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DEPARTMENT OF DEFENCE
Chiefs of Service Committee
AGENDUM PAPER 60 of 12

Version 2

INSPECTOR GENERAL AUSTRALIAN DEFENCE FORCE REVIEW OF THE NOTIFIABLE INCIDENTS SYSTEM IN DEFENCE

SPONSORING MEMBER: VCDF - AIRMSHL Mark Binskin

SPONSOR'S EXECUTIVE SUMMARY

PURPOSE: To inform COSC of the outcomes of the Inspector General Australian Defence Force (IGADF) report of the *Review of the Notifiable Incidents System in Defence* and its recommendations.

KEY JUDGEMENTS:

1. **Improvements to efficiency and effectiveness.** Defence's current notifiable incidents policy, promulgated in DI(G) ADMIN 45-2 *The reporting and management of notifiable incidents* of 26 March 2010, generally works well. Efficiency and effectiveness can be improved by a number of changes to the policy to better reflect ADF disciplinary jurisdictional arrangements and support recommendations of previous reviews (such as the Street-Fisher review).
2. **Universal incident reporting.** Subject to technical and cost feasibility, a universal incident reporting system with case management functionality would likely deliver certain efficiencies to Defence's management of incidents.

RECOMMENDATIONS

1. COSC **agree** that Defence's incident reporting policy, as promulgated in DI(G) ADMIN 45-2, be revised to make it simpler and more user-friendly using the indicative concept draft in enclosure 1 to the IGADF's report, and that the revision specifically include the following:
 - a. The policy mandate the **referral** to the Australian Defence Force Investigative Service (ADFIS) of only those matters which are beyond a summary authority's jurisdiction to try, subject to appropriateness of summary disposal and garrison or organic capability to investigate.
 - b. The policy mandate that units and work areas **inform** ADFIS of incidents above the current jurisdictional threshold, and of action taken or intended in respect of such incidents.
 - c. The policy be amended to replace the term 'notifiable incident' with 'reportable incident' to avoid confusion with work health and safety reporting.
 - d. The policy emphasise the importance of safety reporting.

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- e. The policy mandate that Defence Investigative Authorities provide update reports to Service headquarters and Group Heads.
2. COSC **agree** that Defence conduct a feasibility study for an enterprise-wide information communication and technology solution for incident reporting and case management.

CONSULTATION: See annex A.

FINANCIAL IMPLICATIONS: The conduct of a feasibility study (recommendation 2) will have financial implications. Following consultation with the Chief Information Officer Group, the feasibility study is estimated to cost \$450 000.

WORKFORCE IMPLICATIONS: Nil

Date authorised: 15 November 2012

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BACKGROUND:

1. Following a meeting between the President of the HMAS *Success* Commission of Inquiry, The Honourable Roger Gyles AO QC, and senior ADF leadership, CDF tasked IGADF to conduct a review of the notifiable incidents system. The minutes of that meeting, dated 20 April 2012, defined the scope of the review to include 'the definition of notifiable incident, its management, scope and how these issues are dealt with overall'.
2. Defence's current incident reporting policy is DI(G) ADMIN 45-2 *The reporting and management of notifiable incidents* of 26 March 2010. Essentially, DI(G) ADMIN 45-2 mandates individual and management reporting responsibilities in respect of certain incidents, including disciplinary, criminal, security and fraud matters. The policy also mandates reporting of other incidents, not falling into any of these categories, which are deemed to be serious, sensitive or urgent, and which may bring Defence into disrepute, attract media or Parliamentary attention, or may adversely affect the efficiency of Defence.

KEY ISSUES:

1. **Policy comprehension.** One of the strengths of the current policy is that it is well understood by users. It is partly for this reason that the system appears generally to work well at the tactical, operational and strategic levels. As the system appears generally to be well understood and to be working well, the IGADF's review determined that wholesale policy change is undesirable.
2. **Integrated workforce.** Another strength of current arrangements is their applicability to the integrated workforce. DI(G) ADMIN 45-2 constitutes a general order for ADF personnel as well as reasonable directions for Defence APS employees. This aspect of the policy should also be preserved.
3. **User-friendliness.** Many of those Defence personnel who were consulted as part of the review, and who do not have a legal background, reported that DI(G) ADMIN 45-2 is not a user-friendly document for the casual user. In addition, because it addresses not only directive policy but also procedural matters, the current DI(G) ADMIN 45-2 is inconsistent with the *System of Defence Instructions*.

