

Senate Foreign Affairs, Defence and Trade Legislation Committee

Answers to written questions on notice  
DEPARTMENT OF DEFENCE

Additional estimates 2001—2002; 20–21 February 2002

Investigation Procedures and Jurisdiction

QUESTION W34

- a) Do military police have concurrent jurisdiction (ie with civil police) to investigate alleged sexual offences by an ADF member in:
  - Australia;
  - the territorial sea?
- b) Is assault actionable under both civil law and military law? If yes, does anyone in the chain of command have the responsibility or discretion to decide which of the two systems an allegation of assault should be investigated under?
- c) Can assault (other than sexual assault) be dealt with under the Defence Force Discipline Act?
- d) What is the definition or job description of ‘service police’? Do service police work in this capacity full-time, or they do they have other roles in addition?
  - Is ‘military police’ a synonym for ‘service police’?
- e) What is the difference between Service Police and investigating officers?
- f) Can service police only investigate offences created under the Defence Force Discipline Act? Or do service police have a role in factual inquiries set up under administrative directions etc?
- g) When commanding officers undertake inquiries and trials relating to alleged misconduct amongst officers they are responsible for, must they do this under the Defence Force Discipline Act? Are there less formal mechanisms for inquiries and trials they can undertake (ie, other than through the DFDA)? What happens if the misconduct complained of does not fit any of the misconduct covered in the DFDA?
- h) What is the relationship between the DFDA and the Defence Force (Inquiry) Regulations? Do these laws represent the limits of the chain of command’s jurisdiction over alleged misconduct by service personnel?
- i) Can an inquiry be initiated by an officer above a Commanding Officer, other than by invoking the Defence Force (Inquiry) Regulations? If yes, what mechanisms or guidelines are available for such inquiries?
- j) Does a Commanding Officer have any discretion regarding how to inquire into, investigate or punish, a complaint of unacceptable behaviour where sexual assault may be involved? In particular, in what circumstances or for what misconduct is counselling considered an appropriate action? Please give examples.
- k) Other than the Defence Force Discipline Act, do service police have roles under any other Defence Acts or guidelines (eg, under the Defence (Inquiry) Regulations)?
- l) Can offences under the Defence Force Discipline Act only be investigated by service police?
- m) What is the relationship between the Defence Force Discipline Act and the Discipline Officer Scheme?
- n) What is the definition used in ADF of ‘indecent behaviour’?
- o) Are any of the offences under the Defence Force Discipline Act criminal offences? If not, how are they described (eg, are they ‘service offences’, ‘offences against military law’ etc)
- p) Please give a brief description of the procedures and stages that must be followed for investigations into any misconduct complaints involving Navy personnel, including allegations of sexual assault. (Use whatever method illustrates this best, eg flowcharts).
  - Are the procedures the same for investigation of misconduct across the three Forces?
- q) Is it routine for the Special Investigations Branch (SIB) to investigate incidents when there has already been an investigation by the responsible commanding officer? If yes, please

**Senate Foreign Affairs, Defence and Trade Legislation Committee**

**Answers to written questions on notice  
DEPARTMENT OF DEFENCE**

**Additional estimates 2001—2002; 20–21 February 2002**

explain what role the SIB is supposed to perform (eg, second-tier investigation into same facts; review of the initial investigators' procedure or findings; investigation into certain aspects of the first report that may be inadequate etc). By what mechanism does the SIB become involved (ie, who decides that it should be involved)?

