



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES  
COMMITTEE

**Reference: Effectiveness of Australia's military justice system**

MONDAY, 2 AUGUST 2004

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE**  
**FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE**

**Monday, 2 August 2004**

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

**Substitute members:** Senator Bartlett for Senator Ridgeway and Senator Chris Evans for Senator Marshall

**Participating members:** Senators Abetz, Boswell, Brandis, Brown, Carr, Chapman, Jacinta 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 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**

**ADAMS, Rear Admiral Brian Lee, Head, Defence Personnel Executive, Department of Defence ..... 1**

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**STODULKA, Ms Janet Louisa, Director-General, Defence Community Organisation..... 1**



**Committee met at 4.19 p.m.****ADAMS, Rear Admiral Brian Lee, Head, Defence Personnel Executive, Department of Defence****STODULKA, Ms Janet Louisa, Director-General, Defence Community Organisation**

**CHAIR**—I declare open this meeting of the Senate Foreign Affairs, Defence and Trade References Committee. Today the committee will conduct its eighth 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 an interim report is due to be tabled in the Senate on 9 September 2004.

Witnesses are reminded that 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 processes by which a particular policy was arrived at.

Welcome, Rear Admiral Adams and Ms Stodulka. If you would like to make a brief opening statement to the committee before the committee embarks on its questions, you are most welcome to do so.

**Rear Adm. Adams**—I have quite a short statement, which I would like to read. As you know, service in the ADF, particularly operational service, involves unavoidable separation of members from families and often for extended periods. The Defence Community Organisation exists to help fill the breach caused by the separation by providing support, information, advice and communication between members and their loved ones. The DCO was established in 1996. It has brought together organisations that previously existed in the single services, and it is the primary means through which Defence supports the families of ADF members. An important point to make is that it also supports the chain of command for ADF personnel. At times people can mistakenly assume that the DCO is not part of Defence or is somehow remote from Defence. It is not; it is an essential part of the defence organisation as a whole.

The DCO resides in the Defence Personnel Executive in the Defence group in terms of funding et cetera. Its head office is in Canberra, but it has a network of offices on or nearby the major bases throughout Australia. It is staffed by qualified and experienced ADF members and APS officers, including military support officers, social workers, family liaison officers and regional education liaison officers. These people are formed into teams, positioned around Australia, as I said, in the DCO offices, and they are on call 24 hours a day, seven days a week. Members of ADF families can approach DCO officers directly in order to obtain assistance or any ADF member can obtain access to the DCO as he or she requires. However, in times of crisis or tragedy involving a serving member, it is usually the ADF chain of command which activates the DCO to assist a family.

In providing that assistance and supporting families who lose a serving member, a member of their family, on or off duty, DCO staff members take a four-tiered approach. Firstly, they liaise

with their colleagues in the unit in which the person was serving and the chaplaincy to allocate roles and responsibilities—in other words, who is going to do what and with whom. This ensures the most comprehensive notification of the casualty and delivery of follow-up support, information and counselling to the family. Secondly, DCO appoints a military support officer. I mentioned previously that the DCO is partly staffed by military officers posted there to fill the role of a military support officer. They are appointed as a family's case manager. The officer is responsible, along with people such as the chaplain, for organising a funeral in the case of a death, assisting with managing the estate and providing a conduit between the member's unit and the family to ensure information is communicated clearly, accurately and in a timely manner. The DCO also allocates a social worker to the family who, in the early stages, assists the family to grapple with questions such as why the tragedy occurred, provides information, and assesses and intervenes as necessary with grief counselling. The military support officer and the social worker are both formally trained to deliver these services on behalf of the ADF command and are experienced in the defence environment. It is not uncommon for these people to maintain relationships with families for a period of two or more years.

Thirdly, the DCO staff partner with their medical, psychology and chaplaincy colleagues to provide, as appropriate, critical incident mental health support services and counselling to the community affected by a loss—a deceased member's immediate work colleagues and families in the local Defence Community Organisation, for example. All DCO staff participating in such interventions are formally trained by Defence through its mental health strategy. Lastly, the DCO ensures a system of support is built around the family from within the wider community to support the longer term recovery and support needs of the family. That completes the opening statement. I am happy to take any questions. Ms Stodulka might be better prepared than me to answer more detailed questions.

**CHAIR**—Ms Stodulka, would you like to say anything?

**Ms Stodulka**—Yes, thank you, Chair. I just want to say that the purpose of the Defence Community Organisation is to provide a range of social work and allied support services to, firstly, as the admiral said, reflect the ADF's commitment to the welfare and morale of its people and the defence community; secondly, support the member in fulfilling their service obligations; and, thirdly, build the skills and resilience of defence families so that they are better able to cope with the cumulative challenges that we know go with the military lifestyle. So DCO services are about supporting the command in their leadership and care of their people. They are about supporting the member in fulfilling their service obligations and about supporting the family to live well within the context of the military lifestyle.

**CHAIR**—Thank you. You are obviously a civilian, Ms Stodulka?

**Ms Stodulka**—Yes, I am.

**CHAIR**—You are the Director-General of the DCO.

**Ms Stodulka**—Yes.

**CHAIR**—I am not sure if this was covered by Admiral Adams. Are most of your staff civilians?



**Ms Stodulka**—Yes, they are. I have 230 staff. About 30 of those are military support officers and about 100 of the 200 civilians are qualified social workers. The remainder of the staff are education specialists, family liaison officers and administrative and policy staff.

**CHAIR**—So the 30 military support officers are from Army, Navy or Air Force?

**Ms Stodulka**—That is right. They come from the three services and they are chosen for their aptitude, their interest in and their skills to support the wider defence community.

**CHAIR**—They are not chaplains, are they?

**Ms Stodulka**—No, they are not.

**CHAIR**—Are chaplains included in your 230-odd staff?

**Ms Stodulka**—No. Chaplains are in an organisation separate from the Defence Community Organisation but it is an organisation with which we work very closely. They are separate from our 230 people.

**CHAIR**—In terms of your relationship with the ADF, your relationship structure is with Admiral Adams's office. Is that correct?

**Rear Adm. Adams**—Chair, I can answer that. I am Head of the Defence Personnel Executive, which is a group that has nine branches, one of which is the Defence Community Organisation. I am the person who assesses Ms Stodulka's performance et cetera but, more importantly, I am the link upward into the committee system and up to the CDF and the secretary. But I should also point out that—and I know that this is part of the job—it is up to Ms Stodulka to have a network formed with each service's officers, particularly with her direct equivalent in each service—the director-general of personnel—so there is a great deal of work relating to the military going out from her organisation, both in Canberra and regionally.

**CHAIR**—Is that to your officers, to your Australian Defence Force personnel?

**Rear Adm. Adams**—In terms of funding, access to the committee system, putting proposals forward to seek funding and ensuring Ms Stodulka gets the staff she needs—those broad responsibilities—that is to me. But, quite apart from that, I would expect that she—and she does—works day to day with a whole range of military people for the detailed part of her work in supporting uniformed people.

**CHAIR**—Just for my assistance: if there were a difficulty at, say, Singleton, involving a member's family having a serious problem with their child—they might think he is being harassed or bastardised—and they did not think they were getting through to the officers at Singleton, would they contact your office?

**Rear Adm. Adams**—It is quite possible—by email or telephone. It has never occurred, in my experience; the contact always comes directly into the DCO.

**CHAIR**—So they would probably ring the DCO. Is that whom they would be advised to ring?

**Ms Stodulka**—Yes.

**CHAIR**—What access does DCO then have to go into Singleton?

**Ms Stodulka**—We have free and open access to go into Singleton. Indeed, we have an area manager of that Singleton team who liaises on a regular basis with the military command in that area. A vital part of their role is to be linked in with the command to understand broadly what the issues are in addition to what issues are facing individual families that may come into our organisation. But we also work at a community level. So, if there are particular issues at Singleton, we would work with the commander to try and address those issues.

**CHAIR**—So you have access into Singleton when you have an issue or a concern there.

**Ms Stodulka**—Yes.

**CHAIR**—Does your report go back to Admiral Adams?

**Ms Stodulka**—In the first instance it would be my area manager or regional director in that area who would liaise with the senior command at Singleton. If there were an issue they were concerned about and felt unable to influence at Singleton, they would certainly bring it up to me and I would probably liaise with the Head of the Defence Personnel Executive to take some advice about how we might address the issue.

**CHAIR**—In effect, your regional people would take it up with the command in Singleton?

**Ms Stodulka**—Yes; and, based on their very close relationship, I would expect them to be effective in taking most issues up.

**CHAIR**—I just use Singleton as an example.

**Ms Stodulka**—Yes, I understand that.

**CHAIR**—Is there an agreement about what should happen then? Who then makes a decision about what might need to happen? Maybe it is a transfer or maybe it is something else that needs to occur.

**Ms Stodulka**—Certainly, members sometimes put in a request for a transfer from one posting allocation to another. If that request is based on what we call compassionate grounds—family issues or problems in relationships and that sort of thing—the commanding officer will ask the DCO formally to prepare a report and provide an assessment to him or her about the compassionate circumstances of that member and we will then make a recommendation to them. Based on the needs and wishes of the member and the family and on our understanding of the needs of the organisation, we will provide an independent assessment to the commanding officer to assist him or her in making a recommendation to the posting authority so that a decision can be made about whether someone should be moved.

**CHAIR**—Do you get a copy of that, Admiral Adams?

**Rear Adm. Adams**—Not in the normal course of events. It would be quite a common occurrence, unfortunately, for the chain of command to seek social worker assistance. It could come to me if there was an obstacle or if there was a policy decision to be made; it might be something that I could solve myself. If it were a single service issue, I would be able to go direct, for example, to the Deputy Chief of Army, Navy or Air Force—my rank equivalent—and seek that they take some action to resolve a problem. In short, in the normal course of events, I would not be involved in that detail. If there is a significant issue or a significant problem, particularly of policy, perhaps related to funding, I am available 24 hours a day to go and assist.

**CHAIR**—With the number of social workers you have, do you go to bases like Singleton or those of the Air Force?

**Ms Stodulka**—Absolutely. We have a team based near Singleton. We have 27 teams set up around Australia. Certainly, the role of the regional director and also the area manager of the local team is to liaise with the units on the bases on a regular basis. That is absolutely fundamental to us.

**CHAIR**—They are on the bases too, aren't they?

**Ms Stodulka**—They are either on the bases or near the bases. Sometimes when their office is not on the base, because that is not where families tend to be, we will have outposted offices near the base. The commanding officer will provide us with office accommodation on the base as well so that we can operate from both locations.

**Senator SANDY MACDONALD**—Does DCO operate ancillary activities such as child-care assistance and things like that?

**Ms Stodulka**—Yes, we do. We operate a number of national programs such as the Defence Child Care Program. We have the spouse employment program, with the acronym SWAPP. We also manage the Defence Family Support Funding Program, which is a grant program that supports local self-help defence community groups on the ground.

**Senator SANDY MACDONALD**—I understand the DCO is a relatively new organisation. It has been around for only a decade?

**Ms Stodulka**—We were set up eight years ago.

**Senator SANDY MACDONALD**—How coordinated across the country is the DCO?

**Ms Stodulka**—I think we are extremely coordinated. One of the beauties of the organisation is that it has been left as a national organisation under the Defence Personnel Executive Group. It has not been separated in terms of our regions. The beauty of that is that often members are serving a long way from where their family might be. In the case of a crisis, we sometimes need to coordinate across a number of our teams in order to provide support to families.

**Senator SANDY MACDONALD**—You said you had about 220 employees.

**Ms Stodulka**—Two hundred and thirty.

**Senator SANDY MACDONALD**—Presumably family participation is very important within DCO operations.

**Ms Stodulka**—Yes.

**Senator SANDY MACDONALD**—In some situations, the DCO office at some bases would operate better than at others. Is that a fair comment?

**Ms Stodulka**—I do not know whether the word is ‘better’. The way that the DCO operates in some areas is different from how it operates in others. The way that the Defence Community Organisation delivers services to families, say, in Sydney—where families are widely spread and it is not always easy to know where they are and so access them—would look very different to the way that it delivers services, say, in Katherine where you have a very small and close community, where you are interacting with that community all the time because they are housed and live and work together.

I think the issue is that we seek to deliver against the same outcomes, but we might deliver in different ways, depending on the particular characteristics of an area from which we are operating. Some areas are highly operational, some are not. Some areas have high populations of family, particularly parents, and other areas have high populations of very young, immediate families of defence members. That will reflect a difference in the sorts of programs that we will offer and in the way that we will operate.

**Senator SANDY MACDONALD**—When there is a fatality in the ADF, do you attend? Under ideal circumstances, there is initially uniformed advice to the family. That is quite understandable: it is important to people who have ADF connections; they like that connection. Advice from somebody from the uniformed branch does not always happen. Under ideal circumstances, do you attend with a uniformed officer to advise of a death?

**Ms Stodulka**—When we are advised of a death, we liaise with the unit, the chaplain, our social worker and military support officer to decide on roles. We find it is best that whoever makes the notification—which is normally the unit, supported by the chaplain—is not then required to deliver the ongoing support. Our normal model is the unit and the chaplain notifying the family. We would follow the next day with our military support officer and social worker, who would then provide that enduring, ongoing support to the family.

**Senator SANDY MACDONALD**—You would offer your range of services without any request from the person you were expected to assist?

**Ms Stodulka**—Yes, we would. That would be the normal activation from the commander, who would advise us that we had had a death in service. That would be a normal part of ramping up the services that are available. Obviously, not all families want to access all those services at that time, but they are certainly made available. And we always appoint a case manager, who is not in a counselling role but in a coordination role, to make sure that families are not given the run-around by the many people that they will have to deal with over the coming months. That person ultimately tends to become the single point of contact for that family for information, for advocacy, for advice—for coordination of information for them.

**Senator SANDY MACDONALD**—How long have the arrangements for the appointment of a case officer been in place?

**Ms Stodulka**—I think that came into place around 2000.

**Senator SANDY MACDONALD**—Do you have any auditing of your operation, particularly in connection with the services you supply when there has been a death?

**Ms Stodulka**—We monitor and learn as we go. We are tailoring services to individuals who obviously have different needs, and so it is important for us to learn and reflect. Within our structure, all social workers and military support officers are supervised by a senior social worker who is supervised as well, by a regional director who is a very senior social worker. So supervision is a normal part of how we do our business, to reflect on our interventions, to look at the success or otherwise of the support that we are providing, to look at feedback we are getting from command and to look at feedback we are getting from families so we can ask, ‘Have we got it right? Do we need to modify how we are delivering? Are we not the best people to deliver this at the moment; would it be better to engage a specialist agency from in town to provide those services and just monitor whether that support remains in place?’ So we are constantly reflecting on our practice and learning.

**Rear Adm. Adams**—In my two years experience with the DCO, I am not aware that there has been any formal audit, whether by the management audit branch inside Defence or ANAO externally. I mean this exactly as it is put: my experience in these two years, with Iraq behind us and ongoing involvement in Timor, Bougainville and the Solomons, is that comments on our performance or any deficiencies in performance are usually fairly direct and, in my case, usually from the service chief. I must admit I have had—certainly, in relation to Iraq—praise; but, where there has been an observation that we could have done better or done something differently, it has usually come direct from a serving officer to me. We do it that way. So there is no formal audit but certainly a regular and constant flow of feedback or comment upon the service we provide, either from the service or maybe from Defence Families Australia, a related organisation with whom DCO works.

**Senator SANDY MACDONALD**—I would share your views. My colleague Senator Hogg and I had considerable contact with the DCO during an inquiry on service conditions that we did a couple of years ago, and we were very favourably impressed. But it is clearly a much larger organisation than when we looked at it then. I have one further question, about your use of the word ‘team’. Why don’t you just call it your DCO office? That is modern fluff! It is your DCO office at Singleton. To talk about your ‘team leader’ there is a bit airy-fairy as far as I am concerned!

**Ms Stodulka**—I apologise if it came across that way. I think the concept of ‘team’ is very important to us because rarely do we operate on our own. We do operate with our colleagues in the DCO. I as a social worker might be involved in providing support to a family that has just moved to Singleton. In the course of my engagement with that family I might find that they have a child who is having difficulty fitting in at school, so I would get my regional education liaison officer to engage with them.

**Senator HOGG**—Don’t mention education!

**Ms Stodulka**—The concept of ‘team’ is, as I think you heard from Colonel Tony Cotton and from Brigadier Eacott, that there are four craft group providers, as we call them—that is, the chaplains, the social workers, the psychologists and the medical team—and we know that when we are well integrated and well coordinated we provide the very best service to the defence community.

**Senator SANDY MACDONALD**—One thing I have just been reminded of is that when Senator Hogg and I did a previous inquiry we were very interested in the terms and conditions for people as the Army moved them north—this was a couple of years ago now. I remember one of the comments was that, when people are moving from somewhere down south up to Darwin, being briefed about what to expect as to the type of house they would get and those sorts of things is important—holding people’s hands, because some of these people are not very old and are pretty vulnerable in a sense—to get them prepared before they go to Darwin. Has that assistance been developed further so that, when people are posted to Darwin, they know exactly the sort of house they will get and how local they are to schools and that sort of thing?

**Ms Stodulka**—Yes. We are also involved with a number of other agencies, such as Defence Housing Australia, which shows the houses on the Internet so that people can access that. When a large number of people were moved to the north, the military sponsored families to travel north to get a real feel of what life is like there, to find out what the climate is like and to find out what the houses really are like. To supplement people like me describing the circumstances that people were going to, their fellow Defence families could also talk about what they had observed. We bused people around. We took them to schools, we took them in and out of the various levels of housing and we took them to the shops so that they would get a real sense of what it would be like. It is very important for us to give good information and support to people who are relocating so that serving members can be refocused as quickly as possible on doing their job and not be distracted by issues that could have been addressed earlier. The defence child-care program, which you mentioned before, is another way in which we help. We try to ensure that people can get placements in child-care centres and we try to restore as quickly as possible in their new localities the functioning that families had in their old localities. The spouse employment program is another one like that.

