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SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES
COMMITTEE

Reference: Effectiveness of Australia's military justice system

MONDAY, 21 JUNE 2004

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SENATE
FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE
Monday, 21 June 2004

Members: Senator Hutchins (*Chair*), Senator Sandy Macdonald (*Deputy Chair*), Senators Hogg, Johnston, Marshall and Ridgeway

Substitute members:

Senator Bartlett to replace Senator Ridgeway for the committee's inquiry into the effectiveness of the Australian military justice system

Senator Chris Evans to replace Senator Marshall for the committee's inquiry into the effectiveness of the Australian military justice system

Participating members: Senators Abetz, Boswell, Brandis, Brown, Carr, Chapman, Collins, Conroy, Coonan, Denman, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fifield, Forshaw, Harradine, Harris, Knowles, Lees, Lightfoot, Mackay, Mason, McGauran, Murphy, Nettle, Payne, Santoro, Stott Despoja, Tchen, Tierney and Watson

Senator Bartlett for matters relating to the Defence and Veterans' Affairs portfolio

Senators in attendance: Senators Chris Evans, Hogg, Hutchins, Johnston, Sandy Macdonald and Payne

Terms of reference for the inquiry:

To inquire into and report on:

1. (a) the effectiveness of the Australian military justice system in providing impartial, rigorous and fair outcomes, and mechanisms to improve the transparency and public accountability of military justice procedures; and
(b) the handling by the Australian Defence Force (ADF) of:
 - (i) inquiries into the reasons for peacetime deaths in ADF (whether occurring by suicide or accident), including the quality of investigations, the process for their instigation, and implementation of findings,
 - (ii) allegations that ADF personnel, cadets, trainees, civilian employees or former personnel have been mistreated,
 - (iii) inquiries into whether administrative action or disciplinary action should be taken against any member of the ADF, and
 - (iv) allegations of drug abuse by ADF members.
2. Without limiting the scope of its inquiry, the committee shall consider the process and handling of the following investigations by the ADF into:
 - (a) the death of Private Jeremy Williams;
 - (b) the reasons for the fatal fire on the HMAS Westralia;
 - (c) the suspension of Air Cadet Eleanore Tibble;
 - (d) allegations about misconduct by members of the Special Air Service in East Timor; and
 - (e) the disappearance at sea of Acting Leading Seaman Gurr in 2002
3. The Committee shall also examine the impact of Government initiatives to improve the military justice system, including the Inspector General of the ADF and the proposed office of Director of Military Prosecutions.

WITNESSES

COTTON, Colonel Anthony James, Director of Mental Health, Department of Defence	2
EACOTT, Brigadier Leonard Sidney, Principal Chaplain, Army, Department of Defence.....	24
McDERMOTT, Air Commodore Peter John, Director-General of Reserves, Royal Australian Air Force, Department of Defence.....	45
ROBERTS-SMITH, Justice Leonard William, Major General, Judge Advocate General, Australian Defence Force	36

Committee met at 4.17 p.m.

CHAIR—I declare open this meeting of the Senate Foreign Affairs, Defence and Trade References Committee. Today, the committee will conduct its seventh public hearing into the effectiveness of Australia's military justice system. The terms of reference were referred to the committee on 30 October 2003, and the report is due to be tabled in the Senate on 5 August 2004. The submissions from today's witnesses have been published by the committee and copies are available from the secretariat.

Today's hearing is open to the public, but I should warn the audience that the committee may ask for the room to be cleared to hear evidence in camera if a witness makes that request and the committee agrees. However, the committee prefers as far as possible to hear evidence in public. I point out that the hearing of evidence in camera does not preclude its later publication by the Senate or by the committee, but witnesses would be advised of such action in advance. Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. It is important for witnesses to be aware that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate.

An officer of a department of the Commonwealth will not be asked to give opinions on matters of policy. However, they may be asked to explain government policy, describe how it differs from alternative policies and provide information on the process by which a particular policy was arrived at. Witnesses will be invited to make a brief opening statement to the committee before the committee embarks on its questions.

[4.20 p.m.]

COTTON, Colonel Anthony James, Director of Mental Health, Department of Defence

CHAIR—Welcome. I invite you to make an opening statement.

Col. Cotton—The purpose of my opening statement is to provide you with some context for some of the questions that you might have for me today. I am the Director of Mental Health for the Australian Defence Force and also the Director of the Defence Force Psychology Organisation. I work within the Defence health services branch. I am responsible to the Director General of the Defence Health Service for implementing the ADF mental health strategy. I am a psychologist with over 20 years experience in the military and my area of expertise is in the application of psychology in the workplace.

ADF commanders have always been deeply concerned about the ability of their troops to do the job that is required to meet the expectations of the Australian people. The mental health of ADF members is a key element of this and the ADF has provided a broad range of mental health services to its people over many years. However, in its first comprehensive review of the health of its people, the *ADF Health status report (2000)*, we identified that delivery of these services was not well coordinated and the need for a comprehensive strategy for the delivery of mental health care to the ADF was identified. The ADF mental health strategy was developed as a result. Funding was provided in early 2002 and the strategy was formally launched by Minister Vale in May 2002.

The ADF mental health strategy represents a major change in direction for the delivery of mental health care to the ADF. It is based on the Australian national mental health policy and uses a public health model of mental health service delivery. This means that it is focused on health promotion and preventing mental ill health rather than simply responding to ADF members who become unwell. This does not mean that we do not provide treatment to individuals who become unwell, but we are putting a lot more effort into stopping individuals getting to that point. This has been a major shift for both ADF health providers and commanders. The strategy seeks to move the response to mental health problems forward and give ADF members and commanders the knowledge and support they need to head off problems before they start. But mental health is a complex issue, particularly in as complex a workplace environment as the ADF and with a work force as diverse as ours. As a result, we have identified a set of nine principles for how we will deliver mental health to the ADF.

First, mental ill-health can be the result of either a diagnosable mental disorder or a broader set of mental health problems. Second, the management of mental health in the ADF is a command responsibility and any mental health services delivered to the ADF must support commanders in the exercise of their responsibility. Third, mental health care will be provided to ADF personnel both in the field and in the barracks environment. Fourth, the ADF mental health strategy will emphasise mental health promotion and the prevention of mental disorders or mental health problems. Fifth, ADF members should be able to receive appropriate evidence based treatment for any mental health issue irrespective of its cause. Sixth, any mental health care provided in the ADF must include consideration of family issues. Seventh, access to some

level of ongoing mental health care for service related mental health problems should be available to all members who discharge from the ADF. Eighth, all mental health service providers in the ADF are to be appropriately trained, supervised and credentialed. Finally, the ADF must conduct or sponsor mental health research and mental health surveillance that supports the provision of evidence based mental health services that are properly evaluated.

These principles are being put into a policy document that will then inform commanders and ADF personnel of what they can expect from the mental health care provided by the ADF. These principles will also guide ADF health and allied health professionals in the provision of mental health care to ADF personnel. There are eight key initiatives within the ADF mental health strategy. These initiatives are what we are delivering. I would like to describe briefly what we have been doing in each of these.

The first initiative is to improve mental health literacy within the ADF. Health literacy is fundamental to any public health program as it underpins the ability to move services forward and to empower individuals. A good level of understanding of the risk and protective factors for mental health means that individuals will be better able to look after themselves and their mates. Key activities in this initiative include the development of a comprehensive range of health promotion literature and the presentation of mental health education at a broad range of ADF training courses, including command courses for each of the three services. I have some examples of our promotional material coming along a little bit later.

The next initiative is to improve the integration of mental health care in the ADF. As I said earlier, one of the features of mental health care that we have provided in the past is that it has been fragmented and spread across a number of providers. We have done a great deal to ensure that our work is much more multidisciplinary now, so my directorate has representatives of all of the key professions and we have had considerable success in getting multidisciplinary acceptance of various policies and concepts for service delivery. To better meet the health care at the local level, we have established 25 regional mental health teams across the ADF where service providers and commanders meet regularly in order to ensure that the mental health care provided in the region best meets the needs of our people.

CHAIR—Did you say that there are 25 mental health teams?

Col. Cotton—Yes, there are 25 regional mental health teams. Despite all of our health promotion efforts we know, however, that some individuals will still become unwell. While our focus is on preventing this, we must provide high-quality, evidence based treatment for ADF members. So our next initiative is to enhance the treatment services we are providing. We aim to ensure that the care we provide is based on research that shows that it does contribute to the health of the individual and does no harm. For example, we have recently changed the way we respond to potentially traumatic events or critical incidents to a model that the current research says is most effective and is better tailored to the specific needs of individuals involved in an incident at their workplace. We are also going to trial a group intervention program later this year with returned peacekeepers who are experiencing difficulty readjusting to life in Australia. We expect that this program will provide immediate relief from the types of symptoms that they report as well as possibly contributing to a reduction in the rates of post traumatic stress disorder that we might see in this group.

One of the critically important elements of the strategy, particularly as we move from a traditional model of mental health service delivery to a public health model, is to ensure that we have a consistent training framework for our multidisciplinary work force. This means that we can ensure that all of our providers have the skills needed to provide frontline interventions and that an ADF member can get the same level of service no matter where people serve, whether in Australia or overseas.

Research and surveillance are fundamental to the strategy—the former to ensure that we are providing evidence based treatment and other interventions, the latter for helping us to gain an understanding of the nature of the problems that we are experiencing in the ADF. Key activities in this initiative are the introduction of a system of routine mental health screening and the proposed conduct of a comprehensive mental health prevalence study in the ADF.

The concept of wellbeing is a broad one that nevertheless underpins the mental health of the ADF and its members. An initiative in the strategy is to examine wellbeing as a concept and, in particular, the relationship that wellbeing has to resilience—that is, an individual's ability to remain well in the face of adversity—and how we might be able to enhance wellbeing and hence resilience, in the ADF. We have sponsored an Australian Defence Organisation wellbeing forum, which brought together key contributors to wellbeing in the ADO—that is, ADF and Defence—and we have conducted some research to gain an understanding of how ADF members feel about their wellbeing.

Problematic substance use, whether alcohol, tobacco or illicit drugs, is an issue for the entire community, and the ADF is not immune to this. In fact, the nature of the ADF population—mostly employed young men who are living away from home—means that the organisation could be considered more likely to experience these problems than the general community. As a result, the ADF has been very active in addressing these issues of its members through the establishment of the ADF Alcohol, Tobacco and Other Drugs Service. This is a major initiative within the mental health strategy that provides the ADF with a multilevel response to problematic substance use that is evidence based, consistent with the National Drug Strategy and informs and supports the ADF's administrative response to problematic substance use. Key activities have been a major health promotion campaign, the introduction of routine screening for problematic alcohol use, active capacity building in frontline ADF health and allied health providers and the establishment of relationships with a variety of external agencies to ensure that ADF members get the best, most up-to-date care possible.

The final initiative in the ADF mental health strategy is the ADF Suicide Prevention Program, SPP. Suicide is a tragedy that has always been a major concern for ADF commanders. While our suicide numbers are small, our rates of suicide have at times exceeded those of the general community. The SPP provides the ADF with a comprehensive approach to suicide related behaviour. It has drawn on the expertise of ADF providers as well as that of the US military and Lifeline Australia to ensure that we are giving the ADF the most current, comprehensive and appropriate care possible. We are midway through a trial of an all hours support line that provides ADF members and their families with a single telephone number anywhere in Australia that will provide immediate support if required and then direct the caller to the most appropriate ADF service provider. We have recently entered into a contract with Lifeline Australia to provide multilevel suicide awareness and intervention training to the entire ADF, from recruit training to senior commanders. We have also developed a consistent approach to investigating the mental

health aspects of any suicide related behaviour in order to help us respond to the immediate needs of the ADF member and to understand and respond better to the suicide risk factors that all ADF members face, noting that most of these are the same as those experienced by the general community.

In concluding, let me say that the ADF mental health strategy is a comprehensive, proactive program that aims to reduce the psychological burden of service in the ADF. It is evidence based and conforms to the national mental health policy and a number of other extant Commonwealth guidelines, including those on substance use and suicide. In the short time that it has been in operation, I believe that the strategy has achieved a great deal. But there is still much to do and we are constantly reviewing our work to ensure that we give ADF members the best mental health care possible. We will conduct a formal internal evaluation of the strategy's progress in early 2005 and an independent external evaluation in 2006. I am very confident that the results of these reviews will show that the ADF takes the mental health care of its people very seriously and is becoming a national, if not international, leader in workplace mental health care. Thank you for giving me the opportunity to talk with you this afternoon. I am happy to take any questions that you might have.

CHAIR—Thank you, Colonel Cotton. You said there are nine principles?

Col. Cotton—That is correct, Senator.

CHAIR—When were they drawn up or agreed to?

Col. Cotton—We identified the principles about 12 months ago. They have been promulgated informally. They are in the process of being developed into a policy document, a defence instruction, at the moment.

CHAIR—What principles operated before those?

Col. Cotton—I want to say I do not think there were any principles but that does not mean we did not do mental health care. When we looked at the diversity of the ADF workplace and the diversity of issues, it was very difficult to be prescriptive in how we do this. The department has moved to a principles based policy formulation model which meets our needs very easily because we can take a step back and look at things with a clean sheet of paper and say, 'How would we like to do this?' That was the model that we took—what we thought were the important things in delivering mental health care to the ADF. We established those as principles so that, when the document is promulgated, health care providers know, 'If I'm not sure exactly what to do, I can go back to the principles and see that, yes, our members should get treatment for any mental health care issue irrespective of the cause, so I will provide some treatment in those difficult situations.' It is the same for commanders and ADF members: they know what they can expect.

CHAIR—So there probably was not any sort of formal policy before 12 months ago?

Col. Cotton—No, there was no formal policy. There have certainly been treatment guidelines, selection standards and those sorts of things, but no overarching policy. That is really what the mental health strategy is about—to try to bring all of those things together. Certainly, talking

from a director of psychology point of view, we had principles that were not formally stated as principles, but we had practices and policies that we used. There was nothing that said, as an overarching framework, 'This is how we should do mental health care.'

CHAIR—You said that, with the initiatives, you would talk to the commanders and look at recruits. When you talk to commanders about their people, obviously you advise them what to look for—something that might be a sign. Could you tell us what you tell them to look for and what you tell them regarding how to respond.

Col. Cotton—We are very fortunate in that we are slowly getting to more and more command courses in the ADF, for people across the entire rank spectrum. One of the most important aspects is the commanding officer level, so we talk to the Navy commanding officer designate course, the Army pre-command course and the Air Force commanders course.

The packages vary slightly because each of the services has a slightly different spin on what it is that they are after. We talk primarily about stress, because that is really the main issue for ADF members. Most of our people are healthy. We ask them to do difficult things and we get a response. So typically we talk about stress; we talk about the signs and symptoms of stress. We talk about what they can do as a commander. Because commanders can influence the workplace environment so greatly, they have a significant influence. It is really about trying to educate them to know that they have that influence and that they can have a very positive or negative influence. We talk about the signs and symptoms that they should look for, and also the resources that are available to them, because there is a broad range of resources available to support commanders but they have to be aware of them and they have to use them.

I normally talk to those courses and I normally finish with two or three messages. The first message is that there is a range of services there that are to support you in doing your job, but it is your job to look after your people. A commander lives and breathes with his people day in, day out. I cannot kind of just swan into a unit and say, 'That person is unwell and that person is unwell,' but I can help a commander do their job better. The other thing that we spend a fair bit of time on is commander self-care, because getting our senior managers to look after themselves is very important as well. They are probably the two key messages: telling people what is there and how to use it, and making sure people look after themselves.

CHAIR—What about senior NCOs? My colleagues will correct me if I am wrong on the details, but, in relation to the *Westralia* incident, there was a young woman who gave us evidence where the means by which they thought to deal with what she had been experiencing was to lock her in a smoke-filled room or something, if I recall, after she had been through that horrible accident.

Senator PAYNE—They sent her back into an exercise with a similar sort of experience.

CHAIR—I am not sure that a commanding officer might have done that, but I put London to a brick on it that probably some senior NCO thought that that was the right way to deal with it.

Col. Cotton—We do not talk to the senior NCO courses as yet. We have spoken to some of them and we get to some of them routinely, but we do not get to all of them. That is one of my goals for this year: to get some sort of representation onto all of those courses. Having said that,

about two years ago Training Command Army mandated the delivery of suicide awareness training to all of their courses; so that is delivered to all of those courses. That focuses specifically on suicide, and part of the suicide prevention program is to deliver that sort of training across that spectrum. So we do not get to the senior NCO courses. That is our target, I guess, for the next six to 12 months: to try and get a spot on those courses. Honestly, I think I have fairly good support for that. It is difficult to get a spot on those courses because they tend to be quite full, but I am confident that I have the support of the senior command to do that. It is just a case—

CHAIR—It just seems to me, in what we have seen, that most of the senior NCOs are older than the officers in charge of them and probably know a bit more about what is going on than maybe their officers might.