- r) If an ADF member who alleges that he/she has been sexually assaulted does not want to make a formal complaint (which entails that it be dealt with by the civil police), is any internal action taken at all regarding that allegation?
- s) Does a Commanding Officer or other person responsible for investigating an allegation of assault have the discretion to determine that the misconduct complained of actually amounts to something other than assault, or that the allegation can be better dealt with than by referring it to the civil police?
- t) Is the Commanding Officer that is responsible for a person who has been proven to have behaved unacceptably obliged to notify the Defence Equity Organisation of this instance of unacceptable behaviour? If not, is anyone obliged to?
- u) What is the procedure for ensuring that the Chief of the relevant Service receives reports into misconduct claims that have been investigated? Is there any such procedure? If yes, do investigations (informal or final) into all claims of misconduct have to be communicated to the Chief, and at what stage?
- v) Is there any policy or ministerial guideline that is used by the Minister in deciding whether reports of investigations into incidents that have attracted some public attention are publicly released?
- w) What was the outcome of investigation into claims of sexual harassment made against Commander Tony Gale, captain of HMAS Sydney, in Jan 1999?
  - In particular, how were the claims investigated, and was any disciplinary action taken?
- x) What was the outcome of the military taskforce investigation set up by Lt-Gen Peter Cosgrove into the allegations against Brigadier Wayne Ramsey? What disciplinary action has been taken?
- y) Why was Commander Gale stepped down for the duration of the investigation against him but Brigadier Ramsey wasn't?
- z) What was the outcome of the investigation carried out by the Naval Investigative Service into an incident on HMAS Newcastle in early 2000, where a woman fell overboard in her underwear? Were charges laid?
- aa) Are there any differences between the three arms of the forces in how sexual harassment claims must be dealt with, either in how claims must be made or at investigation stage?
- bb) What trends in harassment has the Navy's Good Working Relationships Project showed? Does this Project still exist, and has it been extended to the Army and Airforce?
- cc) Have any calls been made by men to the Defence Equity Advice Line, in particular about sexual harassment?
- dd) Are there still three different telephone support lines available for the three Services? Has consideration been given to amalgamating them, in line with a 'unified force' approach? If not, or if the decision has been made not to amalgamate, why not?
- ee) Has there been any research into cultural factors that may account for different levels of complaints made about unacceptable behaviour across the three forces?
- ff) Is there any mechanism for receiving feedback from ADF officers about employee satisfaction regarding Defence's handling of sexual harassment claims? Relatedly, has there been any attempt to find out which mode of complaining is utilised most frequently?

Senate Foreign Affairs, Defence and Trade Legislation Committee

Answers to written questions on notice  
DEPARTMENT OF DEFENCE

Additional estimates 2001—2002; 20–21 February 2002

- gg) What was the follow-up action taken to the surveys of six defence bases in Australia in 2000, which found that women in the military are often confronted with pornography, sexually explicit jokes, innuendo and unwanted advances? In particular, what was the follow-up to the finding in these surveys that many women did not report the harassment through official channels?
- hh) With regard to the misconduct involving RAN personnel alleged to have occurred on Diego Garcia, when were the allegations made? Why was no trial conducted? In particular what was the reason/process that meant Vice Admiral Shackleton was notified of the allegations, when they were unproven in any formal ADF discipline process?

**RESPONSE**

- a) In cases of less serious sexual offences in Australia, for example indecent behaviour and indecent assault, military police do have concurrent jurisdiction with the civil police. Policy guidance is contained in DI(G) PERS 45–1 *Jurisdiction under Defence Force Discipline Act—Guidance for Military Commanders*. **A copy of this has been provided to the committee.** Paragraph 5 of the jurisdiction instruction provides that the Services should not normally deal with the sexual offences listed in Annex E to the instruction. These are:
- sexual assault in the first degree;
  - sexual assault in the second degree;
  - sexual assault in the third degree;
  - sexual intercourse without consent; and
  - sexual intercourse with a young person.

The effect of the provision is that sexual assaults are never dealt with by Service authorities. Moreover, in relation to other serious sexual offences such as acts of indecency involving assault, the instruction provides that these offences should normally be referred to the civil authorities. Investigation by the Service police does not exclude a prosecution before the civil courts and an investigation by the civil police does not exclude a prosecution before Service courts.

With regard to the territorial sea, the jurisdictional policy guidance, provided in DI(G) PERS 45–1, is enlarged upon, in the case of sexual offences, by DI(G) PERS 35–3 *Discrimination, Harassment, Sexual Offences, Fraternalisation, and other Unacceptable Behaviour in the Australian Defence Force*. **A copy of this instruction has been provided to the committee.** Paragraph 1 of Annex C to the instruction provides guidance on the management of sexual offences committed in Australia. It states that “Offences committed in Australia include offences committed in the territorial sea”. Therefore, if an offence occurs in the territorial sea, it is treated as if it occurred in Australia.

- b) Yes. Allegations of assault may be prosecuted in the civil courts and, subject to establishing the necessary Service link, a Services member may be prosecuted before a Service tribunal.

