

Chapter 2

Australia's military justice system: an overview

The ADF has a military justice system to support commanders and to ensure effective command at all times. It is vital to the successful conduct of operations and to facilitate its activities during peacetime, including the maintenance of operational preparedness. Establishing and maintaining a high standard of discipline in both peace and on operations is essential for effective day-to-day functioning of the ADF and is applicable to all members of the ADF. The unique nature of ADF service demands a system that will work in both peace and armed conflict. Commanders use the military justice system on a daily basis. It is an integral part of their ability to lead the people for whom they are responsible. Without an effective military justice system, the ADF would not function...Discipline is much more an aid to ADF personnel to enable them to meet the challenges of military service than it is a management tool for commanders to correct or punish unacceptable behaviour that could undermine effective command and control in the ADF. Teamwork and mutual support of the highest order are essential to success. Obedience to lawful direction is an intrinsic requirement expected from the most junior to the most senior members of the ADF.¹

2.1 The military justice system exists to support the peacetime and operational activities of the Australian Defence Force (ADF), serving to maintain discipline and reinforce the chain of command. The military justice system has two distinct but interrelated elements: the discipline system and the administrative system.

2.2 This chapter provides a very brief overview of the main processes and players within the military justice system. Its intention is to inform subsequent discussion rather than provide a comprehensive description of the system.

The Structure of the Australian Defence Force

2.3 Before considering the military justice system, it is useful to provide an initial outline of the structure of the ADF.

2.4 The ADF is constituted under the Defence Act 1903, and its mission is to defend Australia and its national interests.² General control and administration of the ADF resides with the Minister for Defence. The Chief of the Defence Force (CDF) and the Secretary of the Department for Defence (the Secretary) are jointly responsible for the administration of the Defence Force, and are accountable to the

1 General Peter Cosgrove, Chief of Defence Force, *Submission P16*, pp. 5–6.

2 *ibid.*, p. 1.

Minister. CDF has delegated the command of Navy, Army and Air Force to the respective Service Chiefs.³

2.5 The ADF functions through a 'Chain of Command', extending from CDF, through the Service Chiefs, and throughout the entire ADF.⁴ Below the statutorily appointed commanders (the CDF and Service Chiefs), are subordinate single Service and joint Commanders of the major environmental or regional commands and Commanding Officers of joint and single Service flotillas, formations, groups, ships, bases, establishments, squadrons and units. All members of the ADF are under command of some nature.⁵ A Commander is responsible and accountable for those personnel, assets and activities assigned under his or her command.⁶

2.6 The two branches of the military justice system—the discipline and administrative systems—are designed to support this command and organisational structure.

