those matters that appear in my paper to you.

Mr Earley—I assume we are still constrained for time. Would you like me to summarise?

CHAIR—Yes, but I do not want you to feel that you have had an inadequate opportunity to put your views.

Mr Earley—As part of your committee's inquiry into the effectiveness of the military justice system, you have been specifically asked to look at the impact of recent initiatives to improve it, including the establishment of the Inspector General of the ADF. The establishment of the office of Inspector General of the ADF on my appointment in January last year was, as was the case with the DMP, very much a case of starting from scratch. Much of the last 12 months has been spent putting in place the necessary infrastructure—that is, gathering together staff and accommodation, writing operating guidelines and, particularly, amending legislation to do with the inquiry process to enable the office to meet its role.

As a result of all that, the office was not actually formally opened by the CDF until 24 September. I mention that particularly because, given that background, it may be, as the CDF already pointed out in his remarks this morning, a little early to make any definitive assessment of the impact of the office at this point—particularly as some of its functions have not yet had time to properly commence operation. That aside, we have been very busy. Awareness of what we do has been growing. There has been a Defence instruction promulgated. There is a Defence web site; brochures and cards have been printed and there have been articles in the various service newspapers and in some magazines. The early indications are that the office is starting to make a positive difference and is shaping up, at least in my view, to be a most worthwhile and important initiative for military justice in the ADF.

We have briefed the committee previously on the technical aspects of our roles and functions. I would like to very briefly recap what my role is, without going into the detail of the functions. You will recall that it is basically to provide the CDF with an internal review of the military justice system, independent of the normal chain of command, and to provide an avenue by which failures in the system—systemic or otherwise—may be examined.

I would like to note two things in particular about that role as I have set it out. The first concerns the issue of independence. I report directly to the CDF. My appointment is independent of the normal ADF chain of command and the APS line management. The Inspector General of the ADF does not hold military rank but, for administrative purposes, the position is established by contract at a senior executive band 2 equivalent level. That is intended to assist the inspector general to undertake his duties impartially and to counter any perceptions of undue influence that might arise in relation to matters under his consideration.

The office does not purport to be—indeed, it was never intended to be—independent in the sense of being completely external to the Defence Organisation. Given its role, the present arrangements of being aside from and yet at arms-length to and not divorced from the ADF offers advantages which, in my view, are unlikely to be available had the office been established completely externally. This includes the ability to move freely within the Defence Organisation to go directly to the relevant area of interest and to operate with and under the authority of the

CDF. In a hierarchical structured organisation such as the ADF, they are pretty important considerations. They are important, in my view, because they greatly assist the office to perform its function in a way which lessens the risk of resentment arising from a lack of awareness of cultural factors while at the same time allowing an arms-length impartial approach.

The second point I would make about the role concerns authority. The Inspector General of the ADF has no executive authority to implement recommendations that may arise from his activities, be they investigations or performance reviews. I am only empowered to make recommendations to appropriate authorities. However, if in my opinion the responsible authority fails to take action without a reasonable cause, I can report the matter to the CDF for his further consideration. That type of arrangement or structure is consistent with what I understand to be typically the case in ombudsmen's offices and organisations; in my view, it is appropriate for this office too.

The authority to implement recommendations arising from the activities of my office is separate from the authority to conduct those activities. That authority is established by the Defence instruction, which I mentioned earlier, which is applicable throughout the Defence Organisation and also by subordinate legislation under the Defence (Inquiry) Regulations, which give me and my office the power to conduct administrative inquiries on the same basis as do investigating officers under those regulations. Indeed, those regulations were specifically amended last year to provide that authority.

To give you an idea about what impact the office has had so far, I will—and this is in the opening statement, copies of which you have—briefly summarise some of the things we have been doing over the last 12 months. We have responded to over 140 inquiries and that has translated to the opening of around 80 case files. Mainly they relate to complaints on aspects of the military justice system. Typically those matters have come to notice by referral from either the CDF or the service chiefs or, most commonly, by submission from individuals. They can be members, ex-members or members of the family; indeed, any member of the public can make a submission to my office. We will usually consider submissions of that nature provided that they relate to incidents that occurred, generally speaking, post 1985—that being the date that the new military justice system, by and large, came into force.

Of the 80 or so matters that we have dealt with, at the moment—this is a snapshot—25 are the subject of ongoing investigation or preliminary assessment; 12 have been referred to other agencies, which usually means one or other of the services which may in a particular case be better equipped to deal with them and incidentally could also include the service police or even the DMP; 11 are suspended, awaiting the production of further details from those who have made submissions; and 32 have been closed.

Representation by service and by gender of those making submissions between the services are very roughly—and I emphasise 'very roughly'—proportional to overall ADF numbers. If anything, on the present state of the figures, there is a slight underrepresentation from Navy.

I point out that my office is not intended to be a short cut for complainants; it is not a first port of call. Our object is to allow and encourage the normal systems for dealing with failures in the military justice system to operate first. If there is some specific reason why they cannot or if a

member feels that for some particular reason they are unable to access the normal systems, that brings into being the sort of role that we can play.

In other areas, we commissioned a study last year to develop a prototype model to assist in assessing the health and effectiveness of the military justice system. This is a new enterprise that has never before, to my knowledge, been attempted, certainly not in the ADF. For the purposes of that study—and it may be of some interest to you to note the definition that we are using here—we formed a definition of what an effective military justice system ought to look like. We came up with one that is:

... fair and open, assists in maintaining good order and discipline, promotes military efficiency and effectiveness, protects individual rights, and thereby contributes to national security.

That is the basis on which the study went forward. It is still very much in an embryonic prototype stage. It is the first in a series of evolutions of this particular study and we cannot say with 100 per cent certainty that it will work, because it is an entirely new area of research. But the signs so far are pretty encouraging and I am hopeful that it will provide us with a good tool in the future to help us assess what areas of the military justice system need attention.

As part of that performance review function we sponsored for the first time—and the CDF alluded to this in his remarks earlier today—the inclusion of a major military justice component in the ADF attitude survey. That is simply to enable us to get perceptions of members about the system. What they think about the system does not necessarily mean of course that that is the way it is, but it is a perception that we have to deal with and perhaps, if it is necessary, we have to work towards changing that perception if it indicates a problem.

We commissioned the new case management system for my office, which will in the future enable accurate reporting and breakdown of statistics and so on. We have chaired working groups—in particular, one that recognises a longstanding complaint, and that is the experience of officers who from time to time are appointed to conduct administrative inquiries. We are in the process of developing a course to assist in that regard and a pilot course is due for commencement before April.

We have begun an audit program of performance checks of military justice arrangements at unit level. That is still in its early stages. We have conducted one trial audit so far at a naval establishment last year and more trials are in prospect beginning next month. Later on there will be an established schedule whereby my team will visit bases and units around Australia to conduct random checks on their arrangements for military justice. Again, that is a new initiative.

We have contributed to working groups, looking at the employment and use of the military police and at the ADF grievance system. I have initiated discussions with the Federal Police with a view to seeing what can be done to establish a serious crime unit within the ADF. It is at an early stage yet. It recognises that our own military police sometimes lack experience at the more serious end of crime simply because they do not see much of it in the ADF. We conduct lectures to law courses, pre-command courses and at conferences.

We sponsored a seminar on the management of querulants. You may not be familiar with the term ‘querulant’; it means ‘chronic complainant’. The department spends a lot of time each year in dealing with those people—

CHAIR—Querulant? Is it derived from ‘querulous’?

Mr Earley—It derives from ‘quest’, I understand. These people are on a quest.

CHAIR—You are concluding your summary, though, aren’t you?

Mr Earley—I am concluding my summary, yes. My impression, after 12 months or so of operation, is that the ADF military justice system does, by and large, achieve its purpose of maintaining that essential balance between discipline on the one hand and respect for individual rights on the other, which is so necessary for operational effectiveness. The fact that the ADF continues to enjoy demonstrable operational success seems to support that view.

That does not mean that its system is in no need of improvement. It is a relatively modern purpose-built system—it only dates from about the mid-eighties. But like any complex system it has to be applied correctly. It is not immune from individual error or systemic failures that may over time creep in unnoticed. Nor is it immune from changes in community standards and the general law; it is evolutionary in that respect. Any of those factors can be a catalyst for change. While it is an unfortunate fact that the need for change is sometimes exposed by a notorious incident, so much the better if it can be identified routinely and systematically. With a specific focus on the military justice system as a whole, the office of the Inspector General of the ADF is uniquely placed to assist in that regard.

CHAIR—Thank you very much. Before I ask for questions, are there any supplementary comments from any of the other witnesses?

Col. Hevey—One thing I might mention just for the record is something we discussed at the briefing: we are at interim model stage with the DMP until such time as the legislation goes through to make that model mature. At that stage it will be for parliament to decide what powers and obligations they give to the DMP.

Senator CHRIS EVANS—We will be giving it very careful consideration, do not worry.

CHAIR—Are there any questions from the committee?

Senator JOHNSTON—I have a few questions. If I could start with you, Mr Earley, in relation to the inspector general. Is the nomenclature Inspector General of the ADF or just inspector general for military justice?

Mr Earley—My title is the Inspector General of the Australian Defence Force—Inspector General ADF or IGADF for short.

Senator JOHNSTON—Thank you. How many staff do you have?

Mr Earley—There are 10 full-time people, including me. There is provision for part-time people as well.

Senator JOHNSTON—You have got 140 inquiries in just under six months.

Mr Earley—That is actually over the 12-month period

Senator JOHNSTON—Have you been able to deal with those in 12 months? Correct me if I am wrong, but you say that you formally opened on 24 September 2003.

Mr Earley—The office was formally opened in September, correct.

Senator JOHNSTON—Were you actually addressing issues before then?

Mr Earley—Yes, we were.

Senator JOHNSTON—Good. Do you call them inquiries?

Mr Earley—Reference is the term used.