<p>Recommendation 1: COSC agree that Defence's incident reporting policy, as promulgated in DI(G) ADMIN 45-2, be revised to make it simpler and more user-friendly using the indicative concept draft in enclosure 1 to the IGADF's report as the basis for that revision.</p>

4. Recommendations 1a – 1c below address specific aspects of the notifiable incidents policy which are intended to complement the general intent of Recommendation 1 to simplify the present content of DI(G) ADMIN 45-2. Further development of the indicative concept draft will need to consider the appropriate vehicle for the relocation of procedural guidance in accordance with the *System of Defence Instructions*.
5. **Fraud and security incidents.** None of the stakeholders consulted as part of the review expressed any criticism of reporting arrangements for fraud or security incidents. These types of incident are easily identifiable, jurisdiction is relatively straightforward, and the responsible Defence Investigative Authorities—Inspector-General Defence and the Defence Security Authority—appear to have systems in place for swift decisions and timely feedback to commanders and managers about who will investigate.

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6. **Discipline investigations.** ADFIS is not always in a position to assess incidents to determine whether it should investigate in the seven days mandated in paragraph 31 of the current DI(G) ADMIN 45-2. In circumstances where ADFIS assessment is that it not investigate, a common complaint from commanders is that delays in the assessment phase, which lead to concomitant delays in investigation and any DFDA action, frequently detract from the disciplinary efficacy of subsequent DFDA action.

7. **Disciplinary reporting threshold.** The IGADF’s review found there was broad support for an amendment to DI(G) ADMIN 45-2 to raise the threshold for ADF disciplinary incidents that must be referred to ADFIS for investigation. The unit or work area would retain responsibility to coordinate the investigation of a greater proportion of disciplinary incidents than currently. In these circumstances, the unit or work area could investigate the matter itself or, if available, draw on local resources including garrison police to investigate the incident. These proposed arrangements would be consistent with recommendation 7 of the 2009 Street-Fisher *Report of the independent review on the health of the reformed military justice system*. The figure below is a graphical representation of current and proposed policies for disciplinary incident reporting.

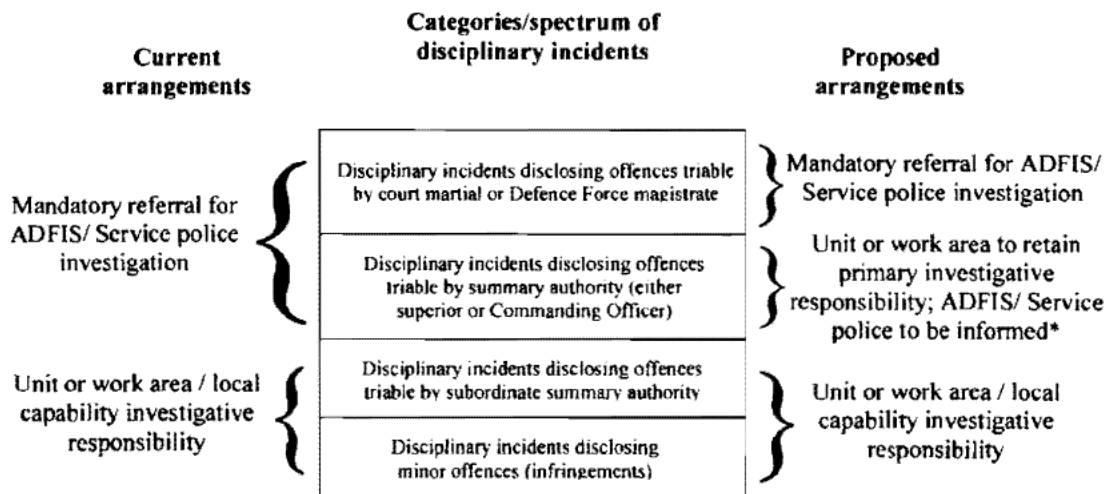


Figure one: Graphical representation of current and proposed policies for ADF disciplinary incident reporting

*Units and work areas retain discretion to refer matters to ADFIS

Recommendation 1a: DI(G) ADMIN 45-2 mandate the *referral* to ADFIS of only those matters which are beyond a summary authority’s jurisdiction to try, subject to appropriateness of summary disposal and garrison or organic capability to investigate.

8. **Informing ADFIS.** In order to enable ADFIS visibility of disciplinary trends involving ADF personnel, Defence units and work areas would still be required to inform ADFIS of incidents on occurrence, and subsequently of any action taken.