Guidance on the resolution of the jurisdictional issue is provided in DI(G) PERS 45-1 *Jurisdiction under the Defence Force Discipline Act—Guidance for Military Commanders*. A decision is to be taken, in accordance with the policy guidance, by commanders in the chain

Senate Foreign Affairs, Defence and Trade Legislation Committee

Answers to written questions on notice  
DEPARTMENT OF DEFENCE

Additional estimates 2001—2002; 20–21 February 2002

of command. In the case where a decision is made to exercise Service authority, the results of any subsequent Service prosecution are to be notified to the relevant civil police authority in the format prescribed by paragraph 12 of the instruction.

- c) Yes. The relevant sections of the *Defence Force Discipline Act* 1982 (DFDA) are:
- s 25 – assault on a superior officer;
  - s 30 – assaulting a guard;
  - s 33 – assault;
  - s 34 – assaulting an inferior; and
  - s 49A – assault against an arresting person.
- d) ‘Service police’ generically means the members of the Security and Naval Police Coxswains Branch, the Royal Australian Corps of Military Police, and the Security Police Branch of the Royal Australian Air Force. Section 3(1) of the DFDA defines ‘police member’ as a service police officer; or a sailor, soldier or airman who is a member of a police corps or service. It also defines ‘service police officer’ as “an officer who is a member of a police corps or service, and includes a provost marshal and a deputy provost marshal”. Part VI of the DFDA—Investigation of Service Offences—also contains a definition of ‘investigating officer’ for the purpose of that Part. The term is defined to mean a police member; or an officer, warrant officer or non-commissioned officer (not being a police member) engaged in the investigation of a service offence.

In relation to the Navy, the Naval Police Coxswains do not work in this capacity on a full-time basis. The approved roles of the Naval Police Coxswains category are discipline and law enforcement, force protection, whole of ship coordination and seamanship and navigation.

In relation to the Army, its Military Police are full time and responsible solely for police-related tasks. In barracks, the Military Police are involved mainly in normal police activity such as patrolling, traffic control and investigations. However, their operational role on exercise and operations also includes military working dogs (physical security and man-trailing), close personal protection (bodyguards), prisoner of war and detainee handling and, among other duties, processing, convoy escort and check points.

In the Air Force, RAAF Security Police have a dual role of law enforcement (policing) and force protection (security/counter-intelligence). Policing/security is a full-time role.

The term ‘Military Police’ relates specifically to the Army Military Police. ‘Service Police’ relates to the police of all three Services.

- e) Service police are trained and specialise in the task of investigating alleged Service offences. Many Service offences involve minor infractions of Service discipline and do not require the investigative skills of Service police. Such matters may be investigated by regimental officers, warrant officers and non-commissioned officers. These latter, if investigating a Service offence, are defined to be ‘investigating officers’ for the purposes of Part VI of the DFDA as discussed in d) above.

Senate Foreign Affairs, Defence and Trade Legislation Committee

Answers to written questions on notice  
DEPARTMENT OF DEFENCE

Additional estimates 2001—2002; 20–21 February 2002

‘Investigating officer’ is a term also applied to members appointed under the Defence (Inquiry) Regulations 1985 to conduct an administrative investigation. Administrative investigations should not be conducted into the commission of an alleged offence.

- f) Service police will ordinarily only investigate offences created under the DFDA, including Territory offences. They do not have a special role in the conduct of administrative inquiries. However, Service police may be involved in administrative investigations under the same provisions as are applicable to other Defence members.

A Territory offence is an offence against:

- a Commonwealth law in force in the ACT other than the DFDA and its regulations or the *Criminal Investigation Act* 1982;
- an offence punishable under the *Crimes Act* 1900 (NSW), in its application to the ACT, as amended or affected by Ordinances in force in the ACT; or
- an offence against the *Police Offences Ordinance* 1930 (ACT); but
- does not include an offence that is an ancillary offence in relation to these Acts.