**Senator HOGG**—I have a question about the redress of grievance process. Do you get involved in that in any way at all?

**Ms Stodulka**—No, I am not part of the redress of grievance process.

**Senator HOGG**—I mean as an aside. It may well be that there is pressure on the spouse or partner of a person who is involved in a redress of grievance process and they might need some form of counselling.

**Ms Stodulka**—Yes, certainly we do then.

**Senator HOGG**—I am just trying to get some feel for how often that might occur. Is it a regular occurrence or is it something that happens just on the odd occasion?

**Ms Stodulka**—I cannot give you a figure on that. My sense is that people who come the Defence Community Organisation will often come about an issue, but there are often a lot of

other issues that can get caught up with it. So they might come to talk to you about difficulties their child is having at school, and that will go on to marital difficulties, which will go on to work difficulties and on to a redress of grievance.

**Senator HOGG**—Just on straight military justice issues, do you have an analysis of how many of the cases that you handle would involve military justice issues, as opposed to the problems of education or settling into a new home?

**Ms Stodulka**—I am sorry, but I cannot give you a break-up around military justice issues.

**Rear Adm. Adams**—I am unable to add anything there, but it has certainly never been brought to my attention in my two years. It might be happening but there is no indication that that link is there. We do not have an analysis.

**Senator HOGG**—All right; there is no analysis. We have had a number of quite tragic cases where young people have committed suicide. In those cases, does your organisation become involved with the families of those people?

**Ms Stodulka**—Yes, certainly.

**Senator HOGG**—Could you just give us some idea of how you specifically become involved and what you actually do for them? How do you cut across other services, such as the service offered by the padre and the social workers?

**Ms Stodulka**—Basically, the process will be the same for any kind of death of a member in service. We will be notified by the command. We will partner with the chaplains and with the unit and decide who is going to do the notification and who will do the follow-up. We will allocate a case manager to the family. We will allocate a social worker to the family. We also get involved in terms of the mental health strategy. We have a role there where we examine the circumstances around the suicide and look at what lessons can be learned from it—whether there were any warning signs and that sort of thing. We have a role in terms of supporting the family. We also have a role in relation to the mental health strategy, which the chaplains, psychs and medical are also part of.

**Senator HOGG**—If you do make recommendations, who do make the recommendations to?

**Ms Stodulka**—If it is around the unit, we make recommendations to the commanding officer of the unit. If we think that issues have a broader application then we will certainly bring it through the Defence Personnel Executive and raise it there so that we can influence policy, if that needs to be changed, or some other practices.

**Senator HOGG**—What support do you give to families, given that I think some of the families that have appeared before the committee have felt that they were fighting the world, that they had no support there at all, that they were abandoned, so to speak, by the whole process? Can you give us some idea of what you actually do to assist those families?

**Ms Stodulka**—Yes. In the sort of circumstances that those families are in, no-one would blame them for feeling like that. It is policy from our point of view to engage with the family,

both with the military support officer and with the social worker, and to offer support and information and maintain contact with the family. However, if the family says, 'Look, I do not want a social worker involved; I only want the military support officer involved,' or, 'I only want the social worker involved,' or whatever, that is the family's decision and we will certainly respect that decision.

**Senator HOGG**—In a number of instances the family have been remote from where the incident itself took place, which seems to pose a real problem for the family—and I can understand that. How do you cope in those circumstances? What sort of liaison is there with a local DCO and what sort of ongoing support are they able to give, given their remoteness from the incident as well?

**Ms Stodulka**—In the initial period, the social worker and the military support officer will travel to wherever that family is located, so the fact they are not near a DCO office is not an impediment to us in the early stages. Obviously it becomes more difficult to maintain a longer term contact with that family if they are remote. The case manager's responsibility is to maintain the contact, so, regardless of where that family lives, that case manager will maintain contact by phone and also by visits. There is another thing that we do, and I am thinking of an example of a few weeks ago where a young boy died and the family lived in country Victoria. When the social worker and the military support officer drove down on the Saturday they looked at how the family was connected in with their local community. They happened to be very well connected with their local church, so the social worker engaged with a senior leader in the church community to provide some kind of safety net in terms of monitoring that family as well as the social worker monitoring the family. If there were signs that the family was suffering more than what would be normal grief in such a tragedy, we would go and re-engage with the family but also engage a professional provider in that community if we felt that that was in the family's interests and they were agreeable to it.

**Senator HOGG**—That raises the issue of what length of support you give these people, given that, in some instances, I would think some people might never have closure on a matter.

**Ms Stodulka**—Yes. It is not uncommon for us to maintain contact for two or three years. The intensity of that contact will vary. Again, social workers on the ground have their fingers on the pulse. If something appears in the newspaper that may be connected to a tragedy that happened a year ago—or the anniversary of a death—and they know that that may trigger for that family, they will proactively make contact with them. We might not be maintaining a close contact for that full two- or three-year period, but certainly the door is always open. We hopefully have formed a strong and trusting relationship with that family so that they feel that they can reconnect at any time. Certainly, we are available to them at any time to reconnect.

**Senator JOHNSTON**—Thank you for coming to the committee, and thank you to your organisation for the very good work we have observed that it does at all of the various bases and in all of the places that Defence has personnel. Tell me how long you have been the director-general. What do you bring to the position? How did you get the job? Tell me a little bit about yourself, if you would, in terms of your CV. What does the defence organisation look for in its director-general?



**Ms Stodulka**—As you know, I have just recently been appointed. I formally took over as the director-general on 6 June.

**Senator JOHNSTON**—I did not know that.

**Ms Stodulka**—In terms of my background, my husband was in the Navy and is now in the naval reserves, so I have been personally associated with the military for the last 20 years and have lived the lifestyle.

**Senator JOHNSTON**—What rank did he have?

**Ms Stodulka**—He was a captain in the Navy.

**Senator JOHNSTON**—So you travelled all over Australia with him to the various postings that he had?

**Ms Stodulka**—I accompanied him on his postings. We did not venture all over Australia, but certainly—

**Senator JOHNSTON**—How many states have you lived in?

**Ms Stodulka**—New South Wales, ACT, America, then back to New South Wales and ACT.

**Senator JOHNSTON**—So you have got some good experience—

**Ms Stodulka**—There is a personal connection.

**Senator JOHNSTON**—of shifting kids and families and all the sorts of things that go with naval service.

**Ms Stodulka**—Absolutely. I am also a social worker by trade. I first joined the defence organisation in 1984, when I worked as a base grade social worker out of Nowra on HMAS *Albatross*. From there I became senior naval social worker for New South Wales and then the national director of naval social work, based in Canberra. I then had a considerable period of time off, following my husband on his postings and having our children. I came back to Defence and worked as a senior project officer for the Australian Defence Families Information and Liaison Service, known as ADFILS—one of the precursors to DCO. I worked as a base grade social worker in Darwin and then as a regional director for the DCO in the Northern Territory. I came back to Canberra and worked as director of corporate development for the DCO. I have had a break for the last 18 months and recently I have been appointed as the director-general of the DCO.

**Senator JOHNSTON**—It strikes me in passing that Navy seems to have a predominant role in DCO. Is that a not entirely accurate perception on my part? Is it more coincidence?

**Rear Adm. Adams**—The DCO was headed, until late 2002, by an EL2 level officer—the rank below Ms Stodulka. The organisation was having increased demands made of it, principally because of the higher tempo of operations. Very soon after I became HDP, I sought approval

from the secretary to increase the level of the job to assistant secretary. We appointed a high-performing officer—he had no Navy connection in particular and no other service connection—and, unfortunately, he got a better offer. The job was filled temporarily from last December until Ms Stodulka took it. She was selected on merit into a pool of officers to be advanced from EL2 to assistant secretary. When she entered that pool, I sought advice from others and set out to obtain her services for this job because of the background she has explained to you and her demonstrated high level of performance. I have very high expectations of her in the future.

**Senator JOHNSTON**—I am very interested and pleased to hear of the extensive on-the-ground experience that she brings to the position. Some very interesting issues arise and there are very traumatic and emotional issues with respect to these deaths. When we have 55,000 people out there in our organisation it is logical, I suppose, and to some degree expected, that we will have to deal with these sorts of issues from time to time. I am interested because we have had a bit of an issue with there being no standard operating procedure with respect to how we respond to a death. A death is a death. The circumstances surrounding the death are always different, always at different ends of the spectrum in terms of culpability and misadventure—a whole host of emotions and facts come to bear. One of the things that I have noticed—and I will not put words into the other committee members' mouths—is that it appears that some people get better service from DCO than others. You have indicated that there is a connection in the way your team deals with a family. In a minute I want to come back to what the definition of family actually is, because I think there is a big problem there. Does the involvement of your personnel depend upon the attitude of the chain of command to the death?

**Ms Stodulka**—No, not at all. We are automatically included in that. Indeed, the chain of command will want us to be involved because we are one of their resources to look after the welfare and morale of their people.

**Senator JOHNSTON**—Then how is the involvement different in certain circumstances? For instance, in the celebrated case—it is a public case—of Seaman Gurr, I thought the involvement was quite outstanding. Your organisation was at the forefront of providing a huge degree of support and assistance to his mother. Indeed, she acknowledged that in our *Hansard*, and it was good to see. There have been other examples where that has not been the case. Is there a written framework? It sounds a bit trite, but do you have a standard operating procedure in order to provide services to the next of kin—let us start with them—and then the wider family, including the mother and father? For instance, as a hypothetical example, a girlfriend or a wife would be in a naval house and you would have to deal with her—whatever information or tragic news has to be taken to her—and mum and dad live in some other state. Do you have a proforma, a framework, that you follow rigidly?

**Ms Stodulka**—Yes, we do.

**Senator JOHNSTON**—Where do I find that and what is it?

**Ms Stodulka**—I can provide that to you.

**Senator JOHNSTON**—I would be much obliged. So something is written down as to how you go about administering your service?

**Ms Stodulka**—Yes. In addition to that, there is the more recently stood up case management role and the requirements of that particular role. I can certainly provide you with that document.

**Senator JOHNSTON**—Can you think of any good reasons why that standard procedure would not be followed in any circumstances of a death?

**Ms Stodulka**—No, I cannot.

**Senator JOHNSTON**—I am obliged to you for that. Let us talk about your budget. You are the director-general. If you ever had an opportunity to complain about a shortage of resources and problems that you have in getting what you want to do what you need to do, this is the time. How is your budget determined? What role and function do you have in seeking the resources that you need on an annual basis?

**Ms Stodulka**—On an annual basis we make a bid for a budget, outlining for my head what activities that money will support. We have just been through a process and we have now been allocated the full budget that we requested for the financial year 2004-05. Obviously, if operations ramp up or in some way requirements change for us in a particular area, I can always go back and seek more resources if I cannot shift my resources within my national organisation to deal with it.

**Senator JOHNSTON**—You have not had an opportunity to test any of those mechanisms at this stage, I dare say, given that you have only been there for some two months.

**Ms Stodulka**—I did face a budget meeting last Thursday evening.

**Senator JOHNSTON**—It was your first?

**Ms Stodulka**—Yes.

**Senator JOHNSTON**—Goodness. How did that go?

**Ms Stodulka**—It was excellent. In terms of the budget that my colleagues had prepared earlier and bid for, we were given our full allocation.

**Senator JOHNSTON**—So what is your annual budget? Tell me what we spend on looking after our personnel and in the backup that you provide.

**Ms Stodulka**—For my organisation, including the funding that comes through the Defence People Committee, it is about \$23 million. That covers salaries as well.

**Senator JOHNSTON**—For your 230-odd personnel?

**Ms Stodulka**—Yes.

**Senator JOHNSTON**—Just before I move to the next line of questioning, how long have your standard operating procedures been in place with respect to how you go into action in the

case of a death? Are you aware of how long they have been on the books? I am sure we will probably see some dates in the papers you have provided.

**Ms Stodulka**—I would have to get back to you on that.

**Rear Adm. Adams**—Senator, if I could interrupt there, I am the person who makes the decisions about the internal budget allocation. I obviously cannot go through the detail—I do not have it here—but certainly in recent times inside the Defence Personnel Executive Group the view is that we will sustain the level of service to families no matter what. We have been able to do it principally by internal redistribution of resources, but given the nature of the business I do not think that I would ever find myself in the position of having to take resources or starve the DCO for resources. It would not happen, in my view.

**Senator JOHNSTON**—That brings me to my next question: how do we know that what we are providing is adequate? How do we benchmark the level of service that we provide to our personnel and what mechanisms are you looking at to know that the \$23 million you are spending is enough, good value or inadequate?

**Rear Adm. Adams**—It goes back to what I said before: we have not sat down—in my experience anyway—and done a formal benchmarking or audit. We have been, and still are, relying on fairly direct input from people like service chiefs or CDFs on perceptions of the level of performance they glean as they go around and talk to their people. They own the people; I do not—I am here in a policy sense. I do get that very frequently.

**Senator JOHNSTON**—Have we got any plans to go to our personnel at large and ask, ‘What do you think of the DCO?’

**Rear Adm. Adams**—We do attitude surveys and we did the census last year. From that we glean quite a bit of knowledge. As you probably know, from exit surveys it is loud and clear to us that not achieving satisfaction for the family is one of the principal reasons why people leave—in terms of stability and so on. I know that is a broad measure, but we glean from that that if we do not keep the family satisfied then we really are putting our retention rates at significant risk.

**Senator JOHNSTON**—What plans do we have to measure the performance of our DCO in meeting the satisfaction criteria of our staff?

**Ms Stodulka**—I have just been through a process with the admiral and the first assistant secretary around what the expectations are of me over the next 12 months. I have made a commitment in that plan, on a page with the admiral, to undertake an independent review of the quality of social work services, to look at the military support officer services and also to look at a couple of the programs. We are looking at the family support funding program to see whether the million dollars that is allocated is hitting the mark and at the spouse employment program to see whether we should maintain it in the same way that it is running as a trial at the moment. We are looking at the support we provide to families with special needs, particularly considering people who are posted overseas, and at the level of support they should provide. We are also doing a review of the defence school transition aid program that we sponsor. So that is what I have committed to as recently as a week and a half ago with the admiral and the first assistant

secretary about what I will take on this year, because I think you are right: we need to be looking at how we are performing.

**Senator JOHNSTON**—I am very impressed by the new direction that I see you have brought to this position, Ms Stodulka.

**Ms Stodulka**—Thank you.

**Senator JOHNSTON**—How are we going to measure our success in that new direction? How are we going to know whether what we have sought to achieve, and the changes and reforms we are seeking to make, are in fact improving, firstly, our perception? I think this is largely about perception. If your troops think you are doing a good job then you must be doing a good job, because I think they would be fairly critical, by and large. How are we going to measure it?

**Ms Stodulka**—It is difficult to measure human service delivery, as you would know, but we will engage a specialist in that area who can assist us. We will also look at running focus groups with the users of our services—the commanders, the families. We will also engage with Defence Families of Australia, which is a group the admiral mentioned earlier that represents defence families' interests. As the admiral said, he is engaged with the three services; similarly, I do that with my equivalents. I also go to the chiefs of the services and seek their feedback on what their requirements are from us in delivering on their behalf.

**Senator JOHNSTON**—That answers my question very well. I have one more question. How do you determine priority between a spouse, be they common law or wife, and mum and dad, in the nature of a serious accident or a death and the level of service you provide? What I am looking for you to tell me about is, again, standard operating procedure as to determining priorities as to who is in fact family.

**Ms Stodulka**—If you are asking me about notification, the deceased member will have given us guidance on that, because on their paperwork they will have said that their mum is their next of kin who should be notified first, for instance.

**Senator JOHNSTON**—Do you look at the date of that? What if he has been married in the interim? A lot of people get married whilst in service and do not change that form. What do you do in those circumstances? This is a real bone of contention.

**Ms Stodulka**—When the unit advises us about the death then normally, through the person's mates, they have a sense of where their relationships are. Defence allows us to be fairly—

**Senator JOHNSTON**—So you consult fairly flexibly with his mates to say, 'What's the situation?'

**Ms Stodulka**—The commanding officer will say to us—again, we had an example of this quite recently—that the next of kin is mum, for example, who lives in Perth, but actually he has a de facto, who is unrecognised, who has been living with him and is in the area where the person died. Defence allows us to take a generous approach in terms of defining who the family

is. We do not just look at who is on the list; we look at who was significant to that person. I do not believe we then make a distinction about what level of support we will make at that time.

**Senator JOHNSTON**—You will do both?

**Ms Stodulka**—We will do both.

**Senator JOHNSTON**—Thank you for that; it was a good answer.

**Senator PAYNE**—I apologise for being late. I had another commitment at the same time as this one. I will read *Hansard* and I suspect I will get answers to some of the issues that concerned me. One of the issues that has been in the back of my mind during the progress of this inquiry is that I see, by way of observation, the ADF and the DCO perhaps operating in parallel. It is a mystery to me as to where they actually meet. Perhaps it is at that table over there, right now! Perhaps you could indulge me with a very brief explanation of that, which will then lead to my next question.

**Rear Adm. Adams**—Yes, I did touch on this in my introductory statement. The DCO is part of the defence organisation—it is as simple as that. It should not act in parallel; it should be cooperating, as part of this team framework we were talking about before, to act together in the interests of the member and his or her family. That notion that somehow they are separate organisations is something that I cannot allow to continue. It is something that we must not allow to continue.