Senator JOHNSTON—That is the ombudsman term. What are you anticipating per annum? Is it 140 or more than that?

Mr Earley—By ‘inquiries’ I meant simply that: people who might ring up or who might email. They might simply ask, ‘Can we have a copy of your brochure?’ That is opposed to the 80-odd matters that we have actually opened files on.

Senator JOHNSTON—Case files.

Mr Earley—Yes.

Senator JOHNSTON—So 80 have resulted in case files. Do you think 80 is a representation of what you would anticipate on a per annum basis?

Mr Earley—When we started I really had no clear idea of what sort of response there would be. I would not necessarily regard 80 as being typical. I think the first year has been atypical because it is a start-up year and awareness of the office and its function is something that is growing. Publication of what it does and so on—brochures and in particular the Defence instruction—did not actually come out until towards the second half of the year. So I think this coming year will be more indicative.

Senator JOHNSTON—Is there any common thread on the surface of these case file matters? Do they fit into any particular category? You might have heard me refer General Leahy to the statistics on page 101 of the defence department’s submission. Is there anything that springs to mind to say that we have a particularly large number of complaints or that they mostly focus on a particular area or a particular matter?

Mr Earley—The first thing that I should say is that they all by definition involve some aspect of the military justice system, otherwise I would not be dealing with them.

Senator JOHNSTON—We would hope that is right, yes.

Mr Earley—We have an internal way of categorising complaints or submissions, some of which appear in the purple brochure we provided the committee with earlier. They would include matters such as abuse of authority, abuse of process, denial of procedural fairness, harassment and victimisation.

Senator JOHNSTON—I would expect that your statistics on the break-up of those matters would, over a period, be a pretty interesting snapshot of any systemic issues. Would you agree with that proposition?

Mr Earley—I think so, over a period. Whatever we might have collected to date might not be all that informative.

Senator JOHNSTON—It is a short time and a small sample. But if we looked back over five years and you had a very significant percentage dealing with abuse of authority, what would you do about that issue? Tell me what you would do if you saw that.

Mr Earley—The purpose of collecting those sorts of statistics is, in the end, to try to identify a trend. That is why one snapshot—

Senator JOHNSTON—You do collect the statistics?

Mr Earley—We are endeavouring to. Just as I mentioned, we have established a case reporting system whereby we can extract that sort of information.

Senator JOHNSTON—Good.

Mr Earley—But at the moment it is one in what will hopefully be a series, and one cannot tell all that much from just one go, as it were.

Senator JOHNSTON—But ultimately we anticipate that the CDF will have a pretty interesting snapshot, over a period of time, of any systemic or out of the ordinary issues arising in the reports to you.

Mr Earley—The intention is to try to analyse trends—in fact, to try to predict areas that will require some attention. But I should just make it clear that categorisation of complaints into matters such as denial of procedural fairness and so on is always an arbitrary exercise—

Senator JOHNSTON—It is very broad.

Mr Earley—because one complaint can cover a number of those categories.

Senator JOHNSTON—Thank you for that. I will now turn to Colonel Hevey and Air Commodore Harvey. You mentioned to me that your DPP prosecutors have a three-month secondment. Is it in New South Wales?

Col. Hevey—They go in with the consent and support of the New South Wales DPP and work in the office there for a period of three months before resuming their work with us.

Senator JOHNSTON—When you say they work in the office, what sort of work do they actually do?

Col. Hevey—They do similar work to what they would do in our office except that they do not present trials in court. They do advisings, they look at briefs to see whether or not they are adequate and they liaise with witnesses and the police in the same way as a prosecutor would do in a preparation for a trial.

Senator JOHNSTON—Do you think three months is long enough?

Col. Hevey—No. In a perfect world we would like our people to have a little longer, but frankly we need the asset and I need a productive asset, so I am constrained by time as to how long I can be without them. The basic advantage of getting them into the police courts, which is where they do stand on their feet, is that they are going to be up against lawyers who usually have more experience than they have. They might be looking to take advantage of that experience, as often occurs in the magistrates courts around the country. Learning to think on your feet and have that horrible sick feeling in the pit of your stomach as you ask the next question or do not ask the next question is probably the greatest teacher of all. So that is why we have them longer with the police prosecuting office than with the office of the public prosecutor.

Senator JOHNSTON—It is fair to say that most of the defence lawyers come from private practice, notwithstanding that they are reservists.

Col. Hevey—We may be at cross purposes. The office consists of six times four prosecutors, plus the deputy and me. In addition to that, we have absolute access to the reserve legal officers around the country, should we require them.

Senator JOHNSTON—Sure, but the defendants in matters laid by your office—

Col. Hevey—I see what you mean. Yes.

Senator JOHNSTON—have access to private practitioners who are in the cut and thrust. The sort of people you are talking about who are going to the police court and/or higher jurisdiction in criminal matters are probably—how should I describe them?—legal fighter pilots.

Col. Hevey—The defence personnel have at their disposal an enormously experienced and competent legal reserve panel of over 300 personnel, ranging from the most senior Queen's Counsel in the country to people who have been out of law school for two or three years. But there are a lot of senior counsel and senior juniors who could be called upon by people who are accused of a particular offence.

Senator JOHNSTON—My next question is a bit obvious: do we use senior counsel to prosecute?

Col. Hevey—We do not have senior counsel prosecuting at the moment, but we do have competent people who are doing the job properly. I will change that to one extent. We do occasionally use senior counsel in very important matters to prosecute, but we would never do so without a senior counsel defending, because we think that that might create the perception that Goliath has more asset than David, so to speak.

Senator JOHNSTON—But surely, to some extent, it is a matter of choice on the other side?

Col. Hevey—Yes, it is.

Senator JOHNSTON—So it is a question of whether it is a proper choice, an informed choice or a wise choice?

Col. Hevey—It is also with the caveat of being reasonably available.

Senator JOHNSTON—All right. I want to talk about the SAS matter and I am guided, through the chair, by you as to whether you want to discuss some of the issues arising from that now or in camera. I think I would prefer to discuss it in camera, but I will leave it up to you, because there are some issues arising. What is your view?

Col. Hevey—Can I indicate to you that, as the office only started on 1 July, I became involved in that matter about the middle or end of July. By that stage the die had been cast.

Senator JOHNSTON—By that stage the hearing date had been and gone and no evidence was called. Is that right?

Col. Hevey—No, by that stage the Defence Force Magistrate had made two rulings, the effect of which had cast the die in any event. Whether there had been or had not been sufficient evidence was not an issue for me to consider at that stage. I was being put in a position where, had I been conducting the prosecution, I would not have been able to lead most of the evidence I would have wanted to lead.

Senator JOHNSTON—Can I clear this up. What is your view? Do you want to get into some of the details of that, because I would prefer to do it in camera?

Senator CHRIS EVANS—The question is: who is going to answer questions like that on behalf of Defence? Obviously, Colonel Hevey, you can to the extent that you were involved, but on the other matters, is it you Air Commodore Harvey, or is there somebody else who would be briefed to answer them?

Air Cdre Harvey—I think it depends on the information that is sought. Obviously, Colonel Hevey's perspective is one that is coming into it fairly late in respect of the prosecution side. The prosecution itself was within the Army chain, so Chief of Army obviously would have some detailed knowledge of the circumstances. But I can certainly try to help you.

Col. Hevey—It might be best if that were discussed in camera, because there will be matters that might be better discussed in that arena.

Senator JOHNSTON—I think so, too.

Senator CHRIS EVANS—If I may make a suggestion, Senator Johnston, we might have a go at that in camera with a request to Defence to provide the relevant officers who can assist us.

Senator PAYNE—On another occasion, Senator?

Senator CHRIS EVANS—Yes, on another occasion.

Senator JOHNSTON—Yes.

Senator CHRIS EVANS—Give them notice that we want to have a discussion about those matters. I think Colonel Hevey ought to be there, but also someone from Army who can take us through the detail.

Senator JOHNSTON—I have two more quick questions. I find the table of statistics on page 101 of the Department of Defence submission very interesting. I think Mr Earley has it in front of him. I am interested to know the break-up of some of these offences. You will recall that I raised these with you in the briefing we had back in February. For instance, a simple matter there is that we have four general courts martial. I would like to know the nature of the offences and I would like to know the outcomes in each of those matters. Similarly, with restricted—and if this is too much trouble, let me know—there are 220 matters. What were the principal offences in those 220 matters? I am interested to know what the charges in those three areas predominantly relate to. I am not so much concerned with the summary authorities; just the Defence Force magistrates and the courts martial. Can you take that on notice for me?

Col. Hevey—Yes, and I can give you a general overview now. They will inevitably involve either physical violence or fraud.

Senator JOHNSTON—When you say ‘fraud’, what does that mean?

Col. Hevey—People who might be making claims on the Commonwealth for payments that they think they are entitled to but later prove not to be entitled to or were never entitled to in the first place.

Senator JOHNSTON—So that would be a Defence Force magistrate matter, would it?

Col. Hevey—That is correct. Normally, if the fraud is serious—and ‘serious’ is often judged by the duration over which it occurs—

Senator JOHNSTON—And the amount of money.

Col. Hevey—and the amount of money, it will be a Defence Force magistrate matter. It may be, for example, that a first-year soldier might inadvertently put in a wrong claim. That would not go to a Defence Force magistrate’s hearing; that would normally be counselling, unless there

was some criminal intent. Those are normally the sorts of matters that go to the Defence Force magistrate.

Senator JOHNSTON—I would be obliged if you could do a bit of work on that and let me have a snapshot of what, in the last five years, has been behind those three headings. Lastly, what is a convening authority?

Col. Hevey—There are established throughout the Defence Force, persons capable of convening a court. Each time we sit a Defence Force magistrate or a court martial, it is the creation of a new court. We do not have a standing court system. So the convening authority convenes a court to commence sitting under the auspices of either a president or a Defence Force magistrate at a given date and time.