- g) Trials relating to alleged misconduct can only be conducted under the DFDA but, before any trial is held, there will be an investigation into the alleged misconduct under the DFDA. An administrative inquiry into alleged misconduct may be conducted initially under the Defence (Inquiry) Regulations. During the course of this administrative inquiry, it may become apparent that the alleged misconduct actually could amount to an offence under the DFDA. Should this occur, the administrative inquiry under the Defence (Inquiry) Regulations should cease and an investigation should be conducted under the DFDA. If the misconduct complained of does not amount to an offence under the DFDA, there remains the option of administrative action being taken against the member; for example, termination of appointment or a formal censure.
- h) The DFDA creates Service offences, sets out the machinery for investigating and trying them, specifies the punishments and orders that may be imposed, and provides a review and appeal process. The predominant purpose of the Defence (Inquiry) Regulations is to determine the facts surrounding a particular incident. The Regulations establish the forums and machinery for conducting administrative investigations into incidents such as the crash of a Service aircraft, the overturning of a Service vehicle occasioning death, or allegations of harassment or misconduct.

The DFDA concerns criminal or disciplinary behaviour. The Defence (Inquiry) Regulations provide the machinery to investigate the broad range of other non-criminal, non-disciplinary matters occurring in the ADF. An administrative investigation under the Defence (Inquiry) Regulations may reveal the need for an investigation under the DFDA, and vice versa, depending on the circumstances.

The DFDA does establish the limits of Service, criminal, and disciplinary jurisdiction for the chain of command. The Defence (Inquiry) Regulations permit the chain of command to investigate alleged misconduct by Service personnel when action under the DFDA is not

Senate Foreign Affairs, Defence and Trade Legislation Committee

Answers to written questions on notice  
DEPARTMENT OF DEFENCE

Additional estimates 2001—2002; 20–21 February 2002

initially indicated. However, a less formal means of investigation is available under the Administrative Inquiries Manual, ADFP 202, which is issued by the Chief of the Defence Force under his command authority under the Defence Act 1903.

- i) Any officer in the chain of command may investigate matters relevant to his/her authority. Formal administrative investigations are conducted under the Defence (Inquiry) Regulations. The conduct of informal routine investigations pursuant to the inherent command authority is provided for in the Administrative Inquiries Manual.
- j) No, a commanding officer does not have any discretion where a sexual assault may be involved. In these circumstances, it is not to be dealt with under the DFDA, but handed to the civil authorities in accordance with Annex C to DI(G) PERS 35–3 *Discrimination, Harassment, Sexual Offences, Fraternisation, and other Unacceptable Behaviour in the Australian Defence Force*. A sexual assault occurring in Australia is never to be dealt with under the DFDA. All sexual assaults in Australia are to be handled by civilian authorities.

Annex E to the instruction indicates when counselling may be considered for dealing with the lowest level of sexual offences, which is indecent behaviour. Examples outlined at paragraph 3 of Annex E of indecent behaviour are:

- the respondent touches the complainant on the backside on the outside of the clothes;
- a female respondent who exposes her breasts at a social function; or
- a male respondent who touches his groin suggestively at a social function.

Each case must be considered having regard to all the circumstances. If the complainant has suffered physical or emotional trauma, then it will generally be inappropriate to deal with the sexual offence administratively and counselling will not be considered appropriate.

- k) Further to d) above regarding the roles of the Service police, they are given certain powers under other legislation. These include:
- i. *Defence Act* 1903. Section 82(4) empowers any member of the Defence Forces to arrest any person who:
- makes, or attempts to make, a sketch, drawing, photograph, picture or painting of any part of a defence installation in Australia; or
  - enters or approaches any Defence installation, without authority, with sketching, drawing, photographing or painting materials or apparatus in their possessions; or
  - trespasses on Defence land.
- ii. *Crimes Act* 1914. Sections 89 and 89A allow for the appointment of Service Police as ‘authorised officers’ to deal with offences of trespass on Commonwealth land and the discharge of firearms over Defence land.

Furthermore, Naval Service Police also have certain powers of search, detention, and arrest on Commonwealth property pursuant to the *Naval Defence Act* 1910 and *Naval Establishment Regulation* 101.