**Senator PAYNE**—I appreciate that clarification. Perhaps you can assist me with another concern: from some of my observations of the relationship between members of the DCO and the families they assist it seems to me that there are some very cogent and powerful criticisms of the way Defence operates in certain areas at certain levels, particularly in times of crisis, whether the crisis comes about as a result of a disciplinary matter or in the sorts of cases that we are talking about—the death of a service member. I want to know, if you can tell me, what capacity there is for the DCO to criticise the Defence organisation and say, ‘This is fundamentally being done the wrong way. Our social workers and professionals cannot support the way that you do this and it needs to change,’ because in the months and months of this inquiry I have seen no evidence of that happening when there are clear problems arising out of Defence procedures.

**Rear Adm. Adams**—To answer in the broad the question of a mechanism where members of the Defence Community Organisation can criticise a Defence practice or policy, I was going to say I get the brunt of it, but that might be overstating it—

**Senator PAYNE**—You have very broad shoulders, Admiral!

**Rear Adm. Adams**—I have to in this job, at times! But I do get it and I get it directly from the convener of the Defence Families Association. That role has been filled by a woman—a service spouse—and I have not seen anything of the three women who have been in that job during my time as HDP that suggests to me that they are anything but very willing to give me the benefit of their advice. And I am not being smart in putting it that way; I do get frequent advice. Most recently, Caragh Waller, who is currently the convener there, wrote to me and to CDF with three

or four pages of her views of where our policies could be improved, and CDF expects that I will respond to those in writing. I have given her one response and there will have to be more.

In terms of DCO, I do personally—not as much as I should or would like—go to DC offices and get direct input from Janet's people in the field. I can honestly say that that is very direct, certainly where they believe that perhaps we are not giving them support in one form or another. If she does not believe she is being resourced or something is occurring where we need a policy change, I do expect Janet to tell me. Also, I am the chair of the Defence People Committee, and there is a natural link there and I have contact through that very frequently. So, where a service deputy chief who represents the service on that committee feels that DCO is not doing something, I get it from there. However, I think your point was being made the other way around. There is no formal mechanism; it is basically word of mouth directly to me. There are other organisations: for example, AFFA—the Armed Forces Federation of Australia—communicated with me today. So I could get it from anywhere, quite frankly.

**Senator JOHNSTON**—What about where people on the ground in the DCO have said, 'Look, we've got a systemic issue here and you need to address it. It is beyond our expertise. It is in the chain of command; it needs to be fixed; we've had enough of dealing with this problem; do something about it'? Can you give us an example?

**Rear Adm. Adams**—The things that instantly jump to mind are things like allowances. For instance, I get direct representations regarding the airconditioning allowance in Darwin or reunion travel, but I must admit I have not had major ones directly from the DCO. I certainly get representations by email directly from spouses of serving members asking me to take action. I do not necessarily go back through the DCO to do that; a few examples spring to mind where I have gone right to the deputy chief of the service and said, 'This is a spouse saying this is happening. What are you going to do about it?' There have not been many occasions, but there was one during the Iraq War where there was a wife who was feeling alone and that she was not getting family support from the unit. I was able to fix that instantly. So I do get feedback.

**Senator PAYNE**—Ms Stodulka, I will give you three examples—and you referred to a spouse employment program which is being trialled. The first example is of a spouse unable to find employment in regional Australia, whose service member husband breaks down in the process of service—that being a major contributing factor—and feels frustrated about not being able to get help within the system. Will that spouse employment program trial address those sorts of problems, as far as it is humanly possible?

**Ms Stodulka**—We have had a spouse employment program running for a number of years. A couple of years ago we recognised that we did not have a strong sense that people were actually getting work out of it. So in October last year we implemented a whole new program providing about five different tiers of support to service spouses. We recognise that, if a spouse has employment in Wagga and is then posted to Townsville and cannot get work, the family's income will possibly be halved and there will be all sorts of ramifications, so we provide support back in Wagga as well as when they get up to Townsville for job-seeking skills, resume writing skills, access to employment opportunities, all those kinds of things.

**Senator PAYNE**—How do they know that? Do they seek you out or do you know that an individual is being transferred, that they have a spouse who will be seeking employment and you seek them out?

**Ms Stodulka**—Both. In fact, a new form of listing is just coming out. But we get advice as to who is relocating, when they are arriving in a posting locality and when the truck is coming with their gear, so we certainly know that. Also, information is given to the member at the time that he or she is given a posting order and they have to submit their removal paperwork. They are given information and they are told, ‘These are the kinds of services that you can access. Please be proactive. Let us know that you’re on the move. We can help you with education, we can help you with spouse employment and we can help you with child care et cetera.’

**Senator PAYNE**—It is worth noting that we have seen examples where that has completely, profoundly and fundamentally failed and led to some of the most severe repercussions, aside from the deaths that this committee has discussed. The second example I want to raise concerns managing grief. Ms Stodulka, when I came into the room I think you were speaking to one of the other senators about normal grief and that sort of context. I am not sure what that is. But in an example where a parent loses their child by suicide and talks to us about moving quite quickly to get to the location of that event—they did not live there; they had to be transported there—when they get there, the room is stripped completely. It looks like a vacant lot. The trauma associated with not being able to deal with their son’s belongings and seeing the situation in which they took their own life and work within that environment to manage their grief strikes me as a fairly simple thing to have left in place for that individual to deal with. Is that something about which your organisation would then say to Defence, ‘It’s not a good idea. It is not helpful to the person whom we’re trying to support—the family member’?

**Ms Stodulka**—Certainly we would give that sort of feedback.

**Senator PAYNE**—I do not think it happened in this case. The final example is an observation in passing, which has been made during the hearings, about members of the DCO knowing of numbers of serving members suffering post-traumatic stress disorder from deployments that simply goes untreated. They are aware of it, it exists and it goes untreated. How do the DCO say to Defence, ‘We don’t do this well. We don’t do it with PTSD; we need to do it better’? Is there a capacity for you to do that, does that happen and what is the result?

**Ms Stodulka**—It is interesting that you commented on that. Part of the idea around the setting up of the mental health support strategy—and we needed local people, the local deliverers on the ground: the chaplain, the psychs, the medical and the social workers—was for them all to be skilled up and credentialed to make, for example, an assessment around PTSD. They will not necessarily be skilled to treat PTSD, but they will certainly be skilled to make an assessment and then refer the person on to a specialist. Certainly DCO chaplains, psychs and medical workers are able to make such referrals and, within the defence health system, they have psychiatrists and various other specialists who are available then to provide that treatment. Other than probably new social workers who have joined the DCO more recently, most of our social workers would be trained up to level 4 in critical mental health incidents. Therefore, they would be skilled and competent to make those kinds of assessments and then it would be their responsibility to ensure that that member was referred for treatment.



**Senator PAYNE**—So it is the responsibility of the DCO member to ensure a referral for treatment.

**Ms Stodulka**—Absolutely.

**Rear Adm. Adams**—Is that the document?

**Ms Stodulka**—No, it is not.

**CHAIR**—It's not marching orders, is it?

**Rear Adm. Adams**—We thought we might have the document on the standard operating procedure which we said we would table before, but this is not it.

**Senator JOHNSTON**—I thought you might have given a wrong answer there somewhere, Admiral, and had received a very terse note from your coach!

**Senator PAYNE**—In the case of loss of life by suicide, accident or other misadventure, is it the case that the next of kin, as adjudged by your professional assessment—not necessarily what is on the form—are offered the opportunity to come to the location of the event if it is appropriate and possible? If someone takes their own life on a base, will their parent or spouse who lives on the other side of the country automatically be offered the opportunity to come, or is it determined in another way? If so, what is the other way?

**Rear Adm. Adams**—To my knowledge, I am not aware that this has ever been an SOP, and in fact I think that this is probably a very favourable, beneficial recent practice.

**Ms Stodulka**—We are actually preparing a policy paper for the admiral around this issue. If the member is deceased, we cannot automatically say to the family, 'You have an entitlement and we can get you on a plane and accommodate you up there.' That is something that we are proposing to put forward for consideration.

**Senator PAYNE**—You might want to read the *Hansard* of our hearing in Adelaide and the testimony of Ms Deborah Knight on this particular matter. I think you will find it as compelling as we did.

**Ms Stodulka**—Yes.

**Senator JOHNSTON**—These are peacetime events. Operational circumstances are totally different and we do not expect to see that sort of caring and nurturing outlook in operational matters—although there is an element of that there. We are talking about peacetime situations where the family are extremely shocked because they think that the particular ADF member is non-operational. They know what is going on. It is a training exercise. It is a *Westralia* type situation. It seems to us that the shock is amplified when there are no variables of operation and the risk factor is apparently much lower and you have an event. Everybody is very shocked.

**Ms Stodulka**—Yes.

**CHAIR**—Does the DCO get involved in assisting service personnel or their families who are going through boards of inquiry, coronial inquests or court martials?

**Ms Stodulka**—Certainly we often provide a support role. For example, for this inquiry we have had DCO staff on standby or at hearings to provide support to people going through that. Normally we are connected with those families anyway. If there has been a death in service and then the board of inquiry follows, we already have that relationship with the family and certainly we would then be involved in providing support and assisting with interpreting information or accessing information for them.

**CHAIR**—And that is right towards the completion of that inquiry—whatever form that inquiry took. So if it was a 13-month coronial inquiry or a two-year board of inquiry—

**Ms Stodulka**—Yes. Again, the intensity of that support might vary during that period of time, but there is no restriction on how long we can then provide that support for, if the support is appropriate and the family would like it.

**CHAIR**—As there are no further questions, I thank you very much for appearing today.

[5.31 p.m.]

**HARRIS, Ms Diane Julie, Director, Complaint Resolution Agency, Department of Defence**

**MARKS, Captain Helen Elizabeth, Director, Alternative Dispute Resolution and Conflict Management, Department of Defence**

**CHAIR**—Welcome, Ms Harris and Captain Marks. I believe you are both aware of the situation regarding privilege and also, being officers of the Commonwealth, of what you can and cannot say. I invite you to make an opening statement.

**Ms Harris**—The Complaint Resolution Agency was established in 1997 as a direct outcome from the Defence Reform Program to provide for the independent and impartial investigation and review of complaints by service personnel and civilian employees. Previously, there were three separate complaint handling sections for each of the three services and a fourth one for members of the Public Service. Within the Defence Reform Program the focus was on the rationalisation of duplicated functions, and it was immediately apparent that efficiencies could be achieved by bringing those four sections together into one agency.

Complaint Resolution Agency staff deal with a range of complaints, including applications for redress of grievance—you have heard a lot about them—by service personnel, and that is in accordance with the Defence Force regulations; requests by APS employees for review of employment related actions, and that is in accordance with the Public Service Act and its associated regulations; and complaints submitted to the Human Rights and Equal Opportunity Commission or to the Privacy Commissioner by current or former service personnel and civilian employees. The agency is also the initial point of contact for the Commonwealth Ombudsman in both his Commonwealth and his Defence Force Ombudsman jurisdictions.

The redress of grievance process is a very fair process. It provides that all members who have a complaint must in the first instance submit that complaint to their commanding officer. If they are dissatisfied with the commanding officer's decision, it can be reviewed by the chief of service. Warrant officers and officers then have access to an additional level of review by the Chief of the Defence Force. Every member also has access to the Defence Force Ombudsman. We believe that this complaint handling process provides our military personnel with a level of protection that is at least equal to and probably greater than any other public sector complaint management system.

We have significantly improved the complaint process in recent years. Five years ago, when the Complaint Resolution Agency was in its infancy, the Australian National Audit Office reviewed our redress process and made 14 recommendations which were substantially agreed by Defence and implemented. In 2000 a further review of the redress system was conducted by Defence, assisted by a member of the Defence Force Ombudsman's staff. This review made 24 recommendations for improvements to the process, most of which have been implemented.

If we compare our current performance against what the ANAO review found, we have reduced the processing time for all categories of complaints, by up to 47 per cent in some cases.

In 2000, which was the year after the ANAO report was produced, it took COs on average about nine months to reach a decision on a redress of grievance. Now it takes on average just three months. Additionally, more redresses are now being finalised at unit level without referral to a higher authority. This suggests, at least to us, that our efforts to educate unit staff about the process, especially the need for timely action and an emphasis on administrative resolution wherever possible, are achieving a measure of success. We are also increasingly using alternative dispute resolution strategies, which my colleague Captain Marks will address shortly.

The vast majority of complaints are handled efficiently. Clearly, some complaints still take too long to finalise and, inevitably, many do not deliver the outcome that the complainant seeks. You have heard this, I know, from people who have already given evidence. There are many reasons for delays in the process. For example, a CO might feel that there are grounds for the complaint but not have the authority to grant the redress that is sought. In this case, a CO may attempt to persuade the original decision maker to change the decision. If such a change potentially impacts on policy, it may require further lengthy consideration and possibly consultation with all three services. A CO may also need to seek legal advice. Complainants often receive detailed legal assistance in putting together a redress application. Where points of law are raised, for example, most COs will need to obtain their own legal advice before making a decision on the merits of the case.

The level of dissatisfaction expressed about the redress process needs to be viewed in the broader context of an organisation that has handled around 2,000 applications for redress in units over the past six years. In this context, the number of complaints that are poorly handled is in fact only a very small percentage of the complaints received.

**Capt. Marks**—The development of the alternative dispute resolution and conflict management program has been a creative and interesting journey. I will briefly relate to the committee how the program was established and describe what the program looks like today and some of the many tangible benefits which this acclaimed and innovative program brings to the Defence portfolio and its people.

It may appear that informal dispute resolution processes such as mediation are counterintuitive in an organisation such as the Australian defence organisation, which is characterised by a command relationship and a disciplined and hierarchical work force. However, the establishment of the program and the use of dispute resolution processes is in keeping with the Australian defence organisation's philosophy that people matter. Here, most importantly, relationships between people at all levels of the organisation are seen as fundamental to achieving the best possible outcomes.

Dispute resolution processes assist in restoring and renewing harmonious relationships and therefore productive workplaces. Whilst the other processes available to members of the Australian defence organisation provide a determined or an adjudicated outcome where parties either win or lose, the dispute resolution process goes a good deal further in that it assists the parties to collaboratively resolve and agree an outcome and therefore restore relationships in the workplace.

How was the program established? As a collateral duty to my primary duty as the director of military justice, I sought approval from the secretary and the Chief of the Defence Force to

develop a proposal to establish and manage a network of accredited alternative dispute resolution practitioners across the Australian defence organisation, to coordinate responses to requests from commanders and managers for alternative dispute resolution processes to resolve complaints and disputes, and to prepare a draft Defence Instruction to outline the policies and procedures for use of ADR, alternative dispute resolution, across Defence.

In developing the ADR program I was guided by research and examination of several organisations, both in Australia and overseas, that epitomise best practice in this field. I undertook specific case studies of the US military alternative dispute resolution programs, the Canadian Department of National Defence and Canadian Forces conflict management program and the US Postal Service mediation program.

In 2002 the Directorate of Alternative Dispute Resolution and Conflict Management was established in the Corporate Services and Infrastructure Group. It has been provided with a modest level of funding but has enjoyed a high level of support from many areas in Defence. A significant milestone for the program was achieved in June 2003, when the secretary and the Chief of the Defence Force issued Defence Instruction (General) PERS 34-4 on the use and management of alternative dispute resolution in Defence. The directorate and the program have established close links with the three service programs, the Head of the Defence Personnel Executive, the Defence Equity Organisation and the Complaint Resolution Agency. The directorate has also established liaison with the Inspector General of the ADF on matters of mutual interest. We have also forged very strong ties with the wider ADR community.

Currently the program operates in three broad categories: prevention, intervention and implementation. The major preventative strategy involves general awareness training in conflict management and dispute resolution strategies and through our negotiation and communication skills training course. In terms of intervention, the program now provides Defence with dispute resolution processes, like mediation, as a less formal means of managing and resolving disputes, conflicts, complaints and claims. It operates in addition to, but does not supplant, the more traditional forms and formal processes, like redresses of grievance, review of actions and administrative inquiries and investigations. Importantly, it is also used to complement existing command and management relationships and processes. Dispute resolution services are delivered through a combination of an internal panel of permanent and Reserve military personnel and members of the Australian Public Service who are registered as defence mediators. This group conducts mediation on our behalf as a collateral duty. We also have access to an external panel of suitably qualified service providers on a user pays basis.

Over the past 18 months the directorate has maintained statistics on ADR interventions, and, based on this data, over 90 per cent of the cases that have been mediated or otherwise facilitated in a group setting have reached agreement. These high figures are reflective of best practice intake assessment that assesses all cases to ensure that only those that are suitable and appropriate for dispute resolution processes are dealt with in this manner.

Finally, during the past two years external consultants have independently conducted an evaluation of the program. They have examined in detail the embedded processes and procedures and have surveyed and interviewed customers, including commanders and managers, parties to mediation, referring officers and mediators. Program evaluation has proved to be a valuable process as the program and its processes have been developed. The bottom line is that,

at the end of the two-year evaluation period, there has been a 90 per cent client satisfaction rate in relation to the overall process. The vast majority of clients said they would be prepared to recommend the process to others and to use the service again. They variously described the program as ‘professional, thorough and impressive’.

**CHAIR**—Thank you, Captain Marks. Ms Harris, does your agency deal with civilian complaints as well?

**Ms Harris**—Yes, it does.

**CHAIR**—Have you had a long association with Defence, the Attorney-General’s Department or something like that?

**Ms Harris**—No. My background is almost entirely in Defence. I had 25 years in the Australian Army. When I left the Army I joined Defence as a public servant and this is my second job within the APS in Defence.