Col. Cotton—Certainly, their junior officers—

CHAIR—That is just an observation; it might be inaccurate.

Col. Cotton—No, it is a good observation. The senior NCOs are a very important audience for me to get to and that is why it is one of our targets this year. We have been lucky to get to the commanding officers. In many respects that is probably the hardest course to get onto because they tend to be shorter—the Navy course is quite long, but the other two are quite short. Senior NCOs are very important. That is our next target.

Senator PAYNE—Is that not a reflection of the priority attached to this issue in the ADF—the fact that it is so hard for you to get time in a course?

CHAIR—You do not have to answer that; they are listening.

Col. Cotton—I think it is a reflection of the priority that is put on it that we have got onto all of the commanding officers' courses. It is just that we are a large bureaucracy. It is about getting that message all of the way through that we need to get on all the other courses. So I think it is a good reflection that we have got onto the CO courses. It is probably a broader reflection of the size of the organisation that we have not got to the senior NCO courses and that sort of thing. As I said, I am fairly confident that we will get on those courses. Part of the responsibility is probably with me for making sure that we actively act on that, but there are a number of things that we have to work to.

Senator PAYNE—Can you tell me how much time is given to instruction on suicide awareness and the other mental health issues that you have discussed at the course for commanding officers?

Col. Cotton—With the Navy, we have a morning.

Senator PAYNE—A couple of hours?

Col. Cotton—Yes. With the Navy we do three presentations. We talk about response to traumatic incidents. We talk about suicide. We talk about operational stress and we talk about the mental health strategy in general. So we get four hours, I guess, with morning tea; we normally

start at about eight and finish at 12. On the Army course we get—I am just trying to think whether it has been one period or two periods. Army give us either 50 minutes or an hour and 40 minutes. The Air Force give us two periods—so that is an hour and 40 minutes. I forgot to mention that we also have a spot on the combined staff college course. That is wrapped up in a symposium with a senior chaplain and a senior commander, so we do that over a morning.

Senator PAYNE—What follow-up is given to those commanding officers? Are they briefed 12 months or 18 months later? Are they ever spoken to again about the issue?

Col. Cotton—No. There is no formal follow-up from that training.

Senator PAYNE—If from your professional perspective a commanding officer did not handle a critical incident as well as they might, which involved either a suicide attempt, a successful—for want of a better word—suicide or displays of aberrant behaviour that led an individual to believe there were problems, what would happen to that commanding officer in terms of some assistance with addressing those issues?

Col. Cotton—Certainly if there is a critical incident or a potentially traumatic event in a unit, we provide a response to every member that is involved. In the past it was very much a template solution so everyone did a debrief. In changing our model, now we go to the unit, make an assessment of the needs of the individuals, which would range from the commanding officer all the way through, and then respond to those needs. If there was a commander who was not dealing with something particularly well, they would get a response from us. Given the nature of their duties, because they tend to be digital and sit pretty much out on their own, they would probably get some individual counselling. Certainly it would be offered. Counselling is the sort of thing that really requires some volition on the part of the individual but it would certainly be offered.

Senator PAYNE—I thought in the ADF it did not always require volition on the part of the individual to be a recipient of counselling—the sort of professional counselling you are talking about.

Col. Cotton—I can certainly order someone to sit down in front of me but I cannot order them to talk.

Senator PAYNE—How long does the mandated suicide awareness training that you spoke of at Training Command Army run for? What sort of time frame does it have?

Col. Cotton—There are two packages. There is a one-period, 40-minute package which goes to the trainees, which is just an awareness thing, and there is a two-period package of 80 minutes—an hour and 20 minutes—which goes to the instructors. It covers the awareness stuff and the instructors are talked to about the sorts of things that they should look for in their trainees. It tries to give them some idea of the signs and symptoms that they might use to identify someone who is at risk.

Senator PAYNE—You spoke in your remarks about the all hours support line and access to that. What measure of its use is the ADF able to make at the moment?

Col. Cotton—At the moment we are tracking the number of calls.

Senator PAYNE—It was introduced in October 2003?

Col. Cotton—It was introduced in October 2003. It has been undersubscribed. We thought it would get used more.

Senator PAYNE—Is that an awareness problem?

Col. Cotton—I think so. There are a couple of things happening with that. I think there is an awareness thing happening and I think there is a culture thing in terms of the help-seeking culture. Men are very poor at using services, and white, Anglo-Saxon men are probably the worst of the lot. There has been success with these sorts of things. The UK military have been successful. They were very successful in Victoria with a specifically men's helpline. There is an awareness thing happening and we are not good at seeking help. One of the things we hope for from our all hours support line is that it would engender or start to engender a better help-seeking culture. My intention is to persist with it to see if we can build that, but it is undersubscribed at the moment.

Senator PAYNE—That is disappointing.

Col. Cotton—It would be nice to think that everybody is well but of course I do not think that that is the case.

Senator PAYNE—Neither do we.

Col. Cotton—So, yes, I am disappointed.

Senator PAYNE—What level of penetration of materials that you use in your Work Well, Live Well, Be Well campaign, whether they are stress balls, sticky notes, stubby holders or whatever, do you assess you have had?

Col. Cotton—We have not formally evaluated that. We have a range of fact sheets. We have about 15 fact sheets now that cover a range of different issues—separation, illicit substances such as alcohol, stress, depression and those sorts of bits and pieces. We have had about 50,000 to 70,000 of those fact sheets printed. They are distributed to every ADF health and psychology facility. All the social work officers get them.

We are now trying to get those to the shopfronts. We have done a good job of getting them to the health and allied health places but they are typically only accessed by people who are seeking help. So if we can get more of them to the orderly rooms and those sorts of places we think we will broaden the access to people who may not be seeking help but may nonetheless find the information in the fact sheets useful. Again, we have not formally evaluated it. I am happy with where we are. There are other places that we need to get to, which is getting them into the orderly rooms.

Senator PAYNE—On the visit the committee made a fortnight ago to Singleton, it was shown the production of some cards entitled ‘Who can help’. Was your organisation involved in the development of those?

Col. Cotton—I am unaware of that. I do not know who produced the cards. Certainly, I did not. I presume that they were a locally produced card.

Senator PAYNE—I want to come back to what you said about the culture thing. I think the chair said in his introduction that this is about our seventh hearing in this process. In addition, there is the range of experience that we have all had doing other inquiries, which brought us close to the ADF. It includes some quite compelling evidence from some extremely traumatised individuals and families. It seems to me that all of your good efforts—and I do credit them as being good efforts—are inevitably going to come to much less than your aims and objectives without a profoundly significant change in the culture thing, whereby the stigma that is already attached to the seeking of mental health support in the general community, which is overwhelmingly exacerbated in the defence environment, is going to forever be a barrier to you achieving what you want to achieve. I am wondering what you, your superiors and the organisation think is possible to do about addressing that? Then I have a really simple question.

Col. Cotton—Good. There are a number of things happening. The help-seeking culture in general—the idea that it is okay to go and get some help—is something that, in my opinion, is foreign to men of our culture. We have seen that in lots of places. I think the military environment exacerbates that because the military environment is all about being robust, being independent and those sorts of things and being able to look out for yourself.

Senator PAYNE—It is about toughening up.

Col. Cotton—Yes, those sorts of things. There are some good reasons for that.

Senator PAYNE—Sure, we know you want to make soldiers. We understand that.

Col. Cotton—That is right but it has some negative consequences. There are some challenges for us in what we deliver, because the last thing that I want is for people to think that they have to have a psychologist, a shrink, a social worker or a chaplain following them around in case something horrible happens. The simple reality is that we ask people to do difficult things but the rates of really negative consequence from trauma are low. PTSD rates in the general community are around 1½ per cent. That does not mean that we ignore it. What it means is that we do not want to diminish people’s resilience or robustness.

Senator PAYNE—No.

Col. Cotton—But you are right. The culture makes it difficult for us to do business. We really need a sea change or a significant culture change, because we need people to be prepared to go and seek help. But it is a complex issue, because we need them to be able to admit that they have a problem and seek some help while not diminishing their robustness and resilience. This underpins pretty much everything that we do or is a flavour to what we do. Culture change is a significant thing. Alcohol, suicide and all those bits and pieces are challenges for us. We recognise them; we work with them. Every time we get a chance to talk about it we do. In the

military, we will never be as good at doing this as the civilian community, purely because we need to prepare people to go and do difficult things. We need to try to balance those things up. That is probably the real trick for me, just to balance those things up and also balance it up in my presentation so that when I talk to commanders they do not think that I am going to diminish their role or somehow diminish the robustness of their people. It is very much a challenge for us. It is something that we are very aware of and something that we are happy to take any advice on what we might be able to do.

Senator PAYNE—There would not be a commander in the ADF, though, who would want to think that the only solution an individual under their command had was to take their own life to deal with a problem they had in the military.

Col. Cotton—No, I could not imagine anybody like that.

Senator PAYNE—Exactly. So there has to be a degree of willingness on the other side of this equation for you.

Col. Cotton—Yes. We have had great support from commanders, certainly from the senior command. My experience in talking to folk at my level and maybe one or two ranks down is that they are already very busy, so what we are trying very hard to do is to make things sustainable and manageable for the people at the unit and the subunit level so that they can do this as easily as possible. One of the great strengths of the public health model is that it is about empowering people. It is about giving sailors, soldiers and airmen the information and the understanding to monitor themselves and look after their mates.

Senator PAYNE—You have just said they are not using those sorts of resources—the help lines and things like that.

Col. Cotton—The help line has been underutilised. Some of the other stuff has been quite well utilised—the fact sheets and that sort of material. Certainly the help line has not been used as much as I would like. We have trialled it for eight months now, and my intention is to persist with it and see whether we can get it working. If it is something that is not an appropriate means of delivering this information, we will look for other means.

Senator PAYNE—You have to wonder when you read the story that appeared in the *Sydney Morning Herald* last week—and just because it appeared in the *Sydney Morning Herald* does not mean I take it as gospel. Nevertheless, it reported an individual ending up in a psychological state such that he was in a siege which is described as having ‘shut down Holsworthy army base as he demanded that police kill him’. Having been to the rehabilitation centre and seen and heard good things, I am left to wonder how a person gets into that mental health state on an army base, in a rehab unit.

Col. Cotton—I am unfamiliar with the case so I cannot speak specifically of the details.

Senator PAYNE—Wouldn’t a case like that, which was reported in the national media, with a very serious reflection on a soldier’s mental health, be something that is normally drawn to your attention?

Col. Cotton—Normally it would, so, yes, I am a little embarrassed that I have not seen that story. Again, I am not familiar with the case. Certainly in terms of help seeking, one of the barriers to that is people looking after their mates. You can look after your mate to their detriment, in some respects, so we need to make people aware and to look out for people. A key part of that is to use the resources that they have available. Sometimes that does not happen and sometimes that could lead to someone getting into that state. As I said, I am not familiar with the case and I apologise for that. If I knew a bit more I could give you a better answer. I am sorry.

Senator PAYNE—Knowing you were coming this evening, I got hold of the article which I had read in the *Sydney Morning Herald* last week. Finally, the only other point I want you to comment on is that you said the ADF suicide numbers are small but that the rates have at times exceeded that of the general community.

Col. Cotton—That is correct, yes.

Senator PAYNE—What concerns me more than a comparison with the general community is that we are actually talking about a single employer, not the general community. The ADF is a single employer and that is where the comparison needs to be, not with what is necessarily happening in the Australian community. Is that how the ADF looks at this issue, or do they look at it across the entire community?

Col. Cotton—The questions I tend to get asked are about how we compare with the general community, so that is the way we look at our statistics and that is what we compare it with.

Senator PAYNE—But do you appreciate the difference?

Col. Cotton—I am not really sure—

Senator PAYNE—That you are a single employer.

Col. Cotton—Sure—and so do we compare ourselves against other employment groups or workplaces and that sort of stuff? No, we have not compared ourselves against workplaces. It would be interesting and useful to do that. I think there are some significant differences with the ADF, so making that comparison—

Senator PAYNE—I am not comparing you with David Jones. I was not trying to do that.

Col. Cotton—We certainly looked at the suicide rates in other military forces, for example. We tend to compare with them.

Senator PAYNE—Do you mean it is a comparable level?

Col. Cotton—Yes. I would say it is a comparable level, but the UK military have recently released some statistics on their suicide rates which would show theirs to be significantly lower than ours, but they have a reasonably high proportion of ‘unexplained deaths’—I think that is the term that they use.

Senator PAYNE—I do not even want to know what that means.

Col. Cotton—It is an interesting term. You look at it and you wonder why they use that. My understanding of the way they report that is that there have been cases identified by the coroner as suicide and there is a large number of cases for which the cause of death is unexplained. When you combine them, ours are similar and it is similarly so with the US. Ours are about the same as the US. The US has had a spate of suicides in Iraq. We have not had any sort of experience like that, but I think in general terms we compare reasonably.

Senator PAYNE—In Iraq on deployment?

Col. Cotton—In Iraq on deployment—that is correct.

Senator PAYNE—I have not seen any significant publicity attaching to that.

Col. Cotton—It is perhaps the different sources. We get plugged into the military news. It is generally available to the public.

Senator SANDY MACDONALD—Is the 1800 number that you were referring to a triage service or a mental health service?

Col. Cotton—It is a triage service. The purpose of the all-hours support line is not to provide a telephone counselling service or anything like that; it is to provide access for someone in crisis to ADF provided facilities. What they will do is that if someone calls and they are in crisis now they will be put onto the 24-hour support that is available in their region but the people at the end of the line, who are all trained health or allied health professionals, will make an assessment and if that person can be best dealt with the next day they will refer them the next day.

Senator SANDY MACDONALD—Are the people who answer the 1800 number ADF personnel?

Col. Cotton—No, they are not. We have a contract with a firm in Sydney.

Senator SANDY MACDONALD—Because of the way the calls come in, can they identify that they are from ADF personnel?

Col. Cotton—No, they do not track where the numbers come from so they ask people if they are an ADF member. When we set the line up, one of the key things was to provide some anonymity because we have this strong sense that people do not use resources because of the spectre of it affecting their career.

Senator SANDY MACDONALD—How long has it been operating?

Col. Cotton—It has been operating since 20 October 2003.

Senator SANDY MACDONALD—How many calls has it taken?

Col. Cotton—We have had 87 calls from ADF people or ADF family members between 20 October 2003 and 20 April 2004.

Senator SANDY MACDONALD—How do you gauge its success? Have you reviewed its success?

Col. Cotton—Yes, we have. We have an evaluation process in place. The draft report on the first evaluation has been done, and that is really because of the short time frame and looking at if the contractors are meeting the requirements of the contract.

Senator SANDY MACDONALD—Who are the contractors?

Col. Cotton—The contractors are a firm called McKesson. They run it out of Sydney. They run a number of similar services across the country.

Senator SANDY MACDONALD—And in New Zealand too?

Col. Cotton—Yes, that is correct.

Senator SANDY MACDONALD—So the service that is provided to the ADF is run out of Sydney? So that is where the 1800 number calls go?

Col. Cotton—Yes, the call centre is in Sydney.

Senator SANDY MACDONALD—Anecdotally, do you think you have been successful? Do you think it has been a lifesaver?

Col. Cotton—I think the service is good. They have had three people who have been identified as high risk. One person they called 000 on—that was only recently—and two others were assessed as high risk.

Senator SANDY MACDONALD—Were they serving personnel, not relatives?

Col. Cotton—They were serving personnel, as far as I am aware.

Senator SANDY MACDONALD—Do you think those three would have been subject to very high levels of alcohol abuse?

Col. Cotton—It is hard to say. I am unfamiliar with the specific cases. Certainly substance use at the time of an incident is a risk factor for suicide.

Senator SANDY MACDONALD—Has the psychological testing for entry changed over time?

Col. Cotton—The testing of general abilities and that sort of stuff has varied a little bit. It changed most significantly probably about six or seven years ago when we went to a triservice form of entry. We are in the process of implementing some better screening at the recruiting end to look for things like suicide risk, alcohol use and those sorts of things.

Senator SANDY MACDONALD—For general entry recruiting, is it done face to face?

Col. Cotton—Yes.

Senator SANDY MACDONALD—Do the psychologists have a veto over entry?

Col. Cotton—The psychologist can make someone psychologically unsuitable for entry and they will not be taken. Until recently the psychologist could make a recommendation about someone's military compatibility and the interviewing officer could override that.

Senator SANDY MACDONALD—But that has changed now?