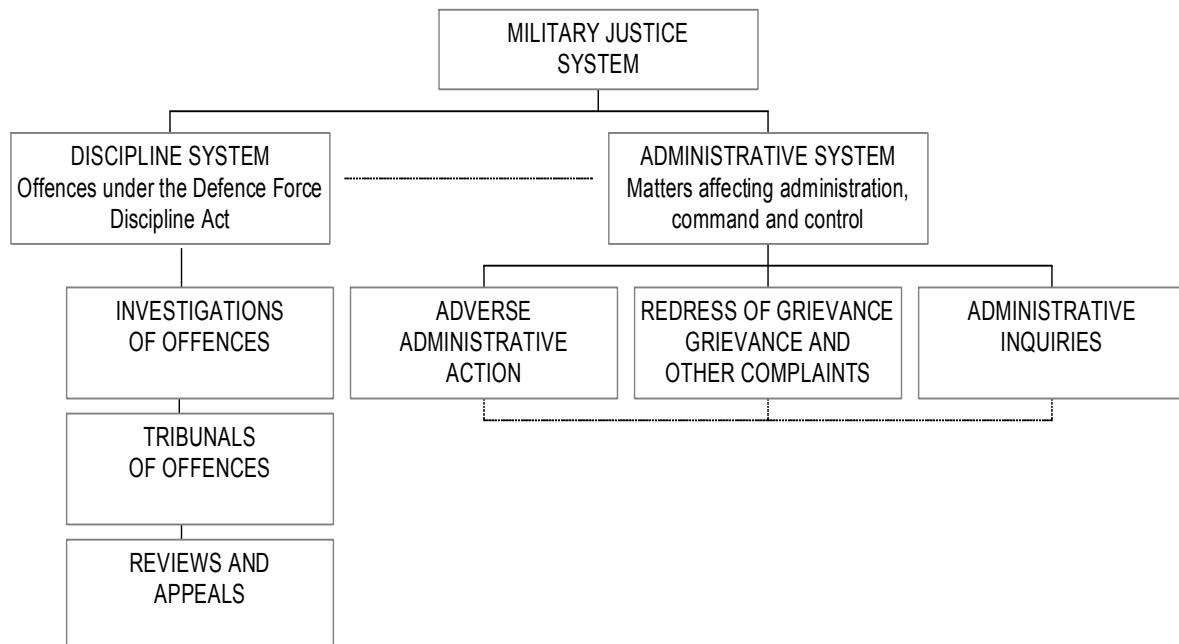


Diagram One: Structure of the Military Justice System.

Source: <http://www.defence.gov.au/mjs/mjs.cfm>

The discipline system

2.7 The discipline system provides a framework within which disciplinary and criminal offences are investigated and prosecuted, regardless of whether offences are

3 *ibid.*, p. 1.

4 *ibid.*, p. 2.

5 *ibid.*, p. 2.

6 *ibid.*, p. 2.

committed during peacetime or operational activities, within Australia or overseas. The *Defence Force Discipline Act 1982* (DFDA) underpins the discipline system, providing for the investigation of disciplinary offences, types of offences, available punishments, the creation of Service tribunals, trial procedures before those Service tribunals, and rights of review and appeal.

2.8 The importance of the discipline system to the overall effectiveness of the ADF was a recurrent theme throughout the course of this inquiry. In both his main and supplementary submissions, General Cosgrove reinforced the operational need for an effective discipline system in response to the unique requirements of military service, stating:

The control and exercise of discipline, through the military justice system, is an essential element of the chain of command. This has not been challenged during the Inquiry and remains a significant distinguishing feature of military justice.⁷

2.9 The Judge Advocate General of the Australian Defence Force, Major-General Justice Roberts-Smith, standing statutorily independent of the ADF chain of command, also endorsed the proposition that the discipline system is vital to the operational effectiveness of the ADF:

The historical need for a discipline system internal to the military force has been recognised by the High Court of Australia in a number of cases—and I think I have referred to them in my submission. So that need, as I would see it, is beyond debate in terms of principle.⁸

2.10 Mr Neil James of the Australian Defence Association also supported the notion that military discipline is essential to the operational effectiveness of the defence forces. He stated:

The association considers the following broad philosophical and practical points are relevant to any review of the military justice system. First, a democracy cannot maintain an effective Defence Force without that force being subject to a code of disciplinary legislation that specifically covers the purposes, situations, conditions and exigencies of war. No extension of civil codes of law can, or necessarily should, meet those requirements. This inquiry, therefore, is surely about improving the Defence Force Discipline Act rather than abolishing it. Second, discipline is both a lawful and an operationally essential component of command.⁹

2.11 General Cosgrove also stated that common standards of discipline for peace and on operations are essential:

7 General Peter Cosgrove, Chief of Defence Force, *Submission P16F*.

8 Major General Justice Roberts-Smith, Judge Advocate General ADF, *Committee Hansard*, 21 June, p. 43.

9 *Committee Hansard*, 9 June 2004, p. 20.

Discipline is integral to the effectiveness and efficiency of professional fighting forces. In preparing for armed conflict during times of peace, members of the ADF must behave to those same exacting high standards which will be demanded in the event of armed conflict

...