**CHAIR**—Are you legally qualified?

**Ms Harris**—No.

**CHAIR**—I think you said that, over six years, you have had 2,000 grievances. Is that correct?

**Ms Harris**—Yes. At the Complaint Resolution Agency we monitor the redresses that are lodged at unit level, although we do not handle them at that stage. In the first instance they must be dealt with by a commanding officer. We monitor the numbers that are lodged and then a percentage of those will subsequently come to us. We deal with them closely when they are referred to the service chief for review. That is when my staff prepare a brief for the service chief.

**Senator PAYNE**—What percentage of those come to you?

**Ms Harris**—A bit under 50 per cent.

**CHAIR**—Are you made aware of a redress of grievance as soon as it is lodged?

**Ms Harris**—When it is lodged, yes. The process requires the unit to advise us so that we know a name, the subject matter of it and the date it is lodged. Then we monitor the processing of it to identify any delays. Where the matter does not seem to be—from the subject matter—a particularly complex one we might go back to the unit, and in fact often do, just to check that it is ticking over. Sometimes, if people have a problem with some aspect of the matter, they tend to get delayed when a bit of advice from us can actually speed the process along. We play a monitoring role at that stage.

**Senator JOHNSTON**—The ROG is not a matter of an option for the participants in it? It is the officer in command who refers it to you?

**Ms Harris**—No. The option of whether it is referred to us to be handled, considered or reviewed by the service chief is entirely with the complainant. In the first instance, under the legislation they must submit their complaint to the commanding officer. Once they have a decision from the commanding officer, it is the complainant who decides whether they are happy with that outcome or whether they want it referred higher.

**Senator JOHNSTON**—Does the complainant tick the box that says, ‘I am happy for this to be mediated’?

**Ms Harris**—In terms of mediation—

**Senator JOHNSTON**—I am referring to what you do, to the sort of function you perform—that is, alternative dispute resolution.

**Ms Harris**—No, sorry. That is what Captain Marks handles.

**Senator JOHNSTON**—All right. What about the job that you do? Does the complainant at the beginning elect to go down your—

**Ms Harris**—No. In the first instance it will be handled by the commanding officer. It only needs to come to us if the complainant is not happy with the outcome. A CO may be able to, in the first instance, determine that there are grounds for the complaint and, secondly, grant the redress that is sought. Often it will be a decision by, say, the CO and when evidence is put before the CO by the complainant the CO may choose to change that decision.

**CHAIR**—What if the CO is the person being complained about? What happens there?

**Ms Harris**—When a CO makes a decision and a complaint is put in as a redress of grievance, the CO in the first instance has the option to consider that redress of grievance and in fact to change the decision. But, where the complaint is about the CO’s decision and the CO considers the redress and declines to grant it, it must be referred to the CO’s superior officer for somebody else to consider before a decision is made on the redress.

**Senator JOHNSTON**—What do you think of that?

**Ms Harris**—I think it is a very fair system. A CO in some instances, on review, will decide that the decision was not a good one and will make a new decision.

**Senator JOHNSTON**—But isn’t there an inherent problem in the chain of command where we have faith and trust in our superior officer, where the bond builds between, let us say, a colonel and a brigadier, where you have a captain or a lieutenant making a complaint and where the colonel is the reason for the complaint? Isn’t it Caesar judging Caesar here?

**Ms Harris**—Once you have that decision made by the commanding officer, any redress can be referred to a service chief. If the complainant is not happy with the outcome—if the complainant felt, for example, for whatever reason, that they did not get the decision they wanted—there is the avenue for them to go to the service chief.

**Senator PAYNE**—Do you know the acronym CLM, Ms Harris?

**Ms Harris**—No, I have not heard it.

**Senator PAYNE**—It stands for career-limiting move. There are one or two people who would make the observation that I am an expert in the political environment on personal CLMs!

**CHAIR**—You are not alone, Marise!

**Senator PAYNE**—None of them are here, happily. The scenario Senator Johnston is pursuing is where a complaint may be about a CO and, as I understand it, the CO has the capacity to appoint the officer who does the inquiry or the investigation.

**Ms Harris**—That is right.

**Senator PAYNE**—So they can, with enormous respect, choose a mate to do the inquiry into the complaint against them and then—quelle surprise!—it is returned with a finding that agrees with the CO's initial decision. We have seen this once or twice in the past few months. And so it goes on. The individual initiating the complaint finds himself or herself being told, as you say quite easily, 'But you can then seek review at the level of the service chief.' There are one or two people in the regular ADF who might see that as a CLM.

**Ms Harris**—The statistics would indicate, though, that a large majority of those who do not get the decision they are seeking at the commanding officer's level refer that complaint to us for it to go to a service chief. Of course they can also go to the Ombudsman if they do not feel that they can get what they believe to be justice within the system.

**Senator PAYNE**—Can we ask you, perhaps on notice, for a pretty comprehensive breakdown of the statistics. You have talked about small numbers of poorly handled complaints. But we do not really know how many you are actually talking about. I think you responded that just under 50 per cent of ROGs end up at the CRA. Could we get some idea of the statistics—and we certainly do not expect you to give them to us here and now. I imagine what we need is a breakdown by service in terms of the number of ROGs that you deal with, whether they come from general recruits or from officers, what the gender breakdown is, whether the issues are related to the investigation that is being carried out by the IO or if it is more complex than that—perhaps there has been a BOI or something like that—what the nature of the complaints is, and then the time frames. I know that is a very comprehensive question, but this is so much the stuff of this inquiry that it is very important to us.

**Ms Harris**—What time period would you be interested in?

**Senator PAYNE**—The last financial year, for starters.

**Ms Harris**—Yes.

**CHAIR**—So 50 per cent of the ROGs are settled without any further ado—is that what you said?



**Ms Harris**—They are finalised. I do not mean to imply that the 50 per cent of complainants that do not come to the Complaint Resolution Agency get what they want from the redress, because in some cases it will be investigated and considered and the decision will be that there are no grounds for the redress and therefore the complaint or the redress will not be granted. A number of those do not continue with their complaint through to the service chief.

**CHAIR**—When might any other body—the Ombudsman or the Defence Legal Service—be involved? Only by the initiation of the complainant? Is there a point where you look at the other 50 per cent that come to your office and say, ‘There’s something amiss here and we need to engage these other people’?

**Ms Harris**—That 50 per cent that come to us are people who are simply exercising their right to have a decision reviewed. The Ombudsman would become involved, normally, after a complaint has been to the service chief. When a complainant is advised of the outcome of the redress at the service chief level, the letter that goes out to them which advises them of the outcome simply states, ‘If you are dissatisfied with this decision you may refer the matter to the Defence Force Ombudsman,’ and then they are given contact details. In terms of the process, that is where the Ombudsman comes in. That said, a number of times we will be contacted by the Ombudsman at other times. It may be where a complainant feels that the complaint is taking too long to get a response, either at the unit level, so a response from the CO, or at our level, where it needs to be staffed to the service chief. So the complainant can at any stage go to the Ombudsman. They will contact us to say, basically, ‘Please explain. Where is this complaint at? Who is handling it? When can we expect an outcome from it?’ So they can intervene at any stage, and often do, but often simply to check that they are satisfied that the process is in fact following the proper course.

**CHAIR**—Are the complaints categorised in terms of demotions, transfers, ‘He looked at me sideways,’ or, ‘He didn’t smile at me this morning’?

**Ms Harris**—We do categorise the complaints so that we can monitor trends, but—

**CHAIR**—You undertook to Senator Payne to do a breakdown of the previous financial year. Could you do one on that as well?

**Ms Harris**—Yes, we can. We do it when it comes in. When we put the information onto our database it is put under a general heading so we can establish, for example, whether the number of complaints about involuntary discharges is going up or down and whether the number of complaints about policy is going up or down. When you get a number of complaints about a relatively new policy it starts to indicate to us that at the very best there may be a lack of clarity in the policy and, at worst, there may be something that needs fixing. It is part of our role to monitor that.

**Senator SANDY MACDONALD**—How many ROGs do you have a year—is it about 300?

**Ms Harris**—At unit level it is about 400, and about 200 come to us.

**Senator SANDY MACDONALD**—Captain Marks, were you the first director of the ADR?

**Capt. Marks**—Yes, I was.

**Senator SANDY MACDONALD**—How many staff do you have?

**Capt. Marks**—I have four permanent and two part-time staff.

**Senator SANDY MACDONALD**—Do they travel?

**Capt. Marks**—We cover the whole of the country. In the regions we have what we call ‘mediators’ and they do mediations as a collateral duty.

**Senator SANDY MACDONALD**—Are your full-time staff ADF personnel?

**Capt. Marks**—No. There is a Navy warrant officer and me. The rest are civilian staff. I have one reservist part-timer who is Navy as well.

**Senator SANDY MACDONALD**—How do people know of your existence?

**Capt. Marks**—We are a fairly new organisation so knowledge of our existence is growing—one would put it that way. Normally people would learn about our existence through looking at the Defence Instruction. We do awareness training. They would learn about it through the Defence Equity Organisation. They always give lots of training around the available resources to people they provide advice to—command and others. We have a web site. We have brochures and pamphlets that are put up across the country.

**Senator JOHNSTON**—Can we have copies of those?

**Capt. Marks**—Yes, I have copies with me.

**Senator SANDY MACDONALD**—I can understand it as part of being a caring and sharing employer, but was there a model that it was based on? Does it exist in other military forces around the world?

**Capt. Marks**—I was aware of it because I had previously been the director of Navy personnel services years ago and had responsibility for implementing the good working relationship program. One subset of that was around—

**CHAIR**—Captain Marks, would you be able to give us a copy of that information now? It would assist us in asking questions.

**Capt. Marks**—Certainly. I also have copies of the Defence Instructions.

**Senator SANDY MACDONALD**—Who reads Defence Instructions?

**Capt. Marks**—Hopefully commanders! I was aware of this process and I had received some training around it. Unfortunately it had lost some momentum so, when I was acting in a different capacity, I thought there was a great need for an additional process to move people out of the

formal rights based investigation processes and the like. I looked around the world, because there were no models in Australia that reflected what I thought we needed. I looked at the Canadian Department of National Defence and Canadian Forces program, which is probably the closest model that we have followed. I also looked at the US Department of the Navy, which had one, and the US Department of the Air Force. I also looked at the US Postal Service, which had a very dynamic program around trying to change workplace culture. You may have heard the term 'going postal'. That was when people resolved their grievances at the point of a gun. They had a very robust program to try and change workplace culture. Looking at those models, I then looked at how we could implement such a process within Defence. Of course, we were approaching it very differently. We did not have a legislative imprimatur around it, like the Americans did, dictating that all government organisations—

**Senator SANDY MACDONALD**—Had a policy decision been made to introduce it, or was this something that you had been tasked to look at?

**Capt. Marks**—I thought it was a good idea, and obviously a good idea is not much without more power, so I put a submission to the Chief of the Defence Force and the secretary asking them to permit me to create a pilot program. They gave me that permission. I then created a pilot program, negotiated a small budget and started the infrastructure development from there.

**Senator SANDY MACDONALD**—What year was that?

**Capt. Marks**—It started in 2001 and really gained momentum in 2002; it got the Defence Instruction in 2003. So it was initially a hobby job, where I did it as an additional collateral duty, and it has just gained such momentum and support.

**Senator SANDY MACDONALD**—Do you refer to your cases as referrals?

**Capt. Marks**—Yes.

**Senator SANDY MACDONALD**—How many did you have last year?

**Capt. Marks**—There were 97 matters brought to my directorate's attention. As a result of those, we did 45 mediations and 10 workplace conferences, which are large work group interventions.

**Senator SANDY MACDONALD**—Where there was a situation which needed a little bit of expert counselling? Counselling is a good thing—

**Capt. Marks**—It is not counselling, no. It is really a very professional process. The term of art is an 'interest based problem-solving mediation style'.

**CHAIR**—So these are all service personnel; they are not employees or public servants, are they?

**Capt. Marks**—In terms of our mediation panel we have a mix of uniformed military personnel, permanent and Reserve, and we also have public servants.

**CHAIR**—No, I meant the people. Ms Harris said that her agency dealt with all three services plus the defence public servants. Do you do the same?

**Capt. Marks**—Absolutely; it is across the defence organisation. A program is being developed around the cadets as well. So we have a very broad application of these processes to the wider defence community. We also engage with family members where there is a need for that.

**Senator SANDY MACDONALD**—You said you had 45 matters where you actually—

**Capt. Marks**—Mediated—and 10 workplace conferences.

**Senator SANDY MACDONALD**—mediated. Can you give us some examples of what they might have been? Also, were they across all ranks, from the lowest to the highest?

**Capt. Marks**—Yes, in fact we have done mediations at the highest level, at the service chief level, and we have done them at the lowest level, that of able seaman. We have done them with a disparity—

**Senator SANDY MACDONALD**—Are they things like ‘My fellow general won’t say good morning to me,’ or something like that, ‘and I feel very upset’?

**Capt. Marks**—Usually the ones at that level are longstanding, very deeply encrusted disputes where the conflict-saturated stories are quite dramatic. It is really a last resort at that stage, and we would use an external agency. So it goes from a very deeply encrusted and difficult dispute which has endured for a long time to a situation where there are perhaps poor working relationships in the workplace which might be characterised initially as harassment but in fact are probably about an interpersonal dispute. We do not necessarily stay with how it has been characterised by the parties; we simply look at what the actual problem is that has presented and try to look at a process around that particular problem.

**Senator SANDY MACDONALD**—Give us a couple of examples.

**Capt. Marks**—A simple mediation would be between a superior and a subordinate, be they civilian or military, where one is perceived to be not performing, or the subordinate is being, in their view, overmanaged—sometimes it is characterised as harassed. So it will often be the superiors of those two people who will bring the instance to us and ask us to come in and see whether this is a matter which is suitable for intervention, because it is disrupting the workplace.

**Senator SANDY MACDONALD**—The superior will come in?

**Capt. Marks**—Sometimes the superior to those two parties—

**Senator SANDY MACDONALD**—The participants may not refer themselves to you?

**Capt. Marks**—They may not. Because of the—

**Senator JOHNSTON**—If they are referred, do they have to go?

**Capt. Marks**—No, it is a voluntary process. Normally, you will find that in that situation the superior will have spoken to the parties. They will then say, ‘Look, we’ve heard about this process called mediation; I think it might work for you.’ So the superior will come to us and say, ‘Is this appropriate?’ We will send in a mediator who will do an initial assessment, talk to the parties separately, see whether it is appropriate to mediate, whether the parties will come to the table in good faith, with a willingness to resolve the situation, and then we will go forward to mediation. Occasionally, one of the parties may bring the matter to us. We then make sure that their superiors are comfortable with this process being used, because obviously we do not want to interrupt command or management relationships where they are to support strong and harmonious workplaces, so we are very careful about managing how we come into a workplace.

If a subordinate has brought it to us, sometimes I might ask, ‘Have you spoken to your superior about the opportunity of mediation?’ If they say no, I will speak to that person and in a sense ask: ‘How would you bring this suggestion to your superior? We don’t want to do any more harm by just announcing it to the superior. Would you like to go to your superior and pose this as a possibility, or is there some other way?’ One instance might be that the director of the Complaint Resolution Agency will ring me and say, ‘I’ve had a subordinate come to me who is in dispute with her superior,’ so I will speak to that person and negotiate with them about how best to bring it to the notice of their superior. Most often they will say, ‘I’ll speak to my superior and see if they’ll agree to us mediating it.’ An example of exactly that is one where a person spoke to their superior, and the superior said yes. I then spoke to the superior—them knowing that this was an opportunity—and it was agreed. I said, ‘It is best if you tell your superior and get their agreement on this,’ and then the mediation took place.

With a large group conflict, it often comes to our attention through the HR manager or the manager of the whole group. At the moment, because we are such a young program, managers have often tried a number of other interventions and this is almost a last resort—in desperation they will try this.

**CHAIR**—These are all terms one might use for employees.

**Capt. Marks**—They are all employees, yes.

**CHAIR**—So they are not service personnel?

**Capt. Marks**—At the moment we have a majority of matters which are civilian disputes. We also have disputes between service people and civilians and between service people and service people. It can be any mix that you can possibly think of.

**Senator JOHNSTON**—What is the most common subject matter that you deal with?

**Capt. Marks**—The most common subject matter that presents is general harassment, as well as personality conflicts. They are characterised—

**Senator JOHNSTON**—Would you call that ‘over management’? Is that what you are talking about?

**Capt. Marks**—I think it depends on who is describing it to us; it is the perception. For a subordinate it might be bullying, for a superior it might be non-performance, and for both it might be a situation where you generally do not have good working relationships. So perception is probably—

**Senator JOHNSTON**—I am with you.

**Senator PAYNE**—The numbers are interesting. My question was going to be about how ADR really works in a command structure. It seems to me that if you were trying to find oxymorons you might put ‘ADR’ and ‘command structure’ in the same sentence.

**Capt. Marks**—In fact it has worked out to be the exact opposite.

**Senator PAYNE**—That is good news.

**Capt. Marks**—The best of good leadership and good command and management relationships is sound communication and negotiation skills. That is the very core of our close relationships and, I suppose, efficient and effective military service. Whereas you might think rank is a factor, we have found that it is not. It comes down to the people, and they prefer to engage. Although a superior might have a privileged and entitled position, it is very important for them to have a very strong and effective team working for them. They see this as a very positive and supportive initiative for them getting their team back to work.

**Senator PAYNE**—But you still have a relatively small percentage of service-to-service participants in the ADR process.

**Capt. Marks**—At the moment it is growing. Yes, proportionally it is still mainly civilians who are using it. But if you look at the Canadian program, for instance, you will see that the majority of matters that they deal with involve service people.

**Senator PAYNE**—In response to Senator Macdonald’s question about who reads the service directions, you said ‘hopefully commanders’.