Col. Cotton—That has changed now. Now we do not make a recommendation or otherwise about military compatibility; we provide some comment. The roles are quite separate. The role of the psychologist is to assess psychological suitability. The role of the interviewing officer is to assess military suitability. The psychologist will gain some information that can help inform that decision. We have changed the process to more accurately reflect the roles of the two.

Senator SANDY MACDONALD—We have had some very sad stories, it goes without saying, in which the near relatives where death or serious injury has occurred have really been in serious need of psychological assistance. Your people would obviously take an interest in that, but do you take some responsibility for it and do you have program that assesses whether the mother or the father or wife or husband can be brought into the net of concern?

Col. Cotton—My charter is to work with ADF members, but one of our principles is that we have to consider family issues. Two of the key stakeholders in the delivery of the mental health strategy are the Defence Community Organisation, which has a clear charter to support ADF families and the ADF Chaplaincy, which also contributes and provides support to families. There are programs in those two agencies, as far as I am aware, to provide support to families.

Senator SANDY MACDONALD—My last question is on the 1800 number. Following on from what Senator Payne said, how widely advertised is it? She may have asked you that. I was not listening to the answer if she did. Clearly people have to know about it. If people know about it, they may use it. If they do not know about it, it is no good saying what a wonderful scheme it is. These kids have got to know about it.

Col. Cotton—We have a banner at the bottom of the page in service newspapers either every issue or every other issue. We have had, as a ballpark figure, 15,000 fact sheets printed and fridge magnets and these sorts of things which went into *Defence Family Matters*, which is a newspaper that is distributed to families. These also went into the packages that were provided to families on their march-in to their new locations at the start of this year. That would have got at least one-third if not one-half of the people in the normal posting rotation. We are advertising it widely. The evaluation is in two stages. The first evaluation really just looks at the process side. In the second stage we will try to get some sense of whether the marketing and the advertising has reached the people.

Senator SANDY MACDONALD—With an increased level of operational deployment, in any one year we might have 3,000 ADF personnel overseas. Do they have access to the 1800 number?

Col. Cotton—They do not have a 1800 number; they have a Sydney number they can dial and that goes to the call centre.

Senator SANDY MACDONALD—How would they access that?

Col. Cotton—By dialling a number in Sydney.

Senator SANDY MACDONALD—They can use their satellite phone time to do that?

Col. Cotton—That is correct.

Senator HOGG—Following on from Senator Macdonald's question, in view of the advertising that you do to let service personnel know what is available, is there still nonetheless a stigma attached to approaching a psychologist in the Defence Force, given that the image of the Defence Force is 'we are rough, tough, ready and strong' et cetera? How do you break through that barrier, if my summation in the broader sense is correct? How do you dismantle the culture so that it is not a sign of weakness for someone to contact you?

Col. Cotton—You are very correct. I was smiling because it is one of the perennial problems we face. We have made some positive steps in the last few years. One of the key things that has contributed to that is that we are now very routine with our mental health screening of people who are coming out of operations. One of the things that that does is that people get to see a psychologist or mental health professional on a face-to-face basis, so that breaks down a bit of the mystique.

We try to publicise stuff as much as we can and we try to get information out to people, such as the fact sheets, in order to try to demystify it. People do not know what depression is and people do not know what some of the common, simple signs of depression are. It is about education. It is a very slow process. It is something that we will always face. It is about trying to make things as normal as possible. As I said, I have been very impressed with the success that we have had just by routinely screening people as they come out of operations. It has reached the point where, in most cases, we have almost no-one who would refuse or not participate in a screen. More often than not, people will say, 'I haven't had my screen. When am I going to get it?' They are the sorts of things that we use, Senator. As I said, I do not think we will ever solve it. I think it is a systemic problem in men, and probably in the military culture in general, not just the ADF. These are the sorts of things we are trying to do to overcome that.

CHAIR—When a person joins the ADF, you said that you do the mental health or psychological tests. Are these men and women assessed again? Is there some sort of regular mental health assessment? I imagine there is a physical assessment that soldiers have to pass. Is there a psychological one that they have to pass as well?

Col. Cotton—We have something called the ADF mental health screen, which has three instruments. One is an alcohol use disorders identification test; one looks at general measures of psychological distress; and the other looks at post traumatic stress disorder symptoms. That is part of our comprehensive preventative health examination, the CPHE, which occurs every five years.

CHAIR—For how long has that one been going?

Col. Cotton—We have put that in place in the last 12 months, so that is still fairly new.

CHAIR—So this has another four years to go before these people are assessed or screened?

Col. Cotton—No, you do it every five years, so 20 per cent of the ADF will do it each year. We are building that up. We are in the process of changing our annual health assessment. Instead of being mandated every year, that will vary a little more, but we will be looking at putting a subset of the items from the mental health screen into that so that we can at least identify people who are high risk for alcohol use and high risk for psychological distress as well.

CHAIR—Are they individually interviewed?

Col. Cotton—At the moment the annual process is a health screen, so you fill out some paperwork while you wait, they do a blood pressure test and a bunch of other physical tests. Normally a nursing officer sits down and goes through that. If there is anything adverse in there, you would then get referred to a medical officer. I am pretty sure that is the process.

CHAIR—Could we be supplied with a copy of the form that a soldier is required to fill out?

Col. Cotton—Certainly.

CHAIR—Do you have an instruction that assessors go by?

Col. Cotton—Yes. We have an instruction on the use of the mental health screen which has all the cut-offs, what to look for and those sorts of things. I can certainly give you a copy of that.

CHAIR—That would be great. It has been mentioned in some of our hearings that the mental health service providers have been unable to authorise leave in the event of a temporary crisis. Would that be your experience?

Col. Cotton—Certainly, as far as I am aware, granting leave is a command responsibility. The relationship would normally be that a health or allied health provider who felt that there was a need would, with the concurrence of the ADF member, go to the commander and say, ‘I think the member needs leave for this period of time for this reason.’

CHAIR—Isn’t it a health responsibility too?

Col. Cotton—I am not familiar with the legal ins and outs of who actually grants leave. As I said, as far as I am aware, it is a command responsibility. I can confirm that and get back to you, if you would like.

CHAIR—If you would not mind. What happens if, in your opinion, someone should be granted leave and the commander says no? What does someone in your position do then if you really are concerned that the person has a problem? It may have occurred, for all I know. What is your advice? We met one of the psychologists at Singleton—I think he was a captain. He came straight out of practice, rather than having gone through Duntroon.

Col. Cotton—Yes, I am familiar with the psychologists at Singleton.

CHAIR—He never raised this. But I am just asking: what would he do?

Senator PAYNE—He is a very busy man.

Col. Cotton—Yes, he is.

CHAIR—What would he do if the commander said no?

Col. Cotton—My advice to him, if I were talking to him now, would be to go back to the commander and have another go. If he was still unsuccessful, then he should come through the technical chain, through the health chain, to me, and I would see what I could do from there. It is timely that you ask this. We have a health services steering committee meeting this week. One of the documents that we are looking at is a health directive on how to manage convalescence leave. Convalescence leave is an important issue, not only from the health providers perspective but also for commanders. As to the legalities of who actually grants the leave, I can get back to you on that but I cannot give you the definitive answer at the moment.

CHAIR—So there is no particular schedule that a captain can look at and say, ‘This is the next step’?

Col. Cotton—In terms of dealing with the commander?

CHAIR—Yes, dealing with that difficulty. Is there anything in the military instruction book—can you look at it that way?

Col. Cotton—Not for that. As a uniform health professional in the Defence Force, you have to balance the two—the command responsibility and the command relationship as well as your relationship as a health adviser. No, I do not have a book which I can tell people to go to. We have support chains for people. As I said, we have a technical command chain, a technical control chain, and that is what I would expect them to use. I would expect them to come to me, or to my staff, and we would go from there.

CHAIR—We have heard of instances where there may be discrimination in the ADF against women and ethnic minorities. Do you have any particular approaches on those matters, if they do indeed exist? Do you have a different approach to Indigenous soldiers? Is the issue of minorities, as such, addressed particularly by your unit?

Col. Cotton—Not in terms of delivery of health care. We do not change the way we do health care for minorities. We provide health care that is appropriate for each individual as they present to us. Certainly we have an equity organisation, which produces policies and those sorts of bits and pieces on equity issues. But, in terms of delivery of mental health care, there is no difference.

CHAIR—For male or female, Greek or Irish origin or anything like that?

Col. Cotton—No. In the delivery of mental health care, people might want to see someone of the same gender, so we try to get some balance in the delivery of our service but we are tied to the exigencies of the staff that we have. But there is no difference in the provision of health care. We provide care to all of our people.

CHAIR—Senator Macdonald asked about the needs of families of ADF personnel. What sort of mechanism locks in once someone has been advised that, for example, their son has suicided, has been killed in an accident or, indeed, has been killed in action? What happens? Is there any ongoing support to these families?

Col. Cotton—We have a notification system, which advises people in the region. Typically the Defence Community Organisation and the chaplaincy will be involved in a visit to the family to provide them with the news. I am honestly not familiar with the extent of the support that is provided to the families.

CHAIR—But there is none from your directorate?

Col. Cotton—No. As I said, my charter is to look to the ADF member. The Defence Community Organisation is involved because we know that family is very important to the wellbeing of the ADF member, so we need to make sure what we do is consistent with what they are doing and the support that is provided to families. But, certainly in my area, my charter is to work with ADF members.

Senator PAYNE—I understand the privacy aspects of the particular role that your psychologists carry out, and the ADF generally operates within those guidelines. But we have heard some interesting evidence from family in particular. I am thinking of one particular incident where, upon being notified of her relatively young son's suicide, the mother was also notified that that was the third occasion on which he had attempted to take his life—and this time it had worked. She had not been previously notified of that. At a hearing, I do not think she was in a position to explain to us that it was because he had put a 'do not tell my next of kin' rider on his personnel file—or however that is done—or whether he had insisted that they not be told or whatever the case was. But, in her own very emotional terms, she related it to us by saying that, when she asked the people who notified her of her son's death why they had not told her that he had tried to take his life on two previous occasions, they said, 'He was in the Army now and did not need his mother.' I caveat my remarks by saying that this was a highly emotional exchange between a committee and the witness. Nevertheless, the circumstances are of concern to us. Perhaps this is not down the military justice road, but this committee has received a great deal of representations on these matters and we cannot afford to ignore them. So, from your perspective, how do you operate within your guidelines? In this instance, I believe there was some duty of care to that individual, who was in the care and custody of the Army at the time, and to his family.

Col. Cotton—That is a very difficult one, particularly with the families. The issue is broader than just the ADF; it is about the confidentiality of information. The simple reality is that I look after people's psychological information and I have very clear guidance on whom I can release it to and when. It is difficult because the simple fact is that my professional guidance is that, without the informed consent of the individual, unless there is clearly a risk to themselves or someone else I cannot release that information. When I say, 'risk to themselves', the authority I

can release that information to is not the individual's parents but police, ambulance and those sorts of bits and pieces. It is very difficult. I have had to deal with some of those sorts of requests in my capacity as director of psychology. It is bigger than just the Defence Force. It is a very difficult question. I have also seen cases where a member clearly specified that they did not want their family to know. So the view I take is that I am looking after the interests of the ADF member and their desires and I have clear guidance as to what I should or should not do with that information. I apply that guidance to the release of that information, and that can result in that very unfortunate consequence.

Senator PAYNE—I would like to say for the record that it is clear to us—and it has been made clear to us by very senior members of the ADF—that in some cases the family, the next of kin, are the problem, not the military. So for someone to then say, 'You did not tell me,' is part of the balance of the whole process. The 'Who can help?' card I referred to before is produced by the Combat Arms Training Centre and was shown to us at Singleton by the commandant CACT and commanding officer of the school of infantry. I guess that the reason I am asking whether you are aware of it—and I hasten to add that I am by no means being critical in any way—is to make sure that the messaging is consistent and that the penetration of the message that you are trying to deliver is consistent with this sort of material. When it is something about support services, confidentiality and who can help, it surprises me slightly that you are not in that loop.

Col. Cotton—We are a very big organisation and so it is easy for things to get lost. We teach our people to use initiative, which is great locally—

Senator PAYNE—I am all in favour of initiative and I am not critical of this. Please do not misunderstand me.

Col. Cotton—I do not think you are. Initiative can be a wonderful thing locally and it can be a real pain sometimes in Canberra. I have mentioned the regional mental health teams, and what I would like to think has happened with that card is that the regional mental health team has provided some advice to the local commander and probably in the minutes of the local regional mental health team meeting there is something that says this is one of the things they have produced. The regional mental health teams are going to be key for us in delivering a consistent service across the ADF in terms of making sure that things like that do cover the right sort of messages. I will go and talk to Singleton and see whether they are engaged—

Senator PAYNE—If it is a good thing then you would want to use it more broadly. We met dozens of infantrymen pulling them out of their pockets to show us, keen to show us the new cards.

Col. Cotton—That is great. The key thing I need is that if they get something like that that works I need them to tell me so that I can tell everybody else.

Senator PAYNE—We thought laminating might not go astray, if you wanted any gratuitous advice from us.

Col. Cotton—Laminating would be very good idea for the infantry school.

CHAIR—We got the impression they had just been issued that morning, though.

Col. Cotton—There is initiative and there is initiative, and there is timing as well.

Senator HOGG—Following on from what Senator Payne has been saying, I want to hit the area of what you do by way of auditing your practices and procedures, both in the closed sense at headquarters and in the broader sense out in the field. Could you give us some idea of what you do there?

Col. Cotton—In terms of the day-to-day practice, all the health professionals and allied health professionals will have some sort of supervision model and some sort of routine. Let me speak for psychology. We have a routine process of documentation checks and those sorts of things that are effected at the local level. So we run a professional practice as would be done anywhere else. The senior psychologist provides supervision to the junior psychologists.

In terms of evaluation of the mental health strategy, I said in my opening statement that we would do a formal internal evaluation in 2005 and an external evaluation in 2006. It is going to be difficult for us to get any real measure of the effectiveness that we have had in reducing the incidence of mental ill-health in the ADF because we have no prevalence data, we do not know what the current rates are. Really what we will be looking at is to say, ‘These are the targets that we set for ourselves. Have we managed to meet those?’ Hopefully we will get a prevalence study up and running probably next year, which will give us some benchmark data that we can then use for a subsequent evaluation, probably a couple of years on from that. The simple fact is that we do not have good data on prevalence rates at the moment to do comparisons.

Senator HOGG—I find that absolutely stunning in a sense. The military has been going on for so long that one would have thought that some of these things would have been fairly rudimentary in terms of the operation of military organisation. There is nothing you can translate from times gone by and use as benchmarks? It would seem to me that as technology moves on and the nature of war to a certain extent changes the problems change as well, so you would really need to be able to see how the paradigm, if one can use that term, might be changing.

Col. Cotton—I say these things could not be done. Yes, I guess they could be done, but they will be done from paper records, so the effort involved would be enormous. Probably one of the major advances we have made within the strategy is really getting across the idea of routine mental health surveillance. Defence health is starting a process of routine health studies for every deployment and that has a mental health component. But the simple fact is that we do not have the electronic information systems to do that easily. We certainly could do it but it would mean going back through 54,000 serving members and that sort of effort would be very difficult.

Senator HOGG—What about comparison with other nations’ defence forces? Is there any value in that?

Col. Cotton—We have a research cooperative group with the UK, the US, Canada and New Zealand. This week, as we speak, one of my colleagues is in New Zealand presenting to a group within that which looks at psychological health and operational effectiveness. Hopefully we will get that up as a working panel and that will allow us to look at collaborative research in terms of our methods and those sorts of things. Of those nations, the only nation that I am aware of that has had a prevalence study within its military force is Canada. The Canadians did a prevalence study about 12 months or two years ago. We are very aware of what the other nations do,

certainly in terms of practices and procedures. In prevalence rates and those sorts of things, most of the other nations are in the same boat as us.

Senator HOGG—I heard you say that yours is a big organisation and it is growing. Can one infer from that that your resources are improving and increasing at a rate to match the expansion of the services that you have to operate?

Col. Cotton—At the moment I am happy with the resources that we have. We are on funding from the Defence People Committee for a finite period of time. One of my jobs is to transition the resources that we have from that specific bucket of money into the ongoing Defence Health Service program. That is going to present some challenges for me in the next 12 months or so. Mental health, and particularly the public health model, is very cheap in terms of the big-ticket health items, so I am fairly confident that we are going to be able to do that. I could always use more resources, but—as I said at the outset—I am happy with the resources that we have at the moment.

Senator HOGG—One other question comes to mind about your reporting. Is your reporting through the annual report and, if so, how do we as a committee interpret what is happening in mental health in the Australian Defence Force? Is there a chart or a table of how many people you saw and how many people you treated or is there something fairly descriptive as to what you do? I cannot say I have focused on this.

Col. Cotton—There is a Defence Health Service annual report.

Senator HOGG—Is that part of the ADF annual report?