In both peace and times of armed conflict, the margin for error or omission without tragic consequences will often depend upon inculcated habits of discipline to instantly obey lawful directions and orders... High standards of discipline are integral to military service during peacetime, particularly for a realistic training environment. Disciplinary standards cannot be dependent on the level of readiness at which a particular unit may be held.¹⁰

2.12 General Cosgrove also asserted that the ability to deal with discipline and criminal conduct under a military code of justice is particularly necessary during operational deployments outside Australia, providing a 'stand alone' code where a civilian jurisdiction may either not apply or does not exist. The discipline system also allows service personnel to be dealt with under Australian law, rather than falling under the jurisdiction of foreign countries or the International Criminal Court.¹¹ The justifications for the maintenance of a separate and distinct military justice system reflect the unique role the defence forces perform and the standards of conduct demanded from service personnel.

Offences under the Defence Force Discipline Act

2.13 Because of the unique functions performed by the ADF, the military justice system differs significantly from forms of regulation encountered in other employment environments requiring a more stringent degree of discipline and proscribing a broader range of behaviours. The DFDA creates three categories of offence:

- military discipline offences for which there are no civilian counterparts (e.g. absence without leave, insubordinate conduct, disobedience of a command, etc);
- offences with a close civilian criminal law equivalent (such as assault on a superior or subordinate);
- civilian criminal offences imported from the law applicable in the Jervis Bay Territory.

2.14 The incorporation of civilian criminal offences into the discipline system enables the extraterritorial application of Australian laws when members are deployed overseas in circumstances where an adequate criminal law framework is absent, or the application of host country law is otherwise undesirable.

10 General Peter Cosgrove, *Submission P16*.

11 General Peter Cosgrove, *Submission P16*.

2.15 Where jurisdictional overlap occurs during peacetime in Australia between the military justice system and the civilian criminal law, jurisdiction under the DFDA can only be exercised where proceedings can reasonably be regarded as substantially serving the purpose of maintaining or enforcing Service discipline. Otherwise, criminal offences or illegal conduct is referred to civilian authorities for investigation and prosecution. Under section 63 of the DFDA, the consent of the Commonwealth Director of Public Prosecutions is required to deal with serious offences (such as murder, manslaughter and certain sexual offences) under military jurisdiction. Where a member is being prosecuted under the civilian criminal justice system, they cannot be subjected to the DFDA for the same or a similar offence.

Service tribunals

2.16 Where offences are prosecuted under military jurisdiction, the DFDA provides for the creation of Service Tribunals with the power to try ADF members. There are three types of tribunal:

- Courts martial (CM);
- Defence Force Magistrates (DFMs); and
- Summary Authorities (SA).

Courts Martial

2.17 There are two levels of Court Martial: General Court Martial (GCM) and Restricted Court Martial (RCM). The procedures for both are essentially the same. The difference between the two lies in the rank of the president, and number of other members.¹² Only military officers can be members of courts martial, and a legal officer acting as Judge Advocate is always present. Members are currently appointed by the convening authority, through authority extending through the chain of command from the CDF. This may change following the implementation of legislation originally scheduled for introduction into Parliament during 2004.¹³ Under the proposed changes, the Registrar of Military Justice (RMJ) will convene courts martial and appoint panel members, although this will still occur through the command chain extending from CDF.¹⁴

Defence Force Magistrates

2.18 DFMs have the same jurisdiction and powers as an RCM and provide an alternative to Courts Martial for dealing with serious offences. DFMs must be military

12 A GCM comprises a President, who is not below the rank of Colonel, and not less than four other members. An RCM comprises a President who is not below the rank of Lieutenant Colonel, and not less than two other members.

13 As at the publishing date of this report, no such legislation had been introduced into Parliament.

14 General Peter Cosgrove, Chief of Defence Force, *Submission P16*, p. 19.

legal officers and are appointed by the Judge Advocate General (JAG), by authority of the chain of command extending from the CDF.

Summary Authorities

2.19 Summary Authorities have limited powers of punishment and are generally used to try less serious offences. There are three levels of SA: Subordinate Summary Authority (SSA), Commanding Officer (CO) and Superior Summary Authority. Only officers of the ADF may be appointed as Summary Authorities. Summary Authorities are also appointed through the chain of command extending from CDF.

2.20 The DFDA also provides for the appointment of Discipline Officers to deal with acts or omissions that are otherwise capable of being charged as Service offences under the DFDA. The Discipline Officer system allows for the expeditious handling of minor infractions committed by non-commissioned rank and officer cadets, and applies where the member admits the misconduct and there is no dispute as to the facts.