**Capt. Marks**—Yes.

**Senator PAYNE**—I assume part of your awareness building and training is in dealing with people at that level to explain the benefits of ADR and its appropriateness in their particular environment and workplace. How do you go about doing that, and what is the reception like?

**Capt. Marks**—It is very positive, particularly if we are speaking, as we do, to commanding officers or people who are going into command—executive officers; that sort of group. They are looking for every tool that they can add to their tool box or opportunity whereby they can have a very successful, efficient command experience and the best for their people. They are very committed to their people, and so they do see this as a positive.

**Senator PAYNE**—I am sure that is absolutely true. We have received some interesting evidence in the past couple of months about how much time is given on particular issues in the training and awareness building processes. For example, if we were to talk about training on

suicide awareness or prevention, it is very finite in terms of time. It is not repeated, as far as we have ascertained. It is certainly not repeated often. What amount of time is given to awareness training on ADR?

**Capt. Marks**—Certainly at the command level it is still quite small, but we find our penetration comes mostly from training the advisers to commanders, such as training the administrative officers and the Defence equity coordinators—the people who the commander will principally call on, including legal officers.

**Senator PAYNE**—That is interesting. How much time do Defence equity coordinators or legal officers in ADR get?

**Capt. Marks**—It is in all their Defence Instructions. Their fundamental training is that this is another tool in the toolbox. My colleague Ms Harris will do training. She will mention mediation in ADR. It is certainly increasing. I do not say it is perfect.

**Senator JOHNSTON**—Does each commander have an equity officer?

**Capt. Marks**—Yes, they do.

**Senator JOHNSTON**—I have recently become aware of equity officers. On ships, for instance, one of the mid-ranking officers is appointed as the equity officer. How do you satisfy yourself that the equity officer is fully aware of these things or is it so trite as to be obvious because they have been trained and you have told them, ‘Here is a set of tools that you can use should you have an issue’?

**Capt. Marks**—I could describe it this way. My colleague on my right and also the head of the Defence Equity Organisation have a very strong and close working relationship around the opportunities for the whole defence organisation, around everything that we do. I know the head of the Defence Equity Organisation has trained many of her Defence equity coordinators and equity advisers in the mediation process through an external source provider. They not only know about it but have actually been through a training course to be a mediator, whether or not they subsequently seek to be credited or registered as a defence mediator. So they are very attuned to it as an opportunity.

**Senator PAYNE**—Just to follow up on that, could you make an assessment of the amount of time—the course component, if you like—involved in ADR training for officers and people taking up command and provide that to the committee on notice. Could you also advise whether there are any refresher courses, as it were, down the road.

**Capt. Marks**—I certainly could.

**CHAIR**—I will ask you about the procedure for a redress of grievance, if you deal with that area. If a member of the services puts in a redress of grievance about an issue, is he or she given all the information that he or she might require in that redress of grievance? For example, if it is a promotion matter, a movement matter or something like that, is everything that man or woman needs to know for his or her complaint or redress of grievance made available to them?

**Ms Harris**—It is made available. To a degree it depends on the extent to which they know that the policy exists. But, at the same time, when they have an issue—say it is to do with the payment of an allowance on a removal—and if they feel that they are not getting what they are entitled to, the first thing they will do is check the policy documents. They do not need to know that it is ‘Defence Instruction whatever’; they simply need to ask for the Defence Instruction that deals with allowances on a removal. They will be directed to that document for them to look at it and see whether it supports their view that they did not get their entitlement, for example. They will seek advice from other people, depending on where they are working. There are administrative staff in the unit and, in the first instance, they will take their complaint to them. If somebody feels that they have missed out on an entitlement, they raise it with the administrative staff as an issue and they can actually get that resolved before it ever becomes a formal redress of grievance. That is the ideal situation. That is what you hope would happen in every instance where it can occur.

**CHAIR**—Is there some level at which no information will be provided?

**Ms Harris**—I do not believe so.

**CHAIR**—What about people whose promotion it may affect?

**Ms Harris**—More often than not, the sort of thing that would affect a promotion would be an annual performance report. When it comes to the reporting process, people know, because they are told, that if they have an issue with a performance report then they can make a representation about that. If they are not happy with the outcome of that, they can put in a redress of grievance. We do get a number of redresses that deal with the promotion process, but it is certainly not evident to me from the complaints that we receive that there is any lack of access to the documents or policy. Bear in mind that they also have access to legal officers for advice. Even though the issues that are the subject of the complaint may not be legal issues in themselves, the legal officer can make sure that that person has gone to the right places to get the information they need in order to frame their complaint.

**CHAIR**—If allegations were made against someone in relation to that, would all those allegations be made available to that person? Say that someone has made a decision as it affects their promotion.

**Ms Harris**—There are two different issues here. In terms of allegations, I assume you are talking about somebody who feels that their promotion is being hampered by an unknown person or perhaps a person known to them who is making allegations that they are not aware of. The performance reporting and promotion process is separate to the redress of grievance process, and at any point in that process people are entitled to have all of the information that is available to the promotion advisory committees that make decisions on promotions. If they believe there are things on their file which are detrimental to them and are affecting their promotion, they can ask for access to that, and they should be given access to any of that information. If they felt that there was some information there that a decision was based on that was not made available to them, they could put in a redress of grievance and the investigation would need to look into that complaint to see whether there was in fact something there. But the promotion process is designed to be quite transparent, as is the redress of grievance process, so the information should be available to them on asking. They can go to the extent of seeking it under freedom of



information but, generally speaking, you do not need to go down that track to get information which relates to the situation that you have outlined.

**CHAIR**—Is the promotion stream different to the redress of grievance if you want to query why—

**Ms Harris**—Yes. In any case, when you are not happy with a decision that affects you, you do not have to put in a redress of grievance. In fact, the redress of grievance should be considered to be a last resort. When you have raised the issue and you cannot get the outcome that you are seeking but you believe that you are entitled to it, it then becomes a redress of grievance. But 400 redresses are submitted each year, so there must be thousands of questions being raised by thousands of members getting decisions—

**Senator SANDY MACDONALD**—That is a lot when you consider that you only have 50,000 ADF personnel.

**Ms Harris**—There are 50,000 full-time personnel, but do not forget that the redress process also applies to all our reservists. We are talking about probably more than 70,000 people who could potentially put in a complaint.

**Senator PAYNE**—Ms Harris, I think you said that you had about 200 ROGs to deal with in the financial year. How many of those do you recommend to the service chiefs should be overturned?

**Ms Harris**—The statistics would show that very few are overturned. I do not have a figure, because we do not run any sort of scoreboard on this, but it is a small number.

**Senator PAYNE**—That is not the answer to my question. My question was not: how many are overturned? It was: how many do you recommend to the service chiefs should be overturned?

**Ms Harris**—Once again, we do not keep figures. I would say that for the great majority we would not recommend that the decision be overturned. There are some instances where we do recommend that a decision be overturned, but the decision of the service chief is different to that. That is the decision maker making the decision. All we do is provide advice.

**Senator PAYNE**—Certainly.

**Senator JOHNSTON**—What checks, balances and jurisprudential safeguards does your agency have in dealing with the rights of complainants and respondents? In other words, how do you know if they need a lawyer, and what do you do to protect them—to tell them: ‘You had better go and see a lawyer’?

**Ms Harris**—In the first instance, because we are after all conducting a review and not the initial investigation, by the time a member’s complaint has come to us they have almost always had legal advice. They are advised when they frame their complaint to submit as a redress that legal advice is available if they feel they need it, so by the time it comes to us we are reviewing something that has already occurred. There are times, however, when something comes to us that has been decided at unit level and there may be some legal issue involved in the interpretation of

somebody's entitlements. In that case we will seek separate legal advice, and in some instances that is the reason we would recommend to a service chief that a decision be overturned: because the legal advice that we get is perhaps different.

**Senator JOHNSTON**—Whom do you seek your legal advice from?

**Ms Harris**—From the Defence Legal Service.

**Senator JOHNSTON**—What is your view of the promptness and the accuracy and ability disclosed by the Defence Legal Service? What is your view of the quality of its advice?

**Ms Harris**—From the perspective of the Complaint Resolution Agency, we get an excellent service from the Defence Legal Service. They have a lot of work to do. We do not expect an immediate turnaround, but when we seek advice on a particular decision it will generally be turned back to us within a week or two. I think that, given the time taken for the entire process, that meets our purposes.

**Senator JOHNSTON**—What about the complainants and the participants in the process before you? Do you believe they get timely and proper legal advice in the process? You say that almost inevitably they have seen a lawyer. We have seen the quality of some of the internal legal advice, and I can tell you that it does not impress us greatly. What do you see? When people come before you have they been fully informed of their rights? It worries me that this is an internal process, and the grievance level that we as a committee are dealing with flows from the fact that it is internal and opaque.

**Ms Harris**—I think there are two aspects to the question about legal advice given to the complainant. As to whether they have been informed of their rights, I would say that in the great majority of cases every indication to us is that people are aware of their rights, so that is not necessarily the problem for them. Going to the other question of whether the legal advice they are given is sound in relation to their complaint, I mentioned before in an answer to a question that I myself do not come from a legal background, but I am not aware of any particular problems in terms of the legal advice being given, other than to say—and it has said before—that if you get two legal opinions more often than not those opinions will differ.

**Senator JOHNSTON**—Are you aware of the preference of service personnel, in exercising their choice in legal practitioners, to have reservist lawyers?

**Ms Harris**—I am not aware that it is a preference, but I know that is the case more often than not. That is usually because of the availability of legal officers to provide the advice.

**Senator JOHNSTON**—So there is a shortage in the availability of internal, full-time ADF legal officers, and we rely upon reservist lawyers from outside more readily?

**Ms Harris**—If you consider that lawyers are either full time or part time and are Reserve or full-time members, it should not matter from whom they get the advice.

**Senator JOHNSTON**—There is a difference between those who are practising at the bar in the wider community, who are surviving by their own efforts to some extent, if you follow what

I mean—they are actually out there in practice—and those who are enlisted personnel. Are you not aware of a preference for lawyers who are out there in practice?

**Ms Harris**—No, I cannot say that I am. Certainly when I was a CO I had a legal officer who worked for me. Because that officer usually would be involved in an issue before a matter became a redress, it would not be appropriate for that officer to be asked to give advice to somebody who was a complainant. In an instance like that, the legal advice inevitably would be provided by a Reserve legal officer to the person putting in the redress.

**Senator JOHNSTON**—Ms Harris, may I ask what rank you attained when you were in the Army?

**Ms Harris**—Colonel.

**Senator JOHNSTON**—For how long were you in the Army?

**Ms Harris**—For 25 years.

**Senator JOHNSTON**—What particular area of Army personnel were you involved in?

**Ms Harris**—I specialised in intelligence.

**Senator JOHNSTON**—How do you get the job that you have got? Tell me a bit about the process, because it is obviously a very important job and fills a vital function in the efficient resolution of some of these things. How did you get your job?

**Ms Harris**—In the first instance, I believe that having somebody with previous command experience is very helpful—not necessary, but helpful.

**Senator JOHNSTON**—Why do you say that?

**Ms Harris**—Because you need to understand the environment in which complaints are made to understand where people are coming from when they make a complaint, to understand what access they have to advice and what difficulty they might face in putting in a complaint.

**Senator JOHNSTON**—Do they suffer any greater or lesser difficulty than people who are in an isolated country town in, say, outback Western Australia?

**Ms Harris**—No. In fact I think it is probably easier for them because they are surrounded by people who can give them advice.

**Senator JOHNSTON**—I am interested to hear you say that and I think the suggestion is that you understand the context of the complaint and you think that is of assistance.

**Ms Harris**—Yes, I do think that is of assistance.

**Senator JOHNSTON**—Tell me why. Does it not colour your perspective? That is the flip side of that argument. You are one of the team members. You have served with distinction, no doubt, and you have got the position you have got, so you are very pleased with the level of ADF output and performance and you are a proud member of the ADF. Does that not colour your attitude when you see something wrong—some misconduct, some lack of justice?

**Ms Harris**—When you say, ‘Does it colour my perspective?’—

**Senator JOHNSTON**—You want to defend the institution.

**Ms Harris**—Certainly.

**Senator JOHNSTON**—Whereas someone who is not from within the institution might want to say, ‘This is just unacceptable,’ and be far more readily disposed to go on the front foot and attack. That is just a hypothetical proposition to you.

**Ms Harris**—I would say that actually it is more the other way. Having been part of that organisation I would like to be sure—and I am confident—that the process provides not only for the ability for somebody to make a complaint but for that to be impartially reviewed if somebody is not happy with the outcome. When a complaint comes to the Complaint Resolution Agency we have people who can look at it in isolation from the unit and from the personalities but with an understanding of the culture and environment in which it arises to understand how things occur the way they do. I think that is important.

**Senator JOHNSTON**—You might be right, but may I ask this question: have you ever been a complainant in your 25 years of service?

**Ms Harris**—Yes, I have.

**Senator JOHNSTON**—Were you satisfied with the outcome?

**Ms Harris**—Yes, I was. I did not get what I wanted but I was heard. At the end of the day, it boiled down to, really, what was a difference of opinion. But I had the opportunity to have my say, to get a response to it and then to say, ‘Well, I gave it a go; it was there for me. But I did not get what I wanted.’

**Senator JOHNSTON**—And you would say that that experience gives you an understanding of the sorts of emotional and psychological dispositions that play upon someone in the process.

**Ms Harris**—Not just that experience.

**Senator JOHNSTON**—In other words, you have actually been there and done that.

**Ms Harris**—That is part of it. Anybody who wears a uniform understands what the possible outcomes are from the redress of grievance process and understands some of the really complex issues that become the subject of redresses even if they have not been a complainant themselves.

**Senator JOHNSTON**—How long have you been in the position that you now hold?

**Ms Harris**—Eighteen months.

**Senator PAYNE**—In the ROG process, is there an obligation or a requirement for the complainant and the individual responsible for the decision complained of to be interviewed by either the investigating officer or the commanding officer?

**Ms Harris**—During the redress process, what would happen is that an individual puts in the complaint. If that is a complaint, for example, about a decision made by a CO the investigating officer is appointed. The investigating officer would conduct any interviews or gather the information on which they would base their report, their findings and their recommendations to the CO. So, at that point, no, there is nobody else who would interview the complainant or the commanding officer.

**Senator PAYNE**—Sorry, I am not sure that I followed that. Is the complainant and the person complained of interviewed?

**Ms Harris**—When you say ‘the person complained of’, a redress is not normally about allegations against another person.

**Senator PAYNE**—It might be though, mightn’t it?

**Ms Harris**—No. If there is a complaint about the actions of another person, management would deal with that. When I say ‘management’, I mean the chain of command. I guess you are talking about allegations of unacceptable behaviour—unacceptable in some form—so there would be an investigation launched into that and the CO would make a decision as to whether or not the behaviour was acceptable. If it was unacceptable, then the CO would make a decision about what action should be taken. It might be disciplinary; it might be administrative. By the time it gets to a redress, if that original complainant wants to submit a redress of grievance, it would be about the decision made by the CO. If the complainant felt that the action taken by the CO was inadequate or inappropriate that would be the subject of the redress. When we are talking about a respondent, there is not really a respondent in terms of the redress other than the CO because it is the CO’s decision, action or perhaps failure to act.

**Senator PAYNE**—But it is possible that a redress could be finalised at the initial stage without the complainant being interviewed.

**Ms Harris**—It would be highly unlikely. I cannot think of a case where that would occur. You could have a redress, for example, about what might be purely a policy issue. An investigating officer could have the original complaint from the complainant, look at a policy and say, ‘Clearly, this is either outside or covered by the policy,’ and in those instances make a decision, but it would be unusual.

**Senator PAYNE**—When it moves onto your agency where you are reviewing those unit level investigations and decisions, is there an obligation on your agency to hear from the complainant?

**Ms Harris**—No, there is not. We conduct a review, so we would review the investigation that was conducted at the unit level. If it was felt that that investigation was lacking—if there were people that had not been interviewed who might be instrumental in providing the information on

which a decision should be based—we could send it back to the unit to request that further information be gathered in relation to that investigation.

**Senator PAYNE**—Does that cover what I would colloquially term ‘aspects of natural justice’ in relation to the complainant?

**Ms Harris**—If we are talking about aspects of natural justice by giving a complainant the right to be heard and then to be satisfied that, if evidence came back that perhaps was adverse to their case they had the opportunity to respond to that, then, yes, that is where one would hope that that would have been done at a unit level. If it has not, it can be picked up at our level.

**Senator PAYNE**—To go back to the hypothetical that we were informally canvassing before and that I think pertains partly to Senator Johnston’s questions, if you have a commanding officer responsible for the initial management of the ROG who may appoint, as an investigating officer, someone who may have a close relationship with them—in professional terms, obviously—that may be part of the issue. You then get a report, which your agency reviews, that is going to have shortcomings that are a by-product of these relationships. They will not necessarily be apparent on the face of it, will they?

**Ms Harris**—No, they will not. I would suggest that, if you are looking at the facts of matter, the questions that have been asked and the answers that have been derived from that, the person who reviews the complaint as it is put in at the Complaint Resolution Agency, who is also an experienced ADF officer, can look at it and say, ‘These are the questions that needed to be asked but were not asked,’ for example. If the investigation is not comprehensive then that will be picked up when it goes to the service chief for review.

**Senator PAYNE**—I wish I had your confidence and I wish the past six months had given me your confidence. Frankly, they have not and our observation of a number of the processes attached to ROGs and the review of ROGs makes me concerned about access to the fundamental tenets of natural justice—that is, the right to be heard and to put your own case, not necessarily to have these matters examined on the papers. In some cases we have seen, at the end of day you are actually talking about the end of people’s careers effectively. They are not minor matters of allowances and similar; they are the end of people’s careers, and these people do not seem to me to have the opportunity to put their own case.