Senator JOHNSTON—Who would be a convening authority for a court martial?

Air Cdre Harvey—Essentially a convening authority is generally at one- or two-star level. The changes that are in train for the military justice system effectively will do away with the convening authority and replace the administrative functions with the Registrar of Military Justice. Obviously, the prosecution functions will continue with the DMP. In answer to your specific question, the convening authority is essentially a senior commander within the command chain, generally at one-or two-star level.

Senator JOHNSTON—The convening authority seems to have referred to him or her issues arising from the conduct of the case as to whether the case should go forward and other things of that nature. Is my perception correct?

Air Cdre Harvey—It is hard to answer that simply. Essentially the convening authority gets involved where a matter has gone before a commanding officer and the commanding officer decides, because of the seriousness of the offence and that there is a case to answer, to refer it to a convening authority with a view to trial by court martial or Defence Force magistrate. It may also come about as a result of an election made at the summary level. Generally, it is a referred process from a summary level, from the commanding officer essentially.

Col. Hevey—The provisions are in sections 103, 107 and 110 of the Defence Force Discipline Act.

Senator PAYNE—Colonel Hevey, I want to go back to the point that Senator Johnston was discussing with you in terms of the staffing of your area. I think you were about to say you thought we might be talking at cross-purposes, in terms of which lawyers work for whom. Would you like to elaborate on what you were going to say then?

Col. Hevey—The cross-purpose that we were talking at was that I was assuming that Senator Johnston was asking me whether we had silks in the office to prosecute matters generally. The answer is that we do not. Then I realised that the reserve was being included in the question, which is what I had not understood in the first place.

Senator PAYNE—I see. You have eight established positions in an office, which you indicate in your remarks—which I have skim read and I have obviously listened to what you have said—

and it is envisaged that you would be pursuing the more serious offences under the DFDA of the ones that would be referred to you. What is the recruitment process for the lawyers who work for you?

Col. Hevey—We are bringing them in at an early stage so that we will get people of O3 equivalent, which is a lieutenant in the Navy, a captain in the Army, and a flight lieutenant in the Air Force. We will mentor them through the first couple of years of their program so that, apart from having outside training, they will be working with more senior officers who have had a great deal more experience. We also have the advantage, especially being located within New South Wales, in that we have a number of Reserve officers who work in the office of the public prosecutor. We can call upon them to mentor these people as they come through.

Senator PAYNE—When you say that you are bringing them in early, what sort of general experience—if you can answer this—do they have when you recruit?

Col. Hevey—It is wide and varied. It is a situation where a person might be a very experienced trial lawyer from having practised for four or five years before joining the ADF. On other occasions, they will be people who have literally just graduated, recently finished their admission processes, come into the ADF, and expressed a desire to become involved in prosecution type work.

Senator PAYNE—And they are full-time lawyers and full-time members of the ADF?

Col. Hevey—That is correct. I am the only person who is not full time in the office. I am a reserve lawyer. I practise at the bar in Melbourne and I work on the basis of being in the office about one week a month as an overseer.

Senator PAYNE—A week a month?

Col. Hevey—About a week a month. That was what I had hoped to be. Regrettably, in terms of my wife and family, it has not always been that way. In fact, it has not been anywhere near it; it has been quite considerably more.

Senator CHRIS EVANS—I do not think this inquiry is going to help with that.

Col. Hevey—No, it is not but I appreciate the opportunity to be here.

Senator CHRIS EVANS—Our apologies to your family.

Senator PAYNE—I am sure you will be eternally grateful, Colonel. Therefore your deputy director is effectively—

Col. Hevey—He is effectively the day-to-day unit manager of my office.

Senator PAYNE—What level of experience would you describe him in general terms as having?

Col. Hevey—He is Legal 05, which means at least 10 years of experience. I am very fortunate to have my current deputy. He is a person who has had a great deal of prosecution experience and, perhaps as importantly, a great deal of operational experience, so he is able to view the ADF as an entirety rather than being just some lawyer who has come in to prosecute in the Army or the ADF.

Senator PAYNE—Perhaps you may want to bring him along one day.

Col. Hevey—He is with us at present, so if there are any questions that need to be answered at least I can get information through him or through the office.

Senator PAYNE—Certainly. Chair, the other questions that I have go to Mr Earley and not to Colonel Hevey. I am happy to either cede to Senator Evans or ask those.

CHAIR—We will go to Senator Evans. We have a 1.15 p.m. finish but I think it will be the case that we will require these gentlemen back. Those questions can either go on notice or be put on ice until they return.

Senator CHRIS EVANS—Thank you, Chair. I appreciate that other senators have questions and clearly I have a range that will take us well beyond the finishing time. I want to start with a process question to Air Commodore Harvey because I think the issue that we have not come to terms with is how we proceed from here. To be frank, we have had a fairly lengthy morning and I do not know if we have actually got to the crux of where we needed to get to. I suppose I have an open-ended question for you, Air Commodore Harvey, as to how Defence would see themselves responding to concerns made in submissions, criticisms made in submissions and criticisms made in evidence to the inquiry. For instance, as we will have a witness this afternoon I really want to know the views of Defence on what they see as a reasonable process. We as a committee have not determined that yet, other than that we will obviously hear evidence from key submitters who have something of interest to say that we want to take up. We are obviously interested in giving Defence fairness. Despite the accusation made by the minister in his statements to the estimates committee the other day, it is not our intention for Defence not to have the right to rebut and deal with any criticisms made. There are two aspects of it. One will be responding to specific allegations or concerns raised by those submitters. The second will be responding to the policy issues that arise out of it that senators will be keen to pursue with Defence in a broader sense, other than just that particular case. No doubt the tiger team have discussed all this and are poised and ready. I would appreciate your advice as to how you think we ought to operate or as to what you think would be fair.

Col. Hevey—I can indicate one thing to put your mind at risk. As for the tiger team in this situation—and I know that was said in jest—I have deliberately, and I am sure that the inspector general has as well, distanced our offices from the Defence submission so that we would be seen as being independent when we came before the committee. While we are now aware of the Defence submission, we have made a conscious choice to be separate and apart to highlight the independence of the two offices. We may have been wrong in that but that was a call that we made early on so that it was not a matter of just the team coming to you and presenting a global approach. I was very conscious that should not occur. If I have it wrong so be it, but that was the choice I made.

Senator CHRIS EVANS—I assumed that might be the case for you and Mr Earley. I am not sure what Air Commodore Harvey's position on this is. Perhaps he may want to address that as well.

Air Cdre Harvey—I will deal with the last point first. Obviously, as a permanent member of the Department of Defence and part of the military justice system, I would be in a position to answer questions related to policy aspects. The key point that you raise in your question is the issue of how to respond to matters that may arise in submissions. To my mind, that involves two issues. One is responses in relation to allegations or statements that may be made by witnesses. The command chain very much controls the operation of the system, so it will be a requirement to get Army, Navy and Air Force respectively to respond to particular questions that arise in relation to the handling of a particular case. In that respect, the so-called tiger team or the Defence liaison team under Air Vice Marshal Treloar is a good vehicle to assist in terms of identifying who is best to respond to those questions. Whether that is dealt with on notice or by witnesses appearing is a matter that has to be decided case by case.

The other issue is the question of policy. My staff and I have considerable responsibility for policy issues and policy development as it relates to the military justice system. Whether you require me or my staff to appear in future to respond or whether we take matters on notice is, again, a case of waiting and seeing. I just want to make the point that we are dealing with two quite different issues. One is what actually happened in an individual case and what policy was applied and why it was applied in that particular case. Secondly, it may be more holistic or systemic—if there are policy changes or things like that, I think that is an area in which my staff and I would be able to assist.

Senator CHRIS EVANS—We have not made a decision as a committee but, on my own behalf, I can indicate that I would want to test both sets of issues with witnesses from Defence at the table. Firstly, we would want to give you the opportunity to respond to anything raised in terms of specific cases—we did a bit of that this morning but not in any detail because of the time constraints. Secondly, I want to have an argument with you about some of your assumptions in your submission.

Air Cdre Harvey—I welcome that.

Senator CHRIS EVANS—Your idea of an evolution is much slower than my idea of evolution. The pace of change is certainly not revolutionary. But I want to test some of those things with you in a policy sense. I want to be clear that Defence is sure who is going to speak on those issues. What might occur is that we might have a list of issues arising out of the submissions that we might want to tease out with you. We might give you some notice of those and then get you in. Senators have not had a chance to go through all that at this stage. Has any decision been taken by Defence—and I am conscious of the minister's criticism—about how quickly you would want to respond to witnesses appearing before the committee? Most of them have given their submissions already, but is there a Defence view about when they would want to respond to anything said in evidence by a witness?

Air Cdre Harvey—I am not sure that I am the right person to answer that. Certainly if issues are raised, I think the Defence position would be that we would want to respond fairly quickly. One of the reasons this team has been set up is to facilitate that, with input from the various

services. We would probably have to take it on notice in terms of the specifics but, given the complexity of some of the issues that may come out, it probably behoves us all to try to respond to particular matters as quickly as we can.

Senator CHRIS EVANS—Maybe you could take that on notice because I want to offer Defence that opportunity, and I am sure the committee as a whole want to do that. I do not want constantly to be dealing with any accusation that they have not had a chance to respond or were not given the opportunity. Defence ought to make some submission to us about how they want to handle that. Obviously the committee will have to make a decision but what we are indicating is that we are happy to facilitate responses. I presume the tiger team has the option of having a response issued by the minister in the form of a press release. Normally with the Department of Defence these things often wait until the end of the inquiry and then everything is responded to at once. I can understand that may not suit Defence on this occasion, so we are happy to facilitate that.