Reviews and appeals

2.21 The DFDA provides for a number of review and appeals processes.

2.22 All SSA convictions and punishments must be automatically reviewed by the CO and include an examination by a Service lawyer, who may transmit the review to a reviewing authority.¹⁵

2.23 Service offences convicted by a Service Tribunal are automatically reviewed by a reviewing authority.¹⁶ Further review is possible by lodgement of a petition to the reviewing authority by the convicted member.¹⁷ It is also possible for further review by the relevant Service Chief or CDF.¹⁸

2.24 Convictions (but not punishments) handed down from Courts Martial or DFMs may also be appealed to the Defence Force Discipline Appeals Tribunal (DFDAT).¹⁹ Appeals are only possible on questions of law—appeals concerning questions of fact cannot be made to the DFDAT.²⁰ The Tribunal is composed of Federal, State and Territory Judges appointed by the Governor-General.

15 s. 151 *DFDA* (1982).

16 s. 152 *DFDA* (1982).

17 s. 153 *DFDA* (1982).

18 s. 155 *DFDA* (1982).

19 s. 20(1) *Defence Force Discipline Appeals Act 1955*.

20 s. 20(1) *Defence Force Discipline Appeals Act 1955*.

2.25 Subsequent appeals from a decision of the DFDAT can be lodged, on questions of law only, with the Federal Court.²¹ Appeals from the Federal Court may ultimately be lodged with the High Court.

2.26 The Inspector-General of the Australian Defence Force (IGADF) also has capacity to review disciplinary processes.

Provision of legal assistance

2.27 Throughout the investigation, tribunal and appeals processes, legal advice is available to Service personnel at the expense of the Commonwealth.

Key military justice appointments and agencies

2.28 There are a number of agencies and appointments that perform key roles in the Military Justice System.

The Office of the Inspector-General of the ADF

2.29 The inaugural Inspector-General of the Australian Defence Force (IGADF) was appointed by the CDF in January of 2003. The Office of the IGADF was opened in September 2003. Broadly, the Office of the IGADF is intended to provide a mechanism whereby the military justice system is reviewed and audited, independently of the chain of command. The IGADF reports directly to the CDF, and may investigate matters arising from both the discipline and administrative systems.

2.30 The role of the IGADF is to identify systemic causes of injustice within the military justice system, rather than supplant existing avenues of recourse available to individuals. Any person may make a submission to the IGADF, including current and former ADF members, Australian Defence Organisation (ADO) personnel, family members and friends, and members of the public.²² The IGADF does not have the power to implement measures arising out of his or her investigations. The IGADF's only power is to make recommendations to other authorities who may remedy the matter.²³

The Defence Legal Service

2.31 The Defence Legal Service (TDLS) provides legal support (including policy advice regarding the operation of the military justice system) to the Defence Organisation. Legal officers provide advice and assistance to commanders concerning the decision to charge and prosecute offences.

21 s. 52(1) *Defence Force Discipline Appeals Act 1955*.

22 DI(G) ADMIN 61-1, para. 16.

23 DI(G) ADMIN 61-1, para. 33.

The Director of Military Prosecutions

2.32 The position of the Director of Military Prosecutions (DMP) was created by a Defence Instruction (General) (DI(G)) issued by the CDF and the Secretary, Department of Defence, in July 2003. Currently, the DMP acts in an advisory capacity to convening authorities. It was anticipated that legislation formally establishing the DMP as a statutory appointment would be introduced into Parliament during 2004, but as yet the Government has not done so. If legislation is introduced, the DMP will replace the convening authority as prosecutorial decision maker. The DMP's current functions include conducting prosecutions at court martial and DFM trials and representing the ADF at appellate trials and courts. The DMP may also provide advice to commanders concerning whether to prosecute an individual.