**Ms Harris**—In fact, I think that a redress relating to a discharge is probably a case where the complainant has the most opportunity to get a hearing. Before they even get to lodging a redress, the process demands that they be issued with a notice to show cause. The notice to show cause will detail the reasons why it is proposed that that person’s services be terminated. The member then has the right—and is in fact required—to respond to that notice to show cause to convince the decision maker that the decision is not the best decision in all the circumstances. They have that initial right to be heard then. So even before they put in a redress of grievance, all of those issues have been canvassed. The individual has responded to a notice to show cause and in almost every case—if not in every case—has done so with legal advice as well. So in terms of the right to be heard, they have been heard. They then come into the redress process where it is all reviewed again. If they are not happy with that, they will—and they almost always do—go to the Ombudsman. The Defence Force Ombudsman’s team will then look at it and go through it with a fine toothcomb as well. So by the time the individual is discharged—

**Senator PAYNE**—Or has turned 65!

**Ms Harris**—You have raised the issue of people who have been discharged. We are talking about termination of service.

**Senator PAYNE**—No, I did not. You took me very literally. I was talking about events that could portend the end of people's careers. I did not actually say anything about discharge, but your interpretation was that that was all I was talking about. I was not; I was talking about serious matters that are dealt with under ROG, which have the effect of basically bringing people to a brick wall, and they know that they have no future. So I was not necessarily talking just about discharge. My concern is that the service personnel get an adequate hearing and be accorded—not be seen to be accorded but be accorded—natural justice.

**CHAIR**—In your charter, Ms Harris, you supposedly ensure independence. But I agree with Senator Payne that on the evidence we have heard over the last few months there does seem to be an issue—and I am not particularly pointing to your organisation. You answer to the service chiefs, as do all the people who seem to review whether or not a redress of grievance is carried out correctly. How can you be independent when another of Senator Payne's acronyms, CLM, might come into play if you decide that that is not the case, particularly as it might even be a service chief that is being queried about, as has possibly been the case?

**Ms Harris**—The agency do not answer to the service chiefs. We provide a staff function for them in reviewing the complaint and making recommendations to them, but we do not work for the service chiefs. I work directly for the secretary and the CDF, and the agency work directly for CDF and the secretary. We give advice to the service chiefs on what we believe to be a fair reading of the case and make recommendations as to the findings, but we do not answer to the service chiefs. We quite deliberately employ reservists as our case officers to review the redresses because it gives them a certain independence as well. These are people who are not looking to forge a future career in Defence. They enjoy the work—

**CHAIR**—But that goes back to the original point that I think Senator Johnston was talking about. You are very proud of your career in the armed forces, as you should be, but in these aspects we are talking about justice. I would be concerned that you would bring in Reserve officers to review these things. Why wouldn't you just bring in people from civilian life who can make decisions on what is right and wrong, or fair and unfair, rather than have people in uniforms who could potentially be not independent at all because of the command structure?

**Ms Harris**—I do not see the difference between using civilian staff or military staff. In fact, some of our redresses are handled by some of my civilian staff—though by and large they are done by the military staff. These are people who are proud of their independent position and who do not hold back if they think that something is wrong. We have certainly had instances where we have put briefs up to service chiefs where our reading has found that senior people have not done the right thing in relation to decisions made on redresses or where we question the way particular matters were handled. It has certainly happened in my time that we have put a recommendation up to a service chief, where there were aspects that the service chief needed to deal with separately in relation to decisions made by a senior officer, and the service chief has accepted that advice and acted on it. That is the sort of role that the CRA can and do play. If we find something is wrong, we can say it is wrong, and we do that.

**CHAIR**—We may have heard differently.

**Senator JOHNSTON**—I am just fascinated to hear you say, Ms Harris, that the reason you go for reservist legal advice is that there is a perception that that is independent. That was the issue I was seeking to discuss with you in relation to the perception we have. If you have not read all of our transcripts, I recommend that you do. It is a very laborious and time-consuming process but it does open a very big window into the way things are perceived by the consumers of the various products that the chiefs have put together to accommodate justice within the ADF. When someone is to be railroaded, the process as you have identified it will be pristine. There will be nothing wrong with it that you can point to, because this is the way we train our defence personnel—they are set a task and they perform it magnificently. So an inquiry designed to end a career—an inquiry designed to remove a problem, be it operational or political—will not have a hole in it. It will not be something that you can deal with.

Without a very skilled, trained jurist or judge, who can scratch away at the surface and burrow down and re-inquire—and what Senator Payne said was 100 per cent correct—you will never see the facts or truth behind an inquiry that is designed to achieve a purpose. Let me tell you that our experience is that Defence is very good at what it does, and if it decides, through its highly trained, skilled officers, to railroad someone then that purpose will be achieved magnificently, and you will never even get a glimpse of where the process came off the rails. And you will be there to come to Senate inquiries and show us how the system should work when it does not. All I am asking you is: where are the safeguards, where are the checks and balances, where is the independence? You are not reporting to your chiefs; you are not beholden to the great institution that you no doubt love and respect. Where do you look for the sort of robust determination to attack a matter to see that a career is not ended wrongfully?

**Ms Harris**—At the moment, I believe the Defence Force Ombudsman fulfil that role. We deal with inquiries from the DFO quite often, and I would say that—though at times they do find problems with what has been done, not necessarily just by the Complaint Resolution Agency but in other areas as well—more often than not, when they go through the case from start to finish, they very rarely find that there is a problem with it. But they are there to review and they do review and they review it with a fine toothcomb.

**Senator PAYNE**—Ms Harris, have you had an opportunity to see the Defence Force Ombudsman's submission to this inquiry or read the *Hansard* of the hearing?

**Ms Harris**—I did.

**Senator PAYNE**—I will read you a paragraph from page 3 of that submission—I hope the chair will indulge me. Under the heading 'Issues—Investigative practices' it reads:

We have received several complaints where it appears Defence has had considerable difficulty in entertaining the notion of investigating a complaint in the first instance despite very clear concerns being expressed both by the individuals involved, as well as by other people in relatively senior positions in the ADF. It is axiomatic that if a complaint is not accepted as a complaint, it cannot be resolved.

We have also received some complaints which have revealed deficiencies in the investigative process. Some of the issues which have arisen include:



- investigations of serious allegations being carried out by officers with apparently inadequate training in investigations and approaches inappropriate for the allegations being investigated,
- an investigation being thorough but conclusions and recommendations not being drawn together logically from the evidence for the decision-maker,
- an investigation taking an inordinate length of time with changes in investigation officer and failure to address the substance of the complaint,
- investigations resulting in recommendations which appear never to have been considered by anyone with the appropriate authority,
- an investigation where members of the public are questioned with little apparent thought for the potential consequences, and
- investigations which have taken so long it renders any outcome favourable to the member virtually meaningless.

A consistent theme is the need for better training for investigation staff. While I appreciate that many people will only be required to undertake few, if any, investigations during their career, given the potential impact on complainants of the result of a poor investigation, this is an area I consider Defence may need to address further.

The committee has taken that evidence very seriously, as you can imagine. What comfort can you give us from your organisation's perspective with regard to that evidence from the Defence Force Ombudsman?

**Ms Harris**—The Ombudsman has listed a number of areas there expressing concerns. None of that was news to us, if you like, because we talk to the Ombudsman's staff quite regularly; we do discuss these things. The only thing I could say with regard to those types of criticisms is that, yes, those are problems. The question is how widespread the problems are, which is obviously what you are looking at. All I can say in terms of administrative investigations is that, for almost every redress that is lodged, there is an administrative investigation. Separately, every time there is a vehicle accident and every time there is a complaint about unacceptable behaviour—some of which are at the minor end of the scale and some of which are more serious—all of those things require an administrative investigation. If we are talking about the number of administrative investigations conducted every year, we are obviously talking about a very large number. In that number, there is no question that some people get it wrong. Training of investigating officers, which Defence is about to embark on, will improve the overall quality of investigations. It will not, however, prevent all of those things from occurring; it can only, one would hope, lessen the occurrence of them, because people make mistakes.

**Senator PAYNE**—I must say that, on a personal note, I do not accept the volume argument as a counter to the concerns that have been raised by the Defence Force Ombudsman. I go back to my premise that many of these cases do mean the end of the effective military career of the individuals concerned if they are not found in their favour when ultimately perhaps they ought to have been. I am not saying, by any stretch of the imagination, that that would be the case on every occasion, but we have seen some that concern us greatly. I am interested in your note that the ADF is about to embark upon training of investigative officers. I do not think that the Defence Force Ombudsman's submission to this inquiry is the first time that that observation has been made.

**Ms Harris**—No, it is not.

**Senator PAYNE**—It seems to have been a long time coming. Do you know the background to that process? What is the nature of the training that will be undertaken?

**Ms Harris**—I believe that the ANAO report, which was tabled in 1999, made the recommendation that investigating officers should be trained. I know that the 2000 review by

Defence and the Ombudsman also noted the need for that to occur. The reason I know that is that I was a member of the review team that undertook the 2000 review. I also know that in 2000—before I left the Army, I was working in the education and training area—at that stage we had a project to develop investigating officer training. So the development of the training was under way when I left the Army.

**Senator PAYNE**—When did you leave?

**Ms Harris**—In 2000.

**Senator PAYNE**—And here we are in 2004.

**Ms Harris**—Correct. Last year, when I moved into the Complaint Resolution Agency, the subject came up. I raised it with a number of other areas in Defence to find out what had happened to that project. I found out at that time that it had actually got to the point where a draft instruction had been written and training materials were prepared, but nobody seemed to know what stage the actual training was at. It has been reinvigorated. A team was set up last year to look at getting it under way. I believe, although it is not my area that has been managing it, that a training package has been developed and it is now part of the responsibility of the IGADF area—Inspector-General ADF—to conduct that training. That is my understanding of the current situation.

**Senator PAYNE**—If you are responsible for the reinvigoration, Ms Harris, we thank you.

**CHAIR**—One final question: can you tell me what happens when an ROG relates to the action of the service chief?

**Ms Harris**—In terms of process, it still needs to be determined by the service chief. In fact, I cannot say off the top of my head, because I have not had one in the time that I have been at CRA.

**CHAIR**—That is 18 months, isn't it?

**Ms Harris**—Yes. I am trying to think back over the legislation, because the legislation requires the service chief to consider it. I would need to check in terms of process how we would handle that.

**CHAIR**—It sounds like the service chief considers whether he should consider himself scrutinised and probably says, 'No, I shouldn't.'

**Capt. Marks**—No, there is a different process.

**Ms Harris**—I would like to take that question on notice, because I would hate to describe the wrong process to you. Certainly it would not work in the way you are saying.

**CHAIR**—I am sure it has happened—maybe not in your time.

**Ms Harris**—That is the problem, yes.

**CHAIR**—As there are no further questions, thank you, Ms Harris and Captain Marks. If you could supply us with that information, it would be appreciated.

[6.53 p.m.]

**HEVEY, Colonel Gary, Director, Office of the Director of Military Prosecutions**

**CHAIR**—I welcome Colonel Gary Hevey. Colonel, you are aware of the requirements under parliamentary privilege—

**Col. Hevey**—Yes, I have read the instructions.

**CHAIR**—and in relation to what you can and cannot do as an officer of the Commonwealth. Would you like to make any opening remarks?

**Col. Hevey**—I have no opening remarks—I made those back in February at a pre-briefing and in March at the start of the hearings themselves. By way of introduction, I am currently the Director of Military Prosecutions, a position which I have held since 1 July last year. The appointment was made on 15 April last year, with a lead time of 2½ months before I assumed it. I am a part-time or Reserve officer. I practise at the Victorian bar and have been a practising barrister for just about 20 years. Prior to that, I was a regular officer in the Australian Defence Force, a legal officer for 5½ years and a prosecutor with the South Australian government for three years or thereabouts.

**CHAIR**—The committee sent, I think to the minister's office, a series of questions on some aspects of military prosecutions. Have you prepared any answers that you wish to table on those questions?

**Col. Hevey**—I have prepared dot points rather than answers, and I am prepared to go through them orally rather than in a written submission.

**CHAIR**—Okay.

**Col. Hevey**—The answer to the question, 'Is the position I occupy a statutorily independent position?' is, 'No, not yet.' 'Why is it so?' as Julius Sumner Miller would have asked. It is because you people have not chosen to prioritise it. I remember that, when I first came into this job, I was told that it would take two years, which I thought was an incredible amount of time for something to happen. The then Minister Vaile wrote a very quick marginal note, 'Why?' The answer that came back was, 'Because you won't action it any faster.'

**CHAIR**—Who is 'you'?

**Col. Hevey**—The parliament—putting it onto its agenda. As I have indicated on a previous occasion, my heart was aflutter on one particular occasion because I had been told that we had been upgraded to an A priority. I realised that meant that it fits in when there is time—when other things that need to be done have been done. The present situation is that the matter has been referred to the Attorney-General's Department and a drafter has been appointed, but the first draft of the legislation necessary to establish my office has not yet been forwarded to me for my comments. We are now more than 15 months down the track from when COSC, the Chiefs

of Services Committee, said this office would be set up, and the legislation is still not in place. I am caught between a rock and a hard place, where people demand statutory independence of me and do not give it to me. So, with respect, someone on your side of the table rather than mine needs to make a decision rather than have me sit around for 15 months waiting for the thing to start.

**Senator JOHNSTON**—Do you actually need the legislation to disclose the independence?

**Col. Hevey**—Absolutely.

**Senator JOHNSTON**—Give me an example of why you need that in terms of the administration of your position.

**Col. Hevey**—I have just sat in the other room and watched the discussion concerning independence and how people can be said to be independent. The claim can be made of me: don't you have to report to the Chief of the Defence Force? The answer is, 'Yes, I do.' Why? Because he is my boss. Then the next question comes: 'When you chose to prosecute or not to prosecute Private Bloggs, General Smith, Admiral Jones or whoever it may be, were you influenced in that decision?' Until I am removed from the chain of command by the office being established properly, I cannot be independent. I must be a person who is within a chain of command somewhere. So, no, the position is not statutorily independent. Would I like it to be? Yes, please. How quickly? As quickly as you can possibly do it.

**Senator JOHNSTON**—I am obliged for your summary of what independence is, because until this point in time, in the context of the chain of command, I do not think we have heard it so succinctly put.

**CHAIR**—We have the questions here. The next question is: what are, or could be, the selection criteria for the position?

**Col. Hevey**—My position was advertised nationally in all of the major dailies around the country in about February last year. With respect, there were some pretty high-powered applicants for the job, and I was fortunate enough to be the person chosen. Why I and not somebody else was chosen is for others to decide and I will not comment upon it. But the position required a number of different criteria. Firstly, the person had to have some prosecution experience. It is obviously no good having an expert on conveyancing law trying to do DMP work. They had to have some experience. By that I mean grey hairs and perhaps a pound or two around the midriff, because it usually takes that length of time before a person has some of life's rich experience to decide what ought to and ought not to go ahead. It usually takes that amount of time until you get what we call a sick feeling in the pit of your stomach when you are deciding whether or not you will make a hard decision that might upset people. So you have to have a lot of experience in that area.

It was essential, and viewed as such, that the person who was to assume the position had considerable military experience. With respect, I think that is an essential criterion of the position. People ought to know how the services operate. Another criterion that needed to be met was, obviously, an ability to think and speak on your feet, demonstrated not only at prosecutorial level but also at boards of inquiry, royal commissions or other such senior investigative bodies.

There had to be an entitlement to hold a certain rank, and the rank that was decided on was at least full colonel. I have my own views on that, but it is at least full colonel. The person also obviously had to have written communication skills which would stand the test and had to display appropriate demeanour during the interviews. The Director-General of the Defence Force Legal Service, as I understand it, will be in a better position to table those criteria if necessary, but they were in national advertisements and they were set out pretty clearly.

**CHAIR**—So who selected you?

**Col. Hevey**—The selection was by a committee. The committee was chaired by one of the service chiefs—in this case, by Chief of Army. The main other members of the committee were the three deputy judge advocate generals. It had two District Court judges, Air Force and Army, and, with respect, one of the best silks in the country, Deputy JAG Air Force Andrew Kirkham. So there were the three deputy JAGS, then Commodore Smith, who was Director-General of TDLS, as it then was, and Chief of Army as the selection panel—a three-star and four one-stars who were to decide who was to get the position.

**CHAIR**—Is the appointee considered for further promotion while in office?

**Col. Hevey**—I received a wonderful phone call the other week telling me I was graded band 1 for promotion to brigadier. I asked when I could expect the extra pip, but it is unlikely to happen. That is because the current position is limited to full colonel. Am I eligible for promotion? Apparently so. Is it likely to happen? Unlikely. That is because of the ceiling rank that has been put on the position.

**CHAIR**—What time attendance commitment is required of the appointee?

**Col. Hevey**—My last 15 months have required in excess of 140 days, which is, frankly, an enormous commitment. Over the last 12 months it has been in excess of 110 days. If we take a normal working year, it rounds out at about 200 working days per year after normal adjustments for weekends, leave et cetera. More than half my year has been devoted to trying to get this office up and running. That has meant that I have spent a lot of time in the office in Sydney, which is where we are currently located—about 40 days all told there. But there has been a lot of time spent either here in Canberra or around the traps, telling people that this office is up and running and introducing myself, because I am unknown to a lot of people in the Navy and Air Force. I hope I am fairly well known within the green machine, but I am fairly unknown to our brothers and sisters in the white and blue. To that extent, there has been an establishment phase. It has been a demanding phase because, as well as the establishment, we have obviously had the committee and have had to attend to its requirements. We have had a Defence Force discipline appeal tribunal hearing and we have had a matter before the High Court, so we have had a very demanding year. For the last financial year, my time in the service, as it were, is in excess of 110 days. So more than half of my working year has been spent doing this particular job.