Can you give the committee the composition of the tiger team, what resources have been devoted to its inquiry and a breakdown of the legal resources of the Department of Defence? You can take it on notice. We had this discussion before about the DMP, but I am also interested in both the military police and the legal officers spread throughout Defence. I would like an overview of those involved with the military justice system to gain a sense of where they are, who they are and the numbers that exist. I think that would be helpful for our inquiry as a bit of a starting point to understanding.

Air Cdre Harvey—Yes.

Col. Hevey—I have been asked to table an answer to an earlier question concerning the Fair Go Hotline. Those questions were asked at about 11.15 this morning, and the answers are now being given.

CHAIR—We will add that into our proceedings.

Senator CHRIS EVANS—That is a turnaround of two hours and five minutes, Mr Chair.

Col. Hevey—We apologise for the delay, obviously.

CHAIR—We are out of time. If there are no further questions, I have one concluding question. I had the honour to chair the Senate inquiry into a certain maritime incident. On that occasion a Defence task force was set up to aid that inquiry. Part way through that inquiry the arrangement changed and the task force was required, where answers were provided on notice, to have those answers provided through the minister's office. That delayed proceedings quite a bit because the minister needed to view each answer. In this case are you required to have the minister vet your answers?

Air Cdre Harvey—I am not in a position to answer that question, being a legal adviser, but we could take that on notice.

CHAIR—I would be grateful if you would.

Proceedings suspended from 1.21 p.m. to 3.33 p.m.

PALMER, Mrs Madonna Therese (Private capacity)

CHAIR—We will resume this hearing of the Senate Foreign Affairs, Defence and Trade Committee inquiring into the effectiveness of Australia's military justice system. I commence these proceedings by saying that I am advised that we are quorate. I am anticipating the arrival of my colleague Senator Evans at any moment. I will take this opportunity to repeat part of my opening statement as delivered this morning for the purposes of this section of the inquiry.

Today's hearing is open to the public. If at any stage a witness wishes to give part of their evidence in camera, they should make that request to me as chair, and the committee will consider that request. Should a witness expect to present evidence to the committee that reflects adversely on a person, the witness should give consideration to that evidence being given in camera. The committee is obliged to draw to the attention of a person any evidence which in the committee's view reflects adversely on that person and to offer that person an opportunity to respond. Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. It is important for witnesses to be aware that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. That concludes the recitation of the relevant standing orders. Welcome, Mrs Palmer. I invite you, if you wish, to make an opening statement.

Mrs Palmer—I would like to thank the committee for giving me the opportunity to speak today. I have been waiting for four years to put forward my concerns. Each part of my submission is important and I urge you to look over it carefully. Damien was a young man of 19. He had joined the Army hoping for a stable job and an active lifestyle. Defence had implemented a strategy to increase the Indigenous population of the ADF and claimed to have policy in place to support Aboriginal and Torres Strait Islanders, as explained in the Australian Defence Aboriginal and Islander recruitment development strategy.

Having left school to commence an apprenticeship prior to completing year 10, Damien did not reach the education eligibility at the time. The Army actively recruited Damien and provided a bridging course specifically for Indigenous people, which he completed. I supported his choice of a military career, comfortable that it would provide a stable career for him. Instead, Damien was not far into his recruit basic training at Kapooka when he experienced race distinction because he was Aboriginal. Damien was treated differently. He was called out to stand in front of his peers to be humiliated and demoralised. I have heard it said that this demoralising treatment makes for a better soldier. But in 2000, the *West Australian* quoted General Cosgrove as saying:

I thoroughly reject the concept that bullying or harassment is necessary to create a tough soldier.

This message is not getting through to the instructors down the ranks.

After Damien graduated in August 1999 it was less than three months before I was informed that my son was found hanged in his room. Defence is fully aware of these issues given that in 2001 50,000 personnel were briefed on bullying and bastardisation. Yet here we are in 2004 with the very same issues. I do not believe that the Defence Force is genuine in its attempt to stamp out discrimination, bullying and bastardisation. In fact, you send a message that it is tolerated by

your lack of action, your denial or your failure to even attempt to answer criticism. If you are serious you should have no problem with every case of mistreatment, discrimination and death being thoroughly investigated by an independent body to be made accountable to the public, as would any other employer. In fact, you should welcome the idea.

My hope is that out of this Senate inquiry new policies will be made, that legislation will be passed to sack offenders who disregard these policies, regardless of rank. This will send a clear message. The Defence Force is no longer capable of investigating in-house and can no longer hide from its obligations to its members, members' families and the Australian public. You cannot bring about change until people stand up and say, 'This is no longer acceptable.' There is no excuse for abuse in any workplace, especially in the military, as one person has so much power over another because of rank.

I am angry at the Army's unfair treatment of Damien for no other reason than that as an Aboriginal he was singled out. The Army clearly knew of the high risk Damien fell into, as stated in the strategy document. For these reasons I believe that the Army contributed to the suicide of my son. You failed to follow your own strategy to provide support for him. The Defence Force is no longer able to protect its employees and guarantee a safe and fair workplace.

Finally I would ask that the Defence Force follow immediately the suicide prevention program that the air force in America have put in place. They confronted the issue of suicide, putting in place a campaign that emphasised early intervention and support services. They also trained unit leaders, chaplains and medical health providers to recognise persons at risk. Damien told his friend, who was on his second enlistment, that he had tried to hang himself that same day. Could Damien's life have been saved? I will never know. I am here to talk about Damien in the hope that other parents will not have to follow me. Thank you for the opportunity to finally present my concerns. I pray that this inquiry will make a difference to someone else's son or daughter.

CHAIR—Thanks, Mrs Palmer.

Senator CHRIS EVANS—Mrs Palmer, I appreciate your coming forward today to share your experiences. Did Damien tell you about his experience at Kapooka?

Mrs Palmer—That is right.

Senator CHRIS EVANS—Did he ring you?

Mrs Palmer—Yes. I was in contact with Damien. When he was in recruit training I made sure he got a letter on the Monday and a letter at the end of the week. We were in constant phone contact when he was able to be. He was on pretty arduous training programs.

Senator CHRIS EVANS—Sure, but he told you about the incident with the instructor and that he was upset about it; is that right? Use your own words. What happened? He rang you and described it to you, did he?

Mrs Palmer—Yes. He also told me that he had been called into an office and he was berated in there. He said it upset him to the point where he was just about to cry. He was a pretty tough

kid, so it meant a lot for him to even tell me that. He used to protect me over racial things. He has had it all his life, but he would protect me rather than tell me all that was going on.

Senator CHRIS EVANS—Did you feel the need to take any action after he contacted you from Kapooka or did you think he was going to cope okay?

Mrs Palmer—No, because I thought it was part of their treatment. I just said to him, ‘Just go along with it and do not stand out for any reason. Stay in the background and keep your head down.’

Senator CHRIS EVANS—Was he happy to do that, do you think? Were you concerned about him at that stage?

Mrs Palmer—No. I had no reason to believe that he was suicidal at all.

Senator CHRIS EVANS—So he went on and finished his training all right? He graduated from the training course okay?

Mrs Palmer—Yes. He was fine. My husband and I flew over from Perth for the graduation. That was the last day I saw Damien.

Senator CHRIS EVANS—When he took his life in Townsville, had you had contact with him prior to that, in the days leading up to that?

Mrs Palmer—Yes. He rang me to ask how to put money into his girlfriend’s account. She was flying up that weekend. I investigated that myself; the civilian police did not even pick it up. In his wallet was a stub to show that he had gone into the bank and put money into her account that same day. He rang me to ask me how to do that sort of thing. He tried to ring me twice that night. I was not at home; I was with my other son at basketball.

Senator CHRIS EVANS—Did you speak to him the day it happened or the day before?

Mrs Palmer—It was probably three or four days before.

Senator CHRIS EVANS—I see. Did you get any sense then of him being particularly depressed?

Mrs Palmer—Not at all.

Senator CHRIS EVANS—Do you have any knowledge of what might have got him down, leading up to that?

Mrs Palmer—No, I do not. I think it was a combination of things. He put money into his girlfriend’s bank account. I do not know whether there was an issue there. I asked her, but she was under no obligation to tell me. I think it was a combination of a few things, as far as I can work out. There was no note—that is, as far as I know, because items in the room were destroyed. As far as I am aware, there was no note. I was told there was none.

Senator CHRIS EVANS—Perhaps the easiest way to deal with this is for you to tell us how you found out about Damien's death and then what happened after that.

Mrs Palmer—How I initially found out?

Senator CHRIS EVANS—Yes.

Mrs Palmer—I was at work. When I came home my husband had just gone to Timor.

Senator CHRIS EVANS—Is your husband in the armed forces?

Mrs Palmer—Yes, he was. He has discharged since. There was a major and a padre at the front door. I thought they had come to pick up his TV and video and things like that. As I was walking down the hallway I was trying to work out how I would disconnect the video for him, because I did not know. They asked if I was Madonna Palmer. I said, 'Yes.' They said, 'Are you the mother of Damien?' I said, 'Yes.' Their exact words were 'he was found hanged in his room this morning'. After that a social worker came around as well. I had two young boys aged nine and 11 at home at the time.

Senator CHRIS EVANS—So you flew to Townsville after that, did you?

Mrs Palmer—No, I was waiting for my husband to come back. I had no family in Perth and I had the two younger boys, so I stayed in Perth and waited for my husband to come home.

Senator CHRIS EVANS—You talk about his room et cetera. I am just trying to piece this together. Did you go to Townsville later on?

Mrs Palmer—Yes, I went to Townsville the next year. That was in October and I went the following year. The civilian police took a number of photos of the room and of Damien himself. I did not look at those, but I looked at the ones of the room. I queried then that homework and things were in the photo. The man who was with him last on the night that he died said that he was doing his homework. The police said that there was a test paper on his bed. I inquired as to where they were. I said, 'Where is his homework and his test paper and all of that sort of thing?' The Army said they had taken them because they were military things. One guy told me that they had shredded them.

Senator CHRIS EVANS—Where was Damien buried? Did you bring him back to Perth?