Recommendation 1b: DI(G) ADMIN 45-2 mandate that units and work areas *inform* ADFIS of disciplinary incidents above the current jurisdictional threshold and of action taken or intended in respect of such incidents.

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9. **Potential ambiguity.** The term, 'notifiable incident' now has a statutory meaning pursuant to the *Work Health and Safety Act 2011*. While there may be some overlap between a 'notifiable incident' for work health and safety purposes and a 'notifiable incident' for the purposes of DI(G) ADMIN 45-2, the use of the same term to describe different types of incident is likely to cause confusion.

Recommendation 1c: DI(G) ADMIN 45-2 be amended to replace the term 'notifiable incident' with 'reportable incident' to avoid confusion with Work Health and Safety reporting.

10. **Emphasising importance of safety incidents.** The *Work Health and Safety Act* commenced in January 2012. The principal changes from previous work health and safety laws have been significantly higher criminal sanctions for noncompliance and a new due diligence duty on 'officers' as defined in the Act, to ensure that organisations are complying with their obligations. Some stakeholders who were consulted as part of the review commented that DI(G) ADMIN 45-2 should be amended to increase the importance of safety reporting.

Recommendation 1d: DI(G) ADMIN 45-2 emphasise the importance of safety reporting.

11. **Updating Services and Groups.** DI(G) ADMIN 45-2 emphasises the relationship between Defence Investigative Authorities and referring units and work areas. It is to the referring unit or work area that a Defence Investigative Authority is required to provide reports on assessments and investigations. One strategic-level stakeholder noted that in this respect DI(G) ADMIN 45-2 is unhelpful to Services and Groups as it does not mandate that Defence Investigative Authorities provide updates to Service headquarters and Group heads. As most incidents worthy of reporting or notification are likely to have strategic implications, providing information on the outcomes of assessments or investigations to Services and Groups would assist in providing a strategic overview of incidents across Defence.

Recommendation 1e: DI(G) ADMIN 45-2 mandate that Defence Investigative Authorities provide update reports to Service headquarters and Group heads.

12. **Universal case management capability.** While the focus of the IGADF's review has been the reporting of incidents rather than their management, during the consultation process it became apparent that a universal reporting and case management capability, if feasible and cost-effective to implement, could provide certain efficiencies in the reporting and management of incidents.

13. **Difficulty of obtaining quantitative data about notifiable incidents.** There is no way of easily quantifying the number of notifiable incidents in Defence; there is no Defence-wide system or process which is capable of quantifying the number of incidents in any given time period, either totally or by category. There is similarly no way of measuring Defence's management of notifiable incidents in terms of time taken, costs, or other measures.

14. **Coalescing multiple reports.** It is sometimes the case that a member of the ADF or a Defence employee will make simultaneous complaints on the same subject to different persons and agencies in Defence. Many agencies responsible for complaint handling have measures in place to de-conflict management of multiple reports with other agencies and this appears to be what usually happens. However, complaints made to areas which are not practised in complaint handling—such as some chains of command or technical chains of command—may not as easily identify the existence of multiple complaints and it is possible that work may therefore be duplicated by two or more work areas on the same issues. A universal reporting system would facilitate early

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identification of multiple reports on the same issue to complaint or issue managers. This would enable the reports to be coalesced and an appropriate single action authority nominated where necessary.

15. **Enhanced efficiency.** The IGADF review found there are over 655 types of incident or event in Defence for which there are formal reporting arrangements or mechanisms. Each of the reporting arrangements at present operates almost independently from others. Defence Investigative Authorities, and each of the Services, already have systems in place for incident reporting and case management. A Defence-wide system, which was able to replicate satisfactorily the advantages of these systems, would not only provide efficiencies in incident management but would also enable incident reports to be quantified, and incident management to be measured, on an enterprise-wide basis.

16. **Feasibility study.** The Chief Information Officer Group Corporate Stakeholder Engagement Team informed the review that a number of high profile and politically sensitive customers have engaged them with requirements that support a case management system. It is not known if a domain-wide information communication technology solution would be feasible. A feasibility study, sponsored by the Chief Information Officer Group, is estimated to cost \$450 000. This cost has been calculated on the basis of a three-person team (1 x consultant, 1 x business analyst and 1 x solutions architect) working for a three-month period. The output of the study would be a comprehensive view of the roles, policy, processes of the domain and options for a system to best support future policy direction.

Recommendation 2: COSC agree that Defence conduct a feasibility study for an enterprise-wide information communication and technology solution for incident reporting and case management.