**CHAIR**—What has been the effective time in office, discounting training and other military duties, for the other permanent legal officer staff?

**Col. Hevey**—That is a half-question, if I might be so bold, because we have only really come on stream since March. In relation to our work force, we have had a deputy in place since 18

August last year. A month and a half after the office opened I was granted the luxury of a deputy director to assist me, and I have been very fortunate in the choice of that person, I hasten to add. We only got full staff on board, in effect, from about 19 March. So we were working at half what we were supposed to be working at until 19 March. I am pleased to say that since that time I have been properly resourced on the staffing side and will continue to be properly resourced insofar as our original expectation of workload is concerned.

You must remember, Senators, that when this office was first floated and talked about it was guesswork as to how much work we would actually have to do. Since that time we estimated that in round figures about 120 to 150 matters a year would see us through and that 50 to 80 of those matters would go to trial. In the first year we have had 260 matters land on our desk. The 260 matters have landed on our desk when we have not had the staff there to deal with them and when we had been tasked at the same time with establishing the office—a task which is a full-time position in itself. We did not arrive with the chairs in place, the computers in place, the staff in place and the procedures in place—these are things which we are still developing, by necessity.

We have been very fortunate to be given one of the graduate students through the graduate program to assist us in the writing of our standard operating procedures. We are looking to try and get accreditation. There is an organisation called LAW 9000—and this is civilian as well as military—which looks at giving proper accreditation for offices as to how they perform their functions and meet their obligations. We are striving to be one of the first—and, I think, the first—military legal offices to obtain accreditation with our procedures. But that takes time. It is not something that one whips up over a weekend and then decides, ‘We’ll push this through,’ and it is all finished. Fortunately this graduate has been of great assistance to us. To that end we are also grateful to our British counterparts, with whom I have had the opportunity to talk and discuss this issue in trying not to reinvent the wheel.

Going back to your original question, Senator, where does that leave us in relation to training? One of our staff, from the moment he came to us, has been almost entirely with the police prosecution course in New South Wales. That is because, as fine an officer as this fellow may be, he has never had a fight on his feet in his life. I have to take someone of relatively senior rank and train him to be a prosecutor. While he may be the best operational or administrative lawyer in the country, it is a different skill to be a prosecutor and it is not one that you pick up in 10 minutes. To that end, we send them off to this police prosecutor course with the cooperation of the New South Wales police force.

They spend nine months literally out at Parramatta doing a week in class and three weeks in court, but I have had to restrict him because I cannot afford to lose him every day for nine months. We have come to an arrangement with the New South Wales police force where I lose him for two weeks a month whereby he has one week in class and as, if you like, a return of service to the New South Wales police by way of a thankyou we give him to them to stand on his feet out at the local courts in Burwood and Parramatta and do the work there. We have just got to the stage where we cannot afford to keep him there anymore and we have had to pull him back into our fold.

Within the career structure of lawyers within the Defence Force as they progress through their levels—and the director-general would be better able to speak to this—they must, by necessity,

complete various modules. The module which they start with the military discipline law is just that: the legal module 'military discipline law'. To progress further to what I call prosecutorial level they have to have done an advanced course as well. They are intensive subjects. They are taught on a four-week basis and then an examination or a paper is required at the end of it. That is some of the training they do.

Finally, the head of the military bar, Captain Paul Willee QC, Royal Australian Naval Reserve, runs, with respect, an excellent advocacy course trying to teach kids who have never really had the chance to stand on their feet and have an argument with someone with grey hair how it is done, what the pitfalls are, where one can go wrong and where one should be looking. These are basic things, but the training is being put in place. Have I got people now whom I would be confident to send out and fight some of our leading silks around the country? No. Have I got people in whom I can be confident to get up on their feet and do their damndest to try and get it right? Yes, because they are keen as mustard, and that is all I am asking at the moment. Until I can get some training properly finalised for them, that is what I will have.

**CHAIR**—So the permanent legal officers all have legal practising certificates and are undertaking continuing—

**Col. Hevey**—They do not have practising certificates. Under section 123 of the Defence Act they are not required to have practising certificates. They are all admitted practitioners and I think that that is a distinction sometimes lost by people. The first thing you have got to do, as it were, is get your ticket. Once you have got your ticket then you have an annual licence to practise, if you like—the practising certificate. All of our people have their ticket. All of our people have qualified. The next question is: do they need the practising certificate? No, they do not. But we train them, in any event, up to what we hope will be a requisite standard.

**CHAIR**—I would just like to ask a question on the case—

**Senator PAYNE**—Excuse me, Chair.

**CHAIR**—You wish to pursue that, Senator?

**Senator PAYNE**—You said it but I do not think it was responded to by Colonel Hevey. Do they participate in CLE in any way?

**Col. Hevey**—Yes, they do, by the very fact that they have to do the four-week course. They do that, basically, over two years—one week one year and one week the next year. As well as that they have got the various advocacy courses, which we run through Captain Willee and his group.

**Senator PAYNE**—So that counts as CLE in the formal recognition process? It is interesting.

**Col. Hevey**—Because they do not have practising certificates, I do not know what requirements each of the various law institutes/societies/bar councils/associations might place on people. I would say that, as far as we are concerned, independent of those bodies, we require continuing legal education, because I do not have people with 20 years experience lobbying on my doorstep as trained prosecutors.



**CHAIR**—I want to come back to one aspect in a moment, but I will just ask these ones that you know I am going to ask. How many of the trials conducted by the office have been run by Reserve officers?

**Col. Hevey**—Over the last 12 months only 32 matters have gone—I am just trying to check the figures so I do not mislead you on that. Forgive me one moment, because I have that here and it is just one that does not spring out at me.

**CHAIR**—Could I ask you the other questions in relation to the reservists?

**Col. Hevey**—Certainly.

**CHAIR**—There are two questions here. Has a panel of Reserve prosecutors been established? Who selects the Reserve prosecutors and on what criteria are they selected?

**Col. Hevey**—I will come back to the trials and who has done what shortly, if I can. There has not been a panel, as such, set out in concrete. The reason for that is that I really require flexibility. One of the advantages that I have in being around for the last 27 years is that you tend to know people and their capabilities. I also have the advantage of having sat as a Defence Force magistrate/judge advocate for three years prior to accepting this position as DMP. So I know, not only from my own knowledge but also from contacts around the country through panel leaders of the various services, who is capable of doing what. There are times when we enlist the assistance of people who are silk—Queen’s Counsel, Senior Counsel. They are usually for the more complex or the more serious trials which could lead to dismissal or other terrible punishments, including imprisonment. If there is, for example, a silk engaged by the defence, we will consider whether or not it is appropriate to have a silk engaged for the prosecution. The choice of prosecutors is normally done on an ‘as required’ basis and that allows me to go literally from Townsville across to Perth down to Hobart and choose who, or as, I require at any given time.

**CHAIR**—So you do it?

**Col. Hevey**—I do it or my deputy does it in consultation with me. There is not a time when Major Bloggs is given a prosecution and I am not aware that he or she is about to do it.

**CHAIR**—What involvement does your office have in training and policy development for military police?

**Col. Hevey**—Unfortunately, none. Why? I simply do not have the hours in the year to do it. Would I like to? Yes. There is a legal officer posted to the military police Army battalion and that legal officer, I understand, will be co-located with us. That will be an advantage, because at least in that situation we will be trying to make sure that the Army military police get the training that we think might assist them. We have been more active with the Naval Investigative Service because we are in a position to do so, being only two buildings away from where they are located as a headquarters.

I perceived a basic problem when I first took over the position. At that time I arranged with the officer commanding the NIS to meet with his investigators. It was done informally, but it

was done by way of a lecture, if you like, for an hour or so on a basic instruction on how a record of interview ought to be structured. I did not think that would be necessary when I took the job on because I just assumed that people had already been trained in that. Regrettably, I found that we had lost capability with the disbandment of our special investigation branches over the last 10 years or so. While our military police personnel were excellently trained in some areas, we had lost a capability in others and that capability has to be restructured. I note that we now are moving into the realm of working with the Australian Federal Police and other professional organisations to try to bring up the level of training, but it has been a problem.

**Senator PAYNE**—Who is responsible for restructuring the capability?

**Col. Hevey**—I would look to Provost Marshal Army and the various persons of Navy, Air Force equivalent. Like any commander, they want to make sure that they are capable of meeting the task that has been allocated to them and if that task is the investigation of criminal events then they ought to be capable of doing it. I read the front page of the *Australian* with interest on Saturday morning—‘I look forward to those results coming through in the near future with the advances in technology’ et cetera.

**Senator PAYNE**—An appropriately drawn record of interview would not seem to be an unreasonable level of demand that you have found lacking in a pretty ad hoc and serendipitous co-location with the Naval Investigative Service.

**Col. Hevey**—It was 12 months ago and it was as a result of, literally, the first or second of the reports I read from the NIS. I formed a view that perhaps people were not properly focused on what I would want, as a prosecutor, to have presented to me so that I could prosecute a matter. I am glad to say that, as a result of our working with the NIS, we have had a distinct improvement in the last 12 months.

**Senator PAYNE**—It begs the question: where does it leave Air Force?

**Col. Hevey**—Air Force are a different kettle of fish.

**Senator PAYNE**—Could you explain that for us?

**Col. Hevey**—Air Force are, frankly, the least of our worries. Air Force tend to be people who do not offend as much as the other two services. My green machine causes the most problems, Navy comes a distant second and the Air Force are a wonderful last—God bless them. Funnily enough, most of the offending—if we were to categorise it—at Air Force is normally at senior officer or senior non-commissioned officer level and normally it is in relation to the payment of allowances. Air Force SEC POL are very good at investigating that because it is pretty well all they have to do.

**Senator PAYNE**—How fortuitous.

**Col. Hevey**—So we do not have to worry about training them for that. I just wonder, if we had what we would call a ‘pub fight’, how the RAAF SEC POL might go in that situation, but they have been the least of our problems.

**Senator PAYNE**—I understand that, but that is by accident not design.

**Col. Hevey**—Perhaps so, but it will be for others to train up the police. My role is to prosecute, not to investigate.

**Senator PAYNE**—Indeed. So we need to speak to the Provost Marshal Army?

**Col. Hevey**—I think that that has been put in place. I understand that there has been an independent audit of military police investigations, their capability—

**Senator PAYNE**—But to get formal advice to the committee on this matter, we need to speak to the Provost Marshal Army?

**Col. Hevey**—I would think so, but I am not a person in a position to tell you that, I am sorry.

**CHAIR**—Going back to an earlier question, you said that the workload that you anticipated was greater than had occurred.

**Col. Hevey**—No, vice versa.

**CHAIR**—I thought you said you were expecting 150 and you got 260.

**Col. Hevey**—That is right. We anticipated that we would have only 120 or thereabouts. The reality is that we have double that number.

**CHAIR**—Yes, that is what I meant. Do you know why that might be the case? What remedial action has been taken to deal with that increase?

**Col. Hevey**—I think the first reason is that there were a lot of too-hard matters on people's desks and we were a convenient recipient of the handpass. That was just part of them saying, 'The DMP is there. He will solve the problems,' so they came to us. We inherited 30-odd matters from our predecessor, the ADF prosecution office, so, if you like, we had a rolling start and then the normal matters flowed in. The difficulty that arose was that, although the Defence Instruction (General), which tells the commanders what must come to us, sets down prescribed offences as, if you like, the starting point, what followed was a discretionary area, whereby if the CO or commander thought it appropriate to send matters to our office then they were at liberty to do so. We obviously encouraged that in the first instance because we wanted to be aware of the matters which, while not prescribed, might be serious. The difficulty that it created in our workload was that we were flooded with matters which really ought to have been dealt with at a lower level. We would prefer our office to be seen as providing advice to Defence Force magistrate and court martial hearings, not to commanding officer hearings. We would hope that base legal officers would be the first and final port of call for commanding officer hearings because that is one of the reasons legal officers exist within a brigade, on a ship or at an Air Force base. They are there to advise the commander.

**CHAIR**—So they were not filtering these cases?

**Col. Hevey**—Initially, no. Service chiefs have now come to our assistance on that. As recently as 15 July, the Acting Chief of Army issued a directive to, as it were, remind people of their responsibilities—who ought to be doing what.

**CHAIR**—Could you find out the number of trials?

**Col. Hevey**—Yes, I will find out.

**CHAIR**—If you cannot do it now you could come back to the secretariat.

**Senator JOHNSTON**—Without putting too fine a point on it, I think it is fair to say that from our perspective you are the bright light on a very dull horizon in this whole process. I do not mean to just flatter you needlessly.

**Col. Hevey**—I can assure you that I am not the brightest light on the Christmas tree.

**Senator JOHNSTON**—You are the one person with a really acceptable understanding of a conflict of interest who has appeared before us, save for those who have been the victims of conflicts of interest in the processes they have been exposed to. Having said that, we are the beneficiaries of an email that was distributed and then forwarded to us by one of our witnesses. I hope you have read the submission of Mr Grant Clark. It is tabled document No. 132. I will pause momentarily to read it to you:

DGTDLS Directive—

I am not sure what that means, but I think it is a directive for Defence lawyers.

**Col. Hevey**—Correct.

**Senator JOHNSTON**—The document continues:

Legal Officer Appointments for Boards of Inquiry

1. The following directive applies to the appointment of PLOs, RLOs and civilian TDLS legal officers at BOI.

Do you know the document I am talking about?

**Col. Hevey**—Yes, I do.

**Senator JOHNSTON**—If you have it there I do not need to read it.

**Col. Hevey**—I do not have it here, but I have read the directive and I have read Mr Clark's submissions and evidence.

**Senator JOHNSTON**—It causes me and others—I know I speak for Senator Payne—enormous angst when I see the factors to be taken into account for approval of legal officer appointments for counsel assisting and counsel representing duties. The minute says:

5. Counsel representing: there are several important factors to be taken into account when approving a legal officer to represent an affected person. They are:

- (a) the interests of the service;
- (b) the interests of the affected person; and
- (c) the availability of the legal officer.

We have had a celebrated case—the name escapes me, but I will think of it in a minute—which went to the High Court. The High Court said that, no matter how serious the indictable offence is, if the perception is that the person tried and convicted did not have the benefit of legal advice—I think you will help me with the case; I cannot remember it but it was a famous one—

**Col. Hevey**—I think it might have been Diana Bettina Stuart and I think it might have been the full Federal Court.

**Senator JOHNSTON**—No, there was one before that that went all the way to the High Court. It was a Western Australian case. It said that, where the accused does not have the benefit of legal advice or access to legal advice, the process cannot stand.

**Col. Hevey**—It was Dietrich.

**Senator JOHNSTON**—Dietrich, thank you. Now, this directive, coming as it does from DGTDLs, absolutely boggles my mind. I cannot tell you how disturbed I am by this, because it is the most fundamental issue that I think emanated from British justice way back when they were all at Runnymede, if I can not put too fine a point on it. I do not want to labour the point, but I just see that you will have one hell of a job to get the sort of thinking that is behind this type of document—and I am staggered it is a document—up onto the table and out of the psyche of those administering this system.

**Col. Hevey**—Can I say a couple of things on that?

**Senator JOHNSTON**—I would be delighted to hear you.

**Col. Hevey**—I am being circumspect for a number of reasons. The first is that it was a previous director, someone for whom I have a great deal of respect and who did an enormous amount of work in trying to build a professional directorate of legal services. My understanding of that minute was that it was born out of complete frustration.

**Senator JOHNSTON**—Certainly. I should say it has been repealed and, to do justice to its authors, it is not the standing order of the day any more and I think it was an aberration.

**Col. Hevey**—It was out of complete frustration, and there was complete frustration because it was perceived that some involved in those processes of boards of inquiry were taking far too long on their tasks, and it always seemed to be the same sorts of people involved. It got to the stage where very large amounts of money were being spent.

**Senator JOHNSTON**—So there were budgetary constraints?

**Col. Hevey**—Very large amounts of money were being paid to certain people who were carrying out their tasks in the best manner that they saw fit. As I understand the commodore's minute, it was one born out of frustration. I am sure that it was one that ought to have been put in the bottom drawer until the morning so that it could be reread in the cold hard light of day before it was sent out. We have all been guilty of that.

**Senator JOHNSTON**—Yes.

**Col. Hevey**—I have done it in the past and I am sure I will do it again in the future, and for that I apologise in advance!

**Senator JOHNSTON**—We owe you a debt of gratitude for putting it so succinctly, because I am starting to feel a bit better about it, having listened to you say that. Nevertheless, it did shock me—

**Col. Hevey**—There were those in the system who were surprised when they read it, if I can speak neutrally, and there were also those of us in the system who had the appropriate chat to say, 'Look, this deserves some reflection'—and, upon reflection, it was rescinded.

**Senator JOHNSTON**—I thank you for that. I think that has gone a long way towards easing my and, I trust, Senator Payne's angst about that subject. There are some things I wanted to talk to you about briefly. For instance, I am curious to know what went on before you arrived.

**Col. Hevey**—We still have in effect a similar position. I am technically not here as yet. The system is this: across the length and breadth of the country, across the length and breadth of uniforms and the length and breadth of rank, we have 33 convening authorities. Those convening authorities decide whether a matter goes to trial at defence force magistrate or court martial level. In that situation they will rely on legal advice, and up until 1 July last year almost inevitably there would be 33 different legal officers giving 33 different convening authorities advice. One of the main reasons for the introduction of this office is to try and give some uniformity across services, geography and rank. At the moment, because of the failure to implement the legislation, we still have the position where I can only advise and commanders will choose, for their proper reasons, to accept or reject that advice. Once the position is put in place that the DMP, whoever it might be, is the equivalent of the DPP in the Commonwealth and the various states and territories, it will be the DPP who effectively decides to sign the charge sheet which brings the matter to trial. That will be one person, not 33.