Mrs Palmer—Yes.

Senator CHRIS EVANS—I see. So you did not actually go to Townsville until some time later. What were you told about his death in the early days? Did you get a briefing? Was there a military investigation or a police investigation?

Mrs Palmer—There was not much of a military investigation. They more or less said they would hand it over to the civilian police. But, on seeing the photos, I sort of found out some things that they had missed as well—the louvres above his door frame and things like that. That is why it is important that items are not destroyed in a person's room—that could have proved

something. The police did not even pick up the stub in his wallet and things like that. There was a towel rack broken off the wall. I said to the civilian police, 'Was Damien aggressive or something that night?' He said, 'No, I sat on it.' This was a detective—he sat on the towel rack and it broke off the wall.

Senator CHRIS EVANS—I am not following this. Why did you go up a year later? I am just trying to get a sense of what you were told and when. The military informed you of your son's death. You made arrangements for the funeral in Perth. What was your next official contact about why he might have died? Did you see a report of an inquiry?

Mrs Palmer—I was waiting for a report, actually. I was a bit naive—I did not realise you had to go chasing it. I was told the police would send a coroner's report and that I would receive reports and all of that sort of thing, which were not forthcoming. It was into the next year that I started writing letters and all the rest of it. I realised that I would have to go through I think it is Russell Offices, the SECMA, which is the equivalent of a freedom of information type of thing with the military. I went and got those sorts of things.

Senator CHRIS EVANS—So you did not get anything from the police or the military in the early stages?

Mrs Palmer—No.

Senator CHRIS EVANS—Nothing at all?

Mrs Palmer—It was about 3½ months. The coroner wrote to me and said straightaway that there would be no inquest.

Senator CHRIS EVANS—So the coroner wrote to you and said there would be no inquest?

Mrs Palmer—Yes, so I wrote back to him and said that I would like to be as positive that there should not be one as he was. I asked him a lot of questions. From there it was letters back and forth all the time for about the next 18 months or two years.

Senator CHRIS EVANS—Are you able to supply the committee with that correspondence?

Mrs Palmer—From the coroner?

Senator CHRIS EVANS—Just the series of correspondence about your efforts to get that information? One of the things we are looking at is how we deal with families.

Mrs Palmer—I do not have them at the moment.

Senator CHRIS EVANS—No, but I think it would probably be useful to follow that. So you got a coroner's letter which basically said there would be no inquest. Did you get a copy of a police report or anything from the police?

Mrs Palmer—Yes, I got an initial certificate of death. Then I had to inquire further to try and get the total autopsy and that sort of information. I have everything documented, though.

CHAIR—Can I interrupt? Would you excuse us—we need to go and vote. We will be a bit longer than 10 minutes this time because we are actually going to cast a vote in the chamber.

Proceedings suspended from 3.49 p.m. to 4.10 p.m.

CHAIR—Mrs Palmer, you had the floor before we suspended but, if you wish, I will ask Senator Evans to frame the question again so that we can kick off.

Senator CHRIS EVANS—I was trying to go through the series of dealings you had with the police and military in trying to get an explanation of your son's death. You got something from the coroner saying there would be no inquest; you got a death certificate from the police and an autopsy report eventually—is that what you said?

Mrs Palmer—Yes.

Senator CHRIS EVANS—But in terms of an investigation or an explanation of what might have happened, was there a military investigation at all?

Mrs Palmer—I do not think so, no. They only more or less handed it straight over. The only statement I got was blanked out—people's names and whoever was speaking and all that sort of thing—from freedom of information, the Army SECMA or something in Canberra.

Senator CHRIS EVANS—Why did you go down that route? I am trying to start from the beginning and work through. You say there was no military investigation into your son's death but they handed it over to the police.

Mrs Palmer—Yes.

Senator CHRIS EVANS—What did you do next? What were you looking for and what action did you take?

Mrs Palmer—Just basic answers. There were a few questions to begin with because I was in Perth. They said Damien moved when the door was opened. I thought the door swung out but it was a sliding door—just things like that. One statement said that the door was open and another one said that it was closed when the officers first arrived. I think there were four officers who went to inspect the building and Damien's happened to be the first room that they came across. One said that the door was open and another said that it was shut—little things like that I wanted to clarify about what was happening at the time.

Senator CHRIS EVANS—Why had the officers gone to the room? Because of the report of his death or was it just a routine inspection?

Mrs Palmer—Routine.

Senator CHRIS EVANS—I see. And they discovered his body?

Mrs Palmer—Yes. They initially thought he had gone AWOL to come back home to Perth, apparently—that is what one of them said.

Senator CHRIS EVANS—Do you know why they would have thought he had gone AWOL?

Mrs Palmer—No, it was something to do with his father in Timor—that he wanted to get home to me because his father was not there.

Senator CHRIS EVANS—That was what one of the Army officers said to you?

Mrs Palmer—Yes.

Senator CHRIS EVANS—I am trying to understand why you started going through the freedom of information route. Was it because you had some doubts about some of the inconsistencies in the various reports of his death or were you trying to find out why he killed himself—or did you believe that maybe he did not kill himself?

Mrs Palmer—I thought murder initially and I did not know where to go from there. The basic thing was to start asking questions, which I did. From there I went to the police commissioner and then I went to the Attorney-General and the Minister for Defence. I did a ministerial so that questions had to be answered.

Senator CHRIS EVANS—I presume you were not happy that you were not getting all the information that you thought you should be getting and you were having to write letters and things to get it—is that right?

Mrs Palmer—Yes.

Senator CHRIS EVANS—Is that why you wrote to the minister at the time?

Mrs Palmer—Yes.

Senator CHRIS EVANS—Asking for a full explanation of your son's death?

Mrs Palmer—That is right.

Senator CHRIS EVANS—What reply did you get from the minister—it was John Moore at the time, wasn't it?

Mrs Palmer—Yes. He said that he would keep me informed of the investigation that was going on and that he would write back to me, which he did. He told me what he found out and then he asked questions down the line of Damien's boss, his next in charge. There were letters back and forth all the time, until I felt satisfied that I had the answers that I was looking for.

Senator CHRIS EVANS—Did you feel satisfied at the end of the process?

Mrs Palmer—Yes, I did. Basic things were answered. I still do not know whether the door was opened or shut. Things like that that I did not have the answers to were playing on my mind, like why things were shredded and things like that.

Senator CHRIS EVANS—What about an explanation of why Damien might have taken his own life? Do you feel you ever got to the bottom of that?

Mrs Palmer—No, I do not think I ever will. I do not know.

Senator CHRIS EVANS—Did any of the investigating authorities, the police or the military, attempt to get to the bottom of those questions?

Mrs Palmer—Yes, they asked the man he was with that night. He said that Damien was upset that night. He had tried to ring me and could not get through. He was very angry that he could not get hold of me. He was angry about his real father. He told this young man that he had tried to hang himself that day. They ended up laughing about it like it was a joke. Damien treated it as a joke then, and so the young man left him. He told him to sleep it off, basically. He was very intoxicated; he was 0.177 or something in his toxicology for alcohol. He did not have any drugs; it was alcohol.

Senator CHRIS EVANS—Did you get to talk to this friend of his?

Mrs Palmer—Yes, I did. He came over for the service in Perth. I talked to him for a little while there but from then on I only talked to him when he had Army people with him.

Senator CHRIS EVANS—Did they think he needed representation?

Mrs Palmer—I am not sure. They probably were more worried that I was going to blame him, which I never have. I have never blamed him, and I told him that. I do not know. They just had someone with him when I was talking to him.

Senator CHRIS EVANS—From talking to this friend of his, did you get any better explanation of what might have affected Damien to cause him to take his life?

Mrs Palmer—No. I think it was a combination. As I have said before, it was different aspects on the night. It just went wrong for him that night.

Senator CHRIS EVANS—Had Damien had any other experience of attempting to take his life or suicidal behaviour before that you knew of?

Mrs Palmer—Not at all.

Senator CHRIS EVANS—So what do you think should have happened in the investigation of his death? You obviously had to go through a lot of hoops to try and get answers. What do you think should have happened in dealing with his death?

Mrs Palmer—First of all, when I did go over to Townsville, the boss of the base did not even come and meet me. This young man died on his base. He could have come and said, 'Hi, I'm CO whoever.' That set me back, really. They could have come and introduced themselves. I went and found things out myself. There was nothing forthcoming. I had to write to ministers and do a ministerial and all that sort of thing to get anywhere. They would blank out all the information of people's names and things like that. I had to go through freedom of information to get that. That

should have been forthcoming. They should have left his room intact. They should have followed through on the strategy that they were supposed to have had in place to support him. I feel they failed Damien in that respect.

Senator CHRIS EVANS—In terms of the support for Aboriginal recruits, do you know what sort of support he was getting at the time of his death? What was happening in terms of any active programs to support him in the Army?

Mrs Palmer—I do not think there was any. As far as I knew, there was not any.

Senator CHRIS EVANS—Was there any while he was at the recruit base?

Mrs Palmer—I do not think so. He has never told me of any.

Senator CHRIS EVANS—But you say one of the reasons that he got in in the first place is that they actually went out and recruited young Aboriginal men?

Mrs Palmer—Yes.

Senator CHRIS EVANS—At that time did you get any sense of what sort of support would be there for him?

Mrs Palmer—No, I just assumed there would be. I feel guilty because I should have been more up with finding out if there was support there. I did not think I needed to. I did not know the staggering numbers of suicides by young Aboriginal men. Before Damien suicided I had nothing to do with suicide. I did not know anyone who had. I had no family member or anyone like that who had. Defence knew and I did not. That is my complaint with them and I am very angry with them for not seeing to it that they looked after him once he was in there. Actually they made it worse by singling him out because he was Aboriginal. Why demoralise a young man who is standing there, the same as every other young man, trying to have a fair go and to get a good job and a steady career? Why single him out just because he is Aboriginal? That is making matters worse and it is not supporting him at all.

