



**Submission by the
Acting Commonwealth
Ombudsman**

**INQUIRY INTO WORKPLACE
BULLYING**

**COMPLAINTS OF WORKPLACE BULLYING BY
MEMBERS OF THE
AUSTRALIAN DEFENCE FORCE**

Submission by the Acting Commonwealth and
Defence Force Ombudsman,

Ms Alison Larkins

25 June 2012

Introduction and summary

The Commonwealth Ombudsman under the jurisdiction of the Defence Force Ombudsman (DFO) has the specific role of investigating complaints arising from the service of members of the Australian Defence Force (ADF). Complaints can be made by serving and ex-serving members of the ADF and their families.

Complaints made to the DFO include decisions about postings, promotions, discharge, leave, and handling of Redress of Grievance (RoG) processes, and the DFO can investigate the administrative processes associated with these matters.

The DFO also receives a small number of complaints about disciplinary matters involving possible failures of military justice. These include allegations of misconduct, bullying, bastardisation, harassment, victimisation, threats, intimidation and abuse.

Under s 19C (5)(d) of the *Ombudsman Act 1976*, the DFO is not authorised to investigate actions taken in connection with disciplinary matters in the ADF. Complaints made to the DFO relating to allegations about disciplinary matters are generally referred to the Inspector General, Australian Defence Force (IGADF).

Background

From 1 July 2010 until 25 June 2012 our office received 825 complaints about the Department of Defence (Defence) and the ADF.

Of these 825 complaints, it is difficult to accurately report on the exact numbers of complaints alleging ADF workplace bullying because:

- When complaints are received by our office, our public contact team initially assesses whether the complaint is currently being considered by the ADF, or if the complainant has not yet raised the issue with the ADF. In either case, our office refers the complainant to the relevant agency in the first instance. Limitations in our reporting systems do not allow for ready identification of the complaint issue in these cases.
- Where cases are referred through to the Ombudsman Defence Team for further assessment or investigation, there are limitations on the identification of issues. For example, some complainants are seeking review of RoG decisions which may relate to workplace bullying. However, as our office is concerned with the administrative review of the RoG process, rather than the specific issue addressed in the RoG, our complaint record would not necessarily identify any workplace bullying for reporting purposes.

However, of the 825 complaints received about Defence and the ADF, 30 complaints were received from ADF and former ADF members that specifically and definitively identified workplace bullying as a primary issue and these were referred to the Ombudsman Defence Team for further assessment.

Scope of workplace bullying complaints

The majority of workplace bullying complaints received by our office related to historical events, some more than ten years old. Most of the cases identified intimidation as a major theme, with the alleged perpetrators in a commanding or supervisory role.

Most of these complaints had previously been investigated by the IGADF, the ADF Investigative Service and/or the Directorate of Complaint Resolution within Defence.

In many of these cases, our office did not further assess the workplace bullying issues, as it was determined that the matter had been adequately investigated. Furthermore, it was decided that consideration of a fresh investigation into the administrative processes associated with these complaints would be difficult due to the age of the complaint and lack of contemporaneous evidence or recollection of events, and would be unlikely to result in the remedy the complainant was seeking.

Complaints about ADF Cadets

While our office notes that issues relating to the ADF Cadets may fall outside of the scope of this Inquiry, from 1 July 2010 to 25 June 2012 we received 13 complaints about ADF Cadet matters. Of these, two complainants alleged workplace bullying. One matter related to a minor and was referred to the DLA Piper Review (see below), and the other matter related to an instructor and was investigated by our office.

Ombudsman referral to the IGADF

The statutory appointment of the IGADF outside of the chain of command has a role to independently monitor and assess the health and effectiveness of the military justice system, and is concerned with disciplinary action and investigations under the *Defence Force Discipline Act 1982*. It also provides an avenue by which failures of military justice may be exposed, examined and any injustice remedied.

Unlike the legislated arrangements for cooperation with other oversight agencies set out in Part II of the *Ombudsman Act 1976*, there is no formal relationship between the DFO and the IGADF.

The IGADF and our office have developed an informal understanding on how approaches that may be of interest to both parties might be managed. This includes the transfer of complaints by consent of the complainant. For example, a complaint to our office may contain elements of ADF workplace bullying. Therefore we would refer these matters, with the consent of the complainant, to the IGADF.

From 1 July 2010 to 25 June 2012 our office referred 11 complaints of this nature to the IGADF. In a further five cases, the complainant was advised of the role of the IGADF. Reasons for providing information about the IGADF, rather than directly referring the matter, may include lack of consent to refer, lack of evidence or where workplace bullying issues are a secondary issue within a complaint.

The DLA Piper Review of Allegations of Sexual and Other Abuse in Defence (the Review)

The Review was established in April 2011 following receipt by the Minister of Defence of communications about abuse within Defence following the 'Skype' incident at the Australian Defence Force Academy. The Review's initial function was to review the allegations that had been received by the Minister, but was subsequently expanded to consider all allegations that might be made in response to advertisements that were published inviting submissions.

From 1 July 2010 to 25 June 2012 our office provided advice about the Review to 10 complainants who raised issues with us of workplace bullying in the ADF.

Our office also received 21 complaints from the Review that were referred to us due to a conflict of interest. Under the Review's Terms of Reference, in the event that any member of the Review team or the staff of DLA Piper had had any previous involvement in any of the matters, these complaints would be referred to the Ombudsman's office.

Our office is currently assessing these referred complaints, many of which include allegations of workplace bullying, with a view to providing a report to the Minister in a manner consistent with the methodology used by DLA Piper.

Conclusion

Due to the small number of received complaints and the limitations of the DFO's jurisdiction to investigate ADF disciplinary matters, we do not propose to draw any conclusions about systemic issues or to measure the effectiveness of the policies and initiatives of the ADF relating to the resolution of workplace bullying complaints.