The Registrar of Military Justice

2.33 The Registrar of Military Justice currently deals with the case management of disciplinary justice trials, and is intended to assist in the reduction of delays in the military justice system. Legislative alteration to the role of the RMJ was intended during 2004. When the DMP replaces the convening authority as prosecutorial decision maker, the RMJ will assume responsibility for convening courts martial and DFM trials. It is intended that the RMJ will take on a function analogous to a civilian registrar or court administrator.

The Judge Advocate General

2.34 The Judge Advocate General (JAG) has oversight and control over the operation of the judicial aspects of the discipline system. Under the terms of the DFDA, the JAG must be a judge of either the Federal or a state Supreme Court. The functions of the JAG are to:

- provide an annual report to the Minister Assisting the Minister for Defence on the operation of the DFDA;
- make procedural rules for Service tribunals;
- act as the final avenue of legal review of proceedings within the ADF; and
- appoint DFMs, Judge Advocates and other legal officers.

Chief Judge Advocate

2.35 The statutory position of Chief Judge Advocate (CJA) was created in 2003. The CJA provides administrative assistance to the JAG, and must be a member of the panel of Judge Advocates.

Judge Advocates

2.36 Judge Advocates (JA) are appointed by the JAG, and are Permanent or Reserve legal officers. They are nominated to courts martial to advise, rule and direct on matters of law.

Service Police

2.37 Each of the three Services has a police organisation. All three organisations report to the Provosts-Marshal of the Navy, Army and Air Force, and remain under the ultimate command of the respective Chiefs of Service. Service police are responsible for the prevention, detection and investigation of all offences committed by ADF members.

Administrative system

2.38 The administrative system deals with the decisions and processes associated with the control and administration of the ADF. In a similar vein to structures in many organisations, it is designed to encourage Service personnel to maintain high standards of professional judgement, command and leadership.

2.39 The administrative system broadly comprises an inquiry system, adverse administrative action in response to member conduct, and internal and external review processes.

2.40 It should be emphasised that the administrative system should not operate as a mechanism through which disciplinary offences committed by individuals are punished, nor should it be used to investigate whether ADF members have committed an offence against the DFDA or civilian criminal laws. The administrative system is primarily aimed at improving ADF processes—any adverse findings or recommendations concerning the conduct of members are incidental to this primary purpose.

Administrative inquiries

2.41 Administrative inquiries are conducted to establish the facts surrounding incidents that may affect the ADF. They are initiated by COs for the purpose of determining what happened and why, in order that appropriate action may be taken to prevent the recurrence of similar incidents, or policy and/or systemic improvements may be made. There are two main documents providing guidance and instruction concerning the conduct of administrative inquiries—*The Guide to Administrative Decision Making*²⁴ and *Administrative Inquiries Manual*.²⁵

24 ADF Publication 06.1.3.

25 ADF Publication 06.1.4.

- 2.42 There are five types of administrative inquiry:²⁶
- a Routine Inquiry;
 - an Investigating Officer (IO) Inquiry under the *Defence (Inquiry) Regulations (D(I)R)*;
 - a Board of Inquiry (BOI) under the D(I)R;
 - a Combined Board of Inquiry (CBOI) under the D(I)R; and
 - a General Court of Inquiry (GCOI) under the D(I)R.
- 2.43 Each of these types of inquiries has four distinct parts:²⁷
- the 'Quick Assessment,' where the nature and gravity of the occurrence, the extent of information required, and type of inquiry needed is determined;
 - the Inquiry;
 - decisions on recommendations arising from the inquiry; and
 - implementation of recommendations.

The Routine Inquiry

2.44 Routine Inquiries derive their authority from the powers of command of the CO and are the only inquiries not established under the D(I)R.²⁸ They typically involve less complicated matters, and are conducted with as little formality as possible.

Investigating Officer

2.45 IO inquiries deal with matters of a more serious nature than those under routine inquiry, and are governed by the provisions of the D(I)R. They are commonly used by COs to investigate significant matters concerning the ADF, but are not empowered to conduct a criminal or disciplinary investigation nor conclude that an offence has been committed.²⁹ COs, acting in the capacity of Appointing Authority (AA), may appoint a member of the ADF or a civilian as an IO, and may also appoint one or more officers to act as inquiry assistants.