Senator CHRIS EVANS—Apart from the case at Kapooka where you said he was humiliated, were you aware of any other ongoing discrimination against him? Had he complained to you about other instances, or once he got out of Kapooka were things better?

Mrs Palmer—No, I never heard of any more, and it was only that that guy—I do not even know who it was—had called him into the room and berated him that day as well. That was just a one-on-one; it was not in front of a platoon.

Senator CHRIS EVANS—So there were two instances that you know of at Kapooka: the time out on the parade ground and when he was called into an office by some superior?

Mrs Palmer—It was not on a parade ground; it was while they were on squad when they went off to do something. But I do not feel confident that more than that did not go on, because Damien protected me anyway from things like that, so I am not at all sure it was not worse than that anyway, which is bad enough.

Senator CHRIS EVANS—Thank you.

Senator JOHNSTON—Is it Mrs Palmer or do you prefer Ms Palmer?

Mrs Palmer—Donna is fine.

Senator JOHNSTON—Thank you very much for coming before the committee. I want to commend you for your courage in doing that. It is a difficult matter for you and I think it is great that you have taken the time to come here. Hopefully we can match your concern with some recommendations. You said that his third posting in four months was part of an arduous training course. What did you understand that he had been through up to that point?

Mrs Palmer—Just the basic training.

Senator JOHNSTON—Where did he do his basic training?

Mrs Palmer—At Kapooka in Wagga Wagga, New South Wales.

Senator JOHNSTON—For how long?

Mrs Palmer—I think it was for 45 days of basic training.

Senator JOHNSTON—Where did he reside before he went to Kapooka?

Mrs Palmer—In Perth with us.

Senator JOHNSTON—How old was he?

Mrs Palmer—He was 19.

Senator JOHNSTON—Had he been away from home very much before he went to Kapooka?

Mrs Palmer—Not at all.

Senator JOHNSTON—So this was his first time away from home?

Mrs Palmer—Yes.

Senator JOHNSTON—How was he handling that?

Mrs Palmer—As far as I knew, he was good. I have two letters from Kapooka. He did not have the time restraints anyway but he used to ring me. He seemed quite fine about it. He said there were a couple of guys—the corporals—who would come around and wake them up by screaming and carrying on.

Senator JOHNSTON—The normal sorts of things that we all know basic training has for young recruits?

Mrs Palmer—Yes. He said some of the young kids were upset. He actually talked a couple of them through, so he was quite stable there himself.

Senator JOHNSTON—You talk about an incident that he had in August. Between August 1999 and 29 October where did he go? He left Kapooka and went to Townsville?

Mrs Palmer—No, he went to Puckapunyal.

Senator JOHNSTON—How long was he at Puckapunyal?

Mrs Palmer—Eight weeks; he was doing a transport driving course.

Senator JOHNSTON—Was he with people different from the people that he was with at Kapooka?

Mrs Palmer—Yes.

Senator JOHNSTON—So he had to re-establish himself at Puckapunyal with his peer group?

Mrs Palmer—Yes.

Senator JOHNSTON—How long was he at Puckapunyal?

Mrs Palmer—I think about eight weeks.

Senator JOHNSTON—And then lastly up to Townsville, was it?

Mrs Palmer—And he was still training there because he was doing a maritime wing to do with splicing and all that stuff on the ships, or something.

Senator JOHNSTON—How long had he been up at Townsville?

Mrs Palmer—I think he was going into his third week. He had only been there a short time.

Senator JOHNSTON—Did you notice a change in his letters, his phone calls and his attitude when he shifted from Puckapunyal to Kapooka?

Mrs Palmer—No.

Senator JOHNSTON—What about when he moved to Townsville: was there any discernible change?

Mrs Palmer—No.

Senator JOHNSTON—So after the events that you describe when he had the run-in with the corporal—and I think that was at Kapooka—

Mrs Palmer—That is right.

Senator JOHNSTON—and that was in August, you say in your submission.

Mrs Palmer—Yes.

Senator JOHNSTON—You did not have any reason to be worried about him at all until you got the news on the 29th.

Mrs Palmer—That is right.

Senator JOHNSTON—Prior to him leaving home, did he live at home on full-time basis?

Mrs Palmer—Yes.

Senator JOHNSTON—Where did he go to school?

Mrs Palmer—At Woodvale High School in Perth.

Senator JOHNSTON—What year did he go to?

Mrs Palmer—Halfway through year 10. He went out on work experience and got a job with group training as a cabinet-maker. He was 15 in March and he left halfway through that year. He did 3½ years of cabinet-making with group training, but they sort of changed bosses all the time.

Senator JOHNSTON—So it was not a full apprenticeship; it was a pre-apprenticeship type course, was it?

Mrs Palmer—No, it was 3½ years.

Senator JOHNSTON—So it was an apprenticeship course. Did he finish his apprenticeship?

Mrs Palmer—No, it was a four-year course. He only had six months to go. I said to him, ‘Do you want to leave it and just wait for the six months?’ He was not keen because he was going to chop and change employers and everything. He said that he would rather have a stable career.

Senator JOHNSTON—In that period of time, how was he? Did he exhibit any symptoms of depression?

Mrs Palmer—Not that I know. But now, looking back on it, I do not know whether he was a binge drinker. He would not drink during the week when he was at work, but on Friday night he and his mates would go out and Saturday night they would go out too.

Senator JOHNSTON—As young blokes do.

Mrs Palmer—Then he would sleep till about 12 o'clock on Sunday. I said, 'You are sleeping your weekend away. Why don't you just go out one night a week?' But there were all doing it, so I do not know.

Senator JOHNSTON—What did he drink? Did he have a preference?

Mrs Palmer—I don't know—Cougar, I think.

Senator JOHNSTON—So he drank spirits?

Mrs Palmer—Yes.

Senator JOHNSTON—You mentioned he had a 0.17 blood alcohol reading.

Mrs Palmer—I think it was 0.177.

Senator JOHNSTON—How did you find out that information?

Mrs Palmer—I got the toxicology report over the phone, and I did not know what that meant, so I rang a pathologist. I said, 'What does that reading mean? I do not know.' She said, 'It is about 3½ times more than you should have if driving. It is fairly intoxicated.'

Senator JOHNSTON—Did you have any other anecdotal information as to what he had been drinking on the night in question, on 29 October?

Mrs Palmer—No. There again I only got one page of an autopsy which just said 'healthy male'. I never got a full report.

Senator JOHNSTON—Did someone say to you that he had definitely been drinking that night?

Mrs Palmer—That is what the toxicology said.

Senator JOHNSTON—So we are only relying on the results of the toxicology—we do not have any history as to what, in fact, he had consumed.

Mrs Palmer—There were people at the boozier, but I do not know whether they were interviewed or whatever. He was at the boozier before he went back to his room.

Senator JOHNSTON—So he was at the wet mess?

Mrs Palmer—Yes.

Senator JOHNSTON—You said that his father was in the RAAF. Then you mentioned his real father. Could you just explain that to me? I am a little confused.

Mrs Palmer—Yes. I was with Damien's father from year 9. I had Damien and then was with him for three years. When Damien was three, we separated. I was on my own with Damien for three years and then I married my now husband.

Senator JOHNSTON—Who is in the ADF, in the RAAF?

Mrs Palmer—He was in the RAAF; he has just been discharged today.

Senator JOHNSTON—And Damien's relationship with your present husband was quite close?

Mrs Palmer—Yes, very.

Senator JOHNSTON—Do you understand that he was upset or concerned about your present husband's posting to East Timor?

Mrs Palmer—That is what I was led to believe through one of the statements from the man who was with him that night. He said that he was upset about him going to Timor. This is a bit confusing too. I was at basketball with the youngest son. Russell—the next son—had answered the phone when Damien rang. He only told him over the phone that afternoon that my husband had gone. It was a six-month build-up to Timor. We were not sure when he was going. Damien had already graduated and all that sort of thing. It was only during that phone call the night he died that he found out my husband was in Timor. That is why they thought he had gone AWOL—to come back to Perth.

Senator JOHNSTON—Just correct me if I am wrong; I am just trying to get a feel for this. Is there some sense in your mind that because your present husband had been posted to East Timor and had gone, that was something of a shock to Damien?

Mrs Palmer—It must have been. That is what they said in the thing: he was worried that I was on my own with the two kids.

Senator JOHNSTON—You mention in your submission:

Police investigators who were first on the scene stated that a failed test paper was found on Damien's bed and that the test paper was shown in photographs to have red pen markings across the pages.

You actually saw those photographs, did you?

Mrs Palmer—Yes.

Senator JOHNSTON—How did you come to see those?

Mrs Palmer—I asked the police if I could have a look at them.

Senator JOHNSTON—The police willingly disclosed those to you?

Mrs Palmer—Yes.

Senator JOHNSTON—That was part of the coroner's file, was it?

Mrs Palmer—No. That was at the police station in Townsville.

Senator JOHNSTON—You could clearly see the test papers and the red markings?

Mrs Palmer—They were on his bed.

Senator JOHNSTON—You asked for the test. Take us through what happened there. You wanted to get to the bottom of what that was all about, so you asked the police?

Mrs Palmer—Yes.

Senator JOHNSTON—Did you also ask anyone at the base—any Army or ADF officials—about the test that he had undertaken?

Mrs Palmer—Yes. I asked, 'What were his marks like? Was he upset because he has this failed test?' They said, 'No. He was doing quite well.' Out of 30 tests he had only failed about three. There was no biggie about it; there was no problem. He was going to resit that same failed test paper the next day. On the Friday he would have resat that failed test.

Senator JOHNSTON—Did you have any idea what the subject matter of the test was?

Mrs Palmer—I am not sure but there was a knot-tying book on his bed as well.

Senator JOHNSTON—At this stage he had graduated and was permanently stationed at Townsville.