Senate Foreign Affairs, Defence and Trade Legislation Committee

Answers to written questions on notice  
DEPARTMENT OF DEFENCE

Additional estimates 2001—2002; 20–21 February 2002

All Service police have a specified role under DI(G) ADMIN 45–2—*Reporting and Investigation of Alleged Offences within the Australian Defence Organisation* – as Defence Investigative Authorities. **A copy of the instruction has been provided to the committee.**

- l) Authorities other than Service police may investigate offences that have a civilian criminal counterpart, for example assault and stealing. Section 101 of the DFDA states that any offence under the Act can be investigated by an officer, warrant officer or non-commissioned officer who does not have to be a member of the Service police.
- m) The Discipline Officer Scheme is created by Part IXA of the DFDA—“Special procedures relating to certain minor disciplinary infringements” covering, for example, absence from place of duty. The discipline officer is not a Service tribunal, and does not conduct a trial. Essentially, for certain minor infringements, the member concerned can indicate a preparedness to accept responsibility for the offence and to have it dealt with by a discipline officer who may then impose a minor punishment, as detailed in section 169F of the DFDA.
- n) DI(G) PERS 35–3—*Discrimination, Harassment, Sexual Offences, Fraternalisation, and other Unacceptable Behaviour in the Australian Defence Force*—defines indecent behaviour as:

"Indecent behaviour is behaviour that offends customary standards of morality. The Defence Force Discipline Act uses the term ‘act of indecency’ to describe indecent behaviour. An act of indecency is an act that is contrary to the ordinary standards of morality of respectable people [R v Harkin (1989) 38 A Crim R 296; R v Court [1989] AC 28] or that offends against currently accepted standards of decency [A-G v Huber (1971) 2 SASR 142]. The behaviour will not be an offence if the complainant has consented to the act.

Indecent has its ordinary plain language meaning [R v Nuzif (1987) 2 NZLR 122 at 127]. Behaviour is more likely to be judged indecent if it has a sexual overtone. Behaviour with a clear sexual overtone includes: exposing the genitalia at the same time as making lewd or suggestive comments; masturbating in the presence of another person. (This behaviour will not be an offence if the complainant consents to it.)”

- o) All offences against the DFDA are defined in section 3(1) of the Act as service offences. A number of the service offences have a civilian criminal counterpart; for example, theft and assault. Similarly, the Territory offences created by section 61 of the DFDA are criminal offences under the general law. It would not be incorrect to refer to offences against the DFDA as ‘offences against military law’.
- p) Allegations of sexual offences are dealt with somewhat differently from other offences. Flow charts governing the management of such offences inside and outside Australia are contained at Appendix 1 to Annex C and Appendix 1 to Annex D of DI(G) PERS 35–3—*Discrimination, Harassment, Sexual Offences, Fraternalisation, and other Unacceptable Behaviour in the Australian Defence Force*. Generally, the reporting and investigation of

Senate Foreign Affairs, Defence and Trade Legislation Committee

Answers to written questions on notice  
DEPARTMENT OF DEFENCE

Additional estimates 2001—2002; 20–21 February 2002

alleged offences are dealt with in DI(G) ADMIN 45–2—*Reporting and Investigation of Alleged Offences within the Australian Defence Organisation*.

While the Defence Instructions indicate that the procedures for investigation of misconduct are common to the three Services, the individual Services each have manuals that specify the methods to be employed in investigating complaints of misconduct.

In relation to the Navy, whenever a complaint of misconduct involving Navy personnel is received, the procedures laid down in DI(G) ADMIN 45–2—*Reporting and Investigation of Alleged Offences within the Australian Defence Organisation*—are followed. Once a Commanding Officer or manager determines that a notifiable incident, defined in paragraph 7 of the instruction as an incident that raises a reasonable suspicion that an offence may have been committed against the DFDA or the criminal law of the Commonwealth, States or Territories, the Commanding Officer or manager is required to report, or make arrangements for the reporting of, the notifiable incident to a Defence Investigative Authority.

A Defence Investigative Authority includes the Service police organisation that reports to the Provost–Marshal of the Navy. The report may be made through an appropriate person in the chain of command, such as a Naval Police Coxswain on board a ship. Subparagraph 8(b) of the instruction makes it mandatory that all alleged offences against a person, including all assaults and sexual offences, are reported.

The investigative authorities are responsible for making decisions about whether or not to investigate notifiable incidents. An investigative authority may determine that a notifiable incident is of a minor nature and does not require investigation. In this case, the investigative authority is responsible for referring the matter back to the Commanding Officer or manager and they, in turn, are required to deal with the matter. The investigative authority will record such decisions in the Defence Policing and Security Management System. This system is the primary computerised management system for recording all reports and investigations of notifiable incidents within Defence.