Boards of Inquiry

2.46 BOIs may be appointed by the CDF, the Secretary, and the Service Chiefs or their delegates. They are empowered to inquire into any matters concerning the

26 ADF Publication 06.1.4, para. 1.10.

27 ADF Publication 06.1.4, para. 1.11.

28 ADF Publication 06.1.4, para. 1.21.

29 ADF Publication 06.1.4, para. 6.4.

administration or aspects of the command and control of the ADF, and are typically convened to examine serious incidents. BOIs are not empowered to conduct a criminal or disciplinary investigation or conclude that an offence has been committed.³⁰ BOIs must have at least two members, one of whom must be an officer. Suitably qualified civilians may also be appointed.³¹

Combined Boards of Inquiry

2.47 CBOIs are established to inquire into matters concerning the ADF and the armed forces of another country. The Minister for Defence or his/her delegate is the AA. This form of inquiry has not been used to date.³²

General Courts of Inquiry

2.48 GCOI are reserved for the most serious incidents affecting the ADF. The *Administrative Inquiries Manual* provides:

A General Court of Inquiry may be appointed where there exists a serious national interest in the matters to be the subject of the inquiry and there is a likelihood that an inquiry by the Defence Force may be perceived to be biased because of the involvement, in the matters to be the subject of the inquiry, of the most senior officers of the Australian Defence Force.³³

2.49 A GCOI is presided over by a Judge or experienced legal practitioner, and is appointed by the Minister for Defence. To date there has been no appointment of a General Court of Inquiry.³⁴

Safeguards and rights

2.50 There are a number of safeguards and rights surrounding the conduct of administrative inquiries. Notably, basic administrative law principles have to be conformed with, including affording natural justice to members that might be adversely identified during the course of an inquiry. Such members are entitled to legal advice at the Commonwealth's expense. Evidence collected during administrative inquiries cannot be used for disciplinary or criminal proceedings, with a statutory exception relating offences against the D(I)R.

2.51 Upon completion of an inquiry, a report must be submitted to the AA. The AA must consider the report and ensure that it adequately addresses the terms of reference (TOR), that the evidence supports the findings and the recommendations are

30 ADF Publication 06.1.4, para. 7.4.

31 ADF Publication 06.1.4, para. 7.7.a.

32 General Peter Cosgrove, Chief of Defence Force *Submission P16*, p. 24.

33 ADF Publication 06.1.4, para. 8.9.

34 GEN Peter Cosgrove, Chief of Defence Force *Submission P16*, p. 24.

appropriate.³⁵ As part of this initial review process, the AA must obtain advice from a legal officer. The Legal Officer must review the report and consider whether the investigation satisfactorily addresses the TOR, whether the conclusions are supported by the evidence, and any other relevant matters.³⁶

2.52 Where factual findings are made regarding the professional conduct of a member, and adverse administrative action is recommended, that member must be issued with a Notice to Show Cause before any decision is taken to impose adverse administrative action. The Notice should outline the facts and circumstances which are relied upon or taken into account in the decision to initiate the adverse administrative action and any other relevant factors, enclose all evidence, and provide an opportunity for the member to reply.³⁷ Once the member has responded, the response must be reviewed and a decision made regarding whether or not to proceed with the adverse administrative action. Where adverse administrative action is pursued, review processes are outlined below.

2.53 Where it appears that a member may have committed a disciplinary offence, all or part of an inquiry may be suspended, pending a decision on whether the matter ought to be referred to the Service or civilian police for investigation. Referral may also occur at the conclusion of an inquiry.

The role of civilian authorities

2.54 All injuries or deaths occurring in Australia may be subject to criminal investigation by civilian police or coronial inquiry, irrespective of whether the ADF has conducted its own disciplinary investigation or administrative inquiry.³⁸ Where possible, the reports of the relevant ADF investigation or inquiry will be made available to the relevant civilian authority.

