

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
BUDGET ESTIMATES 2011-2012

PM&C Portfolio

Department/Agency: Office of the Commonwealth Ombudsman
Outcome/Program: all
Topic: Defence Force Ombudsman

Senator: Bob Brown MP
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Question:

1. Were you aware of poor handling of internal complaints by Defence before the recent well publicised events? Please detail advice and observations that you have given Defence on its internal complaints procedures.

Answer:

The Defence Force Ombudsman recognises that the Australian Defence Force is a large and complex organisation, characterised by distinctive cultural values, hierarchical structures and a diversity of systems that support its roles and missions.

The Defence Force Ombudsman can investigate complaints arising from the service of a member of the Australian Defence Force, but this is limited to the administrative processes associated with decisions affecting the member.

The Australian Defence Force's internal complaint resolution mechanism includes the Redress of Grievance process. Complaints received by the Defence Force Ombudsman include those where the complainant is dissatisfied with delays in resolution of the Redress of Grievance process, and those where the complainant is dissatisfied with the final determinations.

In response to the high number of complaints received by the Defence Force Ombudsman about delays in the Redress of Grievance process in the past three years, the Ombudsman has been working with Defence to develop a range of recommendations aimed at improving the review process. A joint Ombudsman-Defence report on this issue is due to be finalised in August 2011.

In relation to Defence Force Ombudsman investigations of more general complaints, on completion of an investigation the Ombudsman can provide comment to Defence and may also release a public report of the findings.

Public Reports

In June 2007 the Defence Force Ombudsman released Report 04/2007 *Australian Defence Force: Management of Complaints about Unacceptable Behaviour*. This report focused on Defence's written policy about unacceptable behaviour complaints and the level of commitment to this policy within the Australian Defence Force.

Report 04/2007 included 15 recommendations, which offered opportunities to enhance the complaint-handling system, including key areas of record keeping, training, reporting, data collection, the role of inquiry officers and equity advisers, and quality assurance.

In Report 04/2007 the Defence Force Ombudsman assessed the complaint-handling process with reference to the characteristics of good complaint-handling systems identified in the Ombudsman's *Better Practice Guide to Complaint Handling* (April 2009, reprinted April 2011). This Guide identified and analysed the five elements of effective complaint handling, that is: culture, principles, people, process and analysis.

Prior to Report 04/2007, in October 2004 the Defence Force Ombudsman released Report 04/2004 *Complaint by a young person (under the age of 18) of an incident involving unacceptable behaviour at a Navy training establishment in mid-1996*.

Report 04/2004 examined the facts of a complaint made by a young woman about the failure of the Royal Australian Navy to adequately investigate and address issues arising from an incident at a training base in 1996, allegedly involving sexual assault of the young woman by other Navy members. After a detailed investigation of the matters, the Defence Force Ombudsman formed the view that the complaint had been substantiated and made recommendations to the Chief of the Defence Force.

Submissions

As a part of the Defence Force Ombudsman's support of Defence's military justice system, the Ombudsman has made submissions to several inquiries. The most recent of these was the HMAS *Success* Commission of Inquiry (2010), where the Ombudsman provided comment on the system of administrative inquiries in the Australian Defence Force.

Events

In 2008 the Defence Force Ombudsman recognised its 25 year anniversary and released the publication *Defence Force Ombudsman: Twenty-five years of service*. This publication described the changes in 25 years of investigating Australian Defence Force complaints and made observations including about the adequacy of internal agency procedures on complaint handling, administrative investigations and administrative decision making. This theme has also been highlighted in many Ombudsman annual reports.

In 2008 the Defence Force Ombudsman, together with the Inspector-General Australian Defence Force and the Australian Centre for Military Law and Justice, hosted a seminar to examine the military justice system. The seminar examined the challenges arising in administrative oversight of military justice and what is needed to ensure fairness in complaint handling and grievance resolution.

Question:

2. At least six inquiries and reviews into aspects of Defence culture have been announced during the past month or so. Are you involved in any of these investigations?

Answer:

The Defence Force Ombudsman is involved in three of these investigations:

- a) Review of Allegations of Sexual and Other Abuse (and Related Matters) in Defence
- b) Review of Management of Incidents and Complaints
- c) Review of Treatment of Women in the Australian Defence Force.

Review of Allegations of Sexual and Other Abuse (and Related Matters) in Defence

This Review is led by law firm DLA Piper. The Ombudsman's Office is assisting Defence with governance and will undertake quality assurance of the process.

The Review is being conducted in two phases. In Phase One, DLA Piper is reviewing all allegations (more than 1,000) to make an initial assessment of whether the matters alleged have been appropriately managed and to recommend further action to the Minister. The Commonwealth Ombudsman has provided comment on DLA Piper's methodology and scripting and is being provided with status reports and statistical breakdowns.

In the event that DLA Piper or Professor Dennis Pearce have had any previous involvement in any matters referred for review, these matters may, with the consent of the complainant, be referred to the Ombudsman. To date the Ombudsman has accepted three allegations identified as having a conflict of interest, and been advised that there may be some 20 more to be referred to the Defence Force Ombudsman, pending complainant consent.

Phase Two is expected to provide oversight of implementation of recommendations of Phase One and will review Defence's processes for assessing, investigating and responding to allegations to consider with any systemic issues identified in Phase One and to make recommendations about all identified systemic issues.

It is expected that the Ombudsman will provide input and quality assurance in Phase Two.

In the past three years, the number of complaints received by the Ombudsman's office specific to the Australian Defence Force has declined. However, of these complaints, there has been a small increase in the number of complaints specific to issues of unacceptable behaviour (Table 1 refers):

Table 1:

Year	Total complaints received by the Defence Force Ombudsman specific to Australian Defence Force matters	Total complaints received by the Defence Force Ombudsman specific to issues of unacceptable behaviour in the Australian Defence Force
2008-2009	235	4
2009-2010	193	5
2010-2011	176	10*

*It is assumed that some of the complaints received in May/June 2011 were in direct response to media attention about the Review.

Attempts were made to contact all complainants who had lodged complaints with the Defence Force Ombudsman concerning unacceptable behaviour in the period 2006–2011 in order to provide referral details to the DLA Piper Review.

Review of Management of Incidents and Complaints

This Review is led by Mr Geoff Earley, Inspector-General Australian Defence Force.

Mr Earley has met with the Defence Force Ombudsman to ascertain his views and perceptions of Defence's arrangements for the management of incidents and complaints and the Ombudsman is providing a submission in response to this Review.

Issues that the Ombudsman has already commented on include the incident and complaint management policy framework, transparency of processes and the jurisdictional interface between civil and military law.

Review of Treatment of Women in the Australian Defence Force

This Review is led by Major General Orme. The Defence Force Ombudsman intends to provide a submission in response to this Review.