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ANNEX A TO
COSC AGENDUM 60 OF 12

COORDINATING STAFF COMMENT

There appears to be considerable overlap between the recommendations of this report, and the action being under taken by the HDL, HPC and CAE led "*Rethinking systems of inquiry, investigations, review and audit in Defence.*" Air Force preference is that the findings and recommendations of this report are rolled into the broader project, which we understand is due to report to CDF and the Secretary in February 2013.

Key points

- This report examines the current DI(G) ADMIN 45-2 in isolation and recommends minor amendments.
- In contrast, the "Rethinking systems" review is a fundamental reconsideration of the broader inquiry, investigation and review system, and may result in completely new mechanisms for reporting of incidents.
- Implementation of changes to DI(G) ADMIN 45-2 should therefore be postponed until it is confirmed that the instruction will continue to have a role in the future system.
- The majority of the report recommendations raise no concerns for Air Force. These include consideration of a new IT system for incident reporting and case management.
- One recommendation (recommendation 1a and b) raises significant resource concerns for AF: IGADF proposes to raise the threshold for referral to ADFIS to those matters that are beyond the jurisdiction of a summary authority.
 - such action has implications for the investigation workload at the unit level, for which AF is not resourced
 - AF provided 35 investigator positions to ADFIS at inception on the basis that ADFIS would conduct all investigations. ADFIS jurisdiction threshold subsequently increased requiring AF to re-establish a minor investigative capability. The current proposal raises the threshold again, without any corresponding transfer of resources to AF.

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Introduction

While recognising the work involved in and the value of the contribution made by the IG-ADF report of the *Review of the Notifiable Incidents System in Defence* and the recommendations made, Defence Legal does not support COSC agreement to the recommendations as formulated. In fact, Defence Legal notes that DI (G) ADMIN 45-2 is a whole of Defence policy and should not be considered only in the ADF-focused Chiefs of Service Committee. Any significant policy change should be endorsed at Defence Committee level.

COSC agreement would require reform to one small aspect of a larger system which is said to 'generally work well' at a time when the larger system of investigations and inquiries is being reviewed in the *Re-thinking Systems Review*.

Implementation of the recommendations as formulated would require significant organisational effort to amend the Defence Instruction and educate users, likely at the expense of both resources dedicated to driving more fundamental changes and also existing user-familiarity with the current system.

In short, the solutions proposed to the deficiencies identified, are not expedient solutions. Current problems could be addressed by other, more expeditious means. Examples are provided below.

Recommendation 1

The proposed separation of the concepts of reporting an incident and referring an incident for investigation is timely. The difference between these steps and the need for commanders and managers to remain active in managing an incident is agreed. This issue could be dealt with in the short term by a variety of means, including DEFGRAM.

The proposed reformulation of the threshold at which disciplinary incidents must be referred at subparagraph 1 (a) is no clearer than the current threshold. Further guidance on what is meant by 'minor' could be issued via DEFGRAM.

The proposal in subparagraph 1 (c) to replace the term 'notifiable incident' with 'reportable incident' to avoid confusion with Work Health and Safety Reporting would involve replacing a familiar term with a new one to avoid confusion with a small minority of incidents. Educating users on the need to report notifiable incidents for Work Health and Safety purposes can be achieved by other means.

The proposal in subparagraph 1 (d) to amend the DI to emphasise the importance of safety reporting can and should be pursued via alternative means.

The proposal in subparagraph 1 (e) that the DI mandate that DIA provide update reports to Service headquarters and Group Heads is not supported. Any such requirement could be imposed separately

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and would need to be refined to ensure that nugatory reporting requirements are not imposed on an already over-taxed ADFIS.

Recommendation 2

The proposal in recommendation 2 is supported in part. It is supported as part of the *Re-thinking Systems Review*.

The *Re-Thinking Systems Review* is developing models for a coordinated recording, assessment, reporting and case management mechanism applicable across the whole of Defence. The mechanism would cover recording and reporting of incidents in relation to a diverse range of subject matters, including matters such as security, safety, unacceptable, sexual and other offences, fraud, procurement complaints, medical complaints, adverse media coverage, and property damage.