Adverse administrative action

2.55 Adverse administrative action is taken in response to a member's behaviour or performance, in circumstances where conduct falls below the standards required by the ADF, but does not constitute criminal conduct or warrant the initiation of disciplinary proceedings under the DFDA.³⁹

2.56 Adverse administrative action varies in nature, and includes formal warning, censure, removal from duty, reduction in rank, or discharge. It may follow from a DFDA matter, a civilian criminal charge, or an administrative inquiry where the facts

35 *Administrative Inquiries Manual*, para. 5.39.

36 *Administrative Inquiries Manual*, para. 5.40.

37 DI(G) PERS 35-6 Annex D, paras 1-8.

38 General Peter Cosgrove, Chief of Defence Force, *Submission P16*, p. 27.

39 DI(G) PERS 35-6, para. 2.

demonstrate that conduct has occurred which is unacceptable for a member of the ADF.

2.57 Policy guidance and/or instruction concerning the initiation of adverse administrative action is found in *The Guide to Administrative Decision Making*.⁴⁰

Internal review mechanisms

2.58 There are a number of internal mechanisms available to review administrative system processes. In the first instance, the ADF prefers that members seek resolution of complaints at the lowest level possible through normal command channels and administrative arrangements.⁴¹ Where the complaint cannot be resolved in this manner, members may lodge a Redress of Grievance (ROG) and/or make a complaint to the IGADF.

Redress of Grievance

2.59 The ROG process provides a formal mechanism whereby complaints may be investigated and reviewed, and where necessary, wrong or unfair decisions or actions may be corrected.⁴² Oversight of the ROG system is vested in the Director of the Complaint Resolution Agency (CRA) and the Secretary.⁴³

2.60 A complaint through the ROG system may only be made by a member of the ADF, and must be submitted to the member's CO.⁴⁴ The CO must then conduct an investigation into whether grounds exist to support the complaint, and where possible, resolve the matter.⁴⁵ Where a member is unsatisfied with the result of the CO's investigation, he or she may request that the complaint be referred to the relevant Service Chief, at which time the complaint is forwarded to the CRA. The CRA allocates a case officer to review the complaint on the Service Chief's behalf.

2.61 If the complainant is an officer or warrant officer, and is unsatisfied by the Service Chief's review, the member may request an additional review by CDF.

Inspector General ADF

2.62 As outlined above, the IGADF has the capacity to investigate complaints relating to the operation of the administrative system. In unusual circumstances, a complaint may be lodged with the IGADF irrespective of whether an ROG has been

40 ADF Publication 06.1.3.

41 DI(G) PERS 34-1, para. 1.

42 DI(G) PERS 34-1, para. 1.

43 DI(G) PERS 34-1, para. 3.

44 DI(G) PERS 34-1, para. 6.

45 DI(G) PERS 34-1, para. 7.

lodged with a member's CO. This usually occurs when the member feels unable to report concerns to, or has lost confidence in, his or her chain of command.⁴⁶

External review mechanisms

2.63 In addition to the internal review mechanisms available to ADF members, there are a number of external review mechanisms.

Defence Force Ombudsman

2.64 The Defence Force Ombudsman (DFO) is empowered to investigate complaints relating to military inquiries and administrative action, and receives a variety of complaints arising directly from military justice issues. The DFO also receives complaints concerning a broad range of other non-military justice issues arising from the management of the Defence organisation.⁴⁷

2.65 It is standard practice for the DFO to advise complainants to first utilise the ROG process. The DFO does, however, have the capacity to investigate if circumstances strongly indicate that a member may be unable to use the ROG process. Concerned parents, partners or friends of members may also complain to the DFO, but before undertaking an investigation, the DFO requires compelling evidence concerning a member's inability or unwillingness to pursue the issue on his or her own behalf.⁴⁸

Other processes of review

2.66 A member may also lodge a complaint with the Human Rights and Equal Opportunity Commissioner, may make Ministerial representations, and may also appeal to the Federal Court.

Relevant Organisations

2.67 In addition to the organisations and offices outlined above, there are a number of other entities that are relevant to this inquiry.