Only the Head Defence Investigative Authority (ie, the Provost-Marshal of the Navy, Army, or Air Force), their delegates, Service Chiefs, or Deputy Service Chiefs have the authority to cease or suspend investigations once commenced. The Defence Investigative Authority must record the reasons for the decision to cease or suspend an investigation, together with the factors affecting the decision and the identity of the decisionmaker, in the Defence Policing and Security Management System.

The procedure for the initial consideration of incidents and the subsequent action to be taken is laid down in Chapter 6 of Defence Policing and Security Management System Navy Orders. A flow chart of the procedure is set out in Annex A to the chapter. **A copy of Chapter 6 has been provided to the committee.**

- q) If a unit commander commences an investigation into an incident, he/she is required to cease that investigation at the point where it becomes clear that the alleged offence or incident comes under the auspices of DI(G) ADMIN 45–2—*Reporting and Investigation of Alleged*



Senate Foreign Affairs, Defence and Trade Legislation Committee

Answers to written questions on notice  
DEPARTMENT OF DEFENCE

Additional estimates 2001—2002; 20–21 February 2002

*Offences within the Australian Defence Organisation*—and must be reported to the Service police. If the Service police decide to commence an investigation into an offence/incident, all unit investigative action must cease.

The Special Investigations Branch can be informed by a unit when the unit first becomes aware of an incident or when it realises it is beyond their own jurisdiction. Reporting an incident to the Service police does not automatically mean that it will be investigated by them. Matters can be formally referred back to units for their investigation.

On rare occasions where a unit incorrectly completes an investigation into a matter that should have been reported to the Service police, a separate Service police investigation will be conducted, utilising the unit investigation when applicable.

If a matter falls outside military jurisdiction as described in DI(G) PERS 45–1—*Jurisdiction Under Defence Force Discipline Act—Guidance for Military Commanders*, the Service police will formally refer it to the relevant state or federal police.

- r) In the circumstances, it is not possible for the Service police to investigate the sexual assault. However, the Service police may investigate any ancillary offences, for example, breaking into the complainant's room in order to carry out the assault.

In all cases of alleged sexual assault, the Commanding Officer is required to provide all necessary support to the complainant and the respondent, including medical, counselling and legal support.

- s) In so far as a discretion exists as to whether charges should be preferred or not, the ADF has issued Prosecution Guidelines in DI(G) PERS 45–4 *Australian Defence Force Prosecution Policy*. **A copy of this instruction has been provided to the committee.**

In respect of civil offences, relevant Commonwealth, State or Territory police or Directors of Public Prosecutions make prosecution decisions. Decisions in respect of the prosecution of Service offences under the DFDA rest with ADF commanders, not external agencies.

At the lower levels, particularly for less serious Service offences, prosecution decisions will normally be made by unit or command authorities who are best placed to determine the discipline needs of their unit, ship or establishment.

Where charges have been referred by a commanding officer to a convening authority, future decisions in respect of the prosecution of the charges, such as whether they should be referred to a Court Martial or Defence Force Magistrate for trial, rest with the convening authority.

- t) Yes. The names of all personnel who have been found, after due process, to have behaved unacceptably must be reported to the Defence Equity Organisation by the Commanding Officer.

**Senate Foreign Affairs, Defence and Trade Legislation Committee**

**Answers to written questions on notice  
DEPARTMENT OF DEFENCE**

**Additional estimates 2001—2002; 20–21 February 2002**

- u) Sub-paragraph 26(h) of DI(G) ADMIN 45–2 *Reporting and Investigation of Alleged Offences within the Australian Defence Organisation* requires Defence Investigative Authorities (including Service police), without delay, to report details of all serious, sensitive or urgent matters direct to the office of the relevant Deputy Service Chief or the Inspector-General, and in any case, to the Defence Investigative Authority's professional chain of command. Other reports will be made routinely through the chain of command.
- v) Investigations into disciplinary or criminal matters are handled similarly to civilian criminal investigation reports. In short, very little detail may be released in order to avoid prejudicing the investigation and any outcomes. Reports under the *Defence (Inquiry) Regulations 1985* are subject to consideration for release by the Minister under Regulation 63. Relevant considerations include privacy and procedural fairness in the light of any subsequent administrative action.
- w) The incident was investigated by an Investigating Officer who was appointed under the *Defence (Inquiry) Regulations 1985*. The Investigating Officer's report concluded that incidents of unacceptable behaviour involving Commander Gale did in fact occur.