Col. Cotton—No, the Defence Health Service annual report is a separate document. I am not aware of its relationship with the Defence annual report.

Senator HOGG—Is that one tabled in the parliament?

Col. Cotton—I honestly do not know.

Senator HOGG—Can you take that on notice? One of the things one sees when one reads the annual report is a table of how many people might have been treated or what resources the particular section had, but I cannot recall anything specific about a mental health report per se, given the importance that needs to be placed upon it in this day and age.

Col. Cotton—We use key performance indicators for a lot of the health service delivery. We do not have those for mental health as yet, and that is partly because we are so new. There is a whole-of-government program that is looking at better outcomes in mental health. Those in the program are still trying to sort out exactly how we are going to measure outcomes in mental health. We are trying to take what they do and apply it to the ADF, but certainly we have not done that in the past. That is one of the things that we are doing.

Senator HOGG—Is your budget part of the global budget across all programs in Defence or is there something that is quarantined for you in a certain area?

Col. Cotton—Yes, for the mental health strategy and particularly for two of the programs—the drug and alcohol program and the suicide program—we have specific funding from the Defence People Committee.

CHAIR—We have a number of questions we would like you to respond to, but we do not have time so we may write to you and hope that you will respond to them.

Col. Cotton—I am more than happy to do that.

CHAIR—Finally, the committee has been advised that at one stage the training for officers in suicide prevention for Indigenous soldiers was to watch a video on black deaths in custody. Are you aware of whether that is still the case?

Col. Cotton—I am unfamiliar with that. I can look into that, but I am unaware of that.

CHAIR—Is there anything in particular that you do for Indigenous soldiers to keep an eye on them?

Col. Cotton—No, not specifically for Indigenous soldiers.

CHAIR—Just the video?

Col. Cotton—I am unaware of the use of the video.

CHAIR—Thank you very much.

[5.30 p.m.]

EACOTT, Brigadier Leonard Sidney, Principal Chaplain, Army, Department of Defence

CHAIR—Welcome. I invite you to make an opening statement.

Chaplain Eacott—Before I begin, I have been advised that the Defence Health Service annual report is not tabled in parliament. I thank you for the opportunity to appear today. As the chair of the Defence Force chaplains committee, I represent my colleagues in the Royal Australian Navy and the Royal Australian Air Force as well as the chaplains in my team in the Army. My statement draws on the practical experience derived from the privilege of supporting service personnel and their families for over 20 years in peacetime and during two operational deployments.

Faith and hope are the *raison d'être* and foundations upon which chaplains operate. Based on these principles, chaplaincy has four basic functions: religious ministry; pastoral care; character guidance and instruction; and the provision of advice to commanders on religious, spiritual, moral, ethical, cultural and welfare matters. Chaplaincy is unique in that it meets the broad needs of uniformed individuals and service communities through spiritual, sacramental and practical means. Chaplains are trained and equipped to provide religious and practical support in a wide variety of contexts and contingencies, including trauma and grief. The ADF accepts the significance of religious faith in people's lives and upholds the freedom of religious practice.

The religious function effected by the chaplains is intended to provide the individual or community with the opportunity to practise their religious beliefs according to their freedom of choice. By its very nature, chaplaincy integrates spirituality with therapy through pastoral care. The defence chaplain must be sensitive to and aware of the spiritual values and religious aspirations of the various belief systems to be found within the ADF and among the local populations of the host nation when Australians are deployed overseas. Cultures based on belief systems unfamiliar to Australians may seek to resolve their problems in a manner that might seem quite alien to Australian service personnel and chaplains, coming as they do from a nation with a Judaeo-Christian heritage. The chaplain therefore has the responsibility of facilitating the care of individuals by others when it is beyond their area of understanding.

In the ADF, these functions are exercised in various settings: in barracks or base and in the field or at sea, in either an exercise or an operational environment. In the first, chaplains are posted to specific units or training establishments to support unit staff. This frequently has them involved in a wide range of incidents and situations involving uniformed members and their families. Usually working in a first aid or immediate response capacity, chaplains have a privileged opportunity to provide immediate support. When specialised intervention is necessary, the chaplains refer to and/or consult with members of other mental health professions, such as medical or psychology staff or social workers from the Defence Community Organisation.

The chaplain's role is primarily to assist those individuals and groups involved in a critical incident to identify and express those spiritual connections which might be elusive or unspoken in a process which excludes the spiritual aspects of the recovery process. Consistent with the

ADF's policy on mental health care, the level of care that chaplains provide is based on their level of training and expertise rather than on their discipline. To ensure that an appropriate level of training is provided for chaplains and that chaplaincy plays a part in the ADF mental health strategy, an appropriately qualified and experienced chaplain serves on the staff of the Directorate of Mental Health. Mental health teams provide coordination, mutual support and supervision to ensure that best practice is employed in the care of ADF members. Chaplains share professional advice and support with other mental health professionals through this network; thus, chaplains must be attentive to the boundaries of their professional expertise and the need for a multidisciplinary approach to care.

The ADF is committed to a continuing strategy of enhancing the quality of care provided to its members. To ensure that chaplains are not only equipped theologically but also professionally trained with the requisite competencies to operate within the defence environment, training and vocational development is available to ADF chaplains. This includes clinical pastoral education, critical incident mental health support or CMS, pastoral care and trauma training at Westmead Hospital, suicide prevention—ASIST—training, and alcohol, drug and grief training, as well as postgraduate and master's level programs in pastoral counselling, leadership and management.

Defence doctrine provides chaplains with a clearly defined role in fatal casualty or FATALCAS, as we call it, and very seriously ill notifications. These are stressful and emotionally charged situations for all involved. In these circumstances, when possible and timely, a chaplain of the deceased or injured member's nominated religious denomination or faith attends the notification. Because of the need to give early notification to the next of kin, the available local area duty chaplain is likely to attend with the notifications officer. The military attempts to respond to the needs of a family facing some traumatic event, despite having limited acquaintance with that family. Thus, little might be known of the background, the religious beliefs, if any, or the emotional factors that may be released by the loss. The instructions employed by the ADF to provide guidance for commanders and staffs involved in responding to the deaths of service personnel are designed to guide through such emotionally vulnerable situations.

Defence personnel train for operational service and live with the knowledge that their training is dangerous and will possibly lead to a deployment at short notice. When trainees are struggling with the pressures of intensive training, the chaplain is available to trainees and staff as a first point of contact. Military deployments overseas regrettably include the risk of serious injury or death. The chaplain has an important part to play in the spiritual preparation of the force before it departs, as members face possible injury or death. In these circumstances the mere presence of the chaplain in the workplace is an opportunity to build relational bridges and opportunities for pastoral support.

During operational deployments, chaplains, together with medical staff, are often among the first called to support those involved in a critical incident involving serious injury or death. Because chaplains are embedded as an integral part of a unit, the chaplain will usually have a direct and personal relationship with those involved. Consequently, in trauma situations and circumstances it is the chaplain who is expected to undertake immediate support and defusing for those involved in a critical event. For example, it was the chaplain who provided initial support to the Australian service personnel who witnessed the massacre in Rwanda. A team of mental health professionals then applies the more formal critical incident stress management

structures. In traumatic incidents or situations, spiritual, eternal and mortality issues are a very real component of the human experience. Moral and spiritual counselling is vital. However, the chaplain must be very cautious not to impose his or her religious outlook on those receiving support.

The chaplain's task is not to convince people in trauma that God is ever present and active but to allow them to express their pain and emptiness, even anger, notwithstanding any overt religious faith that they might profess. Experience has shown that the mere presence of a man or woman of God as an instrument of peace, in the midst of the emotional chaos of such events, allows those suffering to feel a presence that has often been described as 'spiritually comforting'. I refer, for example, to the ministry of the ADF chaplains in Bali in the aftermath of the Bali tragedy and the daily support given by the chaplains to the body recovery teams in East Timor.

During funerals or memorial services chaplains are ideally placed to assist individuals, families and the broader defence community in accepting the reality of death and the pain and anguish of losing a loved one. The funeral is customarily the vehicle for the expression of grief. It gives to those who mourn an individual opportunity to vent their deepest emotions and feelings. It provides a channel for a meaningful expression of loss, an opportunity to render words and gestures of esteem through a process of ritualised farewell in recognition of the dignity of human life. In the Christian or faith contexts there is also an expression of hope. The funeral also gives the community the opportunity to express its concern and empathetic care.

Families, workmates and friends of trauma victims can easily be overlooked and thus become what I call the 'hidden wounded'. The chaplain through his or her privileged presence in the workplace and ability to move freely among the unit and ADF extended family must be pastorally vigilant to encourage the hidden wounded to express their grief. This gives the chaplain a chance to identify the need for a continuity of pastoral care. There is a well recognised need for care beyond the acute phase of a critical event. Supporting relationships and structures developed during the acute phase of bereavement quickly dissipate. Society moves on. Ongoing post funeral and post event care strategies are critical for the re-integration of the bereaved with life. Those who manage their grief or bereavement are those who have a continuing sense of being cared for and connected within the community environment. Because of the mobility of modern society, and the ADF in particular, this is an area in which the ADF could do well to encourage the use of external agencies that provide continuing care strategies.

Defence chaplains offer a holistic approach incorporating a spiritual dimension to trauma recovery and other pastoral care situations. That is our unique contribution. If a holistic recovery process is to be achieved following a critical incident a uniformed person and their family must be given the opportunity to express their spiritual hurts, their angers, their awareness, their beliefs as well as the other expressions of the critical incident and bereavement process.

There is much more to be said about the role of ADF chaplaincy, particularly in relation to the care, nurture and wellbeing of ADF personnel and their families in other contexts. However, I think that is beyond the scope of this statement. I hope that this brief outline provides you with some valuable insights into ADF chaplaincy.

CHAIR—Thank you. How do we address you?

Chaplain Eacott—The term given to chaplains in the ADF is Padre, so Padre is an appropriate term.

CHAIR—We have been advised that we are going to have a division in the Senate at any moment. You have covered in your statement a number of the questions that we were going to ask you. You said that you have now a member of your staff in the mental health directorate. Is that correct?

Chaplain Eacott—Yes, we do.

CHAIR—Are you brought into discussions or consultations about mental health policies within the armed forces?

Chaplain Eacott—Not in a specific sense. The ADF's principal chaplains committee—the principal chaplains of the Army, Navy and Air Force—as an interested and senior group within Defence is provided with information about the processes. Our chaplain there is involved in the wellbeing program of mental health such that—

CHAIR—There is a program called 'wellbeing', is there?

Chaplain Eacott—Yes, there is. Rather than being involved in a medical model of curing an illness, he is very much involved, and in fact is the case manager for, the wellbeing program. We do not directly monitor his tasks but are conscious that because of his background and experience he can represent the broader sense and wellbeing of ADF members in the development of this program, which is still in the process of development.

CHAIR—Do you know how long this program has been going?

Chaplain Eacott—He was only posted into the position from January this year. It is one of those strategies still being developed as part of the mental health strategy. He has been given carriage of the project. As I said, it is still in the early stages of development.

CHAIR—Is he there full time?

Chaplain Eacott—Yes, he is. He is currently in a temporary position that was created to allow chaplaincy to have representation. We are negotiating for it to become a permanent position. He has a masters in education and a masters in ministry and pastoral counselling, so he is very well-qualified, with that background, to be a chaplain in this position.

CHAIR—And this wellbeing program is under the umbrella of the mental health directorate, is it?

Chaplain Eacott—Yes, he is a staff officer working within the Directorate of Mental Health.

CHAIR—The mental health area is probably a significant one which you would deal with—everything you said ended in some kind of psychology of people, whether spiritual or whatever else. Are you a member of any advisory boards that deal with the discussion of mental health issues within the armed forces?

Chaplain Eacott—At this stage there is, as I said earlier, an overview committee that is giving advice and looking at broad principles, but not the specific program, which remains within the auspices of the medical world. So we are guides on the edge.

CHAIR—We have to go to the chamber for a division. We will be right back with you.

Proceedings suspended from 5.47 p.m. to 6.00 p.m.

CHAIR—I call the committee to order. Brigadier Eacott, is it correct that there is an overview committee that your chaplaincy is a member of?

Chaplain Eacott—Yes, that is correct.

CHAIR—Do you know who else is a member of this committee or what other groups are members of this overview committee?

Chaplain Eacott—Representatives from within the defence medical organisations—so psychiatrists, nursing representatives, psychology representatives and the Defence Community Organisation. They are the craft groups, if you like, that are represented within the Directorate of Mental Health.

CHAIR—Is Colonel Cotton the chairman of this overview committee?

Chaplain Eacott—Yes, he is.

CHAIR—In terms of this overview committee, have you been asked at all for your input on the formulation of mental health policies?

Chaplain Eacott—In the formulation stage of the Directorate of Mental Health there was some consultation about the development of the direction in which it might go and how it might look. It was consultation and guidance rather than detailed planning of the strategy. So it was consultation on the role that chaplaincy might play in the concept—that would be the extent of the advice that we were asked to give.

Senator SANDY MACDONALD—How many padres are there in the ADF? How many of them are regular and how many of them are in the reserves?

Chaplain Eacott—In the three services there are a total of 113 full-time positions. Currently there are 102 chaplains, with 11 vacancies. In the reserves, the part-time members, there are 173 positions and 113 actual chaplains with 60 vacancies, mostly in Army.

Senator SANDY MACDONALD—How are they distributed? Does each naval vessel have a padre?

Chaplain Eacott—Not all the ships have chaplains. There are only 21 full-time naval chaplains, so I think—and I am from the Army so I am not too sure—there is the senior chaplain and they are distributed three to the fleet and they move around the fleet, depending on the

nature of the deployment. The rest of the naval chaplains would be dispersed among the land based establishments.

Senator SANDY MACDONALD—How are the regular chaplains broken down into denominations?

Chaplain Eacott—There are three groups within the Christian denominations—Catholic, Anglican and the Protestant denominations group, represented by the main Protestant denominations. We also have a rabbi, who is part time.

Senator SANDY MACDONALD—So there are no Muslims?

Chaplain Eacott—No. We have had discussions with the Islamic community over the past few years, and there have been a couple of inquiries from Islamic chaplains within the university context, but no forward direction has been taken for someone to proceed to recruit.

Senator SANDY MACDONALD—The great majority of your work—not that you said this—would be nondenominational though, wouldn't it? There is a fair amount of social work and spiritual support, as distinct from, say, bible classes.

Chaplain Eacott—The primary agreement between the Defence Force and the church is for us to provide religious support. We provide pastoral care. That itself has a religious connotation and background. The word 'pastoral' comes from the term 'shepherd'. So we provide shepherding, if you like, within the context of the integration of spirituality and therapy. A significant amount of work is in the care of the individuals. Spiritual and religious opportunity might come from that, if that is the direction in which the individual wishes to go.

Senator SANDY MACDONALD—Do chaplains always wear a uniform?

Chaplain Eacott—Yes. Traditionally, we have always worn a uniform.

Senator SANDY MACDONALD—Is that the uniform that you are wearing? Do you not wear a collar?

Chaplain Eacott—There are times when you can wear a clerical collar—for example, in a formal mess dress uniform or service dress—depending on the occasion. For example, if you go to a ceremonial parade and you have to throw off your uniform and throw on vestments it would be silly not to wear a clerical shirt. That is allowed for in the dress regulations but normally, for identification, one would wear what the soldiers, sailors or airmen wear.

Senator SANDY MACDONALD—Clearly you are involved if there is a trauma for the serving ADF personnel. What involvement do you have with the family in trauma?

Chaplain Eacott—The primary function of the chaplain is operational. Our purpose is to be there alongside the service person while deployed. Obviously we are not going to all be deployed, unless it is a major conflict. Therefore, we spend the majority of the time in a peace situation. The raising of the Defence Community Organisation has allowed for a greater emphasis to be placed by the chaplaincy on the care of the soldier—to allow the care of the

family to be given a greater concentration by the Defence Community Organisation. But there is an ongoing consultation with the social worker and the chaplain.

Senator SANDY MACDONALD—I was thinking of a situation where an ADF member is killed and there is an immediate attempt to contact the family and the next of kin. I wonder whether they are situations in which you are automatically included or not included.

Chaplain Eacott—As I said in my statement, the chaplaincy has a clear role in the fatal casualty notification process. If possible, if the denominational grouping were identified by the individual, the chaplain would go.

Senator SANDY MACDONALD—He would go accompanying the—

Chaplain Eacott—He would go accompanying the notifications officer. He would provide support to the family, and sometimes to the notifications officer, during that initial phase. I will give you an example. After the Black Hawk accident in the mid-nineties, being in Brisbane at the time and the chaplain on call, I attended four notifications between the hours of 10 p.m. and 6 a.m. and then referred the ongoing care to the appropriate denominational chaplains. I maintained a pastoral contact with the Anglican—and I am an Anglican—family. I took the funeral of that young man and maintained a pastoral contact for the months and a couple of years after the event. There is a referral to the appropriate person. If they do not want a chaplain at all and want to have a civil ceremony, that is referred as well.