Conclusion

The Review of Notifiable Incidents by the IG-ADF provides valuable information on discrete areas of a much broader system currently under review. The Report of the Review by the IG-ADF will assist in the review of this broader system. The recommendations made by IG-ADF would be supported by Defence Legal if they were amended (as shown in italics and underlining) to read:

COSC **agree** that as part of the Re-Thinking Systems Review, Defence's incident reporting policy, as promulgated in DI(G) ADMIN 45-2, be revised to make it simpler and more user-friendly and as part of that Review, consider using the indicative concept in enclosure 1 to the IGADF's report, and that the revision specifically consider including the following:

- a. That policy mandate the *referral* to the Australian Defence Force Investigative Service (ADFIS) of only those matters which are beyond a summary authority's jurisdiction to try, subject to appropriateness of summary disposal and garrison or organic capability to investigate.
- b. The policy mandate that units and work areas *inform* ADFIS of incidents above the current jurisdictional threshold, and of action taken or intended in respect of such incidents.
- c. The policy be amended to replace the term 'notifiable incident' with 'reportable incident' to avoid confusion with Work Health and Safety reporting.
- d. The policy emphasise the importance of safety reporting.
- e. The policy mandate that Defence Investigative Authorities provide update reports to Service headquarters and Group Heads.

COSC **agree** that Defence, as part of the Re-thinking Systems Review, conduct a feasibility study for an enterprise-wide information communication and technology solution for incident reporting and case management.

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The IGADF Report, and its conclusions and recommendations, are not supported by IGD for the reasons set out below.

- the IGADF Review and Report goes beyond the statutory jurisdiction of the IGADF, in that it does not address only ADF military justice issues but covers the entire gamut of notifiable incident reporting and action across the whole of the integrated Defence workforce and workplaces;
- the Recommendations contained in the IGADF Report impact on the civilian workforce in Defence – which is an outcome that is beyond the jurisdiction of the IGADF and of the COSC;
- the recommendations contained in the IGADF Report are premature and may not be consistent with the possible outcome of the SEC/CDF whole-of-Defence Review of Inquiries, Investigations and Audits. Any review of the notifiable incidents regime in Defence must be conducted in a manner consistent with the Review of Inquiries, Investigations and Audits;
- any review of DI(G) ADMIN 45-2 and the notifiable incidents regime in Defence must be conducted in accordance with the SoDI system and in full consultation with all stakeholders, in accordance with the SoDI system. Any consideration of, and decision making by COSC on the Recommendations contained in the IGADF Report would have the effect of pre-empting the SoDI process and the outcomes of the Defence Review of Inquiries, Investigations and Audits; and
- Noting that the SoDI is resource intensive, making changes now which may pre-empt the outcomes of the Defence Review of Inquiries, Investigations and Audits would be an inefficient use of resources.

Consequently, IGD considers that:

- The IGADF Report on Notifiable Incidents should not be considered by COSC; and
- COSC should agree that the recommendations contained in the IGADF Report be provided to the Defence Review of Inquiries, Investigations and Audits for consideration of a whole-of-Defence response.

EXE DIR CORP STAKHOLDER ENGAGEMENT:

A/FASRA notes that the feasibility study is not funded and offsets from extant budgets would be required to fund this proposal.



DEPARTMENT OF DEFENCE
Australian Defence Force Investigative Service

MINUTE

ADFIS/OUT/2012/ A811 Q (S) 312

IGADF

For information:

VCDF

IG-D

RESPONSE TO DRAFT REPORT OF A REVIEW OF THE NOTIFIABLE INCIDENTS SYSTEM IN DEFENCE

References:

- A. Chiefs of Service Committee agenda paper 60 of 12 *Inspector General ADF Review of the Notifiable Incidents System in Defence* dated 12 Nov 12
- B. DI(G) ADMIN 45-2 - *The reporting and management of notifiable incidents* of 26 Mar 10
- C. Inspector General Australian Defence Force *Report of a Review of the Notifiable Incidents System in Defence* dated 05 Nov 12
- D. Australian Defence Force Service Police Manual, Volume 2, Section 5

1. I thank you for the opportunity to respond to the draft COSC Paper at reference A. I wish to provide comment in respect of the Paper and the proposed changes to reference B.

ADF Investigative Service Workload

2. As previously raised in respect of the report at reference C, paragraph 6 of reference A refers to the 'common complaint by commanders' that the time taken by the ADF Investigative Service to assess whether or not they will investigate a matter detracts from the disciplinary efficacy of subsequent DFDA action. This raises two concerns.

3. Firstly, this 'common complaint by commanders' is not supported by the statistics for the past twelve months which demonstrate that the vast majority of unit referrals are responded to within seven days, with the average time being ten days. This 'common complaint' thus appears to be anecdotal evidence based on past experiences where delay was common which is no longer relevant.