Ultimately, Commander Gale was removed from his command on 22 January 1999 as his conduct was regarded as a serious breach of a Commanding Officer's responsibilities and resulted in the Maritime Commander losing confidence in Commander Gale's ability to lead and command effectively, thereby putting into doubt the ship's ability to fulfil its roles.

After duly considering the Investigating Officer's report and the various options that were available to him, the Chief of Navy determined that the issue of a formal censure was the most appropriate outcome in all of the circumstances.

Disciplinary action against Commander Gale was not taken under the auspices of the DFDA as the inquiry was undertaken under the authority of the *Defence (Inquiry) Regulations 1985* and any evidence obtained pursuant to those Regulations cannot be used as evidence in a court for disciplinary purposes. In order to obtain admissible evidence for disciplinary purposes, a subsequent investigation under the DFDA would have been required. In the light of all the accompanying circumstances, it was determined that such a further investigation was not warranted.

- x) A number of allegations were made against Brigadier Ramsey in October 2000. The Chief of Army referred the allegations to the Head, Defence Personnel Executive for investigation. An exhaustive investigation was completed in May 2001. After considering the reports provided by the Investigating Officers, the Head, Defence Personnel Executive determined that no action, either military or civil, was or is to be taken against Brigadier Ramsey in relation to any of the allegations.
- y) When allegations of wrong-doing are made against a member, consideration is given to whether the member would be unable to carry out his or her duties during an investigation, or whether it would be inappropriate for the member to continue to perform those duties, given the allegations that have been made. Brigadier Ramsey's case related to incidents that

**Senate Foreign Affairs, Defence and Trade Legislation Committee**

**Answers to written questions on notice  
DEPARTMENT OF DEFENCE**

**Additional estimates 2001—2002; 20–21 February 2002**

allegedly occurred a number of years ago, outside his current workplace and before he took up his current appointment. Head, Defence Personnel Executive concluded that Brigadier Ramsey was able to continue to perform his duties while the investigation was being conducted. In the case of Commander Gale, the allegation made against him related to his conduct while in command of HMAS *Sydney*. It was considered by the Chief of Navy that he could not remain in command of that ship while the investigation was being conducted.

- z) The alleged offender, who held the rank of petty officer, was charged with offences of dangerous behaviour, prejudicial behaviour and failure to comply with a lawful general order.

At the trial, the charge pursuant to section 36(2)(a) of the DFDA (dangerous behaviour) was withdrawn and the accused entered pleas of guilty to the other two counts. The accused was sentenced to:

- (in connection with the failure to comply with a lawful general order charge) a rank reduction to a leading seaman and forfeiture of rank seniority ;and
- (in connection with the prejudicial behaviour charge) a fine of \$2,500.

- aa) No. All three Services adhere to the same Defence Instructions and guidance on the management and investigation of unacceptable behaviour complaints.
- bb) The Defence Equity Organisation's database of reported unacceptable behaviour shows that, while the number of reported incidents per head of population is extremely low, the number of sexual offence complaints is increasing steadily. Over the last two financial years, the number of general harassment complaints has also increased, but the number of sexual harassment complaints has fallen slightly. The increased number of complaints could reflect a greater level of confidence that these complaints will be managed appropriately and sensitively.

The Navy's Good Working Relationships program was subsumed by the creation of the Defence Equity Organisation in 1997. The Defence Equity Organisation coordinates and manages the policy and development of all equity and diversity issues in Defence.

- cc) Since 1 January 1997, there have been 265 calls specifically related to sexual harassment. Of these, 144 have been made by men and 121 by women. In every category of unacceptable behaviour, men have made more calls to the advice line than women. This also reflects the gender composition of Defence.
- dd) There are three 1800 numbers that make up the Defence Equity Advice Line service. While each one may retain a single-Service identity, the numbers are answered by the same operators, all of whom are thoroughly trained and proficient in all areas of equity and diversity policy.
- ee) There has been no research on this matter.
- ff) There is no personnel satisfaction measurement regarding management of unacceptable behaviour complaints. However, ADF members who are dissatisfied may submit a redress of

**Senate Foreign Affairs, Defence and Trade Legislation Committee**

**Answers to written questions on notice  
DEPARTMENT OF DEFENCE**

**Additional estimates 2001—2002; 20–21 February 2002**

grievance. If they remain dissatisfied, they may take their complaint to the Defence Force Ombudsman.