Senator SANDY MACDONALD—Do you have any female chaplains?

Chaplain Eacott—Yes, we do. They are mostly part time. We have one full-time female chaplain in the Army. Another one is about to transfer from the reserves into full time. That is a very positive step.

Senator HOGG—I would just like to find out what role chaplains play in the actual administration of military justice within the defence forces. Do they have a role—not necessarily a formal role, but an informal role—where those who might be accused of doing something might seek the advice, the help, the assistance, even maybe just the presence of the chaplain to assist them because they may be overwhelmed or bewildered by the whole process? Can you give us any insight there?

Chaplain Eacott—Yes, sure. We have a very active role there. Part of the daily routine, or round, of the chaplain in the barracks or in the field will be to visit the cells—to visit and sit and talk and listen to the person who is being held there, for whatever reason, and perhaps even at their request to go to a court martial and sit and wait and talk to them. So there is quite an active role in that in both peacetime and on operations.

Senator HOGG—Have you seen that role changing as the military justice system has changed? Or, has the military justice system not changed? Has it stood still? Has it not moved with the changes in justice in our times?

Chaplain Eacott—I have not seen the role of the chaplain change at all. In fact, the role of the chaplain is positively encouraged by command to support all of those involved in the military

justice system. I would not say that the military justice system has stood still, with the development of the current Defence Force Discipline Act. I believe that is a positive move in the sense that we have moved away from the single service approach to discipline. As a chaplain, I do not become involved in a formal sense. I am not permitted to, and I would prefer not to, because if the team of chaplains becomes involved in the justice system it violates our right to sit and talk and provide care to the accused as well as to the victim.

Senator HOGG—I accept that, but it may well be that in some circumstances you are the only person who that person has to turn to, really.

Chaplain Eacott—Correct.

Senator HOGG—You are the only person who they will confide in, who they can find some sort of comfort in, not necessarily to plead their case—and I was not taking that tack; I was just trying to look at the interaction between yourselves and those who might be accused. They might not even be in a cell—they may well be in a situation where they are in their barracks and the investigation may be under way. It may be taking a long period of time; there may be a great deal of uncertainty for them. So I was just trying to find out what you people do in those circumstances.

Chaplain Eacott—That is actively encouraged, and chaplains take that role and responsibility in that care of the individual, regardless of who they are and what their background is, to stand alongside people. So it is very active, common and part of the daily round of the chaplain to be involved personally at that level with individuals in those circumstances, as well as the teams of chaplains.

Senator HOGG—It must be hard not to become judgmental under those circumstances, when the pressure is being placed upon you—and I am not saying this negatively—by the person who finds themselves on the receiving end of the justice system.

Chaplain Eacott—Yes, it can be. Everyone has their own moral standards and moral views on behaviour patterns within society and the mores of society. However, the need for the care of the individual is paramount, because it may be that if you give the time to the individual you may be saving their life.

Senator HOGG—Can I assume that when you are performing that role with the person who is accused of whatever it might be there is the strictest of confidentiality between you and the person who is seeking your guidance, your assistance, in something?

Chaplain Eacott—Yes, indeed there is—and to pass on any information that that person or individual might say to you would only occur with the agreement of the individual.

Senator HOGG—In those circumstances, how widespread are the services of the padres?

Chaplain Eacott—I am not sure—

Senator HOGG—Are your services called upon very often, or are they called upon more for problems related to alcohol, drugs, grief or whatever it might be?

Chaplain Eacott—I would say that that is just part of our normal routine and part of the daily round of the chaplain. The chaplain, particularly in the Army, is posted to the unit and is an integral part of the unit. You are a part of the command team and you work with the doctor, the regimental sergeant major or the commanding officer, so you know the politics and the circumstances and what is going on in the unit—or you should know. So you would go and stand alongside the individuals who are in need. The role of the chaplain is relational, so a chaplain who is posted to a unit and has the opportunity to sit in a foxhole, at the back of a truck, in a pit somewhere or on the artillery range will talk to the soldiers as a matter of course during the day. In the barracks you may make appointments, but in the field you do not; you are just there alongside them as part of the unit team. So there is a significant amount of trust and that is why I used the word ‘privileged’ in my statement, because I really believe we have a privileged role to be alongside people in their times of need.

Senator HOGG—Thank you.

Senator PAYNE—Padre, I am not sure if you said at the beginning what period of time you have spent as a chaplain in the Army.

Chaplain Eacott—I have had 20 years. The last 14 of those years have been full-time; previously I had a part-time role in a parish situation, and I was a reserve soldier and officer before that.

Senator PAYNE—Have you noticed any discernible decline or increase in the use of your services in that time? Does it have peaks and troughs, for example?

Chaplain Eacott—No, there has certainly been no decline. When I comment on the increase, there are two principles there: there is the individual and then every chaplain in every unit that they go to has to earn their spurs, so to speak, to develop the trust of the commander and the soldiers. Once you have developed that, it is not a question of a demand for your services—you are not keeping records, as some of the other professions might do, of how many half-hour sessions you have, because it is a matter of the daily call—so it is hard to make an assessment of the increase, because it is a relational issue on a day-to-day basis. But I would say that the profile of the defence chaplain is very high, even in a society that perhaps has a low religious observance.

Senator PAYNE—That is one of the reasons I asked the question. If you followed census results at all in Australia, in the last 20 years, which is the period that you have been involved in this process, the number of people who ‘register’ as actively practising a religion is diminishing.

Chaplain Eacott—For the soldier it is not a question of actively practising religion.

Senator PAYNE—No, it is a different situation.

Chaplain Eacott—In my experience in Cambodia and East Timor, during operations many people would attend a worship service who would never darken the door of a church. In an operational environment where questions of their own mortality are large, the dependence on the chaplain for comfort, support and encouragement is quite strong.

Senator PAYNE—I suspect my mother says the same of me when she thinks my mortality is in danger as well! Is the chaplaincy—broadly speaking, not you personally—available 24/7?

Chaplain Eacott—Yes, we are.

Senator PAYNE—Do you very often find yourself being sought after in the wee small hours, as it were?

Chaplain Eacott—In the Australia wide context, there are 24-hour on-call or after-hours lines. Every barracks and facility will have a duty chaplain. If, for example, there is a particular denominational or faith issue, the duty chaplain will respond and refer that to the appropriate Catholic, Anglican or Protestant group. But, in a general sense, that is shared around. If it is too much for the individual to handle, he will call for backup from his team of chaplains.

If I use the Army model again—excuse me, the rest of the Defence Force, for using the Army model—in every area, the 3rd Brigade, for example, or the 1st Brigade in Townsville and Darwin, there are teams of chaplains. Most units have a chaplain with, at the brigade headquarters, a coordinating chaplain. They will coordinate the appropriate crisis response to a whole range of issues so that, if a truck rolls over or whatever, there will be an appropriate response made, in connection with the mental health team in the area and certainly under the guidance of the commander.

Senator PAYNE—I must say, just by way of observation, that the process of these hearings has revealed quite a lot to me, at least, about the presence and importance of your part of the defence organisation, and I am grateful to have had the opportunity to listen to you this evening. Thank you.

Chaplain Eacott—Thanks very much.

Senator JOHNSTON—Padre, I note you are a brigadier and that you have served in a number of operations around the place. What are your actual technical obligations with respect to individual service men and women, as opposed to or in deference to your obligations to the service—namely, the Army? Do we have some sort of document that sets out where you draw the line in these often, I would think, quite difficult ethical considerations? How do you deal with those? What is the protocol and what is your situation in that regard—if you follow what I am seeking to find out?

Chaplain Eacott—Yes, I do. To answer the first part of your statement, I may wear the rank of a brigadier, but my rank is actually Chaplain Division 5. The Army gives me the privilege, if you like, of wearing the equivalent rank of brigadier, but in the first instance I am a chaplain. Certainly, there are defence regulations and instructions for each of the services which give guidance to the roles and responsibilities of chaplains in a whole range of areas. Now, you talked about ethical issues; if I have an ethical concern about what might be occurring in a particular unit or a particular situation, that it is not being dealt with appropriately, then it is my responsibility to represent the individual to the appropriate level of command, regardless of what their rank is and regardless of what my rank is. So, if I have a concern that can only be dealt with by General Cosgrove, I have the right and responsibility to address that with him. But, equally, if

it is about the treatment of a private soldier by a sergeant, I have a right to address that with the sergeant. Rank is really not the issue; it is the—

Senator JOHNSTON—Relationship?

Chaplain Eacott—It is about the relational issues, as I said earlier—yes, very much so.

Senator JOHNSTON—So—if I could persist with this for a moment—if it came to your attention that a particular service man or woman had a disability which would render them a risk, probably an unacceptable risk, to ongoing operations, where would your allegiance lie with respect to the confidence that has been imposed on you or in you by the service man or woman and the wider considerations of the welfare of the Army in this instance?

Chaplain Eacott—That is a very interesting ethical question. I would do everything that I—

Senator JOHNSTON—We have seen a lot of them, I must say; that is the issue that springs to mind.

Chaplain Eacott—Sure. I would do everything that I could to ensure that the needs of the individual were met—their care and their ongoing mental and physical health and wellbeing. But if I became aware that their actions might cause the death of another, or the death of—

Senator JOHNSTON—Themselves?

Chaplain Eacott—themselves—if they were an aircraft pilot or whatever—and they could not function, in the interests of human life I would have a responsibility to ensure that the individual not only did not cause harm to themselves but also did not cause harm to others.

Senator JOHNSTON—Is the approach to these technical and difficult ethical issues laid down anywhere for you? Do you adopt an oath or sign any document that sets out or implies how you should handle such a difficult ethical consideration?

Chaplain Eacott—All of us come from a denominational background. As an ordained priest in the Anglican Church, I have the responsibilities of that office to the bishop and I have signed a code of conduct as well as the ordination vows to respect life et cetera. As far as the Defence Force goes, I will not say there is a doctrinal document, but there are guidelines and it is assumed that we have a standard of ethics in relation to the faith perspective from which we come.

Senator JOHNSTON—What I am getting at is that a service man or woman can come to you in confidence knowing that your first allegiance, unless it is a particularly rare instance, or commitment is to that person as opposed to wider considerations.

Chaplain Eacott—Yes.

Senator JOHNSTON—Thank you.

ACTING CHAIR (Senator Sandy Macdonald)—We have all valued your time. If we have further questions, we may take the opportunity of forwarding them to you for a more formal answer. Thank you very much for appearing before the committee.

Chaplain Eacott—Thank you.

Proceedings suspended from 6.26 p.m. to 7.36 p.m.

ROBERTS-SMITH, Justice Leonard William, Major General, Judge Advocate General, Australian Defence Force

CHAIR—The committee welcomes to the committee via videoconference the Judge Advocate General. Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. It is important for witnesses to be aware that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Judge, your submission was received as No. 27. Do you have any alterations to make to that submission?

Justice Roberts-Smith—I have no alterations to make to it, but there are a couple of qualifications that I would like to address, perhaps in a moment, if I may.

CHAIR—Certainly. I would like to invite you to make an opening statement.

Justice Roberts-Smith—I am a Justice of the Supreme Court of Western Australia and the Judge Advocate General of the Australian Defence Force, and I hold the rank of Major General. I am grateful to you and the committee, Mr Chair, for the opportunity to make a preliminary statement and for agreeing to take my evidence by video link from Albany in Western Australia, where I am presently sitting. Save for some minor matters of clarification to which I shall come shortly, the matters that I invite to the committee's attention are contained in my written submission.

Before proceeding further, it is perhaps desirable that I make some comment on the Office of Judge Advocate General of the ADF, or the JAG. The office was created under section 179 of the Defence Force Discipline Act. The qualification for appointment is that the appointee must be or have been a judge of the Federal Court or of a state Supreme Court. The appointment is made by the Governor-General and the Executive Council.

The functions of the JAG as prescribed by the act when first enacted in 1982 included making procedural rules for service tribunals; providing the final legal review of proceedings within the ADF; participating in the appointment of Judge Advocates, Defence Force magistrates and legal officers for various purposes; and reporting upon the operation of laws relating to the discipline of the ADF. Those functions have continued, but, in response to continual legal challenges to the validity of the traditional court-martial structure, particularly in the case of our Commonwealth common-law allies, the JAG's responsibilities in Australia have been broadened by amendments to the DFDA made by the Defence Legislation Amendment Act 2003. Essentially, those additional responsibilities are for the JAG to nominate the Judge Advocate or Defence Force magistrate for each trial and, where a court-martial is to be convened, to nominate the president and members as well.

The JAG also now makes the statutory appointment of the Chief Judge Advocate under section 188A of the act. The Office of the JAG and its functions are indicative of the legislature's desire for an appropriate civilian oversight of the operation of the DFDA and related legislation. Since its inception in 1985, each JAG has been a two-star ranking officer of the Reserve forces. JAG reports to the minister that have been tabled in parliament have noted that the JAG's status as a superior court judge and the fact that the JAG has held senior military rank have resulted in

the JAG developing an important leadership role among both permanent and reserve legal officers. The command and administrative responsibility in this regard remains, of course, with the Director General of the Defence Legal Service.

I make the point that the only statutory qualification for appointment as JAG is judicial status as a judge of the Federal Court or a state or territory Supreme Court. The military rank has the advantage of giving the JAG useful and appropriate status and authority, including over military staff within his own office but because of the statutory independence, without subjecting the JAG to the chain of command. I can say that has always been acknowledged and accepted by all chiefs of the Defence Force and secretaries, by my predecessors and certainly by me. It is not the function of the JAG to act as general legal adviser to the Australian Defence Force or to the government. That would be inconsistent with judicial office. It is also a limitation to which I invite the committee's attention in connection with my evidence this evening. While it is consistent with my responsibility for general oversight to make comment upon, to raise possible problems or concerns and to identify possible potential vulnerabilities of the existing system and to suggest possible approaches for reform or improvement, it is not appropriate for me to provide legal advice.

The committee would be aware when reading the Lamer report that the situation is different in Canada. The Canadian JAG is not a judicial officer; he is, in fact, the principal military legal adviser to the Canadian forces and the Canadian government. I would ordinarily confine to the vehicle of my annual report observations pertaining to the Defence Force Discipline Act, the discipline system and military matters relating to those. In view of the committee's formal inquiry into the effectiveness of Australia's military justice system, I have considered it appropriate to make a formal submission as JAG. In making that submission I was anxious that the committee should be aware that the discipline system, including the impact of developments overseas, is carefully monitored through the existing arrangements providing for oversight by the JAG.

In that submission I have provided some detail as to the challenges to the traditional court martial structure, both in Australia and overseas, in recent times. I have raised for consideration the desirability of formally establishing a standing military court to try offences currently tried at the level of court martial or Defence Force magistrate. For this to be agreed by the parliament, I have suggested that a possible approach would be to establish officers appointed as Judge Advocates or Defence Force magistrates as a military bench within the Federal Magistrates Court. Before being progressed, those suggestions would require detailed study, including of their impact upon the operational capabilities of the ADF and the requirements of military discipline. I stress, too, that that was suggested as only one possible approach; I shall say more about that in a moment.

Following the making of my submission to the committee I had the opportunity to travel overseas with the Chief Judge Advocate, Colonel Westwood, to attend the United States sponsored Pacific Command conference in Victoria, Canada; to meet with the JAG of the Canadian forces, Major General Pitzul; and to have discussions with the Right Hon. Antonio Lamer, the former Chief Justice of Canada, who has recently conducted an independent review of the Canadian military justice system, that being the report which accompanied my submission to the committee. I also met with the staff of the Canadian chief military judge, including the court-martial administrator; and in the United Kingdom met with Master Venne, the Master of

the Courts-Martial Appeals Court in the UK. There I also met with His Honour Judge Sessions, the Judge Advocate of the Fleet for the Royal Navy, and Commodore Blackett, the Director of Naval Legal Service for the Royal Navy. I also conferred with the senior legal adviser to the Judge Advocate General for the UK Army and the Royal Air Force, Mr Terence Miller, and met with the United Kingdom Armed Forces Bill Team, headed by Mrs Teresa Jones, which is working on the introduction of a triservice disciplinary code for the United Kingdom.

Those meetings and discussions have confirmed my view that the current structural arrangements under the DFDA do not fully reflect the considerable body of law that has developed in recent years in connection with the Canadian and United Kingdom military justice systems with regard to the perceived ability of service tribunals to provide a fair and impartial trial. Whether the High Court of Australia would ultimately find the existing structure wanting, to the point of striking all or part of it down, is an issue upon which it is inappropriate for me to express a conclusion. However, I think such a challenge would at least be arguable in light of these developments and it would be better, in my view, to take a proactive approach at this stage.