The Defence Community Organisation

2.68 The Defence Community Organisation (DCO) is the primary means through which Defence provides social work and support services to the families of ADF members. It also supports the ADF chain of command to care for Service personnel.⁴⁹ The DCO has some 230 employees working as a network of teams throughout

46 DI(G) ADMIN 61-1, para. 17.

47 Prof John McMillan, Defence Force Ombudsman, *Submission P28*, p. 2. (Note: the DFO is not empowered to investigate any action taken under the auspices of the Discipline system.)

48 Professor John McMillan, Defence Force Ombudsman, *Submission P28*, p. 2.

49 General Peter Cosgrove, Chief of Defence Force, *Submission P16F*, pp. 34-35.

Australia. It coordinates the ADF's efforts when a family loses a serving member or is in a crisis situation, providing a broad range of support services and acting as the liaison point between the ADF and the families. The DCO also supports the creation of a network of support for Defence families more generally.

Complaints Resolution Agency

2.69 The Complaints Resolution Agency (CRA) conducts administrative reviews of ROGs referred by ADF members for consideration by the CDF and the three Service Chiefs.⁵⁰ It will only investigate a matter if it has been initially dealt with by the CO.

Policy Documents

2.70 The framework within which the military justice system operates comprises legislation, regulations, and policy documents. The main documents relevant to the terms of this inquiry are listed below.

Defence Force Discipline Act

2.71 The DFDA provides the legislative framework for the Discipline system. It creates tribunals to try members of the Defence Force on charges of Service offences against the Act, and also provides these tribunals with powers to try civilians accompanying the Defence Forces on operations. The act creates a system of appeals, and also covers related matters such as:

- investigation of offences;
- suspension from duty; and
- powers of arrest.

2.72 The DFDA is complemented by the *Discipline Law Manual* (DLM). The DLM provides Defence Force members with basic guidance on the law relating to the investigation, hearing and trial of Service offences, the review of proceedings of Service tribunals, and petitions and appeals against Service tribunals.⁵¹

Defence Regulations

2.73 The Defence (Inquiry) Regulations 1985 set down the provisions governing general courts of inquiry, boards of inquiry, combined boards of inquiry, investigating officers and inquiry assistants and inquiries by the Inspector-General of the Australian Defence Force. Part XV of the Defence Force Regulations 1952 contains provisions relating to the redress of grievance.

50 Annex A to DI(G) PERS 34-1.

51 *Discipline Law Manual* ADFP 201, para. 1.14.

Administrative Inquiries Manual (ADF Publication 06.1.4)

2.74 The Administrative Inquiries Manual provides a succinct but comprehensive description of the entire ADF system for the conduct of administrative inquiries. It contains general guidance on methodology, highlights some areas where inquiries could potentially encounter difficulty, and provides guidance concerning the selection of the most appropriate type of administrative inquiry.

Defence Instructions

2.75 Defence Instructions (DI)s are issued by the Secretary and CDF under s9A of the Defence Act 1903. They outline procedures and policies that are to be implemented throughout the ADF. The Chiefs of Army, Navy and Air Force may also issue Defence Instructions applicable within their respective Service. Service DIs must, however, be consistent with the DIs issued by CDF and the Secretary.

2.76 Having outlined the basic military justice framework, attention now turns to the issues arising in the administrative and disciplinary systems.

Part 2

The disciplinary system

Having provided an overview of the military justice system, Part 2 of the report discusses the issues arising in the disciplinary context.

General Peter Cosgrove, Chief of Defence Force, described discipline within the Defence Forces as:

Essential to command—a non-negotiable requirement for operational effectiveness. For this reason, the control of the exercise of discipline, through the military justice system, is an essential element of the chain of command, from the most junior leader upwards... discipline is much more an aid to ADF personnel to enable them to meet the challenges of military service than it is a management tool for commanders to correct or punish unacceptable behaviour that could undermine effective command and control in the ADF.⁵²

Part 2 seeks to identify the various issues surrounding the way discipline is meted out in the ADF. It examines the three major phases of the disciplinary process:

- the investigation of suspected criminal activity by the Service police;
- the provision of legal advice for the initiation and conduct of prosecutions, and the defence of the accused; and
- the structure of disciplinary tribunals.

52 General Peter Cosgrove, Chief of Defence Force *Submission P16*, paras. 2.2–2.4.