**Senator HOGG**—I am seeking clarification. You said there is a failure to implement some legislation. What do you mean by that? Is there legislation being drafted?

**Col. Hevey**—It is being drafted as we speak. As I understand it, it is with the A-G's department, with the drafter, and I am literally anticipating—

**Senator HOGG**—It is not held up in the processes of the parliament? That is what I am trying to get to.

**Col. Hevey**—No. I practise in private practice and have done for a lot of years. If I want things done, you just do it. I am becoming very much accustomed to how others work and what constraints and restraints are put on me when I want things done and I do not like it. I am one of these people who jumps up and down and says, ‘Make it happen.’

**Senator HOGG**—All right. My point, though, is that it is not a bill that has been put in the parliamentary process and is being held up by the vagaries of the parliament itself.

**Col. Hevey**—It was too late to go in the defence legislation amendment bill last year, 2003, and I am waiting for it to go at some stage this year.

**CHAIR**—So it is not us holding it up.

**Col. Hevey**—No.

**CHAIR**—So you would like to retract your original answer.

**Col. Hevey**—No, I will not. I can tell you one person who is not holding it up, and that is my office. One person who is trying to push it through is my office. If someone would give us a T-rating we would very much appreciate it. So at any stage if anyone can push the appropriate buttons to make it happen, please do so.

**Senator HOGG**—So you are saying this is bogged down in Attorney-General’s.

**Col. Hevey**—I am saying it is bogged down in the very procedure which requires it to take a year and a half before it gets done. For goodness sake, if you want the office up and running, push the procedure aside and make it happen.

**Senator PAYNE**—We agree, Colonel.

**Senator HOGG**—No-one on this committee is disagreeing with you. We just want to find out where things are at.

**Col. Hevey**—It is frustrating beyond belief to be someone who everyone views as a panacea and no-one will give you the tools with which to do the job. Make it happen. Push the procedure aside. Give it a T-rating. Draft the wretched thing. Send it to me to approve and I will look at it and give my comments as quickly as possible.

**Senator HOGG**—Are we looking at some piece of legislation that is very complex?

**Col. Hevey**—No. There are about seven or eight DPP acts around the country at the moment, all of them very similar to each other, from the Northern Territory to Hobart. Any one of them could get a photocopy machine and start work and change the names to protect the innocent. This is not a massive task.

**Senator HOGG**—Okay. I think we had better move on.

**Col. Hevey**—I am sorry, I do get a bit passionate about this.

**CHAIR**—If you want to hold the coalition government to account for it—

**Col. Hevey**—No, I hold parliament—

**Senator PAYNE**—It is not in fact the parliament that is holding up the procedure if Colonel Hevey has not even seen the bill. The bill is drafted by parliamentary counsel and is presented through the minister and the department. It is not held up by the parliament.

**Senator HOGG**—We are trying to establish whether or not it is the parliament itself where the blockage is. It is not.

**Senator PAYNE**—It is not, if Colonel Hevey has not seen the bill. So we will not take corporate responsibility just yet.

**CHAIR**—Colonel Hevey has retracted his allegation!

**Senator PAYNE**—I was pursuing my general tendency to CLMs.

**Senator JOHNSTON**—With respect to further submissions from ADF, and I am not sure whether you have seen them—

**Col. Hevey**—I have; they kindly faxed them through to me over the weekend or on Monday.

**Senator JOHNSTON**—The one that concerns me—as I am sure you have probably heard around the traps—is this Navy case of Hyland. The last line of our chronology—and I am very much obliged to the personnel who compiled this chronology—is that the DMP is currently reviewing relevant documentation. I do not want to do anything that is approaching sub judice—I do not want to go there—but are we nearing a resolution?

**Col. Hevey**—Yes, we are. The advice left our office very recently. Can I tell you why it has taken so long?

**Senator JOHNSTON**—Yes please.

**Col. Hevey**—We are dealing with intra agencies here. It is not simply a matter of going down to Victoria Police, knocking on their door and saying, ‘Give us your file.’ In fact, the file was only forwarded to us after toing-and-froing through all the necessary bureaucratic channels to make sure that no-one’s toes were being stepped on and that we weren’t upsetting any privacy issues et cetera. It arrived in our office in early June this year and it left our office in about mid-July. I think, at least from my point of view, that is an acceptable time period.

**Senator JOHNSTON**—What is the problem with our utilising the Federal Police or the Crimes Act?

**Col. Hevey**—The matter was brought through the Victoria Police. They were the ones who decided not to prosecute it.

**Senator JOHNSTON**—Why did we go there in the first place?

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**Col. Hevey**—Because that is where the offence occurred.

**Senator JOHNSTON**—It still occurred, did it not, on Commonwealth property?

**Col. Hevey**—We still have, as I understand it, the Commonwealth (application of state laws) legislation. In that situation it is a matter of policy, despite the fact that we might not have to pay licensing fees—

**Senator JOHNSTON**—Is it a matter of policy or a matter of law?

**Col. Hevey**—As a matter of policy, as I understand it, we normally try to comply with state laws and hand matters over to the state authorities. It would be unusual, if there were a fight in a mess or canteen, for us to call in the AFP; we would not normally do so. If someone received a punch in the nose we would normally hand the matter over to the state or territory police in which the action occurred.

**Senator JOHNSTON**—Regarding the utilisation of outsourcing, why is it that we would not use some AFP prosecution staff?

**Col. Hevey**—We could, and in fact I recently had cleared through the Defence Legal Service an ability for us as an office, when we get a position vacant, to recruit directly from one of the offices of the Director of Public Prosecutions around the country. I do a bit of prosecution work for the state in Victoria. From discussions I have had with people within that office, as an example, they might find a two- or three-year short service commission a very attractive divergence from their career.

**Senator JOHNSTON**—You have put that in the pipeline?

**Col. Hevey**—I have. I now have approval for that from the career development committee to recruit up to major rank, which is a very significant step.

**Senator JOHNSTON**—That is great. Let us come back to our man Hyland. He has sustained quite remarkable injuries which I would think fit the technical definition of bodily harm, if not going some way towards grievous bodily harm, in criminal parlance. What concerns me—apart from the fact that there has not been a prosecution—is the level of force used to cause those injuries, and that person is still at large within the ADF. Someone has participated in this, rightly or wrongly—and I do not want to draw any conclusions as to guilt or innocence—and it worries me that there is a person out there who has been involved in a one-sided event and the extent of this man's injuries. The transcript is very enlightening as to their extent. What do we do about that?

**Col. Hevey**—For a start I will not comment on the Hyland matter. The reason is that obviously I cannot, and I do not know what occurred on that night. I know there are two different versions and it will be for someone else to decide—if it has not already been decided—what did happen on that night. As a general philosophy, do we have people out there who hurt each other when they are under the influence of alcohol or rage or whatever else? Yes, we do. Otherwise there would be no need for my office or discipline procedures. We train people very hard and sometimes they let off steam. I do not give that as an excuse, but it happens. It also

happens down the road in Kingston, in Queanbeyan and in Darwin. It happens everywhere. It is not something which is restricted to the ADF; it is a community problem.

**Senator JOHNSTON**—With the greatest of respect, I think this is more than letting off steam.

**Col. Hevey**—I do not belittle it by using that phrase. But I do say that people get into fits of rage in the military as well as in civvy street. People do things which they later regret, as we all do. The simple fact of the matter is that, while they would like to be the recipients of some anger management course or something else, we are stuck with what we have.

**Senator JOHNSTON**—But you say there is action afoot with respect to this?

**Col. Hevey**—Our advice on the Hyland case has gone out. Will I tell you what that advice is? No, I will not, for clear reasons. That is for someone else to decide.

**Senator JOHNSTON**—That is fine.

**Col. Hevey**—But it has left our office, and we have given certain advice.

**Senator JOHNSTON**—Is it the case that you have no oversight over administrative inquiries or prosecutions?

**Col. Hevey**—Correct. Administrative inquiries do not involve prosecutions, unless they come to us. If Squadron Leader Bloggs in an administrative inquiry is found on the balance of probabilities to have taken \$10 off someone else's desk when he was not entitled to it, then people might bring that to us by way of a prosecution investigation later. But we do not have any input into the administrative side of the house—and rightly so, if I might say so.

**Senator JOHNSTON**—Possibly, but where we are coming from here is a fairly substantial lack of confidence in the processes on the other side of the fence. You are, as I said, a bright light on a dull horizon. When I look over the other side of the fence concerning one of our witnesses—and the SAS situation in East Timor is one which was heard in camera, but I can say this because I do not think there is a problem with it—the evidence was not substantially of a calibre as to discharge a prima facie case.

**Col. Hevey**—And, as you will be aware, that was one of the very first jobs that was handpassed to me on assuming office.

**Senator JOHNSTON**—I was not aware of that.

**Col. Hevey**—It was one of the very first jobs that was handpassed to me when I assumed the office. I reviewed the material and I made a decision. The decision was to cease and desist.

**Senator JOHNSTON**—Are you in a position to give me the benefit of your wisdom as to how we protect the person involved in such a circumstance from having the prosecution, if you like, get off one horse and get on the other simply because it is convenient?

**Col. Hevey**—There was a recent case which involved my own investigation; I had to go to a particular place to investigate. I do not want to go into names and addresses, obviously, but I investigated a matter in April this year which was a recommended prosecution. As a result of that investigation, I formed the view that it was not possible to get a conviction. I also formed the view that I was in little doubt that what had been alleged to have occurred had occurred. That is not jumping horses from prosecution to administrative matters. In fact, my report to the appropriate authority was that I would not prosecute for this matter but that no doubt other action might be considered.

**Senator JOHNSTON**—I started off the inquiry saying that double jeopardy is to be avoided in all circumstances, but once I have enmeshed myself in the way that discipline has to be administered I have come to the understanding—and I think many committee members have—that there are going to be times when things are not going to discharge a prima facie case or meet beyond reasonable doubt as a standard of proof but they will disclose matters requiring discipline under administrative procedures. What I am really concerned about is that, in the particular instance that we were talking about, because the evidence was not of a quality on a very serious charge, solace was sought. Comfort was sought to be obtained. Retribution was apparently sought to nail this person because it was much easier—not because the evidence was justifying it but because the innuendo was able to be more readily sustained in that jurisdiction. That is what I am worried about.

**Col. Hevey**—In the particular case you are talking about, I know one of the people involved in the decision-making process and I am firmly convinced that that person believed to the best of their knowledge that what they were doing was right. I took a different view, as did a couple of others. I would not question his professional integrity or his decision making insofar as he is a man of considerable experience; he has prosecuted for a number of years. We came to a different view. I think my view was right, but he disagrees with me even to this day. There will always be a situation—

**Senator JOHNSTON**—Can we just pause there. What I want to dwell on for a moment is that we get the feeling that that disagreement is not one of a professional calibre, if you follow what I mean. It is coming from here, and this is a very dangerous place to be. For the transcript, I am pointing to my heart. There is a lot of emotion in these prosecutions internally in the defence department and it is a dangerous, concerning element that we see.

**Col. Hevey**—I can only tell you that that is not the way I view it.

**Senator JOHNSTON**—I know you do not.

**Col. Hevey**—My decisions are made here—and I am pointing to my head.

**Senator HOGG**—This is becoming a real anatomical exercise, isn't it?

**Col. Hevey**—That is going to upset a lot of people. Someone joked with me when I took the job on and said, 'Every decision you make, you will upset 50 per cent of the people.' That was quite right; I do. I will decide to prosecute and people will say, 'You shouldn't do that,' and I will decide not to prosecute and there will be aggrieved people all around the place.

**Senator JOHNSTON**—What is your annual salary?

**Col. Hevey**—I get paid—

**Senator JOHNSTON**—Sorry, not personally. I mean from the defence department.

**Col. Hevey**—I get paid \$275 and some cents per day.

**Senator JOHNSTON**—My goodness.

**Col. Hevey**—As you can imagine, my private practice commands a little more than that.

**Senator JOHNSTON**—Can we talk about what that actually means for those who are not familiar with what the profession's reasonable and legitimate fees are. What would you expect to be paid per day as a privately instructed barrister on a board of inquiry matter?

**Col. Hevey**—As a hypothetical?

**Senator HOGG**—As a hypothetical.

**Senator JOHNSTON**—Roughly.

**Col. Hevey**—I dare to think of myself as a senior junior. I would expect that most senior juniors doing a Supreme Court trial would earn in the order of \$2,500-plus to \$3,000 a day. I say 'plus' meaning with GST. That seems to be about the mark in my experience, that a good junior will command that sort of money.

**Senator JOHNSTON**—Tell us again: you are getting \$235 a day?

**Senator HOGG**—He said \$275 a day.

**Col. Hevey**—I get paid \$275 a day. I get paid rate per rank, what a colonel in the Army gets.

**Senator JOHNSTON**—Did you say \$275?

**Col. Hevey**—I get \$275 a day in round figures. That is what a colonel in the Army gets. I have had difficulties with my office because I have put in more than six months but I do not get leave entitlements for that, nor do I get any superannuation—because I am a Reserve officer—nor do I get paid anything to keep my chambers open while I am not there. My chambers are fairly expensive to run. This has been a labour of love over the last 12 months.

**Senator JOHNSTON**—I have no doubt.

**Col. Hevey**—It has cost my family and me a fortune. Why do I do it? Because I am silly enough to think it is worthwhile.

**Senator JOHNSTON**—We support you in that, let me tell you. Let us move on to the process of the oversight of your performance. What structure is there to say whether Colonel Hevey is doing a good job?

**Col. Hevey**—At present, there is pretty well none. What I would like to think is that there is peer review, because that is something that I take very seriously. The very nature of whoever fills this job will be that they will have a good working relationship with the senior practitioners—and I include Reserve as well as regular officers—throughout the Defence Legal Service. If it gets to the stage where I am not performing as people would expect, I have no doubt that I would be tapped on the shoulder. It might be over a cup of coffee. You might think that would be fortuitous, Senator, but that is exactly what happens with the DPPs in the state, federal and territory jurisdictions.

**Senator JOHNSTON**—Yes, I accept that. But their position is far more transparent in terms of the expectation and the motivation behind the tap.

**Col. Hevey**—I would expect that once the position became statutorily independent there would be responsibilities with the rights.

**Senator JOHNSTON**—Is it the case that you are on trial right now?

**Col. Hevey**—Yes, every day of my practising life—quite seriously. Every day I appear before a judge in the jurisdiction or before a court martial—I would expect that we are on trial every day to decide whether we do the right thing.

**Senator JOHNSTON**—I do not want to put you on the spot with respect to the line of questioning.

**Col. Hevey**—One of my colonel general officers has reminded me that the legal officers are grossly overpaid. They get \$275 per day. A colonel, general list, gets \$230 a day. There is an allowance for specialist training of \$45 a day.

**Senator JOHNSTON**—Let us talk about your selection process. You mentioned that there was a hot field. Why do you think you were chosen and what supports you in that contention? I do not want to know who the candidates were. In the profession you get to know who is who in the zoo. What did you bring to the position that you think attracted your appointment?

**Col. Hevey**—Firstly, I fulfilled all the criteria, clearly. Secondly, I think the big advantage I had was that I had served for nearly 5½ years in the Regular Army, so I knew how command structures worked. During the interview, my main concern was to ensure that the commanders knew that they were gaining an asset, that someone was not trying to usurp their function and that the asset they were gaining was twofold. Firstly, it was a fresh target, which removed any argument, as with attorneys-general—the argument now is not over whether the Attorney-General or commander was influencing it; it is over whether the Director of Military Prosecutions was. Secondly, it provided uniformity, which I thought was important. I am sure a lot of the candidates were able to bring this sort of argument to bear, but I think that—along with the fact that I had served in the Regular Army in a couple of different places and, I like to think, gained people's respect through that service—that assisted me in being selected.

**Senator JOHNSTON**—Were you a practitioner in your service as a regular?

**Col. Hevey**—Yes, I was.

**Senator JOHNSTON**—What was the composition in terms of rank of the panel that appointed you?

**Col. Hevey**—There was the director-general of legal services, a one-star; the three deputy JAGs, all with one star; and the Chief of Army, the chairman of the committee. I had not met the Chief of Army before. If I had, it would have been at a social occasion rather than anything to do with work. That was it—the three-star and four one-stars.

**Senator JOHNSTON**—Do you anticipate that the legislation will appropriate your budget?

**Col. Hevey**—I would hope so. I had the opportunity to speak with the major general in charge of the British army legal service. Their budget comes from the attorney-general's department rather than from army, which is different from what happens in the ADF here in Australia. I do not think it is a bad idea for the attorney-general's department to fund the DMP's office, because it removes yet one more step and any suggestion that the office could be hamstrung or inflated by lack of or surplus funds.

**Senator JOHNSTON**—Why is it that each of the services has different definitions of drugs and drug related matters? There are marginal, but significant, differences between Navy, Air Force and Army when I read through the papers. Why is there a difference?

**Col. Hevey**—I think it is a difference without a distinction. I think the main aim in all of this is one of operational efficiency. I think they have gone about addressing it differently. I hope that an ADF policy could be developed triservice—indeed, it should include Defence, civilians and public servants. That is something that ought to be done.

**Senator JOHNSTON**—It just strikes me that, in terms of the criteria for prosecuting a matter, there are different criteria.

**Col. Hevey**—It makes it difficult. I would prefer it was not difficult.

**CHAIR**—Thank you. It would be good if you could get that answer to us.

**Col. Hevey**—I will get that to you tomorrow. I apologise for not having it at my fingertips.

**Committee adjourned at 7.56 p.m.**