In my submission I have endeavoured to raise approaches that might be considered to address these issues. The approach that I have suggested is that consideration be given to affording greater independence and responsibility and, importantly, the perception of that to what might be loosely called the military judiciary. In the submission I have suggested that consideration be given to addressing this issue through the establishment of a standing military court. For the reasons I give, I believe it is desirable that such a court should comprise permanent and reserve serving officers. I do note a submission to the committee from Mr Richards to the effect that suitably qualified non-military appointments could also be made. I have reservations as to whether this would be suitable. Unlike the position that prevails in the United Kingdom, the great bulk of trials conducted in Australia at the court-martial or DFM level are heard by a Defence Force magistrate sitting alone as the tribunal of fact and law. In such a case, in the event of a conviction it is essential that the judicial officer have a proper appreciation of the maintenance of discipline aspects of the offence as well as the general sentencing principles applied by the civil courts from time to time. Indeed, that approach is required in the sentencing principles at section 70 of the Defence Force Discipline Act. There are also issues of deployability into theatres of operation. Again, unlike the recent UK experience, Defence Force magistrates have sat in nearly all of the recent theatres of operations where the ADF has been present. The details appear in my submission.

I now briefly return to the suggestion that if a permanent military court were to be established it could be created as a military bench of the Federal Magistrates Court with Defence Force magistrates being appointed until retirement. I acknowledge there may well be other possible approaches. I was not intending to preclude consideration of them. One model which could also be considered is for Defence Force magistrates to be appointed by the Governor-General on the recommendation of the JAG for a renewable term of five years during good behaviour, subject to removal by the Governor-General on the recommendation of a judicial committee established under the Defence Force Discipline Act. Renewal of the term would be automatic unless the judicial committee recommended against renewal. The judicial committee under the Defence Force Discipline Act could comprise: as the chair, the president or a member of the Defence Force Discipline Appeals Tribunal; a judge of the Federal Court or a state or territory Supreme Court and a judge of a District or County Court from a state or territory.

One advantage to that arrangement would be that one or even two of those members could come from the DFM's own state or territory jurisdiction. That model would of course not bring the DFM within the scope of chapter III of the Australian Constitution. The obvious advantages of the first suggestion—namely, tenure until retirement—are that it would bring them within chapter III, and so obviate any present jurisdictional complexities or conflicts, and it would patently provide that fundamental guarantee of judicial independence.

There is an error of fact at paragraph 24(b) of my submission, where I refer to the approach taken in the UK in connection with the review of trials conducted by the Army and the Royal Air Force. I am now informed that, notwithstanding criticism by the European Court of Human Rights, the internal review has been retained. I understand that the triservice team considering triservice discipline legislation for the UK forces will recommend that a limited form of internal review be kept when the new UK legislation is introduced in 2005, such that a reviewing authority would retain the power to mitigate sentence but would not have the power to interfere with a conviction. I do not know whether this recommendation of the triservice team will be accepted, but, in any event, I respectfully disagree with it. The concern with the internal review is that it permits a nonjudicial authority to interfere with the decision of a court or a judicial authority, and the review, if undertaken on petition, has regard to the accused's submissions but does not take into account the view of the prosecution or, in cases involving a victim, the views of the victim.

At paragraph 31 of my submission, I did suggest that a DFM nominated by the JAG could be appointed to preside at a board of inquiry. Following my discussions with former Chief Justice Lamer, I am confirmed in my belief that the preferable course would be for this to occur by way of exception and only with the specific approval of the JAG. The conduct of administrative inquiries is an exercise of the executive power rather than the judicial. My view is that the better course for military justice is that the military judicial officers should ordinarily not be involved in administrative inquiries. Subject to the limitation that I will not provide legal advice, I would be very pleased to answer the committee's questions.

Senator CHRIS EVANS—Thank you very much for your submission. It is a very useful addition to the committee's work. We are anxious to look at the broad issues as well as the more particular issues, and this has opened up an important area for us. You have talked about a standing military court, and I must say that that has some appeal for me. You have largely talked about the advantage being seen to be independent and impartial. I wonder whether other advantages would accrue from having a standing military court. For instance, we have dealt with concerns about the lack of public openness, about processes and about the lack of a record of decisions. The whole transparency of the system has been one of our concerns. Would you argue that having a standing military court would help to alleviate some of those issues as well?

Justice Roberts-Smith—In relation to that, the committee might be assisted by reference to some of the comments made by former Chief Justice Lamer in his report on bill C-25 in Canada. His recommendation there is that the military judges in Canada be appointed as a permanent military court. Indeed, that is one of his stronger recommendations. Some of the factors to which you have drawn attention figure in his views about that. Certainly it is true that, if there were a permanent military court, there would also necessarily be a registry associated with that, which would no doubt make for more efficient and hopefully somewhat more transparent proceedings generally. But I also think there are other considerations. A particular one of those, mentioned by

former Chief Justice Lamer, is the status of the court. As I understand his views, he sees the status of military judges in Canada—who do essentially the same job as Defence Force magistrates in Australia—as being equivalent to district or country court judges. He regards the question of status as being quite important.

I think some of the more significant practical advantages of having a permanent military court would be that you have then the opportunity to deal with cases on an interlocutory basis, which is not presently really available. In Australia at the moment, for example—as in Canada—where a military tribunal is to sit with a Defence Force magistrate, it does not come into existence until the reference is made by the convening authority. It then can only sit once that reference is made and, depending upon the terms of the reference, from a date specified in that reference. That creates difficulties with situations where there is a need to make rulings on evidence, questions of law and perhaps questions of bail—things of that kind—preceding the trial. Without a standing court, those things can only be dealt with by the particular Defence Force magistrate appointed to deal with the particular trial and only after the reference has been made. So I think there are practical advantages, as well, to be gained from the appointment of a permanent military court.

Senator CHRIS EVANS—We have a lot of evidence from people concerned about the lack of procedural fairness in issues that have been dealt with inside the military. They have concerns that they are not getting access to natural justice. Would you see the court operating in such a way that people could seek relief through the court?

Justice Roberts-Smith—That was not something that I had anticipated. I have not given any consideration to that. It is certainly not something which is within the scope of the judicial authority of service tribunals under the Defence Force Discipline Act at this stage. It has not been contemplated, as far as I am aware. I should also say that my statutory responsibilities as the JAG are confined to military discipline law. They do not extend, as I sought to make clear, into the areas of wider military justice to do with administrative inquiries and the like. Confining myself to military discipline law—that is, proceedings and military service tribunals and the lead-up to those—I would have thought that there is within the Defence Force Discipline Act ample provision for procedural fairness. I have no concerns about that and, had I any, I would have raised them, as would my predecessors, in the annual reports to parliament. But it seems to me that the procedures which are provided for the conduct of service tribunals—and I am speaking here specifically of courts martial and trials by Defence Force magistrates—are as good as, and in many respects even better than, many of the procedures which apply in the civil jurisdiction. So I would not have those concerns in the context of service tribunals at that level. There may be difficulties in the practical delivery of military jurisdiction at the level of summary authorities, but that is why I have made the other recommendations I have in relation to those in the submission.

Senator CHRIS EVANS—This suggestion about perhaps having a link to a division of the Federal Magistrates Court—I suppose it is a political question in a sense but, obviously, new divisions of courts are not achieved easily. There are usually territorial and other jurisdictional arguments et cetera that come into these things. What would you anticipate might be some of the difficulties about moving to that sort of proposition?

Justice Roberts-Smith—Let me say at the outset, Senator Evans, that that aspect of the recommendation or the suggestion—which is really all it is—is not something which I hold with any degree of fervour: it is a suggestion. I can frankly see quite significant difficulties in attempting to achieve that given the legislation and the Federal Magistrates Act. All that was intended by that suggestion really was that it might be possible to perhaps give military judges, as the Americans or Canadians call them, or Defence Force magistrates, as we currently call them, an appropriate status and some degree of perceived independence by allying them to some extent with what might be called a chapter III or otherwise federally recognised court. That was really the only purpose behind it. I was not suggesting integration necessarily as such. It might be a matter merely of according the military judicial officers that degree of status or standing so that, for example, if the federal magistracy were conducting training sessions or things of that kind, then the military judiciary could be included. It was more with that kind of benefit in mind rather than assimilation, as you put it, as a division of the federal magistracy.

Senator PAYNE—One of the observations that has been made, in fact at some length, in the hearings we have had thus far is that one of the most fundamental problems with the administration of military justice is the length of time it takes for the administration to actually occur. The old maxim, justice delayed is justice denied, has been put before us more than once. I wonder if you have any observations to make on that and whether you think any of the reforms that you very gently suggest in your submission may go some way towards streamlining the procedures?

Justice Roberts-Smith—I am conscious of the sorts of submissions or concerns which have been expressed. I have to say that my overall impression is that they generally concern what I have earlier described as that wider view of military justice rather than the conduct of service tribunals particularly at court martial or Defence Force magistrate level. There have been delays from time to time. There is no question about that and to some extent that is inevitable in any system, civil or military. That is not to say it is desirable because, as you correctly point out, with respect: ‘Justice delayed is justice denied’. But it has to be appreciated again that I am speaking from the viewpoint of the military discipline system and, in that, I am referring to what happens with military charges from the point at which a person is charged with the offence. It is at that point that they come within the scope of my area of responsibility. It is fair to say that from that point there are not very many instances of unreasonable delay. From that point, my experience has been that generally speaking—with rare exceptions—things work reasonably effectively and in a timely fashion.

Senator PAYNE—It may in fact be more a problem of getting them to that point.

Justice Roberts-Smith—I think that is very true. It has certainly been the case that there has been criticism over a number of years, for example, of delays in the conduct of investigations and of the way in which investigations have sometimes been conducted. For some of those reasons there has been quite a long delay in getting the particular matter to the point where someone is charged and comes within the system in that sense. That, I think, can be a real problem. Obviously, what I am suggesting will not impact directly on that. But to return to the thrust of your question, I would like to think—and I would think—that were the suggestions I have made implemented they would have an advantageous effect in terms of expedition of the process of trial by service tribunal.

Senator PAYNE—I am thinking particularly of your suggestions in paragraph 24 in relation to the automatic review that is provided for in DFDA, part 9. You made two suggestions; you prefer the second. Would you like to expand on that a little for the committee?

Justice Roberts-Smith—That certainly would improve the process taken in terms of what happens following conviction because that is an area where there is from time to time potential for delay. I would like to see that overcome. The reason I make the recommendation is more fundamental than that. Broadening the right of appeal to the Defence Force Discipline Appeals Tribunal combined with broadening the right to trial by Defence Force magistrate or court martial would go a long way towards meeting some of the concerns expressed by the European Court in recent cases there as to trial by military officers—summary authorities is what we are talking about here in particular. I mentioned to the chair earlier that one possible area of concern at least in terms of the perception of independence is with the conduct of summary trials by commanding officers and other officers of that kind. If every accused had a right to elect trial by court martial or Defence Force magistrate that would go a long way to overcoming what the European Court would see as an inherent problem with that system.

Senator PAYNE—Thank you. I have questions in two other areas. The first is your suggestion in relation to boards of inquiry, which you refer to particularly in paragraphs 30 and 31, and what you judge would be a genuine and demonstrable independence of the presiding officer. I think you said in your opening remarks that you would in fact advocate that to be used only by exception.

Justice Roberts-Smith—Yes.

Senator PAYNE—Why so restricted? We have received quite a bit of evidence around boards of inquiry, how they are constituted and how they are conducted, which leads me to be attracted to your proposition to avoid some of the problems we have had put before us.

Justice Roberts-Smith—I think that is why I made the suggestion in the first place. Having had the opportunity of discussing that further with the Rt Hon. Antonio Lamer I have become very firmly of the view that it is undesirable for a serving judicial officer to preside at or take part in a board of inquiry into an administrative inquiry. That reflects not only his personal view but it is the official view now adopted in Canada and also, I think, the United Kingdom.

The reason, of course, as I indicated, is that the conduct of an administrative inquiry is an exercise of the executive power, whereas a judicial officer exercises judicial power. In this kind of context, apart from that in-principle observation, there is always the potential problem that the judicial officer could be compromised in the performance of his or her judicial duties by participation in a board of inquiry of that kind. There could be conflicts of interest either then or later which might impact on his or her capacity to perform the judicial duties which are his or her primary responsibility.

Senator PAYNE—I understand that point well, and you have explained it very clearly. However, it does not take away from the problems that the boards of inquiry, as currently constituted, often have both in perception and reality.

Justice Roberts-Smith—That is true. My concern about that would be that, recognising as I do that the appointment of a judicial officer to serve as the head, president or chair of a board of inquiry—or a royal commission, if it comes to that—adds status and credibility to the inquiry, which of course is why governments continue to seek to appoint serving or former judges to those positions. The concern I would have, and the concern which the judiciary generally in a number of countries now has, is that such appointments, whilst enhancing the credibility of the inquiry, have the capacity to detract from the credibility of the judiciary and, as I say, impair their capacity to perform their judicial functions. I do not think the trade-off is worth it.

Senator PAYNE—Indeed. Finally, in oversight terms, in one of your final observations you suggest an enlargement, if you like, of the role that the JAG could play in relation to reporting in the parliamentary process. At paragraph 33 of your submission, you say that it might be possible to enhance the current annual reporting requirements to provide what you call ‘general supervisory oversight of the military justice system’. I am quite attracted to that proposition as well.

Justice Roberts-Smith—I must say that I made that suggestion with some degree of trepidation. I make it because I think it ought to be considered because of the concerns that are generally expressed and indeed because my recollection is that the former parliamentary inquiry made that precise recommendation. Again, it is not something which currently is any part of the responsibility of the JAG, and I make that point quite clear. Nor am I suggesting that the JAG should be given any executive, administrative or other authority or responsibility in relation to the conduct of boards of inquiry. But, in light of the parliament’s previous report making that recommendation, it seemed to me that, if it were to be adopted, the nature of the report ought to be confined in the way I have indicated—namely, a supervisory responsibility only, in the sense of reporting upon observations to parliament, so that parliament has some informed comment in that way upon the conduct of such inquiries but without the JAG having any responsibility in relation to the conduct of them.

Senator JOHNSTON—Thank you very much for a very detailed and contemporary submission which I think is very beneficial to the committee’s deliberations. At paragraph 21 of your submission, you advert to the need for a permanent military court. It was put to us by a member of the legal profession that, whilst most welcome, such a court should not be presided over by serving or reservist officers. In your understanding, are we at the stage where the perception is so adverse to the notions of justice that we have to go outside the military to preside over such a court?

Justice Roberts-Smith—I do not think we are at all. In fact, I might make five quick points in response to that. The first and fundamental point is that we are not talking about an exercise of the ordinary criminal law—although in some areas, as I am sure the committee appreciates, they overlap. It is a military discipline system. The object is to maintain military discipline within the ADF by a system which is, and is seen to be, fair and just and which serves the purpose of military discipline, which is, ultimately, success in battle. 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 the debate in terms of principle. The High Court has also accepted that the system embodied in the Defence Force Discipline Act does accord procedural fairness and due process and meets the requirements of judicial independence and impartiality.

The second point I would make is that it is essential, in my view, to have knowledge of and understanding of the military culture and context. This is something much more than being able to understand specialist evidence in a civil trial. There is a need to understand the military operational and administrative environment and the unique needs for the maintenance of discipline of a military force, both in Australia and on operations and exercises overseas. The third point is that the system must have credibility: credibility with and the acceptance of the Defence Force. It has been suggested that civilian judges have been seen as a success and accepted by the army and the Royal Air Force in the United Kingdom, but that view certainly is not universally held within the armed forces in the UK, as my recent discussions have shown.

The fourth point is that Canada, for example, which is very comparable to Australia in this regard, is firmly of the position that military judges be serving military officers, but, again, that they have structured, legislative, guaranteed independence. Finally, the disciplinary tribunal, the court martial or Defence Force magistrate, as I have already observed, must be able to sit in theatre and on operations. It has to be deployable. So those, very quickly, would be the short points I would make in response to that.

Senator JOHNSTON—Thank you very much. That was most enlightening. We have been confronted with a very grey area and that is the distinction between disciplinary matters, serious matters, that have been dealt with on a relatively low standard of evidence or have failed to breach various evidentiary thresholds, with the authorities then reverting to an administrative process. It strikes me that double jeopardy is not well understood within military circles or adhered to as a principle to be avoided. Could you comment on that?