4. Secondly, reference B mandates that commanders are free to commence action if they do not receive a response from the DIA after seven days. The situation is thus that the maximum possible delay occasioned by a commander before the commencement of unit discipline action should be seven days. This does not appear to be a delay so severe as to reduce the disciplinary efficacy of DFDA proceedings.

Recommendation 1 – Raising Referral Threshold

5. Subject to the observations below, I agree with recommendation 1a that only prescribed or serious service offences be mandatorily referred to ADF Investigative Service. The vast majority on non-prescribed matters presently referred pursuant to reference B do not require investigation by ADF Investigative Service so this measure should free up investigative resources to concentrate on matters which do require ADF Investigative Service involvement.

6. I agree in principle with recommendation 1b that matters above the current jurisdictional threshold be reported to ADF Investigative Service. It is necessary, however, that PM-ADF retain the authority to direct that a unit investigation into a matter reported pursuant to reference B (as amended) cease and the matter be referred to ADF Investigative Service for investigation if it is in the interests of Service Discipline for this to occur.

7. This authority is necessary to prevent units from seeking to expedite the discipline process by dealing with ostensibly prescribed matters (such as Acts of indecency without consent or Assault occasioning actual bodily harm) as lesser non-prescribed offences (such as Prejudicial conduct or Common assault). This necessity is also not purely theoretical as the ADF Investigative Service is presently investigating several very serious matters which have only come to light through media reporting, having been initially investigated and dismissed at unit level. This power on the part of PM-ADF would not prevent units from commencing investigations into matters and would thus achieve the desired outcomes of timeliness and command empowerment.

Reasonable Suspicion Test

8. I note that recommendation 1 to reference A is to make reference B 'simpler and more user-friendly'. It is my view that the current test in reference B for the referral of criminal or discipline offences – that there be a 'reasonable suspicion that an offence may have been committed' – both complicates and weakens the instruction.

9. The phrase 'reasonable suspicion' is a legal term of art relating to criminal investigation and the threshold at which certain powers on the part of police can be employed. As such, this term does not belong in an instruction designed to be simple and user-friendly for commanders without specialist legal or policing training. It has become clear to ADF Investigative Service that the term 'reasonable suspicion' is being interpreted differently by different commanders, ranging from the simple fact of an allegation being made to a test demanding that the unit take investigative action far in excess of a simple Quick Assessment in order to satisfy a commander that an offence has occurred.

10. Quite apart from being unnecessarily confusing, the use of the term 'reasonable suspicion' has also allowed operational commanders to avoid reporting very serious accusations on the basis that a Quick Assessment has concluded that the alleged act was not an offence. This has led to ADF Investigative Service investigations into acts which are potential war crimes but which were not reported pursuant to reference B because the commander could claim that the allegation did not raise a 'reasonable suspicion'.

11. It would thus both simplify and strengthen reference B if the term 'raises a reasonable suspicion that an offence may have been committed' was replaced by 'constitutes an allegation that an offence may have been committed'.

Reporting Requirements

12. Whilst I agree with recommendation 1e that a DIA which is investigating a matter provide updates to Service Headquarters and Group Heads, I note that the draft DI(G) produced by IGADF enacts that recommendation through a requirement to notify the referring chain of command as to the progress of an investigation every seven days, and submit a report on that matter to Service / Group heads every month. Given the number of ADF Investigative Service investigations open at any given time – there are 81 as I write this – this is quite an onerous requirement which does not appear to serve any purpose, other than providing Service Chiefs with dozens of additional reports on a monthly basis.

13. Current Service Police policy contained at paragraph 1.123 to reference D requires that an interim report be provided to a member's command and other relevant authorities 60 days after an investigation has commenced if that investigation is not yet complete and thereafter every 60 days. These reports are to contain the status of the investigation, the reasons for the delay and an estimated completion date.

14. I do support recommendation 1e that DIA should provide update reports to relevant Service or Group heads, however these reports are already provided pursuant to reference D and additional reporting should be as required by events or by request from those Service or Group heads. Mandating monthly reporting creates a significant administrative impost on the ADF Investigative Service and, to a lesser extent, Service or Group heads such as Chief of Army and Chief of Navy who will be in regular receipt of large numbers of monthly reports, and will seriously dilute the effect of ADF Investigative Service reporting where there is actually something of significance to report.

15. I ask that the Paper at reference A be reconsidered in light of the above before it is presented to COSC.