Mrs Palmer—Yes.

Senator JOHNSTON—You also mention that you discovered that someone had entered Damien's room via the louvres. How did you discover that?

Mrs Palmer—Through the photos.

Senator JOHNSTON—How did the photos disclose that someone had come in through the louvres? What did you see and what deductions did you make?

Mrs Palmer—The photo was there. There was just a door frame and there were two louvres standing up lengthways.

Senator JOHNSTON—Against the wall?

Mrs Palmer—Yes. There was one on the inside with a coathanger on the floor. At this stage the civilian police had just assumed that Damien had taken the louvres out to hang himself in the

door frame. After looking at the photos I said to them, ‘Why would he have placed two on the outside, and why is the coathanger on the floor?’ The towel rack was off the wall and I was trying to work out what he had been doing—if he was aggressive or something. They said that they had assumed that that was what he was doing. When I asked them on later investigation, they said, ‘Someone had taken them out and entered the room.’ That is often how young friends of people got into other kids’ rooms. They would just unhook with the coathanger through the louvres. Since then—I have been back to Townsville—the Army has put security grilles above the louvres.

Senator JOHNSTON—So the police told you that they believed that someone had entered through the holes where the louvres had been removed?

Mrs Palmer—On the second investigation. In the first investigation they just assumed that Damien had taken them out, but it was only because I questioned that that they had asked around and found that out during the second investigation.

Senator JOHNSTON—Do you understand that all this information went before the coroner?

Mrs Palmer—I put it all to him.

Senator JOHNSTON—Did you put it to him personally or in writing?

Mrs Palmer—In a letter.

Senator JOHNSTON—And that was before he made his decision?

Mrs Palmer—No, he made his decision that there be no inquest more or less straightaway.

Senator JOHNSTON—Didn’t the coroner make a finding as to the cause of death?

Mrs Palmer—Yes.

Senator JOHNSTON—Did he do that at the time he made the decision not to have an inquest or did he do it subsequent to your letters?

Mrs Palmer—I am not sure. I have got it all but I am not sure which happened first.

Senator JOHNSTON—Okay. With respect to the occasion when you were at home and you thought that the Army chaplain and whoever else was with him had come to collect the video after your husband had left for East Timor, what was your impression and what comments would you like to make to the committee regarding the way the matter was handled at the first instance when you were informed of your son’s death?

Mrs Palmer—I think they handled it pretty well. There was a major there and he basically came out with the information. I did not accept that information. I told him that I understood what he was saying but I did not believe it.

Senator JOHNSTON—So your first thought was that someone had in fact killed him or something else had happened other than suicide?

Mrs Palmer—Yes. Then I invited them in and they had a bit of paper with them. When I kept insisting that I did not believe it, they showed me the written thing.

Senator JOHNSTON—Do you know what that bit of paper was?

Mrs Palmer—It was just to say that that was what it was, that he was found hanged in his room and it was on this date. It was just the basic information.

Senator JOHNSTON—Was it just a typed note?

Mrs Palmer—It was a typed letter.

Senator JOHNSTON—To you?

Mrs Palmer—Yes.

Senator JOHNSTON—How long did they stay with you on that occasion?

Mrs Palmer—I do not know.

Senator JOHNSTON—You would have been in shock.

Mrs Palmer—Yes.

Senator JOHNSTON—Did the chaplain stay with you? Could you tell us what happened, as best you can recall?

Mrs Palmer—It was probably two hours. I gave them a cup of tea and things like that.

Senator JOHNSTON—They were there for a couple of hours.

Mrs Palmer—Yes. Then they left and I rang my girlfriend. The next day a liaison guy rang me up, and he set in motion a social worker from the Army who came around that morning to help me with the kids because I did not know how to tell them, and I wanted to get a book on grieving for the kids. They stayed with me and arranged the funeral. They asked for input. The liaison people were very good; they were fine. I had a civilian side to the funeral for Damien's mates and then the military with his young mates at Kapooka had the service at the cemetery, so they included all his friends. I have no problem with Defence as far as that goes. That was fine. The only thing I could say is that the social worker was there for three months and then she was gone. The kids had only just started getting into it and then she was not available.

Senator JOHNSTON—Thank you, Mrs Palmer. I appreciate your forthrightness.

CHAIR—Senator Johnston spoke for the entire committee, Mrs Palmer, when he said that we do acknowledge that it is a courageous decision of yours to come forward and make yourself available for this inquiry. I offer you our condolences on behalf of the committee.

Mrs Palmer—Thank you.

CHAIR—I want to go back over some of the ground—hopefully not too much. Who paid for your visit to Townsville from Perth when you made it?

Mrs Palmer—I did, but I did not go until July the next year.

CHAIR—Were you offered an opportunity to go and accompany the body back to Perth?

Mrs Palmer—Yes, I think I was.

CHAIR—And you declined that offer?

Mrs Palmer—Yes.

CHAIR—As soon as you heard this news, were you provided with access to counselling? I understood an implication of an earlier answer was that you might have been. Were you provided with access to counselling by the Army?

Mrs Palmer—Yes. She came around the next day with the liaison officer. She came around the next morning for the kids and all that sort of thing. Yes, she was there.

CHAIR—Damien had a blood alcohol reading of 0.177. He was not a solitary drinker, was he? He would have been drinking with some other people, surely?

Mrs Palmer—Yes. He was at the local boozer on base.

CHAIR—Do you know who those people were?

Mrs Palmer—No.

CHAIR—With that blood alcohol reading he went back to his room and studied for his exam the next day. Is that what happened?

Mrs Palmer—Yes.

CHAIR—Did I hear you say earlier that there was no note from Damien?

Mrs Palmer—Suicide note? No, as far as I know. But then I do not know really, because items were missing from the room. Whether there was or there was not, I am not clear on it. I never received any and the Army told me there was not one.

CHAIR—What explanation has been offered to you about the disappearance of—what did you describe them as?—the documents he was studying?

Mrs Palmer—As far as I know there was a knot-tying book on the bed with the test paper. I do not know what the test was about. I do not know what sort of homework he was doing. I got all his letters from me and his grandfather and everything like that out of the room. It was just the military stuff that they kept. They reckoned they shredded it at the time.

CHAIR—As I understand what you have said, in the photograph there was red writing in the margin of his test paper.

Mrs Palmer—I have questioned that and they said it was just markings. Whoever was marking the exam just wrote what he had done wrong or whatever.

CHAIR—I see.

Mrs Palmer—I was interested in that because I thought: ‘Have they said something on the test?’ This is another thing I have heard. I cannot confirm it, but I have heard that there is a saying in the Army: ‘You are useless; go hang yourself.’ I do not know; I cannot confirm it. But when you hear things like that you question whether there was something on his paper. I do not know. I would have liked to have seen his homework and his test. I cannot confirm that, though. That is just what I have heard second-hand.

CHAIR—Did you press the Army as to why they removed those documents when clearly they were part of the scene at the time?

Mrs Palmer—Yes. They just said they were to do with military stuff and that after the police finished their instigation it was up to them to clear the room.

CHAIR—So part of your disquiet, if I can put it as neutrally as that, is that there was no note, that the documents that he was working on had been removed and shredded before you had a chance to see them, that the first police investigation appeared incomplete and that you pointed out to the police what you thought were the gaps in their investigation and the second investigation then closed those gaps. But if you had not pointed them out it would not have happened?

Mrs Palmer—No, not at all.

CHAIR—Some of the overlooked details, like whether the door was open or closed, were questions that required some sort of explanation in trying to piece together what happened on that night. In declining an inquest, did the coroner give you any explanation other than to say that he did not think it was necessary?

Mrs Palmer—He more or less said that he was satisfied that it was suicide and that there would be no further investigation.

CHAIR—In your discussion with him, did you draw to his attention those matters that we have just referred to?

Mrs Palmer—Yes, I wrote to him. I wrote because I thought it should be documented.

CHAIR—How did he respond?

Mrs Palmer—There was not any. I think he wrote back to me the second time and repeated that there would be no inquest.

CHAIR—Are you putting to us that you are unhappy that the coroner has not given an adequate explanation as to why he did not carry his investigation further?

Mrs Palmer—Yes, especially when there were gaps in it. The police had not even picked up information that I, as a mother, looked at a photo and found out.

CHAIR—When you visited Townsville in July you paid for your own trip. Did you put yourself up—that is, did you pay for hotel accommodation?

Mrs Palmer—Yes, I was in an overnight unit in a caravan park.

CHAIR—What assistance were you given from the base to visit the base?

Mrs Palmer—I went to the liaison officer in Townsville and he drove me out to the base. I was in contact with him and I told him I was coming so they would expect me. I did not just turn up on the doorstep. I gave them notice that I was going to come over.

CHAIR—You said earlier that you were disappointed that the commanding officer did not meet with you.

Mrs Palmer—Yes, whoever the boss is.

CHAIR—In terms of the hierarchy of command at the base, who did meet with you? What rank?

Mrs Palmer—I think it was a warrant officer.

CHAIR—Are you happy in your own mind that there is no doubt about the cause of Damien's death?

Mrs Palmer—No, I still question it. I would not feel confident saying that I am happy about it.

CHAIR—You do not feel confident saying that he committed suicide—there may have been some other intervention.

Mrs Palmer—I would have liked the investigation to be more thorough than it was, just in case there was anything.

CHAIR—On page 1 of your submission you outline that Damien was encouraged to join the ADF through the government's Aboriginal and Torres Strait Islander Recruitment and Career Development Strategy. How did they encourage him to do this?

Mrs Palmer—My husband was in the RAAF and he had driven home with a man who was in recruiting. He said, 'How's your son?' They were just talking back and forth when they were driving to work. He said, 'Bring your son in for testing. They would be interested in looking at him.' From there it progressed. He was going to join the RAAF as an ADJI. There were only a couple of spots in Australia. Then the Army picked him up after that. He was just going to leave it at that but the Army said, 'We've got a position for you in the Army.' There was a bridging course. He had not completed year 10. He had to have year 10 to get into the military and they made a specific Indigenous bridging course so he could get in.