Justice Roberts-Smith—I would be very restricted, I think, in my comments. The first reason is that, as I have indicated earlier, administrative processes are not within my area of responsibilities and I think it would be inappropriate for me to comment on them. The other point that I would make—as a general observation, perhaps—is that, in principle, in any event, it is not necessarily a question of double jeopardy because we are talking about two different things. We are talking about, in our case, the military discipline system, and let us equate that with the civilian criminal law. That is one thing. But administrative processes within the public service, for example, or in other organisations are a different thing, and different processes and considerations apply. That is why I say it is not necessarily a question of double jeopardy. Beyond that, I think it would be inappropriate for me to respond.

CHAIR—Thank you very much for joining us this afternoon.

Justice Roberts-Smith—Thank you very much. I appreciate the opportunity.

[8.21 p.m.]

McDERMOTT, Air Commodore Peter John, Director-General of Reserves, Royal Australian Air Force, Department of Defence

CHAIR—Welcome. I invite you to make an opening statement.

Air Cdre McDermott—I would like to thank the committee for the opportunity to speak to you today. I am here in place of Air Vice Marshal Dunlop, Defence's Director-General of Cadets, who is out of the country at present. My current role is the Director-General of Reserves within Air Force, and I am responsible to the Chief of Air Force for the administration of the Australian Air Force Cadets. In addition to my role within Air Force, I am a member of the Australian Defence Force Cadets steering group along with my counterparts in Navy and Army. This steering group forms part of the governance arrangements which have been established to manage the Australian Defence Force Cadets.

I will cover the latest developments and improvements in the management and administration of the cadets. I will provide specific information on the improvements we have made and are making in the Australian Air Force Cadets since the tragic death of Cadet Sergeant Eleanore Tibble. To the best of my ability, I will provide you with details to any specific questions that you may also have on the Army and Navy cadets. In the event that I do not have the answer, I will, with your concurrence, take the question on notice or endeavour to find an answer by the end of this sitting day.

For many years, Air Force has maintained close management of its cadets organisation through the provision of resources and facilities and the loan of staff, all supported by policies and processes applicable to their needs. More recently, with the emergence of the Australian Air Force Cadets as a community based youth support organisation, specific policy guidance and direction has been applied to cadet management and the training of staff. In the past few years there have been some significant improvements in all three corps of the Australian cadets organisations. Air Vice Marshal Dunlop asked me to specifically convey to you that during his time as Director-General of Cadets he will ensure that the program of organisational renewal which has been started within the Australian Defence Force Cadets will continue. Similarly, in my role within Air Force I intend to ensure that these improvements are strongly reinforced in the Air Force Cadets.

I will now explain in more detail the program of organisational renewal for the Australian Defence Force Cadets that has now been in progress since the defence white paper of 2000. The term 'Australian Defence Force Cadets' includes all three cadet organisations—the Australian Air Force Cadets, the Australian Navy Cadets and the Australian Army Cadets. There are about 27,000 young Australians aged between 12½ and 20 who participate in their chosen cadet organisation, and they do that at about 490 locations around Australia. These cadets are led by over 2,600 staff who volunteer their services to participate.

The adult volunteer staff involved in these three cadet organisations come from a representative cross-section of the Australian community. They are drawn from a wide range of

civilian professions within the community and they volunteer their time for a series of reasons. Some are parents who want to be actively involved in their teenagers' activities; some have been recruited into the cadet organisation for their special skills; some have been cadets themselves and want to give something back to the organisation; and for some it represents their chosen form of volunteerism in the Australian community.

It is very important to understand that the cadet organisation does not fall under the same military discipline system as the Australian defence forces. None of them, cadets or staff, are members necessarily of the Australian Defence Force. They are administered by the relevant service chief in accordance with the enabling legislation for cadets in the Defence Act 1903, the Naval Defence Act 1910, the Air Force Act 1923 and the subordinate cadet force regulations last amended in 1977. The administration of those corps is effected through the respective cadet policy manuals. Volunteer cadet staff are subject to the administrative processes defined in those manuals and it is important to note that the outcome of administrative processes used may be an important determinant of accountability in staff's behaviour. As Air Marshal Huston advised you in his earlier address, all three service chiefs take very seriously their responsibilities to Australian Defence Force cadets, their families and community.

A major review of cadets, commissioned by Senator Abetz in December 1999 and released in 2000, entitled *Cadets: the future*, recommended that the government reinvigorate the levels of support provided to this community based Defence sponsored organisation, and a significant amount of work has already been taken against that particular recommendation in three key areas. The first key area that has been addressed relates to the direct levels of management support provided to the organisations. *Cadets: the future* recommended that a national commander be appointed for each cadet organisation and that the Directorate of Defence Force Cadets be established to implement the Cadet Enhancement Program. That Director-General Cadets position, with AVM Dunlop as its current incumbent, was established in 2001 to oversight the Directorate of Defence Force Cadets and the Cadet Enhancement Program and to develop triservice policies and programs to fulfil the aim of reinvigorating Defence Force cadets. The DG Cadets position is not, however, in the chain of command for the day-to-day administration of the three cadet organisations; the service chiefs have that responsibility.

Since that time there have also been national headquarters established for each cadet corps under each national commander and in most instances the support in the regional areas has been enhanced. For example, for all three cadet corps there are permanent and reserve Australian Defence Force members who are either embedded in or closely or directly associated with the cadet organisations to ensure that stronger links are made with the relevant parent service.

The second key area of work has been in policy development and program delivery, and a substantial amount of work has gone into the creation of the right environment for the volunteer staff to be able to conduct youth development activities in a military like setting. Through this Cadet Enhancement Program, Defence is providing policy, awareness training and tools, which clearly identify the standards required of cadets and staff alike. A key example is the ADFC behaviour policy which we are currently implementing throughout the three cadet organisations. This policy provides a framework for behaviour within each of the organisations, including tools for managing unacceptable behaviour and formal codes of behaviour for both cadets and staff. All cadets and staff will be required to read and sign these codes, indicating that they are aware of the standards of behaviour required.

Similarly, in 2002, an ADF cadets occupational health and safety policy was promulgated, with implementation of that policy happening now. This policy gives an appropriate safety framework for the conduct of all cadet activities. Staff receive training on this framework, and a range of tools is now being developed to assist them to manage safety in their own organisations. From a program delivery perspective, through the Cadet Enhancement Program, Defence has put considerable effort into ensuring that cadets are accommodated in environments which are safe and healthy and they have access to their entitlements regarding uniforms. Also it is developing an integrated information technology system to improve the administrative burden on cadet staff.

The third and last key area of activity includes the work that all three cadet organisations have started regarding the development of their cadet staff. Education programs not only aim at educating staff on the important issue of working with adolescents from 12½ to 20 years of age; guidelines outlining the legal obligations and requirements for cadet staff have also been developed and implemented. Training modules have been developed in a range of subject areas including: equity and diversity, legal principles and implications for cadet members, psychology of adolescent behaviour, management of behaviour modification, and management of due process, including a trial of alternative dispute resolution processes.

These three key areas of work encompass much of the work in the Defence Force cadets that we have undertaken since 2000. In addition, there is a range of activities which are preventative in nature and are being progressed now. The two main components of the work relating to preventative measures are suicide awareness and crisis response. Firstly, the work that is being undertaken in the area of suicide awareness is the development of suicide awareness training for cadets and staff. We are going to have two modules which will be presented to the cadet organisations: one for the adult staff and one which will be developmentally appropriate for adolescents. The Australian Defence Force Directorate of Mental Health has recently signed a contract with Lifeline Australia for the provision of suicide awareness and intervention training to ADF members, and cadet staff will get the same training modified to meet their needs. Further, the Directorate of Mental Health will work with the Directorate of Defence Force Cadets to source the design of a training module for cadets. The intention behind the training is to give awareness to both cadets and staff of the signs they should be alert to if someone is contemplating suicide and where they can refer action to be taken. It will not attempt to provide them with counselling skills.

On crisis response, all three cadet organisations have developed a crisis response methodology which works for them. The severity of the crisis dictates the type of methodology that will be used. In the event of the death of a cadet or staff member, where that death occurs within an approved cadet activity Defence will provide significant support. Defence effectively will provide the same level of support to cadets and staff as they would provide to a permanent member of the Australian Defence Force or to a reservist on duty. This support will be provided by the Defence Community Organisation in a case management format. If the crisis is not a death but still warrants assistance at the cadet unit, we have different systems for each of the three cadet organisations. The systems are different due to the fact that they operate quite differently—they have different levels of support from their parent service and are quite different in size. I will run through each of those models.

The Australian Naval Cadets—the smallest cadet organisation—has about 2,000 cadets and 400 staff. The Navy provides management and administrative support to the Navy Cadets by

way of the appointment of a local naval authority, which comprises a commanding officer of a permanent naval base as well as a cadet liaison officer in each state. If a crisis occurs in the Australian Naval Cadets, they request support straightaway from this local naval authority, which makes available for them the support that he or she deems necessary and which would be provided to the permanent Navy. For the purposes of crisis response, the Navy, like the Air Force and the Army, consider that their cadets are part of the broader service family and, as such, receive equal support.

The Australian Army Cadets—the largest of the three—has about 16,000 cadets and 1,500 staff. The Army has posted a chaplain to the Australian Army Cadet headquarters and this headquarters is also able to seek support from the Director of Army psychology. In the past, Army psychology has provided crisis support to Army cadets, and I have been assured by the director of Army psychology that this level of support will remain into the future. If a crisis occurs anywhere in Australia, this team, as I mentioned before, can travel to the location if they think it is necessary or they can organise local Defence support. Alternatively they may use local civilian counterparts which they know through their professional associations.

The Australian Air Force Cadets has about 8,000 cadets and 1,000 staff. Each of the eight wings manages crisis support for cadets and staff in accordance with well-defined procedures. One of the wings has developed a system which is much more self-sufficient and community based than I have mentioned before. This model is similar to the Army cadet model, except that in this case, for one of the wings in the Australian Air Force Cadets, the chaplain and the psychologist at headquarters are cadet staff. They are not members of the Air Force and they use the qualifications that they have in civilian employment. We are looking at piloting that model throughout the eight wings of the Australian Air Force Cadets. There are also extensive levels of support provided by the Air Force and from the wider Defence Community Organisation.

I would like now to specifically explain to you the changes which have been made within the Australian Air Force Cadets. Directly after the death of Cadet Sergeant Eleanore Tibble, the Air Force conducted an investigation into the management, administrative actions, procedures and processes of the Air Force Cadets with respect to cadet members. As soon as that Air Force investigation was completed, immediate steps were taken to overcome the shortcomings listed. That has resulted in a complete revision of the policy and the administrative procedures to be followed when dealing with minors, including the requirement to have a parent or guardian present whenever a cadet is being formally interviewed, as well as the introduction of a training program in cultural and behavioural awareness for all Air Force cadet staff, with particular emphasis on their responsibilities when dealing with minors.

In addition to those improvements, the Australian Air Force Cadets have for a number of years been following a broader program of organisational renewal, which has included the following elements: significant changes to the ways in which we train cadet corps officers and instructors, updating of the administrative support manuals and guidelines—and all cadet instructors, officers and the cadets themselves now undergo training, as I mentioned before, in a range of subjects, including equity and diversity, management of due process, psychology of adolescent behaviour and occupational health and safety.

In conclusion, there have been many improvements in the three cadet organisations over the past few years. Significant work has been undertaken specifically by the Australian Air Force

Cadets to address deficiencies which were highlighted in the Air Force's own investigation into the administrative processes surrounding Cadet Tibble's suspension from the cadets. More broadly, all three cadet organisations are in the process of an organisational renewal agenda designed to create the right environment with the right tools to enable the volunteer staff to conduct youth development activities in a military like setting. Chair and Senators, I would be pleased to take any questions you may have.

CHAIR—Thank you, Air Commodore. In relation to Cadet Sergeant Eleanore Tibble, as you would be aware, when we held a hearing in Hobart we had Eleanore's mother and sister appear before us. You would have no doubt read the *Hansard* of that harrowing experience for her mother and sister. And we subsequently had the Stunden report. Has Leading Aircraftsman Harper ever been interviewed?

Air Cdre McDermott—Not to my knowledge. He left the cadet corps and that was the end of the matter, as I understand it. He resigned at that time.

CHAIR—So, if we have another case like Eleanore Tibble's, all you have to do is resign and you are clear of being required to answer any questions?

Air Cdre McDermott—If the person leaves the cadet organisation, they are no longer part of that organisation, so if there is something that needs to be done, that may well be too late. Clearly, though, if something has been done that might have been of a criminal nature or some other nature, there may well be recourse in law and other places. But, if they have left the organisation, the remedies that are available within the organisation are not open to us.

CHAIR—Has that been considered, the fact that Mr Harper was able to basically avoid the Air Force inquiry into Eleanore's suicide? If there were another suicide, it seems to me all you would have to do is resign. And you still do not have the means to require, compel or even ask a man or woman who may have been in a position of authority to present themselves to some sort of inquiry.

Air Cdre McDermott—The situation as I understand it was that the person came forward, went and spoke to the CO of the unit and said, 'I have done something that is against the rules of the organisation—I have had some form of fraternisation with a cadet—and I believe that I have made a mistake and I wish to resign from the organisation.' Now, that happened. The tragic events were subsequent to that and, from the investigation that was done, I do not see that there was necessarily anything that the Air Force could have done at that time. That happened. The tragic events were subsequent to that. From looking at the investigation that was done, I do not see that there was necessarily anything that the Air Force could have done at that time.

CHAIR—When the investigation was done into the charges against Eleanore, as I recall there was a delay in her being advised of the outcome of that investigation.

Air Cdre McDermott—Do you mean the Stunden report?

CHAIR—I am not sure which one it was, I am just trying to recall. It seemed that there was a period of a few days when Ms Tibble was quite upset about the fact that she had been suspended. As I recall, the cadet commander in Tasmania was advised that she had been exonerated or

cleared, however she was not told of that. It appears that, subsequently, she was so upset that she took her life. Given the changes you have advised us of, could this happen again?

Air Cdre McDermott—I think in those particular circumstances what happened was that, regrettably, Eleanore's formal parent or guardian was not present at that formal interview. That is something that happened and is to be regretted. She was not there. She was advised that she would be suspended from the Australian Air Force Cadets. That advice was relayed to the Director of Reserves—my predecessor position—in Canberra. When that was received, the circumstances were quickly reviewed in terms of some telephone conversations. The order was given back to the officer commanding, as it is now called—in those days it was the commanding officer of the organisation—that it was inappropriate that she had been suspended. A direction was given that she be reinstated. It is regrettable that that advice was not passed on to Eleanore Tibble.

CHAIR—That advice was given to a cadet officer, wasn't it?

Air Cdre McDermott—It was given to the officer responsible.

CHAIR—Yes, I recall that. Can this happen again? I have certainly come to some conclusions about what occurred then—and maybe my colleagues have as well. I would not like to think that personalities got in the way of someone who should have been advised that she had been cleared and that she was no longer suspended. She was not. So there were a few days when someone, who seemed to have had the information, should have advised her but did not. The rest is now history.

Air Cdre McDermott—Yes, it is a most regrettable series of circumstances. As I indicated, we have very carefully looked at the situation there—and it was only the administrative processes that we were able to look at. A gap analysis was made of the quality of training and the quality of preparation for staff in those command positions—and I use that term advisedly—within the cadet organisation to ensure that we have proper procedures. Those procedures have been very rigorously defined. In fact with Ms Campbell's assistance we have revised and completed two new chapters of the cadet policy manual so that it is quite clear which procedures should be put in place to ensure that situation does not happen again. We have had a very extensive training program to ensure that people in those positions understand those policies and, more importantly, understand the behaviours required to manage those situations. It is impossible to say it will never happen again, but I think every process has been reviewed to ensure that we have given the right level of training to people.

CHAIR—One way to prevent it happening again is, I suppose, to have Mr Harper interviewed by someone so he can explain the circumstances that led him to resign and to make that statement to his commanding officer, whatever his position was, and also one of his mates. If you can simply fill out a form and exonerate yourself then what is to stop it happening again? Certainly as far as I am concerned the fact that this chap has not even been interviewed, when he started this scandal off, means it is not over.

Air Cdre McDermott—The Stunden report reviewed all of the processes there. I think the only recommendation that it came to in that particular regard was that the person had departed

the Australian Air Force Cadets and therefore no action was possible. I am sorry, but that is all I can say at this time.

Senator CHRIS EVANS—Senator Hutchins's questioning really gets to the heart of the issue which concerns me, the schizophrenic nature of the relationship between, in this case, the air cadets and the Air Force. It happens in all three services. They wear the uniform and you talk about control and command, but then you stop yourself and have to say 'It is not really command; it is not really control. We are not really accountable for those things.' That worries us. Members of the committee, like the general public, think the cadets are run by and accountable to the various wings of the armed forces. I want to explore that with you. You talk about the officer commanding real control but, at the end of the day, you do not have any real control over how the air cadet staff officers behave. What sanction, what control, do you have?