All formal complaints of unacceptable behaviour must be submitted through the chain of command, either in oral or written form. However, the emphasis in Defence is for issues to be dealt with at the lowest possible level in the chain of command if the complainant feels confident to do so. If they need support to address the issue, they can be supported by an Equity Adviser.

- gg) A survey on gender and sex-related harassment was conducted at the six initial training establishments in 1998. In 2000, there was a survey of Unacceptable Behaviour in the Australian Defence Force. Since that time, action has been taken with regard to the issues identified in the surveys.

In regard to the Navy, at the Naval College and Navy Recruit School there has been a renewed emphasis on equity and diversity education and training. There has also been considerable focus on selection of staff in both initial training establishments to ensure that staff set an appropriate example of behaviour and remain vigilant to ensure the workplace is free of unacceptable material and behaviour. There has been an increase in the number of female staff. The accommodation areas are single gender. Prominence has also been given to developing non-adversarial and supportive relationships between staff and new entry personnel. This has resulted in new entry personnel being able to comfortably raise any issues they may have with staff.

In regard to the Army, at the Army Recruit Training Centre at Kapooka, recruits and staff receive equity and diversity training. A code of conduct has been developed which is widely promulgated and staff are required to ensure it is adhered to. Unit Standing Orders address the issues of unacceptable behaviour. Each Recruit Training Company has an Equity Adviser with whom the recruits become familiar and from whom they can seek advice.

At the Royal Military College, there is a significant focus on equity and diversity training. Responsibilities are reinforced for both staff and cadets. The Commandant personally addresses these issues with all staff and cadets. Regular equity and diversity evaluations are conducted of the cadet population and trends are closely monitored.

As a means of overcoming reluctance to make formal complaints to the chain of command, the Army has established its Fair Go Hotline. Complaints may be made to the hotline, which then ensures they are investigated.

In the Air Force, 1 Recruit Training Unit and the Officer Training School have expended considerable resources in equity and diversity training. The Commanding Officers outline for all personnel the types of behaviour and attitudes which are required, and those types which will not be accepted. In addition a large number of staff are trained as Equity Advisers. Regular discussions between unit staff and unit chaplain, base medical and psychology sections identify if issues are not being reported. As a result, staff have often taken further action when a member's own handling of an issue has not been the most appropriate response.

**Senate Foreign Affairs, Defence and Trade Legislation Committee**

**Answers to written questions on notice  
DEPARTMENT OF DEFENCE**

**Additional estimates 2001—2002; 20–21 February 2002**

- hh) The matter of the behaviour of the Navy personnel was first discussed with Navy authorities on 28 November 2001.

Neither an investigation, nor a trial, was conducted by the Task Group Commanding Officers as they were not involved in any discussion on alleged misbehaviour ashore and they were not made aware of any specific allegations prior to their departure. Subsequently, the Chief of Navy directed that an investigation be undertaken in accordance with the Defence Force Discipline Act in respect of alleged misbehaviour.

Vice Admiral Shackleton was not notified of the allegations at the time they were made. Notwithstanding this, it is not uncommon for matters which may adversely affect the Navy to be advised to the Chief of Navy.

***Attachments:***

- DI(G) PERS 35–3 *Discrimination, Harassment, Sexual Offences, Fraternalisation, and other Unacceptable Behaviour in the Australian Defence Force.*  
(Not reproduced in printed form; not available from the website. Contact the secretariat for details.)
- DI(G) PERS 45–1 *Jurisdiction under Defence Force Discipline Act—Guidance for Military Commanders*  
(See answer to question 14 for DI(G) PERS 45–1)
- DI(G) ADMIN 45–2 *Reporting and Investigation of Alleged Offences within the Australian Defence Organisation*
- DI(G) PERS 45–4 *Australian Defence Force Prosecution Policy.*
- Chapter 6 of Defence Policing and Security Management System Navy Orders.