CHAIR—You outline your dissatisfaction with the implementation of the strategy and, in your view, the inadequate education of the sensitivities and problems faced by young Indigenous people. Can you make any suggestions on that education process? How can it be improved? Can you tell us more about why you are dissatisfied with the implementation of the strategy?

Mrs Palmer—I do not think there was any implementation of the strategy at all. I think he was put in there and just left. That is as it should be; it should be fair. But calling him out in front of people because he was Aboriginal was unfair. That is what I am angry about. As far as other ideas that I have go, I think it would be a good idea to have an Aboriginal liaison on base—someone totally separate.

I went to the padre in Townsville and I did not find him approachable at all. I said to him, 'Was Damien having any trouble? Did he ever approach you?'—I wrote to all the padres on all the bases that he was on—and he said, 'No, I never had contact with him.' As I was talking to him he told me that Damien's warrant officer was his mate that he had gone through training with, so I thought that if you had any problems you would be very reluctant to tell him as he was his mate. I think there should be someone separate who these young kids can go to—not only Aboriginals; I mean anybody. It is too in-house; everybody knows everybody or they have been through training with somebody years ago and know their bosses. If you do have a problem you need to go to someone, even off base or somewhere where they can go separately that is not connected with Defence.

CHAIR—Some independent person?

Mrs Palmer—Yes.

CHAIR—Did he say anything positive about his training? Was he excited by being in the Army? Were there aspects that he quite enjoyed?

Mrs Palmer—Yes. I saw him on his graduation day and I said to him back at the motel, 'How do you really feel? Have you had a hard time?' and he said, 'No, I will retire in the army.' So he was quite happy with it. He was fine.

CHAIR—This was his vocation as far as he was concerned?

Mrs Palmer—Yes.

CHAIR—For the sake of completeness, the second police investigation was prompted by you drawing attention to omissions, as you described it, in the earlier investigation. One of them was the door, one of them was the louvres—were there any others?

Mrs Palmer—No, not really, other than that they did not monitor his whereabouts. I do not know even from the police investigation whether people at the boozer were actually asked or whether they went back the day before to see if Damien had had any altercations with anyone. They should have gone back 48 hours afterwards and found out whether there was anything going on, whether he was distressed about anything or if anyone was picking on him or whatever.

CHAIR—Did they interview the people he was drinking with that night, do you know?

Mrs Palmer—No, not that I know of.

CHAIR—Do you know how many people he was drinking with?

Mrs Palmer—No, I just know he was at the boozer and he came back.

CHAIR—I understand that in an interview recently you said that recruits are taught to shine their boots but that they are not properly educated in looking out for each other and recognising suicidal tendencies. Is that an accurate quote?

Mrs Palmer—Yes.

CHAIR—Can you tell us more about why you think that is the case?

Mrs Palmer—It is not drilled into them enough. The Surgeon-General in America is praising the air force plan for their control over suicide in the force, and he says that suicide is preventable and that 80 per cent of people talk of their intent. Well, Damien did that that night. He told another person who was with him till 11 o'clock that night that he had tried to hang himself that afternoon, and that was not acted upon. I think that they have not drilled it into them enough. They know how to shine their brass and whatever and to have their uniforms straight, but this is a life-and-death crisis and they should be able to go 'A, B, C—I will go and get the duty officer, I will go and see whoever else you're supposed to go and see' and so on.

As far as I know with suicide prevention—I do not know if it has been as of when Damien died because I have been taking this up with the Department of Defence or whether it was happening before—they have a character building course for two days and they have implemented some suicide prevention into that. Whether that was before he died or after, I do not know. But I think they should immediately find out what is going on in the American air force, because they have cut the number of suicides dramatically.

CHAIR—When you wrote to the defence minister about all of this, were you advised about what avenues were open to you and how you could go and get redress on some of these issues?

Mrs Palmer—No, I just did it off my own bat. I just did the ministerial thing. I went to the top people I could think of: the police commissioner, the Attorney-General and the defence minister. I could not think of anyone else to get answers or inquire from.

CHAIR—Did anyone at any stage say, ‘Let’s look at your case. Let’s see where you might be able to find some of the information you are obviously seeking’? Were you provided with that type of advice?

Mrs Palmer—No.

CHAIR—I must say that it worries me that there is still this question mark about the nature of this death, and that is still a matter of obvious concern to you. I do not know what we can do about that, but it worries me that that obviously is the case.

Senator CHRIS EVANS—Senator Cook picked up a couple of things that I wanted to follow up on. I do not want to browbeat you—I know you have been in the chair for an hour or so now. As far as you know, did the military at any stage investigate the possible reasons for your son’s death or the possible reasons for him taking his own life? Did they ever interview people and try and find out what happened?

Mrs Palmer—No, not as far as I know. I am not sure whether it came from the police or the military, but the man he was with that night said that he was upset with me for not answering the phone and upset that his father was in Timor.

Senator CHRIS EVANS—I accept that you have told us about that. I am just trying to ascertain (1) whether the military did their own investigation and (2) whether or not other people were interviewed, as Senator Cook suggested—the people who he was drinking with, his immediate friends, his girlfriend. Were they interviewed as far as you know?

Mrs Palmer—Not by the military, no.

Senator CHRIS EVANS—When you say in your submission that you called for an inquiry in 1999 to no avail, are you talking about a police inquiry or a military inquiry?

Mrs Palmer—A military inquiry.

Senator CHRIS EVANS—So you had written to them asking for a proper inquiry?

Mrs Palmer—Yes.

Senator CHRIS EVANS—I gather you have a file of the correspondence between you and the various authorities. If we could organise for the secretariat to have access to that it would be very helpful to trace the detail.

Mrs Palmer—Yes, that is right. Which is why I kept the documentation.

Senator CHRIS EVANS—It is great that you have. I think it would be useful for us to have a look at the key letters.

Senator PAYNE—Mrs Palmer, we really do appreciate your time and the amount of effort that this takes. It seems to me that you have exercised an enormous amount of your own initiative in this process: you have written to the Army, you have written to the ministers and other people in authority, you have written to the padres, the coroner, the police—everybody, as you said, you could possibly think of. What did Defence do to help you in the process of doing all of that when your son died?

Mrs Palmer—Do for my grieving, do you mean?

Senator PAYNE—No, do for you in seeking this information and providing you with what you were after. For example, is there anything you wanted that you could not get from the defence forces or that you do not have?

Mrs Palmer—I got his medical and all that sort of stuff through the information track, but, until I was satisfied, I just kept writing letters.

Senator PAYNE—You kept writing letters; they did not come to you and offer you reports and information and support?

Mrs Palmer—I would write a letter and they would write back to me and in that letter there would be something that was not quite clear to me or I was not happy with, so I would write back again, and then they would write back again. So it went back and forth all the time. Until I was satisfied that the question had been answered, I continued.

Senator PAYNE—Having lost your son while he was in the care of the Army as a very young recruit, what support did you receive from the Army in giving you that sort of information without you having to go out of your way to get it?

Mrs Palmer—They did not give it to me unless I pursued it.

Senator PAYNE—God forbid that other people would be in the position that you are in, but they have been and they continue to be. What system or process would you like to see in place to help people in that position so they do not have to go through what you have been through?

Mrs Palmer—That is where I would like change. For Damien to be singled out and things like that—there was no reason for that other than that he was Aboriginal. I cannot see any reason that he would—there are no government handouts. Damien was never worried about government handouts at all. He worked at Pizza Hut when he was going through high school. I do not know, really.

Senator PAYNE—If you knew another mother who had to face what you have faced and wanted the sort of information that you have wanted, would it be helpful to a mother in that position to have a system in place where the Army, or whatever part of the ADF it is, can provide you with that information and that help without you having to write reams of letters and keep asking questions?

Mrs Palmer—Yes, definitely. It is very traumatic. I was sitting back waiting for it. It dawned on me after a while that it was not going to happen. That is when the 18 months of writing letters

started—and the going to the top to get answers. That is wrong; you should not have to do that. It is very devastating, and you have family and everything else to deal with along the way. I used to rush home from work and wait for a letter to find out some information. It was just ridiculous.

Senator PAYNE—That would be over and above the counselling and the social worker support you did get—something that would help a person get information and be well supported in that process? You have said that the counselling and the social worker was important, I think, although the person disappeared after a relatively short period of time.

Mrs Palmer—Yes. I think to have a process in place, especially for suicide, where they say, ‘This is going to come to you in two weeks, you can expect this next month, and then when we find this out we can send it to you.’ That sort of thing. But it just does not happen.

Senator PAYNE—I think that is good advice.

Mrs Palmer—Although they were really good with the funeral and all that sort of stuff.

Senator PAYNE—I only have one other question and you have just referred to it again yourself. You said that you were concerned about the impact on Damien apparently of some racism. Did you ask for information in relation to that?

Mrs Palmer—No. I did ask that the corporal who had called him out be spoken to. I do not know whether that ever happened. They never came back and said anything.

Senator PAYNE—In your circumstances, do you think that should have been part of the inquiry into what happened to Damien?

Mrs Palmer—I definitely think the corporal should have been spoken to, because he obviously does not realise that he is having an impact on these young, impressionable people. If you single someone out to demoralise them, that is putting them in a frame of mind of thinking that they are different from their peers. It should not happen.

Senator PAYNE—Thank you very much, Mrs Palmer.

CHAIR—There being no further questions, thank you, Mrs Palmer. You have been of considerable assistance to our inquiry.

Mrs Palmer—Thank you.

Senator CHRIS EVANS—We will make sure that you get a copy of the report.

Proceedings suspended from 5.04 p.m. to 5.15 p.m.

Evidence was then taken in camera—

Committee adjourned at 6.56 p.m.