Air Cdre McDermott—The control we have is an administrative control. The act says that each service chief shall administer the cadet corps. In the policy manuals it is spelled out exactly what that means. For example, in the new Air Force policy manual, it speaks of command but it very carefully defines what that type of command is. It is not the sort of command that we generally have within the Australian Defence Force with any overtones of the Australian Defence Force legal code, the Defence Force Discipline Act, associated with it. It is an administrative control. As I mentioned, we have gone through a very extensive process of ensuring that we have carefully defined what sort of processes need to be done to enable the staff to properly control the organisations that they run. We have a series of policy manuals that reflect that. Each of the three cadet corps has a very extensive program of training that enables staff to thoroughly understand what is required of them.

As I indicated, we have a behaviour code of conduct, which is in the process of being put in place, which very carefully defines how the organisation shall be managed and administered. Each one of the staff is trained in that through a series of programs, in some cases over a number of years as they move up through the organisation and have greater levels of responsibility. The cadets themselves are also expected to abide by a code of conduct. By later this year, all members of the corps, both staff and cadets, will have had training in that, will be expected to have read it and will be expected to sign up to it. So it is quite clear to them, through the policy that has been laid down, how they are to behave and what we expect of them. In terms of the action that we can take against them, at this stage the action is administrative—not dissimilar, perhaps, to processes that might be made in the wider community in another employer relationship where people can be stood aside, suspended from their position or, perhaps, immediately dismissed. Those instruments are there underneath either the regulations or the policies that flow from those.

Senator CHRIS EVANS—How many staff do you have in the air cadets?

Air Cdre McDermott—There are about 1,000 staff in the air cadets.

Senator CHRIS EVANS—And what is the average number of hours per week they work?

Air Cdre McDermott—That is a little hard to define. We give them a remuneration in terms of allowances of a maximum of 48 days effectively a year. That is worked on the basis of, say, one day a week being what we expect a volunteer to put into the organisation. I know many of

them do more than a day a week, but usually if it is a CO or somebody assisting a CO out in the squadron it will be a training evening, perhaps a couple of training evenings if it is a big squadron, and perhaps some work on the weekends to work with wing headquarters to follow up on paperwork and the like.

Senator CHRIS EVANS—The reality is that most are very part-time, aren't they?

Air Cdre McDermott—Yes, they are.

Senator CHRIS EVANS—The only point I would make is that you are attempting to bring in all these policies and codes of behaviour et cetera and on the face of it that is all very fine, but you are dealing with basically a volunteer organisation and you are going to be training them in equity and diversity, legal principles, psychology of adolescent behaviour, management of behaviour modification and management of review process. This is in addition to their one night training they are doing with the cadets. I am not being critical but I am saying that we can all write very good policy documents and we can all write very good codes of practice and they can all be filed very neatly in somebody's office. It seems to me that it is a very big task to impart that sort of training, knowledge, understanding and culture into an organisation where you are effectively relying on a very part-time volunteer force. Over the top of this you have got an expectation in the broader community that you have got a Defence run command set-up. I am a bit sceptical that all the best policy of the world will actually translate into much, given those constraints.

Air Cdre McDermott—The training I mentioned is in addition to the work they are providing for the cadets. For example, when somebody comes into the organisation they have an expectation, in fact a requirement, that within their first year they are to complete a series of training courses which in sum total come to about a week of time. They can do that part-time, and it depends on the situation and depends upon the corps, but effectively they will be doing about a week of full-time training or the equivalent in their first year before they are allowed to have any supervision over the cadets themselves. After that they will have reached a certain level of competence and within the next few years that will increase so that there will be additional training and more detail there. It is additional to the time.

Senator CHRIS EVANS—What percentage of your staff in the air cadets, which seems to be the obvious area of expertise, are actually active reservists?

Air Cdre McDermott—I know of two, and that is only by coincidence. By policy, none. All of the members of the staff of the Australian Air Force cadets are that. If they are members of the reserve or permanent members of the Australian Defence Force, that is because they have chosen to move into the organisation. That is in the Air Force cadets. In the Army cadets there are a number of embedded reserve positions within that.

Senator CHRIS EVANS—I was not necessarily meaning reservists on active duty. I assume a lot of your volunteer staff people would in fact be Air Force reservists as well.

Air Cdre McDermott—As I said, I know of only a couple, and that is because they happen to have children who are in the cadets and they decide to go along and assist.

Senator CHRIS EVANS—Why wouldn't there be more? I am a bit taken aback. I assumed that most of them would be reservists who as part of their involvement with the Air Force drifted into the cadets to help out.

Air Cdre McDermott—That was the model. I do recall that you were in the air cadets and that was the model, I think, at the time that you were there.

Senator CHRIS EVANS—Yes.

Air Cdre McDermott—We do not have that model anymore.

Senator CHRIS EVANS—Do you actively discourage reservists from being involved?

Air Cdre McDermott—No, not at all, but there was a change of government policy. These days members of the Australian Air Force cadets are that in terms of staff. Some may be reservists, some may be whatever, but that is not a policy that we pursue. They are volunteers first and foremost.

Senator CHRIS EVANS—I accept that. I just assumed that naturally it would attract those that had, say, served and were now in the reserves. But you are saying that it is almost unheard of that they are reservists and air cadet staff.

Air Cdre McDermott—I know of only a few.

Senator CHRIS EVANS—Are the Army and Navy the same?

Air Cdre McDermott—They are a little different. The Army has chosen to embed a number of reserve folk within their organisation, and the Navy has a few. The national commander, my equivalent number in Army, is a reserve officer, and he looks after cadets. I look after reserves and cadets and I am a reserve officer. There are a few in Navy and more than a few—I do not have the exact numbers—almost down to the squadron level, in Air Force terms, in Army cadets. They have a number of reserve folk who provide additional assistance to the management of the Army cadets.

Senator JOHNSTON—Are you a full-time member of the reserve? What do you do for a job—is it your full-time job to be in charge of cadets Australia wide?

Air Cdre McDermott—I retired from full-time service in the Royal Australian Air Force about 18 months ago. My last job was running the Australian Defence College and the Australian Command and Staff College. I had a flying career. I left and went off to do the things that officers do in retirement, and after some time I was asked by the chief if I would consider coming back to be the Director-General of Reserves with responsibility for cadets. I knew a little of the job so I was very pleased to do so.

Senator JOHNSTON—Good on you; that is fabulous. I want to follow up what Senator Evans was on about. I think we have some problems, even in your submission, with the concept that the organisation is administered by the service chiefs. Technically I am not sure that means. When you say that it is administered by the relevant service chief, do you mean that he gives

directives? Are there regulations or does he simply approach it on an ad hoc basis as and when asked? How does the service chief administer the cadet corps in his particular service and the supervising personnel?

Air Cdre McDermott—There are two major ways. One is through the provision of policy, which goes through the cadet policy manual. That is the basis for his administration of the cadet organisation.

Senator JOHNSTON—Would that deal with numbers, what sort of equipment they are going to have and all the general, framework type issues?

Air Cdre McDermott—Yes, indeed. Effectively he delegates that to me, and I work closely with the senior Australian Air Force cadet officer, who is not a member of the ADF but wears a uniform with the rank of group captain. I provide a channel for the funds to run the organisation. We provide the majority of funds but not all because much of that comes from the community. Through the agency of the policy manual—which is a major responsibility for me, and I am in the process of updating it—we define the organisation and we establish its structure. I have an officer under my delegation who signs all of the promotion instruments associated with the staff, appoints staff, promotes them, discharges them in due course—or early, if there is a reason for us to have them depart early—and oversights and manages the promotion and appointment et cetera of the cadets. It is for all intents and purposes as if it were a delegated chain of responsibility down through the cadet organisation.

Senator CHRIS EVANS—That was my next question. I accept what you have said about the chain of command. The policy is interesting, and I will come back to that in a minute. I am interested to know whether you are part of the chain of command.

Air Cdre McDermott—I am certainly part of the chain of command from the Chief of the Air Force in terms of his delegating to me the responsibility for the cadet organisation.

Senator CHRIS EVANS—If you do not do what he says, what is his remedy against you?

Air Cdre McDermott—I am a member of the Australian Defence Force as a reservist and therefore I am subject to the Defence Force Discipline Act.

Senator JOHNSTON—Let us explore that further. Let us take a hypothetical example of a volunteer who is in command of, say, 30 or 40 children—I am using a technical legal expression; they are adolescent children, but they are children—and there is a prohibition on entering a certain part of the training area that they are practising in. Notwithstanding that prohibition, that supervisor takes them into that training area, through ignorance or simply through wanting to go there—wanton disregard for the directive or the prohibition. What remedy does the Australian Defence Force or the service chief have against that person?

Air Cdre McDermott—If it is an administrative result—a failure to do something—then administrative remedies would take place.

Senator JOHNSTON—It would be just a disobedience of orders. But how can you have an administrative system? Isn't that person just going to resign and walk off, as the chairman has

indicated? If something happens and you challenge this person—‘You took those children into the part of the training area that you were prohibited to take them into, and we are going to lay a charge on you,’ or ‘We want an account from you as to why you did that’—he could say, ‘I’ve had enough and I’m leaving; see you later.’ That is his entitlement, isn’t it? Do you see the point I am making?

Air Cdre McDermott—Yes, of course. As I mentioned before, if that person, by negligence or disobedience of orders, commits some offence against civil law then they are as liable as any other person in the community.

Senator JOHNSTON—No. He commits an offence in breach of an order by the chain of command, which both you and I understand is the authority that controls a military training area, for instance. This person is on the training area with authority, but he is not part of the ADF. If you want to prosecute him for anything, you have no power or jurisdiction—is that not the case?

Air Cdre McDermott—The power that we have is to stand them aside, to counsel them or to immediately remove them from their position within the cadet corps.

Senator JOHNSTON—Where do you get that power from?

Air Cdre McDermott—That is from the Cadet Forces Regulations 1977.

Senator JOHNSTON—These are volunteers; they are not paid or remunerated in any way. Yes, they have a uniform that has been issued to them. The regulations say this and that. But, at the end of the day, from what we have heard we have come to understand that these people are not the subject of rules, regulations and legislation that control reservists and serving members. I think you can have the regulations—that is fine. What worries me is that you have 26,000 children under the control of people who have no proper legislative framework that says that when they get their uniform they must, at the very least, acknowledge a responsibility to be bound by some form of rules and undertakings and to adhere to some form of military justice and administration. It strikes me—and I want you to argue this with me—that we just go along and accept these people on face value and accept in good faith that these people will do the right thing. When I see the number of 26,000 cadets and almost 3,000 supervisors, I am concerned about the legal nexus between the legislative power of the service chiefs, the chain of command and the oversight that those two institutions have of these volunteers. What can you tell me that gives me comfort that there is that control and authority in technical terms?

Air Cdre McDermott—In technical terms, I would start by indicating that it would certainly be inappropriate—and I believe this is in the submission that we have put forward—that the Defence Force Discipline Act apply in the situation that we are talking about. We are not talking about combat or preparing for combat. We believe it would be inappropriate by community standards to expect us to hold these folk, who are essentially civilians, to the strictures of the Defence Force Discipline Act.

I think you are asking me what the legal status is of the staff in the organisation and I have indicated that we have been pursuing a number of processes to ensure that all of these things are properly put in place. I have indicated that we are looking at reviewing policy and management issues there. We have been looking at the legal status of the cadet staff. Over the last year or two

my predecessors have been looking at this issue. We have obtained legal advice that the relationship between the cadet staff and the Commonwealth is a common law relationship—that is, under the common law the Commonwealth has a common law employer relationship with the staff of the cadet organisations.

Senator JOHNSTON—So damages would flow for wrongful dismissal?

Air Cdre McDermott—Those sorts of things apply, yes. There is a two-way relationship there.

Senator JOHNSTON—Shouldn't we sort that out in legislation? Shouldn't we refine that so that we are not completely at the mercy of lawyers?

Air Cdre McDermott—Of course. One of the issues that is being worked on at this stage is to properly define what that common law relationship should be. Under common law the Commonwealth has a certain vicarious liability for the folk in the organisation. If they commit an act of omission, commission or whatever then the Commonwealth is liable. For the purposes of OH&S matters then all of these folk are deemed to be employees of the Commonwealth.

Senator JOHNSTON—So Comcare would potentially be liable if they were injured on Army, Navy or Air Force land?

Air Cdre McDermott—That is correct. All of those things apply: common law relationships, vicarious responsibility and the like. The responsibilities and the duties of the employee—that is, the cadet staff member—need to be defined in a way so that people can understand what the rights and responsibilities are. At this point we have defined those in terms of the policy manual. The policy manual states what is expected of the employees—that is, the cadet staff—and, as I mentioned, we are expecting each one of the staff members to sign that they have read and understood what their rights, duties and responsibilities are under that code of conduct. We believe that it will state what the responsibilities are under common law.

But we wish to move further than that and the Defence Steering Group, of which I am a member, is in the process of reviewing the adequacy of cadet force regulations to ensure that a proper legal relationship is defined in terms of, I guess, a hierarchy of legal relationships. The cadet force regulations were last issued in 1977. The Defence Steering Group, on 15 December last year, looked at that issue. It recommended that a series of options be examined—such things as contracts for staff, individual workplace agreements or whatever. The advice we have from within the Defence Legal Service and from the Australian Government Solicitor is that the best way of managing that aspect is to review and revise cadet force regulations. That is what I believe will be happening very soon. The chiefs of staff committee, in July of last year, directed the then Director General Cadets to look at this issue and to report back. A draft paper has been prepared and that will be going to the chiefs of staff committee in mid-July.

Senator JOHNSTON—So we are getting to the nub of this issue and there is a draft paper floating around that the chiefs are going to look at shortly?

Air Cdre McDermott—That is correct.

Senator JOHNSTON—That gives me some comfort. Thank you very much.

Senator HOGG—If there is a draft paper floating around, how long before there will be a decision on that draft paper? It could float around for the next five years—that is the problem with Defence.

Air Cdre McDermott—The timescale that I am aware of is that the draft paper is being worked on now. On Monday, 5 July, that paper will be lodged with the chiefs of staff committee secretariat and it will then be tabled. I think it is listed for consideration on 16 July but I would have to check that. In mid-July it will go to the chiefs of staff committee. The recommendation would, I understand, be that the issue of varying the cadet force regulation is the preferred option. The major reason for that is to ensure that—

Senator HOGG—Sorry, Air Commodore, but will that require ministerial action?

Air Cdre McDermott—Yes, it will. It will go to the chiefs of staff committee; it will then go to the minister in the normal course of events, and a regulation would then be varied via the Governor-General-in-Council. That is my understanding.

CHAIR—The government has announced that it is going to put an additional \$18 million into cadets over the next five years. Are you able to advise us of the sorts of plans you have with that \$18 million?

Air Cdre McDermott—Yes. That is an additional \$18 million that will go into the Cadet Enhancement Program—that is, around \$6 million a year. The Defence steering group, of which I am a member and which is chaired by Defence's Director General Cadets, looks at that program. In fact, we reviewed that only a few weeks ago in terms of the budget for the coming year. The money will be broken down in the major areas of expenditure—I could refer to my notes, if you wish—for things such as the cadet initiated activities, which are activities that have been nominated by the cadets themselves and for which there is a number of hundred thousand dollars. Like lots of budget proposals, there are always more proposals than there is money available, so they will be prioritised. The cadets will identify things that are important to them and money will be spent from the \$6 million Cadet Enhancement Program. That money also goes to, in some cases, remediation for some shortfalls in accommodation and a large amount will go towards IT support—computers for the cadet organisation. That is for two major reasons. Firstly, it will allow the cadets to have a much better means of communicating with each other. Earlier this year the so-called Cadetnet organisation was launched. Many cadets have computers in their work places. They have bulletin boards and they can confer with each other across the three corps. A lot of money is being spent in that area, and there are a number of other programs. That is within the Cadet Enhancement Program, but the bulk of the money is actually spent by the service chiefs on behalf of their corps. We are talking about roughly \$38 million a year. This coming year the figure will be around \$38 million, including \$6 million for the Cadet Enhancement Program.

CHAIR—Are you aware of the sorts of things that the cadets have identified that they would like done? Is there anything in particular that they are not doing now—an afternoon at a bowling alley or something like that?

Air Cdre McDermott—No, it is not that sort of wish list. I do not have that information. I can take that on notice. They are things that are generated by the cadets themselves. As I said, for this coming year the figure, when I last saw it, was \$350,000 out of the total of \$6 million, and that was going to be allocated on a pro rata basis across the three corps, depending upon their numbers. I would have to take on notice the question about the programs that they have identified for themselves.

CHAIR—Fair enough. As my colleagues do not have any more questions, I thank you for coming along this evening.

Committee adjourned at 9.14